11–17–98
Vol. 63 No. 221
Pages 63781–63968

federal register

Tuesday
November 17, 1998

Briefings on how to use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

Now Available Online via
GPO Access

Free online access to the official editions of the *Federal Register, the Code of Federal Regulations* and other Federal Register publications is available on *GPO Access,* a service of the U.S. Government Printing Office at:

http://www.access.gpo.gov/nara/index.html

For additional information on ***GPO Access*** products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

Attention: Federal Agencies

Plain Language Tools Are Now Available

The Office of the Federal Register offers Plain Language Tools on its Website to help you comply with the President's Memorandum of June 1, 1998—Plain Language in Government Writing (63 FR 31883, June 10, 1998). Our address is: http://www.nara.gov/fedreg

For more in-depth guidance on the elements of plain language, read ''Writing User-Friendly Documents'' on the National Partnership for Reinventing Government (NPR) Website at: http://www.plainlanguage.gov

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512-1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register,** Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 63 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**512–1800**
Assistance with public single copies	**512–1803**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**523–5243**
Assistance with Federal agency subscriptions	**523–5243**

NOW AVAILABLE ONLINE

The October 1998 Office of the Federal Register Document Drafting Handbook

Free, easy online access to the newly revised October 1998 Office of the Federal Register Document Drafting Handbook (DDH) is now available at:

http://www.nara.gov/fedreg/draftres.html

This handbook helps Federal agencies to prepare documents for publication in the **Federal Register.**

For additional information on access, contact the Office of the Federal Register's Technical Support Staff.

Phone: 202–523–3447

E-mail: info@fedreg.nara.gov

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

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

WHO: Sponosred by the Office of the Federal Register.

WHAT: Free public breifings (approximately 3 hours) to present:

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

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

WASHINGTON, DC

WHEN: Tuesday, Nov. 24, 1998 at 9:00 am.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

Contents

Federal Register

Vol. 63, No. 221

Tuesday, November 17, 1998

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register

Vol. 63, No. 221

Tuesday, November 17, 1998

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 316

RIN 3206–AH47

Temporary and Term Employment

AGENCY: Office of Personnel Management.

ACTION: Final regulation.

SUMMARY: As part of continuing efforts to streamline the appointing system, the Office of Personnel Management (OPM) is issuing final regulations on nonpermanent employment. These regulations eliminate ''outside-the-register authority'' for term appointments; permit OPM to extend the length of term appointments when justified; clarify the crediting of prior service for the required trial period, and allow certain excepted service employees whose positions are brought into the competitive service to serve the full 4-year period allowed for term appointment. The regulations also add several categories of individuals to the list of those eligible for noncompetitive temporary and term appointments on the basis that they are currently eligible for permanent appointment and also clarifies the conditions for making nonpermanent appointments based on a veteran's eligibility for a veterans readjustment appointment (VRA). To help agencies control the costs of workers' compensation by returning more injured employees to duty, the regulations permit the reappointment of injured non-permanent employees to any position for which qualified.

EFFECTIVE DATE: December 17, 1998.

FOR FURTHER INFORMATION CONTACT: Diane Tyrrell or Michael Mahoney on 202–606–0830, FAX 202–606–2329, or TDD 202–606–0023.

SUPPLEMENTARY INFORMATION: On September 9, 1996 (61 FR 47450), OPM published proposed regulations and received comments from four Federal agency headquarters, three agency components, and three employee organizations. Following is a summary of each regulatory provision and the relevant comments.

Eliminating the Outside-the-Register Hiring Mechanism for Term Appointments

Two agency headquarters objected to the elimination of outside-the-register procedures for term appointments on the basis that agencies should have the flexibility to select from ''immediately available and qualified candidates * * * using the latest computer technology.'' We have not adopted these comments.

In the past when OPM (or agencies under delegated examining) maintained standing registers, it was appropriate for the register-holding office to authorize outside-the-register appointments when those registers did not have candidates available for certification. Now, however, OPM has delegated full examining authority to agencies. Agencies can announce individual positions as needed and can tailor examining procedures as appropriate. Further, since term appointees may serve for long periods of time and have benefits similar to those enjoyed by permanent employees, it is appropriate that term and permanent employees be appointed in the same manner. We have, therefore, adopted the proposal to eliminate outside-the-register procedures for term appointment.

Extending Term Appointments

We proposed to permit OPM to extend term appointments beyond the 4-year limit without the need for a variation to the regulation under Civil Service Rule 5.1 as currently required. In response, three agency headquarters and two employee organizations recommended OPM delegate the extension authority to agencies. One agency field component recommended that the regulations authorize agencies to make term appointments for up to 5–7 years through the end of 2001, or permit the noncompetitive reappointment of individuals who have served the maximum time for term appointment in order to complete the work for which they were hired. A third employee organization objected to any expansion of the term authority on the basis that term appointments are not specifically authorized by law.

After considering these dissimilar comments, we believe our original proposal represents a reasonable compromise. Therefore, the final regulations permit OPM to extend term appointments beyond the 4-year limit. The purpose of term appointments remains the same as defined in 5 CFR 316.301; such appointments are appropriate when the need for an employee's services is not permanent, e.g., for project work, extraordinary workload, scheduled abolishment, reorganization, contracting out of the function, uncertainty of future funding, or the need to maintain permanent positions for placement of permanent employees who would otherwise be displaced.

Agencies should determine whether a permanent appointment may be more appropriate if there is a need for continuing the term appointment for an extended period of time. Overly long extensions or consecutive term appointments reflect a permanent need and, therefore, must be staffed accordingly. When seeking OPM approval to extend term appointments, agencies must document the reasons for the continued need of the individual. The requirement to make such requests using the variation process is no longer necessary.

We are also adopting the proposal to clarify that agencies may make term appointments in any increments so long as the appointment is for more than 1 year and no more than 4 years. For example, when an agency makes a term appointment for 13 months, the agency may extend that appointment up to the 4-year limit in as many increments as the agency chooses. The vacancy announcement for a term appointment of less than 4 years should make clear the possibility of extension up to the 4-year limit.

Trial Period for Term Appointment

There were no comments on our proposal to require crediting prior service toward the trial period required for term appointment in the same way that prior service is credited for the probationary period in 5 CFR 315.802, i.e., same agency, same line of work, and no more than a single break in service not exceeding 30 days. The final regulations have adopted the proposal with no changes.

Crediting Excepted Service Toward Time Limit for Term Appointment

One agency commented on our proposal to allow former excepted service employees whose positions were brought into the competitive service when OPM revoked an excepted appointing authority to serve up to the full 4-year period for term appointments rather than have the amount of their prior time-limited excepted service subtracted from the maximum time limit for term appointment. The agency suggested that the regulatory language itself contain a fuller explanation. We have adopted this suggestion in 5 CFR 316.702.

Categories Eligible for Noncompetitive Term and Temporary Appointments

One agency headquarters commented on the proposal to add four categories of individuals eligible for noncompetitive term and temporary appointments based on their eligibility for permanent appointment under various authorities. The agency recommended the final regulations permit noncompetitive term appointments of mentally retarded and disabled employees who have successfully performed while employed under excepted service appointments, 5 CFR 213.3102 (t) and (u). We have not adopted this suggestion. Individuals who serve under these two excepted service authorities are eligible for conversion to career or career-conditional appointments under 5 CFR 315.709 if there is no break in service between their excepted service and the career or career-conditional appointment. A term appointment would constitute a break in service for this purpose and would prevent conversion. Also, since an individual can serve indefinitely under the (t) and (u) authorities unless the appointment is made with a specific time limitation, a term appointment in the competitive service would be less advantageous to the employee since it has a fixed ending date.

Selecting Term Employees for Permanent Positions

Although no specific regulatory language was proposed, two agencies questioned our interpretation of Civil Service Rule 3.1 and parallel regulation 5 CFR 315.703. One agency component recommended a new Executive Order (E.O.) to change Civil Service Rule 3.1 so that term employees could more easily be converted to permanent appointments. In our proposal we pointed out that conversion is possible only when all the conditions of 5 CFR 315.703 are met, including the requirement that the term employee has been within reach for permanent appointment. We explained that in this context, within reach means that the term employee could have been selected for a permanent position *that was actually announced and filled*. We explained that it was not sufficient for the vacancy announcement to have stated that positions could be filled by term *or* permanent appointment or that an individual selected for a term appointment might later be converted to a permanent appointment without further competition.

In commenting on our explanation, the two agencies suggested that when positions are announced as ''term, may become permanent,'' the conversion from term to permanent is made based on a prior competitive selection from a *register which was used to make appointments conferring competitive status*. According to the agencies' reasoning, the conversion from term to permanent would thus be based on prior competition and would, therefore, be in keeping with merit system requirements since all applicants knew of the possible conversion and had a fair opportunity to apply. These agencies see the term appointment as an interim step necessary because of funding constraints.

OPM's view is that *unless permanent appointments were actually made* from the register referred to above, it cannot be said that the register was used to make appointments conferring competitive status. An amendment to E.O. 10577 or enactment of a Federal statute would be necessary before we could issue regulations authorizing individuals to be converted from term to permanent on the basis of a vacancy announcement that said an individual selected for a term appointment might later be converted to permanent appointment.

Two employee organizations recommended OPM seek legislative change to permit temporary and term employees to compete for permanent positions under agency merit promotion procedures. This is a matter outside the scope of the regulations in 5 CFR part 316.

Temporary Employees Injured on the Job

Two agencies commented (one by telephone) on the proposed provision to permit agencies to noncompetitively reappoint former temporary employees who were injured on the job *to any position for which they qualify* if their injury disqualified them for reappointment to their original position or one with the same qualification requirements. (Other former temporary employees who were *not* injured on the job may be noncompetitively reappointed only to their original positions or one with the same qualification requirements.) For all reappointments, time under the initial appointment and reappointment must adhere to the limits for temporary appointments, but time spent on workers' compensation does not count toward any time limit.

One agency recommended that we allow agencies to reappoint former temporary employees who are injured on the job for a minimum of 120 days, even if they had less time remaining under their original temporary appointment. This 120 days would not count toward time remaining under the original temporary appointment. The 120-day period would provide the necessary time for the Department of Labor to calculate a ''loss of wage earning capacity.'' Without such a determination, individuals would return to the long term workers' compensation rolls after expiration of the temporary appointment, and Federal agencies would not have reduced their costs for workers' compensation.

On the basis of this comment, we have changed the regulatory provision to permit reappointment of former temporary employees injured on the job for a minimum of 120 days. See 5 CFR 316.402.

Eliminating the TAPER Authority

In response to the Governmentwide need in connection with the President's initiative to provide opportunity for welfare recipients to enter the workforce, OPM will not eliminate the TAPER (temporary appointment pending establishment of a register) authority at this time. We recognize the need to retain a more simple and flexible examining process required by agencies when filling Worker-Trainee (GS–1 and WG–1 and –2) positions with applicants with limited education and experience. This appointing authority and examining process will continue to be monitored and evaluated to determine the necessity for its continuation.

Editorial

One agency objected to our proposed deletion of 5 CFR 316.305 relating to the eligibility of certain term employees for within-grade increases. Because the section duplicates material already included in 5 CFR part 531, subpart D, we have not adopted the agency's suggestion.

We have made editorial changes in 5 CFR 316.201 of the regulations to clarify that Worker-Trainee promotions are authorized under these regulations when they are consistent with 5 CFR 330.501; in 5 CFR 316.403(b)(1) of the regulations to correct a reference to retired disabled veterans; and in 5 CFR 316.701(b)(1) and 5 CFR 316.702(b)(1) of the regulations, which permit agencies to retain employees whose public or private enterprise or excepted positions are brought into the competitive service. This language makes it clear that if they are retained in continuing positions, they are given status quo appointments. We have also removed reference to temporary and term appointments made based on eligibility under 5 U.S.C. 3304(c) (''Ramspeck appointments'') due to the repeal of the Ramspeck Act.

Other

One agency commented that agencies be allowed to make excepted service appointments on a term basis. Excepted appointments are not covered by 5 CFR part 316. However, unless the specific excepted service authority provides otherwise, agencies may make an excepted appointment on a time limited basis for more than 1 year. Such excepted appointments are comparable to term appointments in the competitive service, but there is no maximum time limit unless specified by a particular excepted service authority. (Excepted appointments not-to-exceed 1 year are defined in 5 CFR 213.104(a)(1) as temporary and are subject to the maximum time limits 5 CFR 213.104(b)(1).

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulation pertains only to Federal employees and agencies.

List of Subjects in 5 CFR Part 316

Government employees.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending part 316 of title 5, Code of Federal Regulations, as follows:

PART 316—TEMPORARY AND TERM EMPLOYMENT

1. The authority citation for part 316 is revised to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

2. In § 316.201, paragraph (b) is revised to read as follows:

§ 316.201 Purpose and duration.

* * * * *

(b) *Specific authority for Worker-Trainee positions.* Agencies may make TAPER appointments to positions at GS–1, WG–1, and WG–2 and may reassign or promote the appointees to other positions through grade GS–3, WG–4, or equivalent grades in the Federal Wage System consistent with § 330.501 of this chapter. Agencies are authorized to reassign or promote Worker-Trainees under this authority.

3. Section 316.301 is revised to read as follows:

§ 316.301 Purpose and duration.

(a) An agency may make a term appointment for a period of more than 1 year but not more than 4 years to positions where the need for an employee's services is not permanent. Reasons for making a term appointment include, but are not limited to: project work, extraordinary workload, scheduled abolishment, reorganization, contracting out of the function, uncertainty of future funding, or the need to maintain permanent positions for placement of employees who would otherwise be displaced from other parts of the organization. Agencies may extend appointments made for more than 1 year but less than 4 years up to the 4-year limit in increments determined by the agency. The vacancy announcement should state that the agency has the option of extending a term appointment up to the 4-year limit.

(b) OPM may authorize exceptions beyond the 4-year limit when the extension is clearly justified and is consistent with applicable statutory provisions. Requests to make and/or extend appointments beyond the 4-year limit must be initiated by the employing office and sent to the appropriate OPM service center.

4. Section 316.302 is revised to read as follows:

§ 316.302 Selection of term employees.

(a) *Competitive term appointment.* An agency may make a term appointment under 5 CFR part 332 competitive procedures.

(b) *Noncompetitive term appointment.* An agency may give a noncompetitive term appointment, without regard to the requirements of parts 332 and 333 of this chapter, to an individual who is qualified for the position and who is eligible for:

(1) Reinstatement under § 315.401 of this chapter;

(2) Veterans readjustment appointment (VRA) under § 307.103 of this chapter. Term appointments under this section are permitted only at the grade levels authorized for VRA appointments. Such appointments are competitive service appointments not excepted VRA appointments and do not lead to conversion to career-conditional appointment;

(3) Career or career-conditional appointment under §§ 315.601, 315.604, 315.605, 315.606, 315.607, 315.608, 315.609, 315.703, or 315.711 of this chapter;

(4) Appointment under 5 U.S.C. 3112 (veterans with compensable service-connected disability of 30% or more). The disability must be documented by a notice of retirement of discharge due to service-connected disability from active military service dated at any time, or by a notice of compensable disability rating from the Department of Veterans Affairs, dated within the last 12 months;

(5) Appointment under 31 U.S.C. 732(g) for current and former employees of the General Accounting Office;

(6) Appointment under 28 U.S.C. 602 for current and former employees of the Administrative Office of the U.S. Courts;

(7) Reappointment on the basis of having left a term appointment prior to serving the 4-year maximum amount of time allowed under the appointment. Reappointment must be to a position in the same agency appropriate for filling under term appointment and for which the individual qualifies. Combined service under the original term appointment and reappointment must not exceed the 4-year limit; or

(8) Conversion in the same agency from a current temporary appointment when the employee is or was within reach on a certificate of eligibles for term appointment *at any time during service in the temporary position. Within reach* means that the person could have been selected for the position under competitive hiring procedures, including veterans' preference. The certificate must have been actually used for term appointment. The person must have been continuously employed in the position from the date found within reach to the date converted to a term appointment.

(c) Term employees are eligible for an extension of their appointment in accordance with the time limits in § 316.301 even if their eligibility for noncompetitive appointment expires or is lost during the period they are serving under term employment.

5. In § 316.304, paragraph (a) is revised to read as follows:

§ 316.304 Trial period.

(a) The first year of service of a term employee is a trial period regardless of the method of appointment. Prior Federal civilian service is credited toward completion of the required trial period in the same manner as prescribed by § 315.802 of this chapter.

* * * * *

§ 316.305 [Removed]

6. Section 316.305 is removed.

7. Section 316.402 is revised to read as follows:

§ 316.402 Procedures for making temporary appointments.

(a) *Competitive temporary appointments.* In accordance with the time limits in § 316.401, an agency may make a temporary appointment under 5 CFR part 332 competitive procedures or under 5 CFR part 333 ''outside-the register'' procedures when there are insufficient eligibles on the appropriate register.

(b) *Noncompetitive temporary appointments.* In accordance with the time limits in § 316.401, an agency may give a noncompetitive temporary appointment, without regard to the requirements of parts 332 and 333 of this chapter, to an individual who is qualified for the position and who is eligible for:

(1) Reinstatement under § 315.401 of this chapter;

(2) Veterans readjustment appointment under § 307.103 of this chapter. Temporary limited appointments under this section are permitted only at the grade levels authorized for VRA appointments. Such appointments are not VRA appointments and do not lead to conversion to career-conditional appointment;

(3) Career-conditional appointment under §§ 315.601, 315.604, 315.605, 315.606, 315.607, 315.608, 315.609, or 315.711 of this chapter;

(4) Appointment under 5 U.S.C. 3112 (veterans with compensable service-connected disability of 30% or more). The disability must be documented by a notice of retirement of discharge due to service-connected disability from active military service dated at any time, or by a notice of compensable disability rating from the Department of Veterans Affairs, dated within the last 12 months;

(5) Appointment under 31 U.S.C. 732(g) for current and former employees of the General Accounting Office;

(6) Appointment under 28 U.S.C. 602 for current and former employees of the Administrative Office of the U.S. Courts;

(7) Reappointment on the basis of being a former temporary employee of the agency who was originally appointed from a certificate of eligibles or under the provisions of part 333 of this chapter. An agency may not reappoint a former temporary employee if the individual has already served the maximum time allowed in § 316.401 or if the position has been filled under temporary appointment for the maximum time allowed in § 316.401. Reappointment must be to the same position or another position appropriate for temporary appointment with the same qualification requirements;

(8) Reappointment on the basis of being a former temporary employee who was originally appointed from a certificate of eligibles or under the provisions of part 333 of this chapter and who sustained a compensable injury while serving on the temporary appointment. Reappointment must be to the same position or another position appropriate for temporary appointment with the same qualification requirements. If the compensable injury disqualifies the former individual from performing such a position, reappointment may be to any position for which the individual is qualified. Reappointment must be for a minimum of 120 days.

(c) *Extension of temporary appointments.* An individual who receives a valid temporary appointment will be eligible for an extension in accordance with § 316.401 even if his or her eligibility for noncompetitive appointment expires or is lost during the authorized period of temporary employment.

8. In § 316.403, paragraph (b)(1) is revised to read as follows:

§ 316.403 Designation of provisional appointments.

* * * * *

(b)* * *

(1) Noncompetitive temporary appointments of disabled veterans under § 316.402(b)(5), when the appointments are intended to afford eligibility for conversion in accordance with § 315.707 of this chapter and section 3112 of title 5, United States Code;

* * * * *

9. In § 316.701, paragraph (b)(1) is revised to read as follows:

§ 316.701 Public or private enterprise taken over by Government.

* * * * *

(b)* * *

(1) When an agency retains an employee under paragraph (a) of this section in a position which it determines to be a continuing one, the agency gives the employee a status quo appointment and shall decide on a timely basis whether it will convert that individual's employment to career or career-conditional under § 315.701 of this chapter.

* * * * *

10. In § 316.702, paragraphs (b)(1) and (d) are revised to read as follows:

§ 316.702 Excepted positions brought into the competitive service.

* * * * *

(b)(1) When an agency retains an employee under paragraph (a) of this section who was serving in an excepted position under an indefinite appointment or an appointment without time limit, the agency gives the employee a status quo appointment and may convert that employee's appointment to career or career-conditional under § 315.701 of this chapter.

* * * * *

(d) An employee who was serving under an excepted appointment with a definite time limit longer than 1 year may be retained under a term appointment. The term appointment is subject to all conditions and time limits applicable to term appointments. Service under excepted appointment does not count against the maximum time limit for term appointment in the competitive service.

[FR Doc. 98–30613 Filed 11–16–98; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–108–AD; Amendment 39–10882; AD 98–23–01]

RIN 2120–AA64

Airworthiness Directives; Parker Hannifan Airborne Dry Air Pumps, Conversion Kits, and Coupling Kits

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–23–01, which was sent previously to all known U.S. owners and operators of aircraft and engines equipped with certain Parker Hannifin Airborne dry air pumps, conversion kits, and coupling kits, utilizing part number (P/N) B1–19–1 flexible coupling that has a date code resembling a clockface and indicating a manufacture date of either ''12/97'' or ''5–6/98''. This AD requires replacing the affected flexible coupling with P/N B1–7–3 flexible coupling (part of Parker Hannifin flexible coupling kit, Airborne P/N 350). The AD resulted from reports

of failure of the affected flexible coupling due to a manufacturing defect of this coupling. The actions specified by this AD are intended to prevent failure of the primary dry air pump caused by defective flexible coupling, which could result in loss of primary attitude and direction references during instrument flight rules (IFR) operations.

DATES: Effective November 20, 1998, to all persons except those to whom it was made immediately effective by priority letter AD 98–23–01, issued October 29, 1998, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 20, 1998.

Comments for inclusion in the Rules Docket must be received on or before January 5, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 98–CE–108–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Copies of the applicable service information may be obtained from the Parker Hannifin Corporation, Airborne Division, 711 Taylor Street, Elyria, Ohio 44035; telephone: (440) 937–1315; facsimile: (440) 937–5409. This information may also be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Roy Boffo, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, Systems and Flight Test Branch, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294–7564; facsimile: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Discussion

On October 29, 1998, the FAA issued priority letter AD 98–23–01, which applies to aircraft or engines equipped with certain Parker Hannifin Airborne dry air pumps, conversion kits, and coupling kits, utilizing P/N B1–19–1 flexible coupling that has a date code resembling a clockface and indicating a manufacture date of either ''12/97'' or ''5–6/98''. This AD requires replacing the affected flexible coupling with P/N B1–7–3 flexible coupling (part of Parker Hannifin flexible coupling kit, Airborne P/N 350), in accordance with Parker Hannifin Airborne Service Letter No. 48, dated October 20, 1998.

That AD resulted from approximately 50 reports of failure of the flexible coupling on certain Parker Hannifin Airborne dry air pumps, conversion kits, and coupling kits installed in aircraft or engines. To this date, no accidents have occurred due to the failure of this coupling. This condition could result in loss of primary attitude and direction references during instrument flight rules (IFR) operations.

This condition is attributed to a manufacturing defect of Lots 1 and 2 of the B1–19–1 flexible coupling. This coupling was shipped between January 1, 1998, and October 13, 1998. Dry air pumps, conversion kits, and flexible coupling kits that incorporate any of the part numbers and serial numbers referenced in the Applicability section of this AD could have this manufacturing defect.

Dry air pumps that could incorporate the part number (P/N) B1–19–1 flexible coupling are installed as original equipment on many airplanes, particularly Cessna, Raytheon, Piper, and Mooney airplanes. In addition, Parker Hannifin holds a parts manufacturer approval (PMA) for field replacements. The dry air pumps are the primary vacuum source on small single-engine airplanes and the secondary vacuum source on larger twin-engine airplanes.

The affected flexible coupling was shipped from Parker Hannifin between January 1, 1998, and October 13, 1998.

Airborne dry air pumps, conversion kits, or coupling kits that were installed or modified prior to January 1, 1998, would not incorporate the affected coupling. A check of the maintenance records would show whether the dry air pump, conversion kit, or coupling kit was installed or modified prior to January 1, 1998.

Those Airborne dry air pumps, conversion kits, or coupling kits installed or modified between January 1, 1998, and October 13, 1998, could incorporate the affected coupling, depending on when the material was received. The coupling could be held as spares or obtained from salvaged parts. For this reason, any dry air pump, conversion kit, or coupling kit with flexible coupling, P/N B1–19–1, that was installed or modified after January 1, 1998, could be affected by the above condition. The flexible coupling has a date code that resembles a clockface and indicates a manufacture date of either ''12/97'' or ''5–6/98''.

Relevant Service Information

Parker Hannifin issued Airborne Service Letter No. 48, dated October 20, 1998, which specifies procedures for:

—Removing the dry air pump from the aircraft;
—Inspecting and identifying the P/N B1–19–1 flexible coupling; and
—Replacing the P/N B1–19–1 flexible coupling with P/N B1–7–3 flexible coupling (part of Parker Hannifin flexible coupling kit, Airborne P/N 350).

The FAA's Determination and Explanation of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other aircraft or engines equipped with the above-referenced flexible coupling, the FAA issued priority letter AD 98–23–01 to prevent failure of the primary dry air pump caused by defective flexible coupling, which could result in loss of primary attitude and direction references during IFR operations.

Determination of the Effective Date of the AD

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on October 29, 1998, to all known U.S. operators of aircraft or engines equipped with the above-referenced flexible coupling. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–108–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–23–01 Parker Hannifin Corporation: Amendment 39–10882; Docket No. 98–CE–108–AD.

Applicability: The following Airborne dry air pumps, conversion kits, and coupling kits, with flexible coupling, part number (P/N) B1–19–1, that:

1. Have a date code resembling a clockface on the coupling and indicating a manufacture date of either ''12/97'' or ''5–6/98''; and

2. Are installed in, but not limited to, the following aircraft or engine models, certificated in any category, that are listed in the Appendix to this AD:

Item	Part number	Serial numbers
Dry Air Pump	211CC	2AP1 through 10AP319.
Dry Air Pump	211CC–9	1AP1 through 2AP5.
Dry Air Pump	E211CC	11AN543 through 11AN642 and 2AP1 through 7AP442.
Dry Air Pump	212CW	2AP1 through 7AP286.
Dry Air Pump	E212CW	1AP1 through 7AP492.
Dry Air Pump	215CC	12AN719 through 12AN940 and 1AP1 through 9AP3510.
Dry Air Pump	215CC–9	2AP1 through 7AP95.
Dry Air Pump	216CW	12AN521 through 12AN660 and 1AP1 through 10AP2695.
Conversion Kit	300–1	4AP120 through 4AP122 and 8AP256 through 8AP258.
Conversion Kit	300–2	2AP30 through 2AP43, 4AP134, 4AP136, and 4AP137.
Conversion Kit	300–3	1AP1 through 1AP3.
Coupling Kit	350	1AP through 9AP and N/A (see Note 1 below).

Note 1: Some of the part number 350 coupling kits incorporated serial numbers 1AP through 9AP, while others were marked with ''N/A'' in the serial number block.

Note 2: The affected flexible coupling was shipped from Parker Hannifin between January 1, 1998, and October 13, 1998. Dry air pumps, conversion kits, or coupling kits that were installed or modified prior to January 1, 1998, would not incorporate the affected coupling. This AD allows the aircraft owner or pilot to check the maintenance records to determine whether the dry air pump, conversion kit, or coupling kit was installed or modified since January 1, 1998. See paragraph (d) of this AD for authorization.

Note 3: This AD applies to any aircraft or engine equipped with Airborne dry air pumps, conversion kits, and coupling kits, that have flexible coupling, part number (P/N) B1–19–1. Aircraft or engines with the P/N B1–19–1 flexible coupling are affected regardless of whether they have been modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft or engines 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 (f) 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 in the body of this AD, unless already accomplished.

To prevent failure of the primary dry air pump caused by defective flexible coupling, which could result in loss of primary attitude and direction references during instrument flight rules (IFR) operations, accomplish the following:

(a) Within 2 calendar days after the effective date of this AD or prior to further flight after the effective date of this AD, whichever occurs later, replace any affected flexible coupling with P/N B1–7–3 flexible coupling (part of Parker Hannifin flexible coupling kit, Airborne P/N 350) in accordance withParker Hannifin Airborne Service Letter No. 48, dated October 20, 1998.

(b) If parts have been ordered from Parker Hannifin, but are not available, accomplish the following:

(1) Operate the aircraft in visual flight rules (VFR) conditions only;

(2) Operate the aircraft during daytime hours only; and

(3) When parts become available, replace the coupling prior to further flight.

(c) As of the effective date of this AD, no person shall install, on any aircraft or engine, any of the affected Airborne dry air pumps, conversion kits, and coupling kits, with part number (P/N) B1–19–1 flexible coupling that has a date code resembling a clockface on the coupling and indicating a manufacture date of either ''12/97'' or ''5–6/98''.

(d) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the maintenance records to determine whether the existing dry air pump, conversion kit, or coupling kit was installed or modified since January 1, 1998. If the dry air pump, conversion kit, or coupling kit was not installed or modified since January 1, 1998, the AD does not apply and the owner/operator must make an entry into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(e) 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, provided that:

(1) The aircraft is operated in VFR conditions only; and

(2) The aircraft is operated during daytime hours only.

(f) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Chicago Aircraft Certification Office (ACO), 2300 E. Devon Avenue, Des Plaines, Illinois 60018. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Chicago ACO.

(g) The replacement required by this AD shall be done in accordance with Parker Hannifin Airborne Service Letter No. 48, dated October 20, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Parker Hannifin Corporation, Airborne Division, 711 Taylor Street, Elyria, Ohio 44035. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(h) This amendment becomes effective on November 20, 1998, except those persons to whom it was made immediately effective by priority letter AD 98–23–01, issued October 29, 1998, which contained the requirements of this amendment.

APPENDIX TO AD 98–23–01; DOCKET NO. 98–CE–108–AD

Part name	Part No.	Airplane/engine make/model
Dry Air Pump	211CC, 215CC, E211CC	AIRPLANES
		Aerospatiale / TB9, TB10, TB20.
		Beech / 19, 19A, B19, 23, B23, C23, 24, A24, A24R, B24R, C24R, 76, 77, E95.
		Cessna / F152, FA152, 172, FR172K, R172K, 177, 177RG, FR182, R182, TR182, T182, T303, 336, 337, F337, T337G, P337, FT337, 411, 411A, 421A, 421B, 421C.
		Grumman / AAA1B, AA1C, AA5A, AA5B, GA7.
		Lake / LA–4–200, 250.
		Maule / M4–210.
		Mooney / M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K.
		Navion / G, H.
		Piper / PA–18, PA18–150, PA–22–108, PA–23–235, PA–23–250, PA–24–180, PA–24–250, PA–24–260, PA–24–400, PA–28–140, PA–28–150, PA–28–151, PA–28–160, PA–28–161, PA–28–180, PA–28R–180, PA–28–181, PA–28R–200, PA–28–201T, PA–28R–201, PA–28R–201T, PA–28RT–201, PA–28RT–201T, PA28–235, PA–28–236, PA–30, PA–31–300, PA–31–310, PA–31–325, PA–31–350, PA–31P–350, PA–32–260, PA–32–300, PA–32R–300, PA–32RT–300, PA–32RT–300T, PA–32–301, PA–32–301T, PA–32R–301, PA–32R–301T, PA–34–200, PA–34–200T, PA–38–112, PA–39, PA–44–180, PA–44–180T.
		Rockwell / 100, 112, 112A, 112B, 112TC, 112TCA, 114, 114A, 180.
		Lovaux Ltd. / Optica OA7, Series 300 (FLS Aerospace).
		ENGINES
		Textron Lycoming / 0–235, 0–290, 0–320, 0–360, 0–435, 0–540, IO–320. IO–360, IO–540, IO–720, TIO–360, TIO–540, GO–480, GSO–480.
		Continental / 0–300, GO–300, IO–360, TSIO–360, TSIO–520, GTSIO–520.
		United Aircraft / PT6A, PT6B.
Dry Air Pump	211CC–9, 215CC–9	AIRPLANES
		Cessna / 150, A150K, A150L, A150M, F150K, F150L, F150M, FA150K, FA150L, FA150M, 152, A152, 172, 177, 337.
		ENGINES
		Textron Lycoming / 0–320.
		Continental / C90–16, 0–200.
Dry Air Pump	212CW, E212CW, 216CW	AIRPLANES
		Beech / A23, A23A, E33, E33A, F33A, F33C, V35A, V35A–TC, 36, A36, A36TC, B36TC, B55, 58, 76.
		Britten Norman / BN–2A.
		Cessna / 152, A152, 172, 180, 182H thru M, 182N and P, F182, R182, TR182, T182, 185, U206, TU206, 207, T207, 210, T210, P210, T303, 310P, 310R, 335, 340, 340A, 401, 401A, 401B, 402, 402A, 402B, 414, 414A.
		Helio / H295.
		Maule / M4–220.
		Mooney / M20K, M22.
		Navion / G, H.
		Piper / PA–31–325, PA–31–350, PA–31P–350, PA–34–200, PA–34–200T, PA–39, PA–44–180, PA–44–180T, PA–46–310P, PA–46–350.

APPENDIX TO AD 98–23–01; DOCKET NO. 98–CE–108–AD—Continued

Part name	Part No.	Airplane/engine make/model
		ENGINES
		Textron Lycoming / LIO–360, GO–435, TIO–541.
		Continental / E–185, E–225, IO–346, O–470, IO–470, TSIO–470, IO–520.
		Franklin / 6A–335, 6A–350.
Conversion Kit	300–1	Cessna / 172A, 172B thru 172H.
		Piper / PA–22–108, PA–22–135, PA–22S–135, PA–22–150, PA–22S–150, PA–22–160, PA–22S–160.
Conversion Kit	300–2	Beech / 35 thru S35, 35–33 thru 35–A33, 35–B33.
		Cessna / 175 thru 175A, 175B, 175C, P172D, 180 thru 180H, 182 thru 182H, 185 thru 185D, 210, 210A thru 210J, 210–5, 210–5A.
Conversion Kit	300–3	Cessna / 150, 150A thru 150H.
Coupling Kit	350	Coupling kit may have been put on any of the above list airplanes or engines.

Issued in Kansas City, Missouri, on November 4, 1998.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30170 Filed 11–16–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, and 125

[Docket No. 28537; SFAR 50–2]

Special Flight Rules in the Vicinity of Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correcting amendment; correction.

SUMMARY: This document contains a correction to the final rule published in the **Federal Register** (63 FR 23604) on April 29, 1998. The final rule corrected an error in the February 26, 1997, final rule, which inadvertently removed section 3 of SFAR No. 50–2 concerning special flight rules in the vicinity of Grand Canyon National Park. The April 1998 final rule corrected the error by reinstating section 3.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: David L. Catey, (202) 267–8166.

Correction of Publication

In final rule FR Doc. 98–11335, on page 23604 in the **Federal Register** issue of April 29, 1998, make the following corrections:

On page 23604, in the first column, in the heading, ‘‘14 CFR Parts 91, 93, 121, and 135’’ should read ‘‘14 CFR Parts 91, 121, and 135’’.

On page 23604, in the first column, in the heading, ‘‘[Docket No. 28537; Amendment Nos. 91–257, 121–270, 135–72, 93–76]’’ should read ‘‘[Docket No. 28437; SFAR 50–2]’’.

Issued in Washington, DC, on November 4, 1998.

Donald P. Byrne,

Assistant Chief Counsel.

[FR Doc. 98–30090 Filed 11–16–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Trenbolone Acetate and Estradiol Benzoate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Fort Dodge Animal Health, Division of American Home Products Corp. The supplemental NADA provides for the use of a trenbolone acetate and estradiol benzoate ear implant in heifers fed in confinement for slaughter for increased rate of weight gain.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Jack Caldwell, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0217.

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Division of American Home Products Corp., 800 Fifth St. NW., Ft. Dodge, IA 50501, filed supplemental NADA 141–043 that provides for use of an implantation containing 200 milligrams (mg) trenbolone acetate and 28 mg estradiol benzoate (Synovex® Plus) in heifers fed in confinement for slaughter for increased rate of weight gain. The supplemental NADA is approved as of September 30, 1998, and the regulations are amended in 21 CFR 522.2478 by adding paragraph (c)(2) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

–In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for food producing animals qualifies for 3 years of marketing exclusivity beginning September 30, 1998, because the supplemental application contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety, or, in the case of food producing animals, human food safety studies (other than bioequivalence or residue studies) required for the approval of the supplement and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to use in confined heifers for increased rate of weight gain for which the supplemental application is approved.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

–Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 522.2478 is amended by adding paragraph (c)(2) to read as follows:

§ 522.2478 Trenbolone acetate and estradiol benzoate.

* * * * *

(c) * * *

(2) *Heifers*—(i) *Amount*. 200 milligrams of trenbolone acetate and 28 milligrams of estradiol benzoate (one implant consisting of 8 pellets, each pellet containing 25 milligrams of trenbolone acetate and 3.5 milligrams of estradiol benzoate) per animal.

(ii) *Indications for use*. For increased rate of weight gain in heifers fed in confinement for slaughter.

(iii) *Limitations*. Implant subcutaneously in ear only. Not for dairy or beef replacement heifers.

Dated: November 3, 1998.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–30611 Filed 11–16–98; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 79 and 80

[FRL–6187–6]

Use of Alternative Analytical Test Methods in the Reformulated Gasoline Program and Revision of the Specification for the Mixing Chamber Associated With Animal Toxicity Testing of Fuels and Fuel Additives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This direct final rule extends the time period during which certain alternative analytical test methods may be used in the Federal reformulated gasoline (RFG) program to September 1, 2000. The time period for use of these alternative methods originally expired on January 1, 1997 and was previously extended to September 1, 1998. The purpose of today's extension is to grant temporary flexibility until a final performance-based analytical test method approach rulemaking is promulgated. EPA expects to finalize the performance-based analytical test methods approach rulemaking before September 1, 2000. This direct final rule also makes certain revisions to the procedures applicable to health effects testing of fuels and fuel additives.

EFFECTIVE DATE: This direct final rule is effective January 19, 1999, unless EPA receives adverse comment or a request for a public hearing by December 17, 1998. In the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a proposed rule that matches the substance of this direct final rule. If the Agency receives adverse comment or a request for a public hearing by December 17, 1998, EPA will withdraw this direct final rule by publishing timely withdrawal in the **Federal Register**.

ADDRESSES: Any person wishing to submit comments should send them (in duplicate, if possible) to the docket address listed and to Joseph R. Sopata, U.S. Environmental Protection Agency, Fuels and Energy Division, 401 M Street, SW (6406J), Washington, D.C. 20460. Materials relevant to this direct final rule have been placed in docket A–98–21 located at U.S. Environmental Protection Agency, Air Docket Section, Room M–1500, 401 M Street, SW, Washington, D.C. 20460. The docket is open for public inspection from 8:00 a.m. until 5:30 p.m., Monday through Friday, except on Federal holidays. A reasonable fee may be charged for photocopying services.

FOR FURTHER INFORMATION CONTACT: For further information about this rule, contact Joseph R. Sopata, Chemist, Fuels & Energy Division, at (202) 564–9034. To notify EPA of an intent to submit an adverse comment or public hearing request, contact Joseph R. Sopata, (202) 564–9034, or Anne-Marie C. Pastorkovich, Attorney/Advisor, Fuels & Energy Division, (202) 564–8987.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities potentially regulated by this action are those that use analytical test methods to comply with the RFG program and manufacturers of fuels and fuel additives. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Oil refiners, gasoline importers, oxygenate blenders, analytical testing laboratories. Manufacturers of gasoline and diesel fuel. Manufacturers of additives for gasoline and diesel fuel.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists all types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your business is regulated by this action, you should carefully examine the applicability criteria in parts 79 and 80 of title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section of this document.

II. RFG Standards & Test Methods Utilized at § 80.46

Section 211(k) of the Clean Air Act (the Act) requires that EPA establish standards for RFG to be used in specified ozone nonattainment areas (covered areas), as well as anti-dumping standards for non-reformulated, or conventional gasoline, used in the rest of the country, beginning in January 1995. The Act requires that RFG reduce VOC and toxics emissions from motor vehicles, not increase NOx emissions, and meet certain content standards for oxygen, benzene, and heavy metals. EPA published the final RFG regulations in the **Federal Register** on February 16, 1994.[1]

[1] The RFG and anti-dumping regulations are located at 40 CFR part 80, subparts D, E, and F. The final rule establishing the RFG and anti-dumping standards was published in the February 16, 1994 **Federal Register** at 59 FR 7716. Amendments were published at 59 FR 36944 (June 20, 1994), 59 FR 39258 (August 2, 1994), 59 FR 60715 (November 28, 1994), 60 FR 2699 (January 11, 1995), 60 FR 6030 (February 1, 1995), 60 FR 35488 (July 10, 1995), 60 FR 40006 (August 1, 1995), 60 FR 65571 (December 20, 1995), 61 FR 12030 (March 25, 1996), 61 FR 20736 (May 8, 1996), 61 FR 35673 (July 8, 1996),

Continued

Refiners, importers, and oxygenate blenders are required, among other things, to test RFG and conventional gasoline for various gasoline parameters or qualities, such as sulfur levels, aromatics, benzene, and so on. Based upon comments received from the regulated industry during the RFG and anti-dumping rulemaking, EPA concluded that it would be appropriate to temporarily allow the use of alternative analytical test methods for measuring the parameters of aromatics and oxygenates. Language was adopted in §§ 80.46(f)(3) and (g)(9)(i), which permitted the use of alternative analytical test methods for aromatics and oxygenates, respectively, until January 1, 1997. These sections were later amended by a November 13, 1996 final rule published in the **Federal Register** to permit the use of alternative analytical test methods for these two parameters until September 1, 1998.[2]

As explained in the February 16, 1994 final rule, the Agency will undertake a rulemaking to consider establishing a performance-based analytical test method approach for the measurement of the reformulated gasoline (RFG) parameters at § 80.46. The Agency envisions that a performance-based approach could provide additional flexibility to the regulated industry in its choice of analytical test methods to be utilized for compliance under the RFG and conventional gasoline programs for analytical test methods that differ from the designated analytical test method. The Agency further believes that the establishment of a performance-based test method approach may help advance the purposes of the ''National Technology Transfer and Advancement Act of 1995,'' section 12(d) of Public Law 104–113 and Office of Management and Budget (OMB) circular A–119.[3] In general, the National Technology Transfer and Advancement Act of 1995 and OMB Circular A–119 are designed to encourage the adoption of standards developed by ''voluntary consensus bodies'' and to reduce reliance on government-unique standards ''where an existing voluntary standard would suffice.''[4] Today's direct final rule provides an extension of deadline for use of certain alternative test methods until such time as a notice-and-comment rulemaking to establish performance-based standards is completed. Issues related to the National Technology Transfer and Advancement Act of 1995 and OMB Circular A–119 will be appropriately explored in detail in connection with that rulemaking.

EPA originally expected to finalize action on such a rulemaking by September 1, 1998; however, the Agency now realizes that it will not complete rulemaking until after that date. Refiners and importers will need several months to determine whether these alternative methods qualify under the envisioned performance based analytical test method approach. Therefore the Agency is extending the deadline for the use of alternative test methods at §§ 80.46(f)(3) and 80.46(g)(9) until September 1, 2000. This extension of the deadline would allow parties to make long-term purchasing decisions based on all the testing options that could be made available at the conclusion of the performance-based rulemaking. EPA reasonably expects to complete rulemaking before September 1, 2000.

III. Revision of the Specification for the Mixing Chamber Associated With Animal Toxicity Testing of Fuels and Fuel Additives at § 79.57(e)(2)(iii)(C)

The fuels and fuel additives registration program is authorized by section 211 of the Clean Air Act and codified in 40 CFR part 79. In accordance with sections 211(a) and (b)(1) of the Act, basic registration requirements applicable to gasoline and diesel fuel have been in existence since 1975. On June 27, 1994, EPA published a **Federal Register** document announcing final additional regulations for registration of designated fuels and fuel additives as authorized by sections 211(b)(2) and 211(e) of the Clean Air Act as amended in 1990.[5] The additional regulations require manufacturers, as part of the registration program, to conduct tests and submit information related to the health effects of their fuel and fuel additive products. The health effects testing requirements are organized in three tiers. Tier 1 requires analysis of combustion and evaporative emissions of fuels and fuel additives and a survey of existing scientific information on the public health and welfare effects of these emissions. Tier 2 requires manufacturers to conduct specified health effects tests to screen for adverse health effects of fuel and fuel additive emissions. Additional testing may be required under Tier 3 at EPA's discretion.

A provision of the health effects testing regulations requires that the emission moderation apparatus must function such that the average concentration of hydrocarbons leaving the apparatus shall be within 10 percent of the average concentration of hydrocarbons entering the mixing chamber. The Agency now believes that this specification for the mixing chamber (or any alternative emission moderation apparatus) at §§ 79.57(e)(2)(iii)(C) and 79.57(e)(2)(v)(B) is likely unachievable in a typical laboratory setting. Additionally, the regulations require that the mean exposure concentration in the inhalation test chamber shall be within 10 percent of the target concentration for the single species being controlled on 90 percent or more of the exposure days and that daily monitoring of CO, CO_2, oxides of nitrogen, oxides of sulfur and total hydrocarbons in the exposure chamber shall be required. 40 CFR 79.57(e)(2)(iv)(B). EPA now believes that the required mean exposure concentration in the inhalation test chamber is unachievable for total hydrocarbons and particulate. The Agency believes that the reason that these specifications are unachievable for hydrocarbons and particulate is because of the cohesive qualities that such compounds share. These shared cohesive tendencies result in a tendency to fall out of the exposure atmosphere as it passes through the apparatus.

EPA believes that a more appropriate specification for particulate and hydrocarbon compounds would be 15%. The Agency believes the modified emission dilution requirements at §§ 79.57(e)(2)(iv)(B) and 79.57(e)(2)(vi)(B), will provide for sufficient quality control assurances and thereby negate the need for §§ 79.57(e)(2)(iii)(C) and

61 FR 58304 (November 13, 1996), 62 FR 9872 (March 4, 1997), 62 FR 12572 (March 17, 1997), and 62 FR 30260 (June 3, 1997). EPA proposed several additional modifications to the RFG and anti-dumping regulations at 62 FR 37338 (July 11, 1997). Some of these proposed modifications were included in a final rule published at 62 FR 68196 (December 31, 1997), while others will be the subject of a future final rule. Please refer to the December 31, 1997 final rule for more information.

[2] See 61 FR 58304 (November 13, 1996). The final rule did not become effective until May 1, 1998, due to an inadvertent administrative error. *See* the correction notice announcing the new effective data 63 FR 24117 (May 1, 1998).

[3] *See* ''OMB Circular A–119; Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' 63 FR 8546 (February 19, 1998).

[4] *Id.*

[5] The fuels and fuel additives registration regulations are located in 40 CFR part 79. Testing requirements for fuels and fuel additives are in subpart F. The final rule establishing these regulations was published in the June 27, 1994 **Federal Register** at 59 FR 33042. Amendments were published at 61 FR 36506 (July 11, 1996), 61 FR 58744 (November 18, 1996), 62 FR 12564 (March 17, 1997) and 62 FR 12572 (March 17, 1997).

79.57(e)(2)(v)(B).[6] Accordingly, the Agency is deleting §§ 79.57(e)(2)(iii)(C) and 79.57(e)(2)(v)(B), and modifying §§ 79.57(e)(2)(iv)(B) and 79.57(e)(2)(vi)(B).

IV. Additional changes related to animal toxicity testing of fuels and fuel additives

A. Vascular Perfusion Technique

Section 79.66(e)(5)(iii)(B) states that for the vascular perfusion technique, the animals shall be perfused in situ by a generally recognized technique.[7] Section 79.62(d)(7)(v) states that the lungs and trachea of the whole-body perfusion-fixed test animals are examined for inhaled particle distribution.

The methods for vascular perfusion cited in the regulation perfuse only the systemic vascular system with fixative. Using the methods cited, the lungs are neither fixed nor inflated. This is because no pressure (either air or fixative) is applied to the airways to counteract the pressure being applied through the blood vessels, so that the airspaces of the lungs collapse under the pressure from the vascular fixation. The collapsed, unfixed lungs are not useful for histopathological examination, or for examination of inhaled particle distribution.

EPA is modifying the systemic vascular perfusion fixation procedure by including intratracheal instillation of the lungs with fixative via the trachea during the fixation process. This would preserve the lungs for examination and achieve the whole-body fixation needed for neurotoxicity endpoints.

B. Correction of Animal Numbers

Section 79.62(d)(1)(ii)(B) states, in part, ''Forty rodents, 25 females and 10 males * * *'' EPA is amending this section to reflect a correct total of 35 rodents.

V. Environmental and Economic Impacts

This rule is expected to have no negative environmental impact. The change in the deadline for the use of certain alternative test methods preserves the status quo of the RFG program and will result in no reduction in the emission benefits of the program. The changes to the fuels and fuel additives registration regulations are not expected to have any negative environmental impact on the public health and environmental benefits associated with the fuels and fuel additives testing program. In fact, today's changes with regard to health testing requirements add certainty and correct errors and, as a result, may enhance the benefits of the program.

Today's direct final rule would have a positive impact on the great majority of entities regulated by the RFG regulation, because it permits continued flexibility with respect to the use of alternative test methods. This flexibility will continue through September 1, 2000 or until such time as EPA issues final regulations for performance-based analytical test methods. The proposed changes to the health effects testing requirements are minor and are not expected to result in any additional compliance costs for regulated parties.

VI. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule. EPA has also determined that this direct final rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Today's regulation would have a positive economic impact on the great majority of entities regulated by the RFG regulation, including small businesses. Specifically, it grants the regulated industry flexibility in the use of alternative test methods until September 1, 2000 (or until such time as EPA completes final rulemaking) and corrects certain errors in existing registration requirements for fuels and fuel additives. It is not expected to result in any additional compliance costs for regulated parties, including small entities. A regulatory flexibility analysis has therefore not been prepared.

VII. Executive Order 12866

Under Executive Order 12866,[8] the Agency must determine whether a regulation is ''significant'' and therefore subject to OMB review 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 of 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 obligations 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 this Executive Order.[9]

EPA has determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

VIII. Paperwork Reduction Act

Today's direct final rule does not impose any new information collection burden. The Office of Management and Budget (OMB) has previously approved the applicable information collection requirements (ICRs) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned the following OMB control numbers: 2060–0297 (''Registration of Fuels and Fuel Additives; Health-Effects Research Requirements for Manufacturers—40 CFR part 79, subpart F''), 2060–0150 (''Registration of Fuels and Fuel Additives: Requirements for Manufacturers''), and 2060–0277 (''Standards for Reformulated Gasoline''). Copies of these ICRs may be obtained from Sandy Farmer, OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–2740. Include the ICR title and/or OMB number in any correspondence. Nothing in today's direct final rule will result in any additional reporting, recordkeeping, testing, or other informational burdens.

IX. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Public Law 104–4, EPA must prepare a budgetary impact statement to accompany any general

[6] Sections 79.57(e)(2)(iv)(B) and 79.57(e)(2)(vi)(B) did not previously contain reference to hydrocarbons, but have been modified by this direct final rule to include specific requirements for both hydrocarbons and particulate. Sections 79.57(e)(2)(iii)(C) and 79.57(e)(2)(v)(B), which are deleted by this action, specifically addressed hydrocarbons only, and are no longer necessary.

[7] Standard techniques for vascular perfusion in the following references are cited: Zeman, W., and Innes, J.R.M., *Craigie's Neuroanatomy of the Rat* (New York: Academic, 1963); Hayat, M.A., ''Vol. 1. Biological applications,'' *Principles and Techniques of Electron Microscopy* (New York: Van Nostrand, Reinhold, 1970); and Spencer, P.S., and Schaumbur, H.H., (eds.). *Experimental and Clinical Neurotoxicology* (Baltimore: Williams and Wilkins, 1980).

[8] 58 FR 51736 (October 4, 1993).

[9] *Id.* at section 3(f)(1)–(4).

notice of proposed rulemaking or final rule that includes a Federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, for any rule subject to section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that this rule does not include a Federal mandate as defined in UMRA. The rule does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and it does not establish regulatory requirements that may significantly or uniquely affect small governments.

X. Effects on Tribal, State, and Local Government Entities

This direct final rule does not establish any regulatory requirements which would significantly or uniquely affect tribal governments within the meaning of E.O. 13084, ''Consultation and Coordination with Indian Tribal Governments.''

XI. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's direct final rule does not create a mandate on state, local or tribal governments. The direct final rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this direct final rule.

XII. Applicability of E.O. 13045: Children's Health Protection

This direct final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

Today's direct final rule extends the time period during which certain alternative analytical test methods may be used. This would preserve the status quo under the existing RFG program until such time as a performance-based test method rule is issued. The extension will result in no reduction in the RFG program's environmental or health benefits and presents no health or safety risks that will adversely affect children.

Today's changes and corrections to the health effects testing regulations for fuels and fuel additives will add certainty and facilitate compliance by regulated parties. As a result, any impact on children's health resulting from these changes and corrections would reasonably be expected to be positive.

XIII. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (NTTAA), section 12(d) of Public Law 104–113, is designed to encourage the adoption of standards developed by ''voluntary consensus bodies'' and to reduce reliance on government-unique standards where existing voluntary standards would suffice.

Today's direct final rule provides an extension of deadline for use of certain analytical test methods for the RFG program until such time as a notice-and-comment rulemaking to establish performance-based analytical test methods is completed. Today's action does not establish new technical standards or analytical test methods. The Agency plans to address the NTTAA in detail in an upcoming rulemaking to establish performance-based analytical test methods.

For a more detailed discussion, please refer to **SUPPLEMENTARY INFORMATION**, section II, ''RFG Standards and Test Methods Utilized at § 80.46,'' above.

XIV. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective January 19, 1999.

List of Subjects

40 CFR Part 79

Environmental protection, Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Labeling.

Dated: November 3, 1998.

Carol M. Browner,

Administrator.

For the reasons described in the preamble, parts 79 and 80 of Title 40 of the Code of Federal Regulations are amended as follows:

PART 79 [AMENDED]

1. The authority citation for part 79 continues to read as follows:

Authority: 42 U.S.C. 7414, 7524, 7545, and 7601.

* * * * *

2. Section 79.57 is amended by removing and reserving paragraphs (e)(2)(iii)(C) and (e)(2)(v)(B) and by revising paragraphs (e)(2)(iv)(B) and (e)(2)(vi)(B), to read as follows:

§ 79.57 Emission generation.

* * * * *

(e) * * *

(2) * * *

(iii) * * *

(C) [Reserved]

* * * * *

(iv) * * *

(B) These procedures include requirements that the mean exposure concentration in the inhalation test chamber on 90 percent or more of the exposure days shall be controlled as follows:

(*1*) If the species being controlled is hydrocarbon or particulate, the mean exposure concentration must be within 15 percent of the target concentration for the single species being controlled.

(*2*) For other species, the mean exposure concentration must be within 10 percent of the target concentration for the single species being controlled.

(*3*) For all species, daily monitoring of CO, CO_2, NO_X, SO_X, and total hydrocarbons in the exposure chamber shall be required. Analysis of the particle size distribution shall also be performed to establish the stability and consistency of particle size distribution in the test exposure.

* * * * *

(v) * * *

(B) [Reserved]

* * * * *

(vi) * * *

(B) These procedures include requirements that the mean exposure concentration in the inhalation test chamber on 90 percent or more of the exposure days shall be controlled as follows:

(*1*) If the species being controlled is hydrocarbon or particulate, the mean exposure concentration must be within 15 percent of the target concentration for the single species being controlled.

(*2*) For other species, the mean exposure concentration must be within 10 percent of the target concentration for the single species being controlled.

(*3*) For all species, daily monitoring of CO, CO_2, NO_X, SO_X, and total hydrocarbons in the exposure chamber shall be required. Analysis of the particle size distribution shall also be performed to establish the stability and consistency of particle size distribution in the test exposure.

* * * * *

3. Section 79.62 is amended by revising paragraph (d)(1)(ii)(B), to read as follows:

§ 79.62 Subchronic toxicity study with specific health effects assessment.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(B) Thirty-five rodents, 25 females and ten males, shall be added for each test concentration or control group when combining a 90-day toxicity study with a fertility assessment.

* * * * *

4. Section 79.66 is amended by adding a sentence to the end of paragraph (e)(5)(iii)(B), to read as follows:

§ 79.66 Neuropathology assessment.

* * * * *

(e) * * *

(5) * * *

(iii) * * *

(B) *Perfusion technique.* * * * In addition, the lungs shall be instilled with fixative via the trachea during the fixation process in order to preserve the lungs and achieve whole-body fixation.

* * * * *

PART 80—[AMENDED]

5. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

* * * * *

6. Section 80.46 is amended by revising paragraphs (f)(3) and (g)(9) to read as follows:

§ 80.46 Measurement of reformulated gasoline fuel parameters.

* * * * *

(f) * * *

(3) *Alternative test method.* (i) Prior to September 1, 2000, any refiner or importer may determine aromatics content using ASTM standard method D–1319–93, entitled ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Flourescent Indicator Adsorption,'' for purposes of meeting any testing requirement involving aromatics content; provided that

(ii) The refiner or importer test result is correlated with the method specified in paragraph (f)(1) of this section.

(g) * * *

(9)(i) Prior to September 1, 2000, and when the oxygenates present are limited to MTBE, ETBE, TAME, DIPE, tertiary-amyl alcohol, and C1 to C4 alcohols, any refiner, importer, or oxygenate blender may determine oxygen and oxygenate content using ASTM standard method D–4815–93, entitled ''Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C1 to C4 Alcohols in Gasoline by Gas Chromatography,'' for purposes of meeting any testing requirement; provided that

(ii) The refiner or importer test result is correlated with the method set forth in paragraphs (g)(1) through (g)(8) of this section.

* * * * *

[FR Doc. 98–30401 Filed 11–16–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–6186–1]

Tennessee; Final Approval of State Petroleum Underground Storage Tank Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final determination on the State of Tennessee's application for final approval.

SUMMARY: The State of Tennessee has applied for partial approval of its underground storage tank program for petroleum under subtitle I of the Resource Conservation and Recovery Act (RCRA). The State of Tennessee is not requesting approval of the underground storage tank program for hazardous substances. The Environmental Protection Agency (EPA) has reviewed Tennessee's application and has reached a final determination that Tennessee's underground storage tank program for petroleum satisfies all of the requirements necessary to qualify for approval. Thus, EPA is granting final approval to the State of Tennessee to operate its underground storage tank program for petroleum. This approval does not include hazardous substance underground storage tanks under subtitle I of RCRA.

EFFECTIVE DATE: Final approval for the State of Tennessee's petroleum underground storage tank program shall be effective at 1:00 pm Eastern Standard Time on January 15, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. John K. Mason, Chief, Underground Storage Tank Section, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, Georgia 30303, phone number: (404) 562–9441.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) authorizes the Environmental Protection Agency (EPA) to approve State underground storage tank programs to operate in the State in lieu of the federal underground storage tank (UST) program. To qualify for final authorization, a state's program must: (1) Be ''no less stringent'' than the federal program for the seven elements set forth at RCRA section 9004(a) (1) through (7); and (2) provide for adequate enforcement of compliance with UST standards of RCRA Ssction 9004(a).

On September 1, 1996, the State of Tennessee submitted an official application to obtain final partial program approval to administer the underground storage tank program for petroleum. On July 10, 1998, EPA published a tentative decision announcing its intent to grant Tennessee final approval for petroleum. Further background on the tentative decision to grant approval appears at 63 FR 37311, July 10, 1998.

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of a public hearing on the application. EPA requested advance notice for testimony and reserved the right to cancel the public hearing for lack of public interest. Since there was no public request, the public hearing was canceled. No public comments were received regarding EPA's approval of Tennessee's underground storage tank program.

The following statutory provisions are broader in scope than the federal program and are not part of the approved program: Tennessee Code Annotated, Title 68, Chapter 215—section 102(a)(3), insofar as it refers to the intent to develop long range plans to meet future petroleum underground storage tank demands; section 102(a)(5), insofar as it provides for a fund; section 104, insofar as it applies to persons other than underground storage tank owners and operators; section 106(a)(6), insofar as it requires any person who deposits petroleum in underground storage tanks to notify the owner or operator of state notification requirements; section 106(c)(2), insofar as it applies to persons other than owners and operators placing petroleum substances in an underground storage tank; section 107(f)(9), insofar as it provides for rule development for the assessment and collections of fees; section 109, insofar as it allows for levying and collection of annual fees to operate the UST fund and develop rules; section 110, insofar as it establishes a petroleum underground storage tank fund; section 111, insofar as it refers to uses of the state underground storage tank fund; section 112, insofar as it establishes a petroleum underground storage tank board; section 113, insofar as it establishes board meetings, public hearings, and board compensation; section 115, insofar as it establishes cost recovery and apportionment of liability for cleanups; section 117, insofar as it applies to persons other than underground storage tank owners and operators; section 125, insofar as it applies to the state UST fund; and section 128, insofar as it requires a report to the General Assembly.

The following regulatory provisions are broader in scope than the federal program and not part of the approved program: Tennessee Department of Environment and Conservation, Underground Storage Tank Program Rules, Chapter 1200–1–15—section-.09, insofar as it refers to guidelines and procedures for administering the Tennessee petroleum underground storage tank fund; section-.10, insofar as it refers to annual fees, the use, collection and failure to pay fees; and section-.11, insofar as it requires underground storage tank fees, use, collection failure to pay, and fee notices.

B. Decision

I conclude that the State of Tennessee's application for final program approval meets all of the statutory and regulatory requirements established by Subtitle I of RCRA. Accordingly, Tennessee is granted final approval to operate its underground storage tank program for petroleum. The State of Tennessee now has the responsibility for managing all regulated petroleum underground storage tank facilities within its border and carrying out all aspects of the underground storage tank program except with regard to hazardous substance underground storage tanks where EPA will retain regulatory authority. Tennessee also has primacy enforcement responsibility for petroleum underground storage tanks, although EPA retains the right to conduct enforcement actions for all regulated underground storage tanks under section 9006 of RCRA.

C. Administrative Requirements

1. Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

2. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The State administers its underground storage tank program voluntarily, and any duties on other State, local or tribal governmental entities arise from that program, not from today's action. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

3. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Tennessee is not approved to implement the underground storage tank program in Indian Country. This rule has no effect on the underground storage tank program that EPA implements in the Indian Country within the State. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

4. Compliance With Executive Order 13045

Executive Order 13045 applies to any rule that the Office of Management and Budget determines is ''economically significant'' as defined under Executive Order 12866, and that EPA determines that the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The Agency has determined that the final rule is not a covered regulatory action as defined in the Executive Order because it is not economically significant and does not address environmental health and safety risks. As such, the final rule is not subject to the requirements of Executive Order 13045.

5. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

6. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The section 202 and 205 requirements do not apply to today's action because it is not a ''Federal mandate'' and because it does not impose annual costs of $100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any State, local or tribal governments or the private sector because the requirements of the Tennessee program are already imposed by the State and subject to State law. Second, the Act also generally excludes from the definition of a ''Federal mandate'' duties that arise from participation in a voluntary Federal program. Tennessee's participation in an approved UST program is voluntary.

Even if today's rule did contain a Federal mandate, this rule will not result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Tennessee program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, section 203 of the UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may own and/or operate USTs, they are already subject to the regulatory requirements under existing state law which are being approved by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

7. Certification Under the Regulatory Flexibility Act

EPA has determined that this approval will not have a significant economic impact on a substantial number of small entities. Such small entities which own and/or operate USTs are already subject to the regulatory requirements under existing State law which are being approved by EPA. EPA's approval does not impose any additional burdens on these small entities. This is because EPA's approval would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. This rule approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

8. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each house of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

9. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by an information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This notice is issued under the authority of section 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6974(b), 6991c.

Dated: October 19, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 98–30720 Filed 11–16–98; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7701]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date Certain Federal assistance no longer available in Special flood hazard areas
Region I				
Connecticut:				
Plymouth, town of, Litchfield County	090138	Sept. 4, 1975, Emerg.; Oct. 15, 1982, Reg.; Nov. 6, 1998, Susp.	Nov. 6, 1998	Nov. 6, 1998.
Windham, town of, Windham County	090119	June 26, 1975, Emerg.; Feb. 3, 1982, Reg.; Nov. 6, 1998, Susp.	......do	Do.
Region IV				
North Carolina: Carteret County, unincorporated areas.	370043	Nov. 19, 1971, Emerg.; May 15, 1980, Reg.; Nov. 6, 1998, Susp.	......do	Do.
Region V				
Minnesota: East Grand Forks, city of, Polk County.	275236	Jan. 19, 1973, Emerg.; Sept. 15, 1977, Reg.; Nov. 6, 1998, Susp.	......do	Do.
Region I				
Maine:				
Sidney, town of, Kennebec County	230247	May 10, 1976, Emerg.; March 18, 1987, Reg.; Nov. 20, 1998, Susp.	Nov. 20, 1998	Nov. 20, 1998.
Vienna, town of, Kennebec County	230249	May 3, 1976, Emerg.; Aug. 19, 1985, Reg.; Nov. 20, 1998, Susp.	......do	Do.
Massachusetts: Sudbury, town of, Middlesex County.	250217	Aug. 1, 1975, Emerg.; June 1, 1982, Reg.; Nov. 20, 1998, Susp.	......do	Do.
Region III				
West Virginia: Berkeley County, unincorporated areas.	540282	July 29, 1975, Emerg.; Aug. 4, 1988, Reg.; Nov. 20, 1998, Susp.	......do	Do.
Region IV				
North Carolina:				
Grifton, town of, Lenoir and Pitt Counties.	370192	April 10, 1975, Emerg.; Feb. 17, 1982, Reg.; Nov. 20, 1998, Susp.	......do	Do.
Raleigh, city of, Wake County	370243	Aug. 31, 1973, Emerg.; Aug. 15, 1978, Reg.; Nov. 20, 1998, Susp.	......do	Do.
Region VI				
Arkansas: West Memphis, city of, Crittenden County.	050055	June 6, 1974, Emerg.; July 16, 1980, Reg.; Nov. 20, 1998, Susp.	......do	Do.
Texas:				
Gonzales County, unincorporated areas	480253	Nov. 8, 1973, Emerg.; Aug. 15, 1978, Reg.; Nov. 20, 1998, Susp.	......do	Do.
Guadalupe County, unincorporated areas.	480266	Sept. 22, 1972, Emerg.; March 1, 1979, Reg.; Nov. 20, 1998, Susp.	......do	Do.
Victoria County, unincorporated areas	480637	April 16, 1979, Emerg.; Sept. 18, 1987, Reg.; Nov. 20, 1998, Susp.	......do	Do.
Region VII				
Iowa:				
Carlisle, city of, Warren County	190274	December 17, 1974, Emerg.; Aug. 4, 1987, Reg.; Nov. 20, 1998, Susp.	......do	Do.
Indianola, city of, Warren County	190275	June 1, 1977, Emerg.; July 31, 1979, Reg.; Nov. 20, 1998, Susp.	......do	Do.
Norwalk, city of, Warren County	190631	March 3, 1993, Emerg.; Nov. 20, 1998, Reg.; Nov. 20, 1998, Susp.	......do	Do.
Warren County, unincorporated areas	190912	Nov. 19, 1990, Emerg.; July 1, 1991, Reg.; Nov. 20, 1998, Susp.	......do	Do.
Region IX				
California:				
Firebaugh, city of, Fresno and Madera Counties.	060046	June 20, 1975, Emerg.; Aug. 23, 1982, Reg.; Nov. 20, 1998, Susp.	......do	Do.
Fresno County, unincorporated areas	065029	June 30, 1970, Emerg.; December 1, 1982, Reg.; Nov. 20, 1998, Susp.	......do	Do.
Madera County, unincorporated areas	060170	March 3, 1972, Emerg.; Aug. 4, 1987, Reg.; Nov. 20, 1998, Susp.	......do	Do.
Winters, city of, Yolo County	060425	April 11, 1975, Emerg.; Dec. 1, 1978, Reg.; Nov. 20, 1998, Susp.	......do	Do.
Nevada: Lyon County, unincorporated areas	320029	April 20, 1982, Emerg.; Sept. 30, 1982, Reg.; Nov. 20, 1998, Susp.	......do	Do.

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Rein.-Reinstatement; Susp.-Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Issued: November 3, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–30707 Filed 11–16–98; 8:45 am]

BILLING CODE 6718–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 199

[CGD 84–069]

RIN 2115–AB72

Lifesaving Equipment; Correction

AGENCY: Coast Guard, DOT.

ACTION: Correcting amendments.

SUMMARY: This document corrects the regulations [CGD 84–069], which the Coast Guard published Thursday, October 1, 1998 (63 FR 52802). The regulations revised the lifesaving equipment requirements for U.S. inspected vessels.

DATES: Effective on November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markle, Chief, Lifesaving and Fire Safety Standards Division (G–MSE–4), U.S. Coast Guard Headquarters, by e-mail at *RMarkle@comdt.uscg.mil,* telephone at 202–267–1444, or fax at 202–267–1069.

SUPPLEMENTARY INFORMATION:

Background

This project is part of the President's Regulatory Review Initiative to remove or revise unnecessary government regulations. This project removed numerous obsolete sections from the Code of Federal Regulations (CFR) and eliminated others by consolidating the lifesaving requirements for most U.S. inspected vessels in the new subchapter W in 46 CFR chapter I. Subchapter W also replaced many prescriptive regulations with performance-based alternatives.

You can find more detailed background information in the preamble of the final rule published on October 1, 1998 (63 FR 52802), under **SUPPLEMENTARY INFORMATION.**

Need for Correction

As published, the final regulations contain typographical errors that may mislead the reader and need to be corrected.

List of Subjects in 46 CFR Part 199

Cargo vessels, Incorporation by reference, Marine safety, Oil and gas exploration, Passenger vessels, Reporting and recordkeeping requirements, Vessels.

Accordingly, 46 CFR part 199 is corrected by making the following amendments:

PART 199—LIFESAVING SYSTEMS FOR CERTAIN INSPECTED VESSELS

1. The authority citation for part 199 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 46 CFR 1.46.

§ 199.10 [Amended]

2. In § 199.10(A) amend Table 199.10(a) by, in the first entry for ''D'' and in the first entry for ''I'', under the column heading ''Vessel Type'', removing the symbol ''>'' and adding, in its place, the symbol ''≥''; and in the second entry for ''D'', under the column heading ''Vessel Type'', removing the symbol ''>'' and adding, in its place, the symbol ''<''.

§ 199.630 [Amended]

3. In § 199.630(a) amend Table 199.630(a) by, in the entry for ''199.201(b)'', under the column heading ''Lakes, bays, and sounds'', removing ''199.630(g)[2 3]'' and adding, in its place, ''199.630(g)''.

Dated: November 10, 1998.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 98–30726 Filed 11–16–98; 8:45 am]

BILLING CODE 4910–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 97–157, FCC 98–261]

Reallocation of Television Channels 60–69, the 746–806 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this *Memorandum Opinion and Order,* the Commission reconsiders its decisions in the *Report and Order* in this proceeding, and declines to change its decision to allow no new television (TV) permittees to operate in channels 60–69. The Commission also declines to change the status of low-power TV and TV translators in channels 60–69.

DATES: Effective November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Sean White, Office of Engineering and Technology, (202) 418–2453.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinon and Order,* adopted October 5, 1998, and released October 9, 1998. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–C404), 445 Twelfth Street, SW, Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Summary of Memorandum Opinion and Order

1. In this *Memorandum Opinion and Order,* the Commission addresses four petitions for reconsideration of the *Report and Order,* 63 FR 6669, February 10, 1998, in this proceeding. In the *Report and Order,* the Commission reallocated TV channels 63, 64, 68, and 69 to the fixed and mobile services, and designated them for the exclusive use of public safety, and channels 60–62 and 65–67 for commercial use pursuant to a future auction. The Commission also declined to adopt additional protections for low-power TV and TV translator stations beyond those adopted in its *DTV Proceeding,* See *In re Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service* (DTV Proceeding), MM Docket No. 87–268, *Fifth Report and Order,* 62 FR 26996, May 16, 1997, (on reconsideration, 63 FR 13546, March 20, 1998); *Sixth Report and Order,* 62 FR 26684, May 14, 1997, (on reconsideration, 63 FR 15774, April 1998), and stated that no new applications will be considered for the provision of analog TV service in channels 60–69, but that current applicants would, at a later date, be afforded an opportunity to amend their applications to seek channels below 60 upon which to provide service. The Commission received petitions for reconsideration of the *Report and Order* from four parties. Three of these parties requested reconsideration of the decision to consider granting no new applications in channels 60–69, and one requested reconsideration of the decision to provide no additional protection to low-power TV and TV translator stations.

2. The Commission found that it had the authority to dismiss license applications when the public interest so demands. The Commission also found that it was the intention of Congress in the Balanced Budget Act of 1997 that channels 60–69 were to be reallocated

with all due haste, with only ''grandfathering'' for current licensees in the band. The Commission also concluded, however, that it was important to maximize the utility of the 746–806 MHz band for public safety and new commercial services. In addition, any TV application granted would have no allotment for a DTV channel and would be required to cease analog operations at the end of the DTV transition period. For these reasons, the Commission decided not to authorize additional new analog full-service television stations on channels 60–69. Upon reconsideration in this *Memorandum Opinion and Order*, the Commission affirmed its authority to make these decisions, and held that it had been presented with no persuasive arguments to change the decisions made in the *Report and Order.* The Commission stated that it would provide applicants a later opportunity to amend their applications to seek a channel below 60, but would not authorize additional new full-service analog TV stations in channels 60–69.

List of Subjects in 47 CFR Part 2

Frequency allocations and radio treaty matters, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–30553 Filed 11–16–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 215 and 253

[DFARS Case 97–D025]

Defense Federal Acquisition Regulation Supplement; Weighted Guidelines—Federally Funded Research and Development Centers

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to exempt contract actions with Federally Funded Research and Development Centers (FFRDCs) from the weighted guidelines method of establishing profit and fee objectives. The fee for an FFRDC is based on assessment of need and, therefore, should not be subject to the risk-based approach used in the weighted guidelines method. The rule instead requires contracting officers to establish fee objectives for FFRDCs in accordance with the DoD FFRDC Management Plan.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule with request for comments was published in the Federal Register on September 15, 1997 (62 FR 48205). Two sources submitted comments in response to the proposed rule. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies only to contract actions with Federally Funded Research and Development Centers. The rule is not applicable to small businesses.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 215 and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 215 and 253 are amended as follows:

1. The authority citation for 48 CFR Parts 215 and 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.404–4 is amended by revising paragraph (b)(1) introductory text, paragraph (c)(2) introductory text, and paragraphs (c)(2)(A) and (c)(2)(B) to read as follows:

215.404–4 Profit.

(b) * * *

(1) Departments and agencies shall use a structured approach for developing a prenegotiation profit or fee objective on any negotiated contract action that requires cost analysis, except on cost-plus-award-free contracts (see 215.404–74) or contracts with Federally Funded Research and Development Centers (FFRDCs) (see 215.404–75). There are three structured approaches—

* * * * *

(c) * * *

(2) When using a structured approach, the contracting officer—

(A) Shall use the weighted guidelines method (see 215.404–71), except as provided in paragraphs (c)(2)(B) and (c)(2)(C) of this subsection.

(B) Shall use the modified weighted guidelines method (see 215.404–72) on contract actions with nonprofit organizations other than FFRDCs.

* * * * *

3. Section 215.404–72 is revised to read as follows:

215.404–72 Modified weighted guidelines method for nonprofit organizations other than FFRDCs.

(a) *Definition.* As used in this subpart, a nonprofit organization is a business entity—

(1) That operates exclusively for charitable, scientific, or educational purposes;

(2) Whose earnings do not benefit any private shareholder or individual;

(3) Whose activities do not involve influencing legislation or political campaigning for any candidate for public office; and

(4) That is exempted from Federal income taxation under section 501 of the Internal Revenue Code.

(b) For nonprofit organizations that are entities that have been identified by the Secretary of Defense or a Secretary of a Department as receiving sustaining support on a cost-plus-fixed-fee basis from a particular DoD department or agency, compute a fee objective for covered actions using the weighted guidelines method in 215.404–71, with the following modifications:

(1) *Modifications to performance risk (Blocks 21–24 of the DD Form 1547).* (i) If the contracting officer assigns a value from the standard designated range (see 215.404–71–2(c)), reduce the fee objective by an amount equal to 1 percent of the costs in Block 18 of the DD Form 1547. Show the net (reduced) amount on the DD Form 1547.

(ii) If the contracting officer assigns a value from the alternate designated range, reduce the fee objective by an amount equal to 2 percent of the costs in Block 18 of the DD Form 1547. Show the net (reduced) amount on the DD Form 1547.

(2) *Modifications to contract type risk (Block 25 of the DD Form 1547).* Use a designated range of -1 percent to 0 percent instead of the values in 215.404–71–3. There is no normal value.

(c) For all other nonprofit organizations except FFRDCs, compute a fee objective for covered actions using the weighted guidelines method in 215.404–71, modified as described in paragraph (b)(1) of this subsection.

215.404–75 [Redesignated as 215.404–76]

4. Section 215.404–75 is redesignated as section 215.404–76.

5. A new section 215.404–75 is added to read as follows:

215.404–75 Fee requirements for FFRDCs.

For nonprofit organizations that are FFRDCs, the contracting officer—

(a) Should consider whether any fee is appropriate. Considerations shall include the FFRDC's—

(1) Proportion of retained earnings (as established under generally accepted accounting methods) that relates to DoD contracted effort;

(2) Facilities capital acquisition plans;

(3) Working capital funding as assessed on operating cycle cash needs; and

(4) Provision for funding unreimbursed costs deemed ordinary and necessary to the FFRDC.

(b) Shall, when a fee is considered appropriate, establish the fee objective in accordance with FFRDC fee policies in the DoD FFRDC Management Plan.

(c) Shall not use the weighted guidelines method or an alternate structured approach.

PART 253—FORMS

253.215–70 [Amended]

6. Section 253.215–70 is amended in paragraph (b)(4) by revising the parenthetical to read ''(see 215.404–76)''.

[FR Doc. 98–30713 Filed 11–16–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 98–4723]

RIN 2127–AF73

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

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

ACTION: Final rule; technical amendment.

SUMMARY: This document amends Standard No. 108, the Federal motor vehicle safety standard on lighting, to remove paragraph S7.8.2.3 relating to headlamps aimed by moving the reflector relative to the lens and headlamp housing, or vice versa. This paragraph has been superseded by paragraph S7.8.2.2, which retains the requirements of S7.8.2.3 for headlamps with movable parts that are not visually/optically aimable and prescribes requirements for headlamps with movable parts that are visually/optically aimable. Paragraph S7.8.2.3 is therefore redundant and can be removed without creating a burden on any person.

DATES: The amendment is effective November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Safety Performance Standards, NHTSA (Phone: 202–366–6346).

SUPPLEMENTARY INFORMATION: Paragraph S7.8.2.2 of Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment,* as in effect until May 1, 1997, read as follows:

S7.8.2.2 If a headlamp is aimed by moving the reflector relative to the lens and headlamp housing, or vice versa, it shall conform with the photometrics applicable to it with the lens at any position relative to the reflector within the aim range limits of paragraph S7.8.3 and S7.8.4 or any combination.

Paragraph S7.8.4 as in effect until May 1, 1997, read as follows:

S7.8.4 When a headlamp system is tested in a laboratory, the range of horizontal aim shall be not less than 2.5 degrees from the nominal correct aim position for the intended vehicle application.

Standard No. 108 was amended on March 10, 1997, to adopt specifications for visually/optically aimable headlamps, representing the consensus of a NHTSA Advisory Committee on Regulatory Negotiation (62 FR 10710). The amendments were effective on May 1, 1997. As part of that rulemaking action, a new paragraph S7.8.2.2 was adopted, and existing S7.8.2.2, as shown above, was redesignated S7.8.2.3. At the same time, a clarifying amendment was made to S7.8.4, to insert ''±'' before ''2.5 degrees.'' No amendment was made to paragraph S7.8.3.

Grote Industries, a manufacturer of lighting equipment, has questioned whether S7.8.2.2 and S7.8.2.3 are in conflict. Upon review, NHTSA has concluded that there is no conflict, but that it acted erroneously in redesignating S7.8.2.2 and that it should have removed S7.8.2.2 rather than redesignating it.

NHTSA wishes to correct this error. However, there is the possibility that a manufacturer who complied with the requirements of S7.8.2.2 before May 1, 1997, may have continued to do so after it was redesignated S7.8.2.3 as of May 1, 1997. Continued compliance is technically possible because S7.8.3 was not amended, and S7.8.4 only in a minor respect. Therefore, the agency must determine whether removal of S7.8.2.3 would create an obligation or remove an option not otherwise available.

The agency has decided that removal of S7.8.2.3 would not create an obligation or remove an option not otherwise available. The preamble to the final rule adopting new paragraph S7.8.2.2 explained that ''requirements for the aiming of movable reflector headlamps have been clarified and expanded to cover headlamps which are visually/optically aimable'' (at 10713). In other words, paragraph S7.8.2.2 retained the requirements of S7.8.2.3 for headlamps with movable parts that are not visually/optically aimable, as well as extending these requirements to headlamps with movable parts that are visually/optically aimable. Paragraph S7.8.2.3 is therefore redundant and can be removed without creating a burden on any person.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under Executive Order 12866. Further, it has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The purpose of the rulemaking action is to correct an error and to remove an obsolete requirement. Since the final rule will not impose or reduce costs, preparation of a full regulatory evaluation is not warranted. Vehicles with movable reflector headlamps that are not visually/optically aimable are presumed to comply with both the new and obsolete requirement.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. This final rule will not have a significant effect upon the environment. The composition of lighting equipment will not change from those presently in production.

Regulatory Flexibility Act

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act (5 U.S.C. Sec. 601 *et seq.*). For the reasons stated above in the paragraph on

Executive Order 12866 and the DOT Regulatory Policies and Procedures, I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. Sec. 605(b)). The amendment primarily affects manufacturers of motor vehicles. Manufacturers of motor vehicles are generally not small businesses within the meaning of the Regulatory Flexibility Act.

The Small Business Administration's regulations define a small business in part as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)) SBA's size standards are organized according to Standard Industrial Classification Codes (SIC), SIC Code 3711 ''Motor Vehicles and Passenger Car Bodies'' has a small business size standard of 1,000 employees or fewer.

For manufacturers of passenger cars and light trucks, NHTSA estimates there are at most five small manufacturers of passenger cars in the U.S. Since each manufacturer serves a niche market, often specializing in replicas of ''classic'' cars, production for each manufacturer is fewer than 100 cars per year. Thus, there are at most 500 cars manufactured per year by U.S. small businesses.

In contrast, in 1998, there are approximately nine large manufacturers producing passenger cars, and light trucks in the U.S. Total U.S. manufacturing production per year is approximately 15 to 15 and a half million passenger cars and light trucks per year. NHTSA does not believe small businesses manufacture even 0.1 percent of total U.S. passenger car and light truck production per year.

Further, small organizations and governmental jurisdictions are not be significantly affected as the price of motor vehicles ought not to change as the result of this final rule.

Executive Order 12612 (Federalism)

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

Civil Justice

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this final rule does not have a $100 million effect, no Unfunded Mandates assessment has been prepared.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

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

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Section 571.108 is amended by removing paragraph S7.8.2.3.

Issued on: November 3, 1998.

James R. Hackney,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 98–30731 Filed 11–16–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208298–8055–02; I.D. 111298A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific cod in the Bering Sea and Aleutian Islands

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

ACTION: Reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from trawl catcher/processors and trawl catcher vessels to vessels using fixed gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 1998 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 12, 1998, until 2400 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR parts 600 and 679.

As of October 31, 1998, the Acting Administrator, Alaska Region, NMFS, has determined that approximately 4,097 metric tons (mt) of Pacific cod remain in the catcher/processor allocation and 5,975 mt remain in the catcher vessel allocation. Trawl catcher/ processors will not be able to harvest 1,500 metric tons (mt) of Pacific cod, and the trawl catcher vessels, 5,000 mt of Pacific cod, allocated to those sectors under § 679.20(a)(7)(i)(B).

Therefore, in accordance with § 679.20(a)(7)(ii)(B), NMFS is apportioning the projected unused amount, 1,500 mt, of Pacific cod from trawl catcher/processors to vessels using fixed gear and 5,000 mt from trawl catcher vessels to vessels using fixed gear.

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the Pacific cod TAC. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only disrupt the FMP's objective of providing a portion of the Pacific cod TAC for fixed gear in the BSAI. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

Classification

This action is taken under 50 CFR 679.20, and is exempt from OMB review under E.O. 12866.

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

Dated: November 12, 1998.

Gary C. Matlock,

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

[FR Doc. 98–30693 Filed 11–12–98; 4:43 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 63, No. 221

Tuesday, November 17, 1998

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. AO–370–A6; FV98–930–2]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Hearing on Proposed Amendment of Marketing Agreement and Order No. 930

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to consider amending Marketing Agreement and Order No. 930, hereinafter referred to as the ''order.'' The order regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. The purpose of the hearing is to receive evidence on two proposals to amend the order. The proposals were submitted by the Cherry Industry Administrative Board (Board), which is responsible for local administration of the order. One proposed amendment would clarify the current limitation on the number of Board members that may represent a single ''sales constituency.'' The second would simplify the method used to establish volume regulations for tart cherries.

DATES: The hearing will begin at 9:00 a.m. in Grand Rapids, Michigan on December 1, 1998, and, if necessary, will continue the next day beginning at 9:00 a.m. A second hearing session will begin at 9:00 a.m. in Salt Lake City, Utah on December 3, 1998, and, if necessary, will continue the next day beginning at 9:00 a.m.

ADDRESSES: The Grand Rapids hearing will be held at the Hilton Grand Rapids Hotel, 4747 28th Street SE, Grand Rapids, Michigan 99512. The Salt Lake City hearing will be held in the Conference Room at the Utah Department of Agriculture and Food, 350 North Redwood Road, Salt Lake City, Utah 84116.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This administrative action is taken pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposals.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The Board submitted a proposal to clarify the current limitation on the number of Board members that may represent a single ''sales constituency.'' The definition of that term would be clarified to reduce uncertainty over which types of industry organizations are intended to be included under that definition. A second Board proposal would simplify its method of calculating the optimum supply of tart cherries used in establishing annual volume regulations.

The Board works with the Department in administering the order. These proposals have not received the approval of the Secretary of Agriculture.

The Board believes that the proposed changes would improve the administration, operation, and functioning of the order.

Also, the Fruit and Vegetable Programs of the Agricultural Marketing Service (AMS) proposes to allow such conforming changes to the order which may be necessary as a result of the hearing.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except any designated employees of the General Counsel assigned to represent the Board in this rulemaking proceeding; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the Cherry Industry Administrative Board:

Proposal No. 1

Revise § 930.16 to read as follows:

§ 930.16 Sales constituency.

Sales constituency means a common marketing organization or brokerage firm or individual representing a group of handlers or growers. An organization which receives consignments of cherries and does not direct where the consigned cherries are sold is not a sales consituency.

Proposal No. 2

In § 930.50, revise paragraph (a) to read as follows:

§ 930.50 Marketing policy.

(a) *Optimum Supply.* On or about July 1 of each crop year, the Board shall hold a meeting to review sales data, inventory data, current crop forecasts and market conditions in order to establish an optimum supply level for the crop year. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years, reduced by the sales that represent dispositions of restricted cherries qualifying for diversion credit, unless the Board votes to do otherwise, to which shall be added a desirable carryout inventory not to exceed 20 million pounds or such other amount as the Board, with the approval of the Secretary, may establish. This optimum supply volume shall be announced by the Board in accordance with paragraph (h) of this section.

* * * * *

The Fruit and Vegetable Programs, Agricultural Marketing Service, submitted the following proposal:

Proposal No. 3

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: November 12, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–30828 Filed 11–13–98; 12:58 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV–99–985–1 PR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1999–2000 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1999–2000 marketing year, which begins on June 1, 1999. This proposal would establish salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 1,199,290 pounds and 65 percent, respectively, and for Class 3 (Native) spearmint oil of 1,125,755 pounds and 55 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market.

DATES: Comments must be received by December 17, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724; Fax: (503) 326–7440; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 205–6632. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 205–6632, or E-mail: Jay__N__Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1999–2000 marketing year, which begins on June 1, 1999. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Pursuant to authority contained in sections 985.50, 985.51, and 985.52 of the order, the Committee recommended the salable quantities and allotment percentages for the 1999–2000 marketing year at its October 7, 1998, meeting. With 6 members in favor, 1 member opposed, and 1 member abstaining, the Committee recommended the establishment of a salable quantity and allotment percentage for Class 1 (Scotch) spearmint oil of 1,199,290 pounds and 65 percent, respectively. The member in opposition favored the establishment of a lower salable quantity and allotment percentage. With 6 members in favor and 2 members abstaining, the Committee recommended the establishment of a salable quantity and allotment percentage for Class 3 (Native) spearmint oil of 1,125,755 pounds and 55 percent, respectively. The member abstaining does not currently produce Native spearmint oil. The chairman, as is traditional with this committee, abstained on both the Scotch and the Native spearmint oil recommendations.

This proposed rule would limit the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 1999–2000 marketing year, which begins on June 1, 1999. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order accounts for approximately 65 percent of the annual U.S. production of Scotch spearmint oil and approximately 90 percent of the annual U.S. production of Native spearmint oil.

When the order became effective in 1980, the United States produced nearly 100 percent of the world's supply of Scotch spearmint oil, of which approximately 80 percent was produced in the regulated production area in the Far West. International production characteristics have changed in recent years, however, with foreign Scotch spearmint oil production contributing significantly to world production. Although still a leader in production, the Far West's market share has decreased to approximately 39 percent of the world total. Therefore, the Committee's recommendation for Scotch spearmint oil could maintain market stability by avoiding extreme fluctuations in supplies and prices, and would help the industry remain competitive on an international level by hopefully regaining some of the Far West's historical share of the global market. The Committee's recommendation is intended to foster market stability so that the Far West's Scotch spearmint oil market share will not only be retained, but expanded as well.

The order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. For example, between 1971 and 1975 the price of Native spearmint oil ranged from $3.00 per pound to $11.00 per pound. In contrast, under the order, prices have stabilized between $10.50 and $11.50 per pound for the past ten years. The average price for Native spearmint oil in 1997 was $11.00. With approximately 90 percent of the U.S. production located in the Far West, the method of calculating the Native spearmint oil salable quantity and allotment percentage primarily utilizes information on price and available supply as they are affected by the estimated trade demand.

The proposed salable quantity and allotment percentage for each class of spearmint oil for the 1999–2000 marketing year is based upon the Committee's recommendation and the data presented below.

(1) Class 1 (Scotch) Spearmint Oil

(A) Estimated carry-in on June 1, 1999—598,929 pounds. This figure is derived by subtracting the estimated 1998–99 marketing year trade demand of 900,000 pounds from the revised 1998–99 marketing year total available supply of 1,498,929 pounds.

(B) Estimated world production for the 1998–99 marketing year—3,280,758 pounds. This figure is based on information the Committee has compiled.

(C) Estimated Far West production for the 1998–99 marketing year—1,278,508 pounds.

(D) Approximate Far West percentage of total world production in 1998–99—39 percent. This is down from the 1980 level of approximately 80 percent.

(E) Total estimated allotment base for the 1999–2000 marketing year—1,845,061 pounds. This figure represents a one percent increase over the revised 1998–99 allotment base.

(F) Recommended 1999–2000 allotment percentage—65 percent. This figure is based upon recommendations made at the October 7, 1998, meeting, as well as at the five Scotch spearmint oil production area meetings held during September.

(G) The Committee's computed 1999–2000 salable quantity—1,199,290 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 1999–2000 marketing year—1,798,219 pounds. This figure is derived by adding the computed salable quantity to the estimated June 1, 1999, carry-in volume, and represents the total amount of Scotch spearmint oil that could be available to the market during the 1999–2000 marketing year.

(I) Estimated trade demand for Far West Scotch spearmint oil during the 1999–2000 marketing year—910,000 pounds. This figure is based upon estimates provided to the Committee by buyers of spearmint oil.

(J) Estimated carry-out on June 1, 2000—888,219 pounds. This figure is the difference between the 1999–2000 estimated trade demand and the 1999–2000 estimated available supply.

(2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 1999—54,815 pounds. This figure is the difference between the estimated 1998–99 marketing year trade demand of 1,170,000 pounds and the revised 1998–99 marketing year total available supply of 1,224,815 pounds.

(B) Estimated trade demand (domestic and export) for the 1999–2000 marketing year—1,155,000 pounds. This figure is based on the average of the three most recent years' sales figures and input from spearmint oil buyers.

(C) Salable quantity required from 1999 production—1,100,185 pounds. This figure is the difference between the estimated 1999–2000 marketing year trade demand and the estimated carry-in on June 1, 1999.

(D) Total estimated allotment base for the 1999–2000 marketing year—2,046,828 pounds. This figure represents a one percent increase over the revised 1998–99 allotment base.

(E) Computed allotment percentage—53.8 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—55 percent. This is the Committee's recommendation based on the computed allotment percentage and input received at the four Native spearmint oil production area meetings held during September.

(G) The Committee's recommended salable quantity—1,125,755 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

The salable quantity is the total quantity of each class of spearmint oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch spearmint oil salable quantity of 1,199,290 pounds and allotment percentage of 65 percent are based on the Committee's goal of maintaining market stability by avoiding extreme fluctuations in supplies and prices, and thereby helping the industry remain competitive on the international level. The Committee's recommended Native spearmint oil salable quantity of 1,125,755 pounds and allotment percentage of 55 percent are based on anticipated supply and trade demand during the 1999–2000 marketing year. The proposed salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year can be satisfied by an increase in the salable quantities. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 1999–2000 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool.

This proposed regulation, if adopted, would be similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this proposed action are expected to be offset by the benefits derived from a stable market, a greater market share, and possible improved returns. In conjunction with the issuance of this proposed rule, the Committee's marketing policy statement for the 1999–2000 marketing year has been reviewed by the Department. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulations, fully meets the intent of section 985.50 of the order. During its discussion of potential 1999–2000 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages would allow for anticipated market needs. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil which should be produced for next season in order to meet anticipated market demand.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this initial regulatory flexibility analysis.

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

There are 9 spearmint oil handlers subject to regulation under the order, and approximately 124 producers of Class 1 (Scotch) spearmint oil and approximately 110 producers of Class 3 (Native) spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA)(13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 9 handlers regulated by the order would be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 29 of the 124 Scotch spearmint oil producers and 14 of the 110 Native spearmint oil producers would be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. A normal spearmint oil producing operation would have enough acreage for rotation such that the total acreage required to produce the crop would be about one-third spearmint and two-thirds rotational crops. An average spearmint oil producing farm would thus have to have considerably more acreage than would be planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil producing farms would fall into the SBA category of large businesses.

This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1999–2000 marketing year. The Committee recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market. This action is authorized by the provisions of sections 985.50, 985.51 and 985.52 of the order.

Small spearmint oil producers generally are not extensively diversified and as such are more at risk to market fluctuations. Such small farmers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because incomes from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

The order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. For example, between 1971 and 1975 the price of Native spearmint oil ranged from $3.00 per pound to $11.00 per pound. In contrast, under the order, prices have stabilized between $10.50 and $11.50 per pound for the past ten years. The average price for Native spearmint oil in 1997 was $11.00.

Alternatives to the proposal included not regulating the handling of spearmint oil during the 1999–2000 marketing year, and recommending either higher or lower levels for the salable quantities and allotment percentages. The Committee reached its recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended will achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pattern of cyclical prices of prior years, as well as suffer the potentially price depressing consequence that a release of the nearly 1.3 million pounds of spearmint oil reserves would have on the market. According to the Committee, higher or lower salable quantities and allotment percentages would not achieve the intended goals of market and price stability, with market share maintenance and growth.

Annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

Finally, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. Interested persons are also invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 30-day comment period is provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impacts of this action on small businesses. Thirty days is deemed appropriate because this rule would need to be effective as soon as possible to provide producers sufficient time prior to the beginning of the 1999–2000 marketing year to adjust their cultural and marketing plans accordingly. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is proposed to be amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 985.218 is added to read as follows:

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

§ 985.218 Salable quantities and allotment percentages—1999–2000 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1999, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 1,199,290 pounds and an allotment percentage of 65 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,125,755 pounds and an allotment percentage of 55 percent.

Dated: November 9, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–30673 Filed 11–16–98; 8:45 am]

BILLING CODE 3410–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 79 and 80

[FRL–6187–5]

Use of Alternative Analytical Test Methods in the Reformulated Gasoline Program and Revision of the Specification for the Mixing Chamber Associated with Animal Toxicity Testing of Fuels and Fuel Additives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule extends the time period during which certain alternative analytical test methods may be used in the Federal reformulated gasoline (RFG) program to September 1, 2000. The time period for use of these alternative methods originally expired on January 1, 1997 and was previously extended to September 1, 1998. The purpose of today's proposed extension

is to grant temporary flexibility until a final performance-based analytical test method approach rulemaking is promulgated. EPA expects to finalize the performance-based analytical test method approach rulemaking before September 1, 2000. This proposed rule also makes certain revisions to the procedures applicable to health effects testing of fuels and fuel additives.

DATE: Comments must be received in writing by December 17, 1998.

ADDRESSES: Any person wishing to submit comments should send them (in duplicate, if possible) to the docket address listed and to Joseph R. Sopata, U.S. Environmental Protection Agency, Fuels and Energy Division, 401 M Street, SW (6406J), Washington, D.C. 20460. Materials relevant to this direct final rule have been placed in docket A–98–21 located at U.S. Environmental Protection Agency, Air Docket Section, Room M–1500, 401 M Street, SW, Washington, D.C. 20460. The docket is open for public inspection from 8:00 a.m. until 5:30 p.m., Monday through Friday, except on Federal holidays. A reasonable fee may be charged for photocopying services.

FOR FURTHER INFORMATION CONTACT: For further information about this proposed rule, contact Joseph R. Sopata, Chemist, Fuels & Energy Division, at (202) 564–9034. To notify EPA of an intent to submit an adverse comment or public hearing request, contact Joseph R. Sopata, (202) 564–9034, or Anne-Marie C. Pastorkovich, Attorney/Advisor, Fuels & Energy Division, (202) 564–8987.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities potentially regulated by this action are those that use analytical test methods to comply with the RFG program and manufacturers of fuels and fuel additives. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Oil refiners, gasoline importers, oxygenate blenders, analytical testing laboratories. Manufacturers of gasoline and diesel fuel. Manufacturers of additives for gasoline and diesel fuel.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed action. This table lists all types of entities that EPA is now aware could potentially be regulated by this proposed action. Other types of entities not listed in this table could also be regulated. To determine whether your business is regulated by this proposed action, you should carefully examine the applicability criteria in parts 79 and 80 of title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section of this document.

II. RFG Standards & Test Methods Utilized at § 80.46

Section 211(k) of the Clean Air Act (the Act) requires that EPA establish standards for RFG to be used in specified ozone nonattainment areas (covered areas), as well as anti-dumping standards for non-reformulated, or conventional gasoline, used in the rest of the country, beginning in January 1995. The Act requires that RFG reduce VOC and toxics emissions from motor vehicles, not increase NO_X emissions, and meet certain content standards for oxygen, benzene, and heavy metals. EPA published the final RFG regulations in the **Federal Register** on February 16, 1994.[1]

Refiners, importers, and oxygenate blenders are required, among other things, to test RFG and conventional gasoline for various gasoline parameters or qualities, such as sulfur levels, aromatics, benzene, and so on. Based upon comments received from the regulated industry during the RFG and anti-dumping rulemaking, EPA concluded that it would be appropriate to temporarily allow the use of alternative analytical test methods for measuring the parameters of aromatics and oxygenates. Language was adopted in §§ 80.46(f)(3) and (g)(9)(i), which permitted the use of alternative analytical test methods for aromatics and oxygenates, respectively, until January 1, 1997. These sections were later amended by a November 13, 1996 final rule published in the **Federal Register** to permit the use of alternative analytical test methods for these two parameters until September 1, 1998.[2]

As explained in the February 16, 1994 final rule, the Agency will undertake a rulemaking to consider establishing a performance-based analytical test method approach for the measurement of the reformulated gasoline (RFG) parameters at § 80.46. The Agency envisions that a performance-based approach could provide additional flexibility to the regulated industry in its choice of analytical test methods to be utilized for compliance under the RFG and conventional gasoline programs for analytical test methods that differ from the designated analytical test method. The Agency further believes that establishment of a performance-based test method approach may help advance the purposes of the ''National Technology Transfer and Advancement Act of 1995,'' section 12(d) of Public Law 104–113 and Office of Management and Budget (OMB) Circular A–119.[3] In general, the National Technology Transfer and Advancement Act of 1995 and OMB Circular A–119 are designed to encourage the adoption of standards developed by ''voluntary consensus bodies'' and to reduce reliance on government-unique standards ''where an existing voluntary standard would suffice.''[4] Today's proposed rule provides an extension of deadline for use of certain alternative test methods until such time as a notice-and-comment rulemaking to establish performance-based standards is

[1] The RFG and anti-dumping regulations are located at 40 CFR part 80, subparts D, E, and F. The final rule establishing the RFG and anti-dumping standards was published in the February 16, 1994 **Federal Register** at 59 FR 7716. Amendments were published at 59 FR 36944 (June 20, 1994), 59 FR 39258 (August 2, 1994), 59 FR 60715 (November 28, 1994), 60 FR 2699 (January 11, 1995), 60 FR 6030 (February 1, 1995), 60 FR 35488 (July 10, 1995), 60 FR 40006 (August 1, 1995), 60 FR 65571 (December 20, 1995), 61 FR 12030 (March 25, 1996), 61 FR 20736 (May 8, 1996), 61 FR 35673 (July 8, 1996), 61 FR 58304 (November 13, 1996), 62 FR 9872 (March 4, 1997), 62 FR 12572 (March 17, 1997), and 62 FR 30260 (June 3, 1997). EPA proposed several additional modifications to the RFG and anti-dumping regulations at 62 FR 37338 (July 11, 1997). Some of these proposed modifications were included in a final rule published at 62 FR 68196 (December 31, 1997), while others will be the subject of a future final rule. Please refer to the December 31, 1997 final rule for more information.

[2] See 61 FR 58304 (November 13, 1996).

[3] *See* ''OMB Circular A–119; Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' 63 FR 8546 (February 19, 1998).

[4] *Id.*

completed. Issues related to the National Technology Transfer and Advancement Act of 1995 and OMB Circular A–119 will be appropriately explored in detail in connection with that rulemaking.

EPA originally expected to finalize action on such a rulemaking by September 1, 1998; however, the Agency now realizes that it will not complete rulemaking until after that date. Refiners and importers will need several months to determine whether these alternative methods qualify under the envisioned performance-based analytical test method approach. Therefore the Agency is proposing to extend the deadline for the use of alternative test methods at §§ 80.46(f)(3) and 80.46(g)(9) until September 1, 2000. This extension of the deadline would allow parties to make long-term purchasing decisions based on all the testing options that could be made available at the conclusion of the performance-based rulemaking. EPA reasonably expects to complete rulemaking before September 1, 2000.

III. Proposed Revision of the Specification for the Mixing Chamber Associated With Animal Toxicity Testing of Fuels and Fuel Additives at § 79.57(e)(2)(iii)(C)

The fuels and fuel additives registration program is authorized by section 211 of the Clean Air Act and codified at 40 CFR part 79. In accordance with sections 211(a) and (b)(1) of the Act, basic registration requirements applicable to gasoline and diesel fuel have been in existence since 1975. On June 27, 1994, EPA published a **Federal Register** document announcing final additional regulations for registration of designated fuels and fuel additives as authorized by sections 211(b)(2) and 211(e) of the Clean Air Act as amended in 1990.[5] The additional regulations require manufacturers, as part of the registration program, to conduct tests and submit information related to the health effects of their fuel and fuel additive products. The health effects testing requirements are organized in three tiers. Tier 1 requires analysis of combustion and evaporative emissions of fuels and fuel additives and a survey of existing scientific information on the public health and welfare effects of these emissions. Tier 2 requires manufacturers to conduct specified health effects tests to screen for adverse health effects of fuel and fuel additive emissions. Additional testing may be required under Tier 3 at EPA's discretion.

A provision of the health effects testing regulations requires that the emission moderation apparatus must function such that the average concentration of hydrocarbons leaving the apparatus shall be within 10 percent of the average concentration of hydrocarbons entering the mixing chamber. The Agency now believes that this specification for the mixing chamber (or any alternative emission moderation apparatus) at §§ 79.57(e)(2)(iii)(C) and 79.57(e)(2)(v)(B) is likely unachievable in a typical laboratory setting. Additionally, the regulations require that the mean exposure concentration in the inhalation test chamber shall be within 10 percent of the target concentration for the single species being controlled on 90 percent or more of the exposure days and that daily monitoring of CO, CO_2, oxides of nitrogen, oxides of sulfur and total hydrocarbons in the exposure chamber shall be required. 40 CFR 79.57(e)(2)(iv)(B). EPA now believes that the required mean exposure concentration in the inhalation test chamber is unachievable for total hydrocarbons and particulate. The Agency believes that the reason that these specifications are unachievable for hydrocarbons and particulate is because of the cohesive qualities that such compounds share. These shared cohesive tendencies result in a tendency to fall out of the exposure atmosphere as it passes through the apparatus.

EPA believes that a more appropriate specification for particulate and hydrocarbon compounds would be 15%. The Agency believes the modified emission dilution requirements at §§ 79.57(e)(2)(iv)(B) and 79.57(e)(2)(vi)(B) will provide for sufficient quality control assurances and thereby negate the need for §§ 79.57(e)(2)(iii)(C) and 79.57(e)(2)(v)(B).[6] Accordingly, the Agency is proposing to delete §§ 79.57(e)(2)(iii)(C) and 79.57(e)(2)(v)(B), and proposing to modify §§ 79.57(e)(2)(iv)(B) and 79.57(e)(2)(vi)(B).

IV. Additional Changes Related to Animal Toxicity Testing of Fuels and Fuel Additives

A. Vascular Perfusion Technique

Section 79.66(e)(5)(iii)(B) states that for the vascular perfusion technique, the animals shall be perfused in situ by a generally recognized technique.[7] Section 79.62(d)(7)(v) states that the lungs and trachea of the whole-body perfusion-fixed test animals are examined for inhaled particle distribution.

The methods for vascular perfusion cited in the regulation perfuse only the systemic vascular system with fixative. Using the methods cited, the lungs are neither fixed nor inflated. This is because no pressure (either air or fixative) is applied to the airways to counteract the pressure being applied through the blood vessels, so that the airspaces of the lungs collapse under the pressure from the vascular fixation. The collapsed, unfixed lungs are not useful for histopathological examination, or for examination of inhaled particle distribution.

EPA is proposing to modify the systemic vascular perfusion fixation procedure by including intratracheal instillation of the lungs with fixative via the trachea during the fixation process. This would preserve the lungs for examination and achieve the whole-body fixation needed for neurotoxicity endpoints.

B. Correction of Animal Numbers

Section 79.62(d)(1)(ii)(B) states, in part, ''Forty rodents, 25 females and 10 males . . .'' EPA is proposing to amend the section to reflect a correct total of 35 rodents.

V. Environmental and Economic Impacts

This proposed rule is expected to have no negative environmental impact. The proposed change in the deadline for the use of certain alternative test methods preserves the status quo of the RFG program and will result in no reduction in the emission benefits of the program. The proposed changes to the fuels and fuel additives registration

---

[5] The fuels and fuel additives registration regulations are located in 40 CFR part 79. Testing requirements for fuels and fuel additives are in subpart F. The final rule establishing these regulations was published in the June 27, 1994 **Federal Register** at 59 FR 33042. Amendments were published at 61 FR 36506 (July 11, 1996), 61 FR 58744 (November 18, 1996), 62 FR 12564 (March 17, 1997) and 62 FR 12572 (March 17, 1997).

[6] Sections 79.57(e)(2)(iv)(B) and 79.57(e)(2)(vi)(B) did not previously contain reference to hydrocarbons, but are proposed to be modified to include specific requirements for both hydrocarbons and particulate. Sections 79.57(e)(2)(iii)(C) and 79.57(e)(2)(v)(B), which are proposed to be deleted, specifically address hydrocarbons only, and would no longer be necessary.

[7] Standard techniques for vascular perfusion in the following references are cited: Zeman, W., and Innes, J.R.M., *Craigie's Neuroanatomy of the Rat* (New York: Academic, 1963); Hayat, M.A., ''Vol. 1. Biological applications,'' *Principles and Techniques of Electron Microscopy* (New York: Van Nostrand, Reinhold, 1970); and Spencer, P.S., and Schaumbur, H.H., (eds.). *Experimental and Clinical Neurotoxicology* (Baltimore: Williams and Wilkins, 1980).

regulations are not expected to have any negative environmental impact on the public health and environmental benefits associated with the fuels and fuel additives testing program. In fact, today's proposed changes with regard to health testing requirements add certainty and correct errors and, as a result, may enhance the benefits of the program.

Today's proposed regulation would have a positive impact on the great majority of entities regulated by the RFG regulation, because it permits continued flexibility with respect to the use of alternative test methods. This flexibility will continue through September 1, 2000 or until such time as EPA issues final regulations for performance-based analytical test methods. The proposed changes to the health effects testing requirements are minor and are not expected to result in any additional compliance costs for regulated parties.

VI. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule. EPA has also determined that this proposed rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Today's proposed regulation would have a positive economic impact on the great majority of entities regulated by the RFG regulation, including small businesses. Specifically, it would grant the regulated industry flexibility in the use of alternative test methods until September 1, 2000 (or until such time as EPA completes final rulemaking) and would correct certain errors in existing registration requirements for fuels and fuel additives. It is not expected to result in any additional compliance costs for regulated parties, including small entities. A regulatory flexibility analysis has therefore not been prepared.

VII. Executive Order 12866

Under Executive Order 12866 [8], the Agency must determine whether a regulation is ''significant'' and therefore subject to OMB review 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 of 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 obligations 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 this Executive Order.[9]

EPA has determined that this proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

VIII. Paperwork Reduction Act

Today's proposed rule does not impose any new information collection burden. The Office of Management and Budget (OMB) has previously approved the applicable information collection requirements (ICRs) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned the following OMB control numbers: 2060–0297 (''Registration of Fuels and Fuel Additives; Health-Effects Research Requirements for Manufacturers—40 CFR part 79, subpart F''), 2060–0150 (''Registration of Fuels and Fuel Additives: Requirements for Manufacturers''), and 2060–0277 (''Standards for Reformulated Gasoline''). Copies of these ICRs may be obtained from Sandy Farmer, OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–2740. Include the ICR title and/or OMB number in any correspondence. Nothing in today's proposed rule will result in any additional reporting, recordkeeping, testing, or other informational burdens.

IX. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Public Law 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a Federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, for any rule subject to section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that this proposed rule does not include a Federal mandate as defined in UMRA. The proposed rule does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and it does not establish regulatory requirements that may significantly or uniquely affect small governments.

X. Effects on Tribal, State, and Local Government Entities

This proposed rule would not establish any regulatory requirements which would significantly or uniquely affect tribal governments within the meaning of E.O. 13084, ''Consultation and Coordination with Indian Tribal Governments.''

XI. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's proposed rule would not create a mandate on state, local or tribal governments. The proposed rule would not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule.

[8] 58 FR 51736 (October 4, 1993).

[9] *Id.* at section 3(f)(1)–(4).

XII. Applicability of E.O. 13045: Children's Health Protection

This proposed rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

Today's proposed rule extends the time period during which certain alternative analytical test methods may be used. This would preserve the status quo under the existing RFG program until such time as a performance-based test method rule is issued. The proposed extension will result in no reduction in the RFG program's environmental or health benefits and presents no health or safety risks that will adversely affect children.

Today's proposed changes and corrections to the health effects testing regulations for fuels and fuel additives will add certainty and facilitate compliance by regulated parties. As a result, any impact on children's health resulting from the proposed changes and corrections would reasonably be expected to be positive.

XIII. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (NTTAA), Section 12(d) of Public Law 104–113, is designed to encourage the adoption of standards developed by ''voluntary consensus bodies'' and to reduce reliance on government-unique standards where existing voluntary standards would suffice.

Today's proposed rule would provide an extension of deadline for use of certain analytical test methods for the RFG program until such time as a notice-and-comment rulemaking to establish performance-based analytical test methods is completed. Today's action does not establish new technical standards or analytical test methods. The Agency plans to address the NTTAA in detail in an upcoming rulemaking to establish performance-based analytical test methods.

For a more detailed discussion, please refer to SUPPLEMENTARY INFORMATION, section II, ''RFG Standards and Test Methods Utilized at § 80.46,'' above.

List of Subjects

40 CFR Part 79

Environmental protection, Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Labeling.

Dated: November 3, 1998.

Carol M. Browner,

Administrator.

For the reasons described in the preamble, parts 79 and 80 of Title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 79—[AMENDED]

1. The authority citation for part 79 continues to read as follows:

Authority: 42 U.S.C. 7414, 7524, 7545, and 7601.

2. Section 79.57 is proposed to be amended by removing and reserving paragraphs (e)(2)(iii)(C) and (e)(2)(v)(B) and by revising paragraphs (e)(2)(iv)(B) and (e)(2)(vi)(B), to read as follows:

§ 79.57 Emissions Generation.

* * * * *

(e) * * *

(2) * * *

(iii) * * *

(C) [Reserved]

(iv) * * *

(B) These procedures include requirements that the mean exposure concentration in the inhalation test chamber on 90 percent or more of the exposure days shall be controlled as follows:

(*1*) If the species being controlled is hydrocarbon or particulate, the mean exposure concentration must be within 15 percent of the target concentration for the single species being controlled.

(*2*) For other species, the mean exposure concentration must be within 10 percent of the target concentration for the single species being controlled.

(*3*) For all species, daily monitoring of CO, CO_2, NO_X, SO_X, and total hydrocarbons in the exposure chamber shall be required. Analysis of the particle size distribution shall also be performed to establish the stability and consistency of particle size distribution in the test exposure.

* * * * *

(v) * * *

(B) [Reserved]

(vi) * * *

(B) These procedures include requirements that the mean exposure concentration in the inhalation test chamber on 90 percent or more of the exposure days shall be controlled as follows:

(*1*) If the species being controlled is hydrocarbon or particulate, the mean exposure concentration must be within 15 percent of the target concentration for the single species being controlled.

(*2*) For other species, the mean exposure concentration must be within 10 percent of the target concentration for the single species being controlled.

(*3*) For all species, daily monitoring of CO, NO_2, NO_X, SO_X, and total hydrocarbons in the exposure chamber shall be required. Analysis of the particle size distribution shall also be performed to establish the stability and consistency of particle size distribution in the test exposure.

* * * * *

3. Section 79.62 is proposed to be amended by revising paragraph (d)(1)(ii)(B), to read as follows:

§ 79.62 Subchronic toxicity study with specific health effects assessment.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(B) Thirty-five rodents, 25 females and ten males, shall be added for each test concentration or control group when combining a 90-day toxicity study with a fertility assessment.

* * * * *

4. Section 79.66 is proposed to be amended by adding a sentence to the end of paragraph (e)(5)(iii)(B), to read as follows:

§ 79.66 Neuropathology assessment.

* * * * *

(e) * * *

(5) * * *

(iii) * * *

(B) *Perfusion technique.* * * * In addition, the lungs shall be instilled with fixative via the trachea during the fixation process in order to preserve the lungs and achieve whole-body fixation.

* * * * *

PART 80—[AMENDED]

5. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

6. Section 80.46 is proposed to be amended by revising paragraphs (f)(3) and (g)(9) to read as follows:

§ 80.46 Measurement of reformulated gasoline fuel parameters.

* * * * *

(f) * * *

(3) *Alternative test method.* (i) Prior to September 1, 2000, any refiner or importer may determine aromatics content using ASTM standard method D–1319–93, entitled ''Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Flourescent Indicator Adsorption,''for

purposes of meeting any testing requirement involving aromatics content; provided that

(ii) The refiner or importer test result is correlated with the method specified in paragraph (f)(1) of this section.

(g) * * *

(9)(i) Prior to September 1, 2000, and when the oxygenates present are limited to MTBE, ETBE, TAME, DIPE, tertiary-amyl alcohol, and C1 to C4 alcohols, any refiner, importer, or oxygenate blender may determine oxygen and oxygenate content using ASTM standard method D–4815–93, entitled ‘‘Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C1 to C4 Alcohols in Gasoline by Gas Chromatography,’’ for purposes of meeting any testing requirement; provided that

(ii) The refiner or importer test result is correlated with the method set forth in paragraphs (g)(1) through (g)(8) of this section.

* * * * *

[FR Doc. 98–30402 Filed 11–16–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AF02

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule, and request for comments.

SUMMARY: The Fish and Wildlife Service (Service) is proposing regulations that would authorize for the next 5 years the incidental, unintentional take of small numbers of polar bears (*Ursus maritimus*) and Pacific walrus (*Odobenus rosmarus divergens*) during year-round oil and gas industry operations (exploration, development, and production) in the Beaufort Sea and adjacent northern coast of Alaska.

Under the provisions of the Marine Mammal Protection Act (Act), the Service will allow the taking of these marine mammals only if the Director of the Service finds, based on the best scientific evidence available, that the total of such taking for the 5 year period will have a negligible impact on these species and will not have an unmitigable adverse impact on the availability of these species for subsistence uses by Alaska Natives. If these findings are made, the Service will establish specific regulations for the activity that set forth: permissible methods of taking; means of effecting the least practicable adverse impact on the species and their habitat and on the availability of the species for subsistence uses; and requirements for monitoring and reporting.

Through the preparation of a draft Environmental Assessment, and the knowledge learned from four years of monitoring interactions between marine mammals and oil and gas industry activities, the Service has proposed a finding that the total expected takings of polar bear and walrus during oil and gas industry exploration, development and production activities would have a negligible impact on these species, and there would be no unmitigable adverse impacts on the availability of these species for subsistence uses by Alaska Natives.

DATES: Comments on the proposed rule must be received by December 11, 1998.

ADDRESSES: Written comments should be submitted by mail to Supervisor, Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503. Comments may also be hand delivered to the same address. Comments and materials received in response to this proposal will be available for public inspection at this address during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John Bridges, Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503, (907) 786–3800, FAX (907) 786–3816, or Internet John__Bridges@mail.fws.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Act gives the Secretary of the Interior (Secretary) through the Director of the U.S. Fish and Wildlife Service the authority to allow, on request by U.S. citizens [as defined in 50 CFR 18.27(c)] engaged in a specified activity (other than commercial fishing) in a specified geographical region the incidental, but not intentional, taking of small numbers of marine mammals. The Service may grant permission for periods of up to 5 years.

If the Service finds, based on the best scientific evidence available, that the taking of marine mammals will have a negligible impact on the species or stock and will not have an ‘‘unmitigable adverse impact’’ on the availability of the species or stock for subsistence uses, the taking of marine mammals may be allowed. Also, the Service will publish regulations that include permissible methods of taking and other means to ensure the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses. These regulations must include requirements for monitoring and reporting. The Service issues Letters of Authorization (LOA), upon request and receipt of appropriate data, to individual entities to conduct activities pursuant to the regulations.

The term *take* as defined by the Act means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

Harassment as defined by the Act, as amended in September 1994, ‘‘* * * means any act of pursuit, torment, or annoyance which—

(i) Has the potential to injure a marine mammal or marine mammal stock in the wild; or

(ii) Has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.’’

As a result of 1986 amendments to the Act, the Service on September 29, 1989, published a final rule (54 FR 40338) amending 50 CFR 18.27 (i.e., regulations governing small takes of marine mammals incidental to specified activities) that included, among other things, a revised definition of ‘‘negligible impact’’ and a new definition for ‘‘unmitigable adverse impact.’’ Negligible impact is now defined as ‘‘an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.’’ [50 CFR 18.27(c)]. ‘‘Unmitigable adverse impact means an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.’’ Id.

Oil and gas exploration, development, and production activities conducted in marine mammal habitat risk violating the moratorium on the taking of marine mammals and, therefore, violating the terms of the Act. It is probable that in a period of five years, takes of polar bear and/or walrus will occur. Although there is no legal requirement for the oil and gas industry (Industry) to obtain incidental take authority, they have chosen to seek authorization to avoid the uncertainties of oil and gas industry activities in marine mammal habitat.

On December 17, 1991, BP Exploration (Alaska), Inc. (BPXA), for itself and on behalf of Amerada Hess Corporation, Amoco Production Company, ARCO Alaska, Inc., CGG American Service, Inc., Conoco Inc., Digicon Geophysical Corp., Exxon Corporation, GECO Geophysical Co., Halliburton Geophysical Services, Inc., Mobil Oil Corporation, Northern Geophysical of America, Texaco Inc., Unocal Corporation, and Western Geophysical Company, petitioned the Service for the promulgation of regulations pursuant to Section 101(a)(5) of the Act.

Regulations were issued on November 16, 1993 (58 FR 60402), that allowed the incidental, but not intentional, take of small numbers of polar bears and Pacific walrus in the event that such a taking occurred in the course of oil and gas exploration, development, or production activities during year-round operations in the Beaufort Sea, in Alaskan State waters and Outer Continental Shelf (OCS) waters and the adjacent northern coast of Alaska. The regulations were issued for a period of 18 months. The Secretary of the Interior directed the Service to develop and begin implementing a polar bear habitat conservation strategy prior to extending the regulations beyond the initial 18 months for a total 5-year period as allowed by the Act. *The Habitat Conservation Strategy for Polar Bears in Alaska* was developed to ensure that the regulations fully meet with the intent of the 1973 *International Agreement on the Conservation of Polar Bears.* On August 17, 1995, the final rule and notice of availability of a Completed Final Polar Bear Habitat Conservation Strategy was issued (60 FR 42805); and the regulations were extended for an additional 42 months to expire on December 15, 1998.

Specifically, a north/south line at Barrow, Alaska, including all Alaska state waters and the OCS waters and east of that line to the Canadian border defines the offshore geographic region. The same north/south line at Barrow, 25 miles inland and east to the Canning River defines the onshore region. The Arctic National Wildlife Refuge was excluded from the proposal.

Summary of the Current Request

On August 28, 1997, BPXA submitted a petition for rule making pursuant to Section 101(a)(5)(A) of the Act, and Section 553(e) of the Administrative Procedure Act (APA). The request seeks regulations to allow the incidental, but not intentional, taking of small numbers of polar bears and Pacific walrus in the event that takings occur in the course of oil and gas exploration, development, and production operations in Arctic Alaska. Specifically, BPXA requested an extension of the current incidental take regulations beginning at 50 CFR 18.121 for an additional five-year term from December 16, 1998, through December 15, 2003. The request was submitted by BPXA for itself and on behalf of ARCO Alaska, Inc., Exxon Corporation, and Western Geophysical Company.

The geographical extent of this request is the same as the previous regulations; it is a north/south line at Barrow, Alaska, including all Alaska State waters and OCS waters, and east of that line to the Canadian border. The onshore region is the same north/south line at Barrow, 25 miles inland and east to the Canning River. The Service excludes the Arctic National Wildlife Refuge from this proposal.

Summary of Proposed Rule

The Service proposes specific regulations to allow the incidental, unintentional take of polar bear and Pacific walrus in the Beaufort Sea and northern coast of Alaska. The regulations would be in effect year-round for a five year period expected to begin at the expiration of the current regulations (December 15, 1998) for entities conducting oil and gas industry activities. This proposed regulation does not authorize the intentional harassment, hunting, capturing or killing of polar bear or walrus. Under these regulations, Industry operations will continue while functioning under the restrictions of the Act.

These regulations do not permit the actual activities associated with oil and gas exploration, development, and production, but rather allow the incidental, unintentional take of the two species of marine mammals. The Department of the Interior's Minerals Management Service (MMS) and the Bureau of Land Management are responsible for permitting activities associated with oil and gas activities in Federal waters and on Federal lands, respectively, and the State of Alaska is responsible for activities on State lands and in State waters.

Concern has been directed at polar bear encounter incidents where human life is in jeopardy. When human activity occurs in polar bear habitat, polar bear/human encounters are possible. In over 25 years of industry activity in this area, only one polar bear died for the protection of human life. Each person operating under these regulations will have polar bear interaction training and knowledge of polar bear interaction plans. The Service authorizes deterrent activities under Section 109(h)(1) of the Act, and lethal takes (kills) in defense of self or others are authorized by Section 101(c) of the Act.

The proposed regulations authorizing the incidental take of polar bears and Pacific walrus is directed to incidents that occur between Industry and the two species during year-round oil and gas activities that might cause minor disturbances to polar bears or Pacific walrus, especially those incidents that may occur in the absence of any negligence or intentional action by a person carrying out an otherwise lawful activity.

The proposed regulations include requirements for monitoring and reporting, and measures to effect the least practicable adverse impact on these species and their habitat and on the availability of these species for subsistence uses. The regulations are based on the finding that exploration, development, and production activities in this area may involve the taking of the two aforementioned species of marine mammals. The Service believes that the total impact of the takings will have a negligible impact on these species and on their availability for subsistence uses. Monitoring reports submitted for each exploration, development, and production activity conducted from 1993–1997 support this believe.

Subsequent to establishing regulations, the Service requires a LOA to conduct activities pursuant to these regulations. Where there is the likelihood of taking polar bear or walrus, each group or individual conducting an oil and gas industry-related activity may request a LOA. The proposed regulations require those who request a LOA to submit a plan to monitor the effects on polar bear and walrus that are present during the authorized activities. Also, each applicant for a LOA must identify, in a Plan of Cooperation, measures taken to minimize adverse impacts on the availability of marine mammals for subsistence uses if the activity takes place in or near a traditional subsistence hunting area. Each request for a LOA is evaluated on the specific activity and the specific location, and the Service specifically conditions each LOA for that activity and location.

Description of Activity

In accordance with 50 CFR 18.27, Industry has submitted a request for the promulgation of incidental take regulations pursuant to Section 101(a)(5)(A) of the Act.

Activities that are covered in the petition are exploration activities such as geological and geophysical surveys which include: geotechnical site investigation, reflective seismic exploration, vibrator seismic data collection, air gun and water gun seismic data collection, explosive seismic data collection, geological surveys, and drilling operations. The latter include: drill ships, floating drill platform such as the Kulluk, ice pads, artificial islands, caisson-retained islands, and two types of bottom-founded structures: (1) concrete island drilling system, and (2) single steel drilling caisson.

Development and production activities are located on the North Slope along the shores of the Beaufort Sea. This region contains more than 11 separate oil and gas fields. All of the fields lie within the range of polar bears, while those in the offshore/near shore may encounter Pacific walrus on an irregular basis. At present, seven fields are in production: Prudoe Bay, Kuparuk, Endicott, Lisburne, Milne Point, Niakuk, and Point McIntyre. Additional fields expected to be in production over the next few years are: Northstar, Badami, Liberty, Tarn, and Alpine. The Trans-Alaska Pipeline System transports oil from each of the producing fields 800 miles south to Valdez, Alaska.

Potential sources of incidental take are noise, physical interactions, and permitted and unpermitted discharges (oil spills). Oil and gas well drilling operations will include artificial islands, caisson-retained islands, ice island, bottom-founded structures and ice pads and drill ships.

During the life of these proposed regulations, the Service anticipates a similar level of activity as during the previous five years, with the addition of a number of new developments as mentioned above. Because of the large number of variables influencing exploration activity, any predictions as to the exact dates and locations of the operations that will take place over the next five years would be highly speculative. However, requests for LOAs must include specific details regarding dates, duration, and geographic locations of proposed activities.

Biological Information

Polar bears and Pacific walrus utilize the proposed area as habitat which is vital to their survival, more so for polar bears than the Pacific walrus. The geographical area is the land and water area east of a north/south line through Barrow, Alaska. The onshore area is 25 miles inland and east to the Canning River. The Arctic National Wildlife Refuge is outside of the proposed area. Offshore, the area extends through Alaska State waters and into the OCS waters of the Beaufort Sea from Barrow east to the Canadian border.

Walrus

The Pacific walrus primarily occurs in the waters of the Chukchi Sea along the western coast of Alaska. Most of the population congregates near the ice edge of the Chukchi Sea pack ice during the summer. The primary summer range of the walrus does not extend east of Point Barrow. In the winter, walrus occur in areas where there are polynyas, open leads, or thin ice in which they can create and maintain breathing holes, and major winter concentrations occur in the southeastern Bering Sea. Walrus do occur in the Beaufort Sea but in small numbers. Data from the Service's Marking, Tagging, and Reporting Program show that from 1994 through 1997, 73 walrus were reported killed by Barrow hunters. Tagging certificates shows that nearly all walrus were taken west of Barrow. Based on four years of monitoring Industry's activities in the Beaufort Sea required as a condition to LOAs, only two walrus were observed by on-site monitors.

Polar bear

Polar bears occur only in the Northern Hemisphere, where their distribution is circumpolar, and they live in close association with polar ice. In Alaska, their distribution extends from south of the Bering Strait to the U.S.-Canada border. The Service estimates the world population at 21,000–28,000, with possibly as many as 5,000 bears in Alaska. The most extensive north-south movements of polar bears occur with the ice in the spring and fall.

Females without dependent cubs breed in the spring and enter maternity dens by late November. Females with cubs do not mate. An average of two cubs, sometimes one and rarely three, are usually born in December, and the family group emerges from the den in late March or early April. Only pregnant females den for an extended period during the winter. Other polar bears may burrow out depressions to escape harsh winter winds. The average reproduction interval for polar bear is 3–4 years. The maximum reported age of reproduction in Alaska is 18 years. Based on these conditions, a polar bear may produce about ten cubs in her lifetime.

The fur and blubber of the polar bear provide vital protection from the cold air and frigid water. Newly emerged cubs of the year may not have a sufficient layer of blubber to maintain body heat when immersed in water for long periods of time. For this reason the mother is very protective of the cubs. Cubs abandoned prior to the normal weaning age of 2.5 years likely will not survive.

Ringed seals (*Phoca hispida*) are the primary prey species of the polar bear; occasionally, they hunt bearded seals (*Erignathus barbatus*) and walrus calves. Polar bears scavenge on marine mammal carcasses washed up on shore. They also eat non-food items such as Styrofoam, plastic, car-batteries, anti-freeze and lubricating fluids.

Polar bears have no natural predators, and they do not appear to be prone to death by diseases or parasites. The most significant source of mortality are humans. Since 1972, with the passage of the Act, only Alaska Natives hunt polar bears in Alaska and use bears for their subsistence needs and manufacture of handicraft and clothing items. The Native harvest occurs without restrictions on sex, age, number, or season, providing takes are non-wasteful. From 1980–1997, the total annual harvest averaged 103 bears. The majority of this harvest (70 percent) came from the Chukchi Sea area.

Effects of Oil and Gas Industry Activities on Marine Mammals and on Subsistence Uses

Walrus

Oil and gas industry activities such as air and vessel traffic, noise from air traffic, seismic surveys, ice breakers, supply ships and drilling may frighten or displace walrus. However, as previously stated in this document, the primary range of the Pacific walrus is west of Point Barrow and the likelihood of many walrus being in the Beaufort Sea is small. Therefore, it is unlikely that oil and gas industry activities will result in more than a negligible impact on the species. Likewise, activities during the ice covered periods and the onshore development and production activities should not impact the species.

Stationary drilling structures may affect the movement of walrus. Walrus are attracted to certain activities or repelled from others by noise or smell. In the 1989 drilling season an incident occurred in a Chukchi Sea operation where a young walrus surfaced in the center hole (moonpool) of the drill ship. A cargo net removed the walrus from the drilling area, after which the walrus left the scene of the incident and was not seen again.

The majority of the population congregates during the summer months (open water season) in the southern region of the Chukchi Sea pack ice between Long Strait and Wrangle Island to the west and Point Barrow, Alaska, to the east. These animals stray or are blown by storms into the proposed regulation area. The remainder of the population, primarily adult males, stay in the Bearing Sea, especially along the Anadyr Gulf coast and in several areas in northern Bristol Bay.

In winter, walrus are found in two major regions where open leads, polynyas, or thin ice occur (Fay et al. 1984). Generally, one group ranges from the Gulf of Anadyr into the region southwest of St. Lawrence Island, and a second group is found in the southeastern Bering Sea from south of Nunivak Island into northwestern Bristol Bay. No impacts to walrus are expected during winter oil and gas industry activities since the winter range of the Pacific walrus is not within the geographical area of the proposed regulations.

Seismic surveys generally take place on solid ice or open water. Since most walrus activity occurs near the ice edge, interactions with walrus and the seismic activity are unlikely.

Subsistence

Few walrus are harvested in the Beaufort Sea along the northern coast of Alaska. The walrus constitutes a small portion of the harvest for the village of Barrow. For the four year period that the current incidental take regulations have been in place, 1994 through 1997, 73 walrus were reported taken by Barrow hunters. Reports indicate that all but one of the 73 walrus were taken west of Point Barrow, outside the limits of the incidental take regulations. Hunters from Nuiqsut and Kaktovik have not reported taking any walrus this time.

Polar Bear

Oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska may affect the polar bear. Drill ships and icebreaker activity may be physical obstructions to normal movement. Noise, sights, and smells produced by activities may attract or repel bears. These disruptions may introduce detrimental changes in the bears' natural behavior.

Exploration activities during the open-water season are not likely to impact the movements or natural behavior of the polar bear. Although polar bears have been documented in open water, miles from the ice edge or ice floes, they normally are found near the ice edge. Therefore, it is unlikely that exploration activities in the open-water season will have more than a negligible impact on the polar bear.

Winter oil and gas activities have a greater possibility of having detrimental impacts on the polar bear. Polar bears that continue to move over the ice pack throughout the year are likely to encounter Industry activities. Curious polar bears are likely to investigate drill ships and artificial or natural islands where drilling operations occur. Any on-ice activity creates an opportunity for Industry/bear interactions.

Offshore drill sites within the pack ice may modify the habitat by creating open water leads down current from the activity. Polar bears are attracted to open water leads which create temporary niches for subadult or non-breeding ringed seals, the primary prey species for the polar bear. Polar bears attracted to these artificial open water leads create possibilities of Industry/polar bear encounters.

Polar bear interaction plans are developed for each operation. Industry personnel participate in a polar bear interaction training program while on-site. These training programs and interaction plans insure that the activity and possible interactions have the least detrimental effect on industry personnel and the polar bear. Occasionally, work is performed on the ice adjacent to elevated drill ships or platforms. In such cases, well-lighted and open work areas are provided to reduce the likelihood of an encounter with an undetected polar bear.

Winter seismic activity (survey crews) have a potential of disturbing denning females which are sensitive to noise disturbances. Denning females may stop seeking a preferred denning site, or may abandon dens, thereby risking the lives of their offspring. Prior to initiating seismic survey activity, Industry provides the Service with the proposed survey route. Through satellite observations of radio collared bears the Service is able to inform Industry of known denning sites, and from knowledge of the geographical area the Service can identify areas of probable denning sites. Industry cooperates with the Service to alter survey routes to pass within no less than one mile of denning sites. As a result of the ongoing cooperative operating procedures, Industry activities avoid known den sites within all practicable limits.

Subsistence

The polar bear is not a primary subsistence species of the villages of Barrow, Nuiqsut or Kaktovik. Preliminary data from the Service's Marking, Tagging, and Reporting Program indicate that from July 1, 1993, to June 30, 1997, a total of 83 polar bears were reported harvested by the Natives of Barrow; 5 polar bears from the village of Nuiqsut; and 9 polar bears from the village of Kaktovik. Hunting success varies considerably from year-to-year because of variable ice and weather conditions.

Industry works with the local Native groups to achieve a cooperative relationship between oil and gas activities and subsistence activities. It is assumed that oil and gas exploration, development, and production will not have more than a negligible impact on subsistence activities.

Oil Spills

The accidental discharge of oil into the environment during Industry activities could result from operational spills during refueling, handling of lubricants and liquid products, and during general maintenance. The spills are small in quantity, generally less than a barrel of oil per incident. Drilling units maintain onboard cleanup equipment and train personnel to handle operational spills. These spills do not pose a threat to polar bear or walrus.

A blowout (i.e., the loss of control of a well during drilling) is a potentially more serious type of spill accident. However, based on data calculated by the MMS, the probability of a major blowout in the Beaufort Sea is extremely low; data compiled by that agency verify that although blowouts occur during exploratory drilling on the OCS, no oil has been spilled.

Based upon historical data, the probability of a blowout not occurring is calculated to be 99.36 percent. This data set includes all blowouts including those caused by gas or water, as well as oil. All blowouts do not necessarily result in the release of oil.

Swimming polar bears are directly impacted by contacting oil-contaminated waters. Bears that are fouled by oil may suffer thermoregulatory problems, ingest oil, and exhibit other detrimental effects such as inflammation of the nasal passages or damage to their renal and central nervous system.

The Service acknowledges that while there is a low probability of oil spills connected with a blowout, the potential negative effects to polar bears or their habitats may be significant. Bears that contact oil are likely to die. The Service balances the probability of an oil spill with the potential severity of harm to the species or stock when determining negligible impact. Even if the potential effects of a spill are significant but the probability of occurrence is low, a finding of negligible impact may be appropriate.

Due to the small number of walrus in the Beaufort Sea area, impacts resulting from oil spills are foreseen as negligible.

Conclusions

Based on the previous discussion and monitoring results from the previous five years' monitoring program, the Service makes the following preliminary findings regarding the proposed action.

Impact on Species

The Service finds, based on the best scientific information available and the results of four years of monitoring data, the effects of oil and gas related exploration, development, and production activities for the next five years in the Beaufort Sea and adjacent northern coast of Alaska will have a negligible impact on polar bears and Pacific walrus and their habitat and on the availability of the species for subsistence uses if certain conditions are met. Oil and gas activities have occurred in the Beaufort Sea and the adjacent northern coast of Alaska for many years. To date, there has been only one documented case of a lethal take of a polar bear at an exploratory drill site. In the event of a catastrophic spill, the Service would reassess the impacts to the polar bear and/or walrus populations and reconsider the appropriateness of authorization for taking thorough Section 101(a)(5)(A) of the Act.

The finding of ''negligible impact'' applies to exploration, development, and production activities related to oil and gas activities. The following are generic conditions that are proposed to eliminate interference with normal breeding, feeding, and possible migration patterns to ensure that the effects to the species remain negligible. The Service may expand the conditions in the LOA's based upon site specific and species specific reasons.

(1) These regulations do not authorize intentional taking of polar bear or walrus. When an intentional take (e.g., harassment associated with deterrent activities and/or lethal take) situation arises, the Service can allow such action under the authority of Section 109(h)(1) or Section 101(c) of the Act.

(2) For the protection of pregnant polar bears during denning activities (selection, birthing, and maturation of cubs) in known and confirmed denning areas, Industry activities will be restricted in specific locations during certain specified times of the year. These restrictions will be applied on a case-by-case basis in response to a request for each LOA. In potential denning areas, pre-activity surveys, as determined by the Service, may be required to determine the presence or absence of denning activity.

(3) Each activity authorized by a LOA will require a site-specific plan of operation, and a site-specific monitoring and reporting plan. The purpose of the required plans is to ensure that the level of activity and possible takes will be consistent with the finding that the cumulative total of takes will have a negligible impact on polar bear and Pacific walrus. their habitat, and where relevant, on the availability of the species for subsistence uses.

Impact on Subsistence

Polar bear and Pacific walrus contribute a small amount of the total subsistence harvest for the villages of Barrow, Nuiqsut, and Kaktovik. However, this does not mean that the harvesting of these species is not important to Alaska Natives. To ensure that the impact of oil and gas activity on the availability of the species or stock for subsistence uses is negligible, prior to receipt of a LOA, Industry must provide evidence to the Service that a plan of cooperation has been presented to the subsistence communities, the Eskimo Walrus Commission, Alaska Nanuuq Commission, and the North Slope Borough. This plan of cooperation will provide the procedures on how Industry will work with the affected Native communities and what actions will be taken to avoid interference with subsistence hunting of polar bear and walrus.

If there is evidence that oil and gas activities will affect, or in the future may affect, the availability of polar bear or walrus for subsistence, the Service will reevaluate its findings regarding permissible limits to take and the measures required to ensure continued subsistence hunting opportunities.

Monitoring and Reporting

The purpose of the monitoring program is to determine short-term and direct effects of authorized oil and gas activities on polar bear and walrus in the Beaufort Sea and the adjacent northern coast of Alaska. Plans must identify the methods used to assess the effects on the movements, behavior, and habitat use of polar bear and walrus in response to Industry's activities. Monitoring activities are summarized and reported each year, and reviewed by the Service. The Service bases each year's monitoring objective on the previous year's monitoring results.

The Service requires an approved plan for monitoring and reporting the effects of oil and gas industry exploration, development, and production activities on polar bear and walrus prior to issuance of a LOA. The applicant must submit an annual monitoring and reporting plan, at least 90 days prior to initiation of proposed activity, for each exploratory activity; and the applicant must submit a final monitoring report to the Service no later than 90 days after completion of the exploratory activity. Since development production activities are continuous long-term activities, upon approval, LOAs and their required monitoring and reporting plans will be issued for the life of the activity or until expiration of the regulations, whichever occurs first. The Service will require that the operator submit development and production activity monitoring results associated with LOAs annually for review by the Service no later than January 15 for the previous activity. The Service requires annual approval of the monitoring results for continued operation under the LOA.

Required Determinations

The Service has prepared a draft Environmental Assessment in conjunction with this proposed rulemaking. Subsequent to closure of the comment period for this proposed rule, the Service will decide whether this is a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969. For a copy of the draft Environmental Assessment, contact the individual identified above in the section entitled, FOR FURTHER INFORMATION CONTACT.

Through preparation of a Record of Compliance for a Rulemaking Document, the Department of the Interior has determined that this proposed rule is not a major rule requiring a regulatory impact analysis under Executive Order 12866. The proposed regulations are not likely to result in: (1) an annual effect on the economy of $100 million or more, with the Service estimating actual Industry and Federal government costs associated with developing petitions, specific regulations, and LOAs at $500,000–$1 million (Note that without specific regulations and LOAs, the cost to Industry resulting from lost profits, relinquishing leases earlier than expected, and writing off bonus payments against current income; and the cost to American society from lost royalties and tax payments might be substantial if incidental takes occurred and legal challenges succeeded in long-term stoppages of oil and gas operations on Federal and State lands and waters. However, it is unlikely that such stoppages will occur, but if any such cessation of activities did occur, they likely would be only short-term and would not have an annual effect on the economy surpassing $100 million.); (2) a major increase in costs or prices for consumers, individual industries, or government agencies; or (3) significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. It has also been determined that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. Oil companies and their contractors, conducting exploration, development, and production activities in Alaska have been identified as the only likely applicants under the proposed regulations. These potential applicants have not been identified as small businesses. The Record of Compliance for this proposed rule is available from the individual identified above in the section entitled, FOR FURTHER INFORMATION CONTACT.

This proposed rule is not expected to have a potential takings implication under Executive Order 12630 because it would authorize incidental, but not intentional, take of polar bear and walrus by oil and gas industry companies and thereby exempt them from civil and criminal liability. The proposed rule also does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

The reinstatement of authority (under OMB Number 1018–0070) to collect information contained in this rule was submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). On April 1, 1998, the Service published a notice in the **Federal Register** with a 60-day comment period announcing to the public its intention to seek OMB approval for the collection of information associated with this rulemaking. On September 22, 1998, the Service published a **Federal Register** notice with 30-day comment period announcing to the public that this collection of information has been submitted to OMB for reinstatement. On October 24, 1998, OMB granted approval of our request for reinstatement of this information collection requirement.

This rulemaking is not a significant rule subject to OMB review under Executive Order 12866. The Service has determined that the rapidly approaching expiration of the current regulation necessitates a public comment period of less than 60 days. Therefore, comments on this Proposed Rule will be accepted through December 11, 1998.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and record keeping requirements, Transportation.

For the reasons set forth in the preamble, the Service proposes to amend part 18, subchapter B of chapter 1, title 50 of the Code of Federal Regulations as set forth below:

PART 18—MARINE MAMMALS

1. The authority citation for 50 CFR part 18 continues to read as follows: 16 U.S.C. 1361 *et seq.*

2. Subpart J is revised to read as follows:

Subpart J—Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development, and Production Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska

Sec.

Subpart J—Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development and Production Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska

§ 18.121 Specified activity and specified geographical region.

Regulations in this subpart apply to the incidental, but not intentional, take of polar bear and Pacific walrus by U.S. citizens (as defined in § 18.27(c)) engaged in oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska. The specified geographical area is defined by a North/South line at Barrow, Alaska, and includes all Alaska coastal areas, State waters, and Outer Continental Shelf waters east of that line to the Canadian border and in area 25 miles inland from Barrow on the west to the Canning River on the east. The Arctic National Wildlife Refuge is excluded from this proposal.

§ 18.122 Effective dates.

Regulations in this subpart are effective for a five year period, beginning December 16, 1998, for year-round oil and gas exploration, development, and production activities.

§ 18.123 Permissible methods.

(a) A Letter of Authorization (see § 18.128) permits the incidental, but not intentional, take of polar bear and walrus by U.S. citizens:

(1) Conducting geological and geophysical surveys;

(2) Drilling exploratory wells and associated activities; and

(3) Drilling production wells and performing production support operations.

(b) The operator must conduct methods and activities identified in § 18.123(a) in a manner that minimizes to the greatest extent practicable adverse impacts on polar bear and walrus, their habitat and on the availability of these marine mammals for subsistence uses.

(c) The Service will evaluate each request for a Letter of Authorization based on the specific activity and the specific geographical location. Each Letter of Authorization will identify allowable conditions or methods that are specific to the activity and location.

§ 18.124 Prohibitions.

(a) These regulations do not authorize intentional takes of polar bear or walrus. (Pursuant to Section 109(h)(1) and Section 101(c) of the Marine Mammal Protection Act, the Service may authorize the intentional take (e.g., harassment associated with deterrent activities, and taking in defense of self or others.)

(b) Letters of Authorization prohibit any take that fails to comply with the terms and conditions of these specific regulations.

§ 18.125 Level of activity.

When a U.S. citizen requests a Letter of Authorization, the Service will determine whether the level of activity identified in the request exceeds that considered by the Service in making a finding of negligible impact on the species and a finding of no unmitigable adverse impact on the availability of the species for subsistence. If the level of activity is greater, the Service will re-evaluate its findings to determine if those findings continue to be appropriate based on the greater level of activity. Depending on the results of the evaluation, the service may allow the authorization to stand as is, add further conditions, or withdraw the authorization.

§ 18.126 Measures to ensure availability of species for subsistence.

When applying for a Letter of Authorization, the applicant must submit a plan of cooperation that identifies measures to minimize adverse effects on the availability of polar bear and walrus for subsistence uses if the activity takes place in or near a traditional subsistence hunting area. The applicant should contact affected subsistence communities to discuss potential conflicts with the location, timing, and methods of proposed operations. The applicant must make reasonable efforts to assure that exploration activities do not interfere with subsistence hunting or that adverse effects on the availability of polar bear or walrus are properly mitigated.

§ 18.127 Requirements for monitoring and reporting.

(a) The Service requires holders of Letters of Authorization to cooperate with the Service and other designated Federal, State, or local agencies to monitor the impacts of oil and gas exploration, development, and production activities on polar bear and walrus.

(b) Holders of Letters of Authorization must designate a qualified individual or individuals to observe, record, and report on the effects of the activities on polar bear and walrus.

(c) When applying for a Letter of Authorization, the applicant must include a site-specific plan to monitor the effects of the activity on the populations of polar bear and walrus that are present during the on-going activities. The Service's Alaska Regional Director must approve the plan which identifies the survey techniques that determine the actions of the polar bear and walrus in response to the on-going activity. The monitoring program must document the actions of these marine mammals and estimate the actual level of take. The monitoring requirements will vary depending on the activity, the location, and the time.

(d) The operator must develop a polar bear awareness and interaction plan if the activity is on ice or in an area of active ice movement. For the protection of human life and welfare, each employee on site must complete a basic polar bear encounter training course.

(e) At its discretion, the Service may place an observer on site of the activity, on board drill ships, drill rigs, aircraft, icebreakers, or other support vessels or vehicles to monitor the impacts of the activity on polar bear and walrus.

(f) For exploratory activities, holders of a Letter of Authorization must submit a report to the Service's Alaska Regional Director within 90 days after completion of activities. For development and production activities, holders of a Letter of Authorization must submit a report to the Service's Alaska Regional director by January 15 each year for the preceding calendar year's activities. Reports must include, at a minimum, the following information:

(1) Dates and time so activity;

(2) Dates and locations of polar bear or walrus activity as related to the monitoring activity; and

(3) Results of the monitoring activities including an estimate of the level of take.

§ 18.128 Letters of Authorization.

(a) Each person or entity conducting an oil and gas exploration, development, or production activity in the geographical area described in § 18.121, that may take a polar bear or walrus in execution of those activities, should apply for a Letter of Authorization for each exploration activity or a Letter of Authorization for each development and production area. At least 90 days prior to the start of the proposed activity, the operator must submit the application for authorization to the Service's Alaska Regional Director.

(b) An application for a Letter of Authorization must include the following information:

(1) A description of the activity, the dates and duration, the specific location and the estimated area affected by that activity;

(2) A plan to monitor the behavior and effects of the acitivity on polar bear and walrus;

(3) A polar bear awareness and interaction plan;

(4) Where relevant, a Plan of Cooperation to mitigate potential conflicts between the proposed activity and subsistence hunting.

(c) In accordance with § 18.27(f), decisions made concerning withdrawals of Letters of Authorization, either on an individual or class basis, will be made only after notice and opportunity for public comment.

(d) The requirement for notice and public comment in § 18.128(c) will not apply should the Service determine that an emergency exists which poses a significant risk to the well-being of the species or stocks of polar bear or walrus.

§ 18.129 Information collection requirements.

(a) The collection of information contained in this subpart has been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned clearance number 1018–0070. It is necessary to collect the information in order to describe the proposed activity and estimate the impacts of potential takings by all persons conducting the activity. The Service will use the information to evaluate the application and determine whether to issue specific regulations and, subsequently, Letters of Authorization.

(b) For the initial year only, the Service estimates a 200 hour application burden. For the initial year and annually thereafter, the Service estimates 8 hours per LOA, 4 hours for monitoring, and 8 hours per monitoring report for each of 5 companies for each of 3 active sites (20 hours x 5 companies x 3 sites). Therefore, the Service estimates that there is a total 1,100 hour public burden associated with this rulemaking for the full 3-year period of OMB authorization (200 hours to complete a one-time request for specific regulations; 8 hours for each LOA request, 4 hours per monitoring activity, and 8 hours for each monitoring report). Responses to this information collection are required to obtain a benefit pursuant to Section 101(a)(5) of the Marine Mammal Protection Act. Direct comments regard the burden estimate or any other aspect of this requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop 224 ARLSQ, 1849 C Street, NW., Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project (1018–0070), Washington, DC 20503.

Dated: November 10, 1998.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–30605 Filed 11–16–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981106278–8278–01; I.D. 101598B]

RIN 0648–AL76

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 1999 Specifications

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

ACTION: Proposed rule and proposed 1999 initial specifications; request for comments.

SUMMARY: NMFS proposes initial specifications for the 1999 fishing year for Atlantic mackerel, squid, and butterfish (MSB). Regulations governing these fisheries require NMFS to publish specifications for the upcoming fishing year and to provide an opportunity for the public to comment. This action is intended to fulfill this requirement and promote the development and conservation of the U.S. MSB fisheries. This action also proposes making an inseason adjustment of as much as 15,000 mt to the 1999 mackerel joint venture processing (JVP) annual specifications. Further, it proposes to grant the Administrator, Northeast Region, NMFS (Regional Administrator), the authority to prohibit incidental catches of *Loligo, Illex*, or butterfish when the Regional Administrator determines that closure of the incidental fishery is necessary to assure that the *Loligo, Illex*, or butterfish annual specifications will not be exceeded.

DATES: Public comments must be received on or before December 14, 1998.

ADDRESSES: Copies of the Mid-Atlantic Fishery Management Council's quota paper and recommendations, the Environmental Assessment, and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Jon C. Rittgers, Acting Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298.

Comments should be sent to Jon C. Rittgers, Acting Regional Administrator, Northeast Region Office, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. Please mark the envelope, ''Comments—1999 MSB specifications.''

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) prepared by the Mid-Atlantic Fishery Management Council (Council) appear at 50 CFR part 648. These regulations require NMFS to publish a proposed rule specifying the initial annual amounts of the initial optimum yield (IOY), as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. Regulations implementing Amendment 4 to the FMP allow the Council to recommend specifications for these fisheries for up to 3 consecutive years. Procedures for determining the initial annual amounts are found in § 648.21.

The following table contains the proposed initial specifications for the 1999 Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish fisheries as recommended by the Council.

PRELIMINARY INITIAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 1999

[mt]

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	Illex		
Max OY	26,000	24,000	[1] N/A	16,000
ABC	21,000	19,000	383,000	7,200
IOY	21,000	19,000	[2] 75,000	5,900
DAH	21,000	19,000	[3] 75,000	5,900
DAP	21,000	19,000	50,000	5,900
JVP	0	0	10,000	0
TALFF	0	0	0	0

[1] Not applicable.
[2] OY may be increased during the year, but the total will not exceed 383,000 mt.
[3] Includes 15,000 mt of Atlantic mackerel recreational allocation.

1999 Proposed Specifications

Atlantic Mackerel

The FMP provides that ABC in U.S. waters for the upcoming fishing year is that quantity of mackerel that could be caught in U.S. and Canadian waters minus the estimated catch in Canadian waters, while still maintaining a spawning stock size in the year following the year for which catch estimates and quotas are being prepared, equal to, or greater than, 900,000 mt or a catch associated with $F_{0.1}$, whichever is less. Therefore, the ABC specification for Atlantic mackerel is proposed at 383,000 mt. This level of ABC is the catch associated with a fishing mortality rate of $F_{0.1}$ while taking into account a projected Canadian catch of 22,000 mt. The proposed IOY for the 1999 Atlantic mackerel fishery is set at 75,000 mt, equal to the proposed DAH plus TALFF. The specification for DAH is computed by adding the estimated recreational catch, the proposed DAP and JVP. The recreational component of DAH is estimated to be 15,000 mt. DAP and JVP components of DAH have historically been estimated using the Council's annual processor survey. However, for the years 1994 through 1998, response was low and did not contain projections from the large, known processors. In addition, inquiries regarding the utilization of displaced New England groundfish trawlers for possible entry into the Atlantic mackerel fishery have led the Council to recommend no change to the DAP for the 1999 fishery. This led to the Council recommendation that JVP be reduced to 10,000 mt in 1999 (reduced from 15,000 mt in 1998 and from 25,000 mt in 1997). The Council position was that, even though joint venture (JV)-caught mackerel could negatively effect U.S. processing and exports, some specification of JVP was necessary to support U.S. harvesters who are currently restrained by the limited capacity of the U.S. processing sector. Several years ago, the Council concluded that, even though JVs are necessary in the short term, the long-term policy should be to eliminate JVP to promote the development of the U.S. processing and export industry for Atlantic mackerel, which is one of the primary objectives of the current FMP.

The Council has recommended and NMFS proposes an initial specification of 10,000 mt of JVP for the 1999 fishery. The Council also recommended and NMFS proposes a DAP of 50,000 mt yielding a DAH of 75,000 mt, which includes the 15,000 mt recreational component.

Current MSB regulations allow for inseason adjustments of the annual specifications. These regulations authorize the Regional Administrator, in consultation with the Council, to make adjustments during the fishing year by publication in the **Federal Register** stating the reasons for such action and providing a 30-day public comment period. Therefore, in conjunction with this proposed initial annual specifications action, the Regional Administrator is seeking Council input and public comment on a proposed inseason adjustment to the 1999 mackerel JVP annual specifications of as much as 15,000 mt (with a resultant increase to as much as 15,000 mt in IOY and DAH), in the event additional JV applications are submitted. NMFS believes that announcing this inseason adjustment during this proposed rule process will facilitate more timely use of the existing regulatory provision, allowing inseason increases to specifications including JVP. This action could provide another opportunity for U.S. vessels to participate in JV fisheries without any negative impacts on the Council's long-term goal to Americanize the fishery. If additional JV applications are received, the 1999 mackerel JVP specifications may be increased by as much as 15,000 mt by publication of a final rule in the **Federal Register** without further consultation with the Council.

An IOY level that keeps TALFF at zero is recommended for the 1999 Atlantic mackerel fishery. The Fisheries Act of 1995, P.L. 104–43, prohibits a specification of TALFF unless recommended by the Council and proposed by NMFS. In 1992, the Council used testimony from both the domestic fishing and processing industries and the analysis of nine economic factors found at § 648.21(b)(2)(iii) to determine that mackerel produced from directed foreign fishing would directly compete with U.S. processed products, thus limiting markets available to U.S. processors. The industry was nearly unanimous in its assessment that a specification of TALFF would impede the growth of the U.S. fishery. The Council sees no evidence that this evaluation has changed. Further, the Council believes that an expanding mackerel market and uncertainty regarding world supply, due to the economic and political restructuring in Eastern Europe and to the recent declines in the North Sea mackerel stock, has resulted in increased opportunities for U.S. producers to increase sales to new markets abroad. The U.S. industry has been successful in capturing an increased market share for mackerel in the Caribbean, North Africa, and Japan over the past several years, and a number of factors indicate that market expansion for U.S. Atlantic mackerel is likely to continue. The U.S. Atlantic mackerel stock abundance remains high. Also, the continued low abundance of several important groundfish stocks in the Gulf of Maine, southern New England, and Georges Bank is causing further restrictions in fishing effort for those species. This increases the need for many fishermen to redirect their effort to underutilized species. Atlantic mackerel is considered a prime candidate for innovation in harvesting, processing, and marketing.

As a supplement to the quota paper for the 1993 and 1994 fisheries, benefit-cost and sensitivity analyses were prepared by the Council and NMFS. Results of the analyses indicated that, in the long term, a specification of zero TALFF will yield positive benefits to the fishery and to the Nation. In its 1998 and 1999 quota papers, the Council provided additional analyses of the costs and benefits of directed foreign fishing which indicated that the conclusions reached in prior analyses of zero TALFF have not changed.

The Council also recommended and NMFS proposes that four special conditions imposed in previous years continue to be imposed on the 1999 Atlantic mackerel fishery as follows: (1) JVs are allowed south of 37°30′N. lat., but river herring bycatch may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Regional Administrator should ensure that impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; (3) the mackerel OY may be increased during the year, but the total should not exceed 383,000 mt; and (4) applications from a particular nation for a JV for 1999 will not be decided on until the Regional Administrator determines, based on an evaluation of performances, that the Nation's purchase obligations for previous years have been fulfilled.

Atlantic Squids

The proposed maximum OY (Max OY) for *Loligo* squid is 26,000 mt. It represents the harvest level associated with a fishing mortality rate of F_{50}, which is the management target adopted in Amendment 6 to the FMP (F_{50} is defined as the fishing mortality rate that results in 50 percent of the maximum spawning potential of the stock). The Council recommended and NMFS proposes an IOY of 21,000 mt, which is equal to ABC. In Amendment 5 to the FMP, the Council concluded that U.S. vessels have the capacity to, and will harvest the OY on an annual basis: so DAH equals OY. The Council also concluded that U.S. fish processors, on an annual basis, can harvest that portion of the OY that will be harvested by U.S. commercial fishing vessels: so DAP equals DAH and JVP equals zero. Since U.S. fishing vessels have the capacity to harvest the entire OY, there is no portion of the OY that can be made available for foreign fishing: so TALFF equals zero. These determinations were made in Amendment 5 to the FMP. The proposed IOY/DAH/DAP of 21,000 mt for the 1999 fishery represents no change from the final 1998 IOY/DAH/DAP specifications.

The FMP sets the Max OY for *Illex* squid at 24,000 mt. The Council recommended and NMFS proposes an ABC of 19,000 mt (unchanged from 1998), which is equal to the quota associated with the target fishing mortality rate of F_{50} proposed by the 21st Stock Assessment Workshop (SAW 21) and adopted by the Council in Amendment 6 to the FMP. This amendment changed the definitions of overfishing for the squids and butterfish. SAW 21 recommended that the management target for *Illex* squid be a harvest associated with a fishing mortality of F_{50} (a fishing mortality rate that produces 50 percent of the maximum spawning potential of the stock). This recommendation is due, in part, to the conclusion that *Illex* squid has a life span of only 1 year and is, therefore, susceptible to recruitment overfishing. This level of fishing is analogous to the Falkland Islands *Illex* squid management target of 40 percent proportional escapement. SAW 21 recommended that a real-time management system will be necessary to maximize the utilization of the U.S. squid stocks while preventing recruitment overfishing of the stock. A real-time management system will take several years to develop and implement. In the interim, the management strategy is to specify the allowable harvest for *Loligo* and *Illex* squids at a level associated with F_{50}, which should be sustainable over a wide range of stock levels.

SAW 21 concluded that the U.S. *Illex* squid stock is now fully exploited. As in the case of *Loligo* squid, Amendment 5 eliminated the possibility of JVP and TALFF for the *Illex* squid fishery.

Butterfish

The FMP sets the Max OY for butterfish at 16,000 mt. Based on the most current stock assessments, the Council recommends and NMFS proposes an ABC of 7,200 mt for the 1999 fishery, unchanged since 1996. Commercial landings of butterfish have been low at 2,013 mt, 3,489 mt, and 2,798 mt for the 1995 through 1997 fisheries, respectively. Lack of market demand and the difficulty in locating schools of market size fish have caused severe reductions in the supply of butterfish. Discard data from the offshore fishery is lacking, and high discard rates could be reducing potential yield.

The Council recommended and NMFS proposes an IOY and DAH for butterfish of 5,900 mt. Amendment 5 eliminated the possibility of JVP or TALFF specifications for butterfish except for a bycatch TALFF specification if TALFF is specified for Atlantic mackerel. However, since the Council recommended and NMFS proposes no TALFF for Atlantic mackerel, no bycatch TALFF is necessary for butterfish.

Closure of the Fishery

Current MSB regulations allow the Assistant Administrator for Fisheries, NOAA, to close the directed fishery in the EEZ for *Loligo* squid, *Illex* squid, or butterfish when 95 percent of DAH has been harvested. The closure would remain in effect for the remainder of the fishing year, with incidental catches allowed. On August 25, 1998, NMFS determined that 95 percent of the DAH for *Illex* squid had been harvested and closed the directed fishery for *Illex* squid (63 FR 45763, August 27, 1998). An incidental catch trip limit of 5,000 lb (2.27 mt) was then instituted for all vessels issued Federal permits for *Illex* squid. Since the closure, the landings of Illex squid have exceeded 100 percent of the DAH for *Illex* squid. During the August 1998 Council meeting, the majority of the Council members agreed by consensus that the provisions for closure of the fishery should also allow for the prohibition of incidental catches when the entire DAH is harvested. Current regulations do not provide for the prohibition of incidental catches of *Loligo* squid, *Illex* squid, or butterfish when 100 percent of the DAH has been harvested. Therefore, in conjunction with this proposed initial annual specifications action, NMFS is seeking public comment on a regulatory change to authorize the Regional Administrator to prohibit incidental catches through publication in the **Federal Register** when the Regional Administrator determines that closure of the incidental *Loligo* squid, *Illex* squid, or butterfish fishery is necessary to assure that 100 percent of DAH will not be exceeded.

Classification

This action is authorized by 50 CFR Part 648 and complies with the National Environmental Policy Act.

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

NMFS has completed an IRFA for this proposed rule, pursuant to 5 U.S.C. 603. The IRFA indicates that the proposed rule could have a significant impact on a substantial number of small entities. A summary of this IRFA follows. A copy of the complete IRFA can be obtained from the Northeast Regional Office of NMFS (see **ADDRESSES**).

The IRFA assumes that all vessels prosecuting these fisheries would be impacted by these quota specifications. Therefore, the substantial number (greater than 20 percent) criteria would be met. For *Loligo* squid, butterfish, and Atlantic mackerel, gross revenues are not expected to decrease as a consequence of the proposed actions. In 1997, *Loligo* squid landings were 16,203 mt. The proposed IOY specification for *Loligo* squid in 1999 would be 21,000 mt. In 1997, butterfish landings were 2,797 mt. The proposed IOY specification for butterfish in 1999 would be 5,900 mt. In the case of Atlantic mackerel, the 1999 IOY was reduced from 80,000 mt in 1998 to the proposed level of 75,000 mt in 1999. Both specifications far exceed recent harvest of Atlantic mackerel in the 1997 fishery of 15,406 mt. In addition, the proposed reduction in IOY in 1999 is due to a reduction in the JV specification by 5,000 mt. The only JV activity in recent years was in 1998, when the JV operation was not able to harvest the entire JV allocation of 10,000 mt. Therefore, the Council concluded that the proposed reduction in the initial JV specification should not affect revenues in the fishery. In addition, the measure to allow an inseason increase in the specification would moderate any unanticipated affects.

In 1997, *Illex* squid landings were 13,632 mt valued at $6.1 million. The proposed ABC specification for *Illex* squid in 1999 is 19,000 mt. In past years, a surplus existed between the 1998 ABC specification and what has been landed. However, due to overharvesting in 1998, 22,610 mt of *Illex* squid have been harvested as of September 1998. This means that the 1999 proposal equates to a decrease of 7.9 million lb (3,585 mt) from 1998, valued at $1.975 million. The Council's Amendment 5 document indicates that the directed fishery accounts for 99.7 percent of the total landings, meaning that $1,969,000 of the revenue associated with the quota overage would be attributed to moratorium vessels and only $6,000 to incidental catch vessels. According to 1998 NMFS permit records, 75 vessels hold *Illex* squid moratorium permits and 64 had *Illex* squid landings in 1998; 1,504 hold incidental catch permits. This would mean that each moratorium vessel could have revenue losses of $31,000 and each incidental catch vessel would have negligible revenue losses. This raises the question of the significance of the impact on the moratorium vessels. When dividing the 1998 overage value of $1.975 million by the 64 moratorium vessels, this leads to an ex-vessel price of $551 per mt. Multiplying that value by the total harvest in 1998 of 22,610 mt of *Illex* leads to revenues of $12,458,110. When divided by the 64 moratorium vessels this leads to $195,000. Dividing the revenue losses of $31,000 of each moratorium vessel by this value equates to a 16% loss in average gross revenues. Therefore, this loss is anticipated to have a substantial impact on most moratorium vessels, as defined by the Regulatory Flexibility Act (RFA). In light of this impact, the RFA requires alternatives to be considered to moderate the impact. However, while several alternatives were analyzed, they were rejected because the target in the FMP would be exceeded resulting in overfishing. Overfishing cannot be allowed to continue despite the obvious benefits of higher landings.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 10, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.22, paragraph (a) is revised to read as follows:

§ 648.22 Closure of the fishery.

(a) *General.* The Assistant Administrator shall close the directed mackerel fishery in the EEZ when U.S. fishermen have harvested 80 percent of the DAH of that fishery if such closure is necessary to prevent the DAH from being exceeded. The closure shall remain in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section, until the entire DAH is attained. When it is projected that DAH will be attained for mackerel, the Assistant Administrator may close the mackerel fishery in the EEZ, and the incidental catches specified for mackerel in paragraph (c) of this section may be prohibited. The Assistant Administrator shall close the directed fishery in the EEZ for *Loligo*, *Illex*, or butterfish when 95 percent of DAH has been harvested. The closure of the directed fishery shall be in effect with incidental catches allowed as specified in paragraph (c) of this section, until the entire DAH is attained. When it is projected that DAH will be attained for *Loligo*, *Illex*, or butterfish, the Assistant Administrator may close the *Loligo*, *Illex*, or butterfish fishery in the EEZ, and the incidental catches specified for *Loligo*, *Illex*, or butterfish in paragraph (c) of this section may be prohibited.

* * * * *

[FR Doc. 98–30692 Filed 11–12–98; 4:43 pm]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 63, No. 221

Tuesday, November 17, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

ENVIRONMENTAL PROTECTION AGENCY

Draft Unified National Strategy for Animal Feeding Operations; Meeting

AGENCY: Department of Agriculture and Environmental Protection Agency.

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) and the U.S. Environmental Protection Agency (EPA) will conduct 11 public listening sessions where interested individuals can ask questions and provide feedback on the draft Unified National Strategy for Animal Feeding Operations. This national strategy is one of the key actions in the Clean Water Action Plan announced by President Clinton in February 1998.

The public is invited to attend the sessions and attain a better understanding of the draft strategy. After a brief overview of the draft strategy, a question and answer discussion will be held. Those who wish to speak at a session may either make arrangements in advance by calling the contact listed for the session or sign up at the session. Time for each speaker will be limited to allow time for all to be heard.

All are encouraged to provide detailed written comments concerning the draft strategy. Written comments will not be accepted at the sessions, but addressed envelopes will be provided for mailing written comments. Written comments will be accepted through January 19, 1999, and should be mailed to Denise C. Coleman, Program Analyst, USDA Natural Resources Conservation Service, ATTN: AFO, P.O. Box 2890, Washington, DC 20013–2890, or sent via e-mail to denise__c.coleman@usda.gov.

DATES AND LOCATIONS: The meetings will be held November 16 through December 15 at the following locations:

Location	Date
Tulsa, OK	November 16.
Harrisburg, PA	November 17.
Ontario, CA	November 23.
Madison, WI	November 30.
Seattle, WA	December 3.
Des Moines, IA	December 4.
Chattanooga, TN	December 9.
Indianapolis, IN	December 10.
Fort Worth, TX	December 10.
Denver, CO	December 14.
Annapolis, MD	December 15.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about a specific meeting, contact one of the following or visit the World Wide Web at http://cleanwater.gov.

Location	Contact Person	Phone	Address
Tulsa, OK	Ronnie Clark, USDA–NRCS	405–742–1204	USDA Agri-Center Bldg., 100 USDA, Suite 203, Stillwater, OK 74074–2655.
	Brad Lamb, EPA Region 6	214–665–6683	1445 Ross Ave. (6WQ–AG), Dallas, TX 75202.
Harrisburg, PA	Janet Oertly, USDA–NRCS	717–237–2200	1 Credit Union Place, Suite 340, Harrisburg, PA 17110–2993.
	Joe Piotrowski, EPA Region 3	215–814–2310	1650 Arch Street, Philadelphia, PA 19103.
Ontario, CA	Jeff Vonk, USDA–NRCS	530–757–8215	2121–C 2nd Street, Suite 102, Davis, CA 95616–5475.
	Virginia Donahue, EPA Region 9	415–744–2275	75 Hawthorne Street, San Francisco, CA 94105.
Madison, WI	Pat Leavenworth, USDA–NRCS	608–276–8732 x229	6515 Watts Road, Suite 200, Madison, WI 53719–2726.
	Steve Jann, EPA Region 5	312–886–2446	77 West Jackson Blvd., Chicago, IL 60604–7804.
Seattle, WA	Joe Roberto, EPA Region 10	206–553–1669	1200 6th Ave., Seattle, WA 98101.
	Leonard Jordan, USDA–NRCS	509–323–2900	Rock Pointe Tower II, W. 316 Boone Avenue, Suite 450, Spokane, WA 99201–2348.
Des Moines, IA	Leroy Brown, USDA–NRCS	515–284–6655	693 Federal Building, 210 Walnut Street, Suite 693, Des Moines, IA 50309–2180.
	Ralph Summers, EPA Region 7	913–551–7418	726 Minnesota Ave., Kansas City, KS 66101.
Chattanooga, TN	Roosevelt Childress, EPA Region 4	404–562–9279	Atlanta Federal Center, 61 Forsyth St., SW, Atlanta, GA 30303.
	James Ford, USDA–NRCS	617–736–5471	675 U.S. Courthouse, 801 Broadway, Nashville, TN 37203–3878.
Indianapolis, IN	Bob Eddleman, USDA–NRCS	317–290–3200	6013 Lakeside Blvd., Indianapolis, IN 46278–2933.

Location	Contact Person	Phone	Address
	Steve Jann, EPA Region 5	312–886–2446	77 West Jackson Blvd., Chicago, IL 60604.
Fort Worth, TX	Brad Lamb, EPA Region 6	214–665–6683	1445 Ross Ave., Dallas, TX 75202.
	John Burt, USDA–NRCS	254–742–9800	W.R. Poage Building, 101 South Main Street, Temple, TX 76501–7682.
Denver, CO	Mike Reed, EPA Region 8	303–312–6132	One Denver Place, 999 18th St., Denver, CO 80202–2413.
	Steve Black, USDA–NRCS	313–236–2886 x202	655 Parfet Street, Room E200C, Lakewood, CO 80215–5517.
Annapolis, MD	Joe Piotrowski, EPA Region 3	215–814–2310	1650 Arch St., Philadelphia, PA 10103.
	Dave Doss, USDA–NRCS	410–757–0861 x314	John Hanson Business Center, 339 Busch's Frontage Road, Suite 301, Annapolis, MD 21401–5534.

SUPPLEMENTARY INFORMATION: Over the past quarter century, the United States has made tremendous progress in cleaning up its rivers, lakes, and coastal waters. While pollution from factories and sewage treatment plants has been dramatically reduced, runoff from city streets, agricultural activities (including animal feeding operations), and other sources continues to degrade the environment and puts drinking water at risk.

In February 1998, President Clinton released the Clean Water Action Plan (CWAP), which provides a blueprint for restoring and protecting water quality across the Nation. The CWAP identifies polluted runoff as the most important remaining source of water pollution and provides for a coordinated effort to reduce polluted runoff from a variety of sources. As part of this effort, the CWAP calls for USDA and EPA to develop a Unified National Strategy to minimize the water quality and public health impacts of animal feeding operations (AFOs).

The draft Unified National Strategy for AFOs discusses the relationships between AFOs and environmental and public health, and establishes a national performance expectation for all AFO owners and operators. The strategy presents a series of actions that USDA and EPA will take to minimize public health impacts and improve water quality while complementing the long-term sustainability of livestock production.

Background

AFOs are agricultural enterprises where animals are kept and raised in confined situations. Approximately 450,000 AFOs in the United States congregate animals, feed, manure and urine, dead animals, and production operations on a small land area. USDA data indicate that the vast majority of farms with livestock are small; about 85 percent of these farms have fewer than 250 animal units. About 6,600 AFOs had more than 1,000 animal units in 1992 and are considered to be large operations.

In the past several decades, domestic and export market forces, technological changes, and industry adaptations have led to substantial changes in the animal production industry. These factors have promoted expansion of confined production units, with growth in both existing areas and new areas; integration and concentration of some of the industries; geographic separation of animal production and feed production operations; and the concentration of large quantities of manure and wastewater on farms and in some watersheds.

AFOs can pose a number of risks to water quality and public health, mainly because of the amount of animal manure and wastewater they generate. Manure and wastewater from AFOs have the potential to contribute pollutants, such as nutrients (e.g., nitrogen, phosphorus), sediment, pathogens, heavy metals, hormones, antibiotics, and ammonia to the environment. These pollutants can cause several types of water quality and public health impacts.

Even though many diverse sources contribute to water pollution, States report that agriculture is the most widespread source of pollution in the Nation's surveyed rivers. In the 22 states that categorized impacts from specific types of agriculture, animal operations impact about 35,000 river miles of those miles assessed. While there are other potential environmental impacts associated with AFOs (e.g., odor, habitat loss, ground water depletion), this strategy focuses on addressing surface and ground water quality problems. Once implemented, however, this strategy will indirectly benefit other resources.

USDA and EPA's National Performance Expectation

To minimize water quality and public health impacts from AFOs and land application of animal waste, this draft Unified National Strategy for AFOs establishes a national performance expectation that all AFO owners and operators develop and implement technically sound and economically feasible Comprehensive Nutrient Management Plans (CNMPs). A CNMP identifies actions that will be implemented to meet clearly-defined nutrient management goals at an agricultural operation. The following types of actions are contained in a CNMP:

Feed Management—Where possible, animal diets and feed should be modified to reduce the amounts of nutrients in manure.

Manure Handling and Storage—Manure needs to be handled and stored properly to prevent water pollution from AFOs.

Land Application of Manure—Land application is the most common, and usually most desirable, method of utilizing manure because of the value of the nutrients and organic matter. Land application in accordance with the CNMP should minimize water quality and public health risk.

Land Management—Tillage, crop residue management, grazing management, and other conservation practices should be used to minimize movement to surface and ground water of soil, organic materials, nutrients, and pathogens from lands where manure is applied.

Record Keeping—AFO operators should keep records that indicate the quantity of manure produced and ultimate utilization, including where, when, and in what amounts nutrients were applied.

Other Utilization Options—In vulnerable watersheds, where the potential for environmentally sound land application is limited, alternative uses of manure, such as the sale of manure to other farmers, composting and sale of compost to home owners, and using manure for power generation, may need to be considered.

AFO owners and operators may seek technical assistance for the development and implementation of CNMPs from qualified specialists. These specialists should assist in implementation and provide ongoing assistance through periodic reviews and revisions of CNMPs, as appropriate.

Relationship of Voluntary and Regulatory Programs

Voluntary and regulatory programs serve complementary roles in providing AFO owners and operators and the animal agricultural industry with the assistance and certainty they need to achieve individual business and personal goals, and in ensuring protection of water quality and public health.

Voluntary Program for Most AFOs

Voluntary programs provide an enormous opportunity to help AFO owners and operators and communities address water quality and public health concerns surrounding AFOs. For the vast majority of AFOs, voluntary efforts will be the principal approach to assist owners and operators in developing and implementing CNMPs, and in reducing water pollution and public health risks associated with AFOs. While CNMPs are not required for AFOs participating in voluntary programs, they are strongly encouraged as the best possible means of managing potential water quality and public health impacts from these operations.

There are three types of voluntary programs to assist AFO owners and operators. USDA and EPA are both committed to promoting locally led conservation as one of the most effective ways to help AFO owners and operators achieve their conservation goals. Environmental education can bring an awareness of possible water quality problems and inform AFO owners and operators about practices that will address such problems. A variety of financial and technical assistance programs exist to provide AFO owners and operators advice in developing CNMPs and implementing solutions and to defray the costs of approved/needed structures (e.g., waste storage facilities for small operations) or to implement other practices, such as installation of conservation buffers to protect water quality.

Regulatory Program for Some AFOs

Impacts from certain higher risk AFOs are addressed through National Pollutant Discharge Elimination System (NPDES) permits under the authority of the Clean Water Act. AFOs that meet certain specified criteria in the NPDES regulations are referred to as concentrated animal feeding operations or CAFOs.

NPDES permits will require CAFOs to develop CNMPs and to meet other conditions that minimize the threat to water quality and public health and otherwise ensure compliance with the requirements of the Clean Water Act. NPDES permits will also ensure that the animal waste from CAFOs will be disposed of properly and require reporting on whether the permittee has a CNMP for land application of animal waste and whether it is being implemented properly. The draft strategy identifies three categories of CAFOs that are priorities for the regulatory program:

Significant Manure Production—Large facilities (those with greater than 1,000 animal units) produce quantities of manure that are a risk to water quality and public health whether the facilities are well managed or not.

Unacceptable Conditions—Facilities that have constructed conveyances that discharge animal waste to waters or have a direct discharge to waters that pass through the facility or come into direct contact with animals represent a significant risk to water quality and public health.

Significant Contributors to Water Quality Impairment—A facility or a collection of facilities that is significantly contributing to, or is likely to significantly contribute to, impairment of a waterbody and nonattainment of a designated use is also a priority for the NPDES permitting program.

The draft strategy supplements these regulatory program priorities with two types of incentives for some types of AFOs. Smaller CAFOs that meet certain conditions may exit the regulatory program at the end of their permit term if they correct the problem(s) that caused them to be covered by the regulatory program. The draft strategy also describes a ‘‘good faith incentive’’ for some AFOs to avoid being covered by the regulatory program if they have and are implementing a CNMP.

Strategic Issues

The draft Unified National Strategy for AFOs addresses seven strategic issues. The discussion of each strategic issue identifies several action items.

Building Capacity for CNMP Development and Implementation—The successful implementation of this strategy depends on the availability of qualified specialists from either the private or public sector to assist in the development and implementation of CNMPs. The draft strategy describes actions to substantially increase AFO owners and operators’ access to technical assistance for developing and implementing CNMPs.

Accelerating Voluntary, Incentive-Based Programs—The draft strategy sets out a desired outcome that all AFOs will have CNMPs by 2008. Several actions, including review and revision of USDA’s practice standards, development of CNMP guidance, fair and equitable program delivery, and options for financial assistance, are directed toward achieving this objective.

Implementing and Improving the Existing Regulatory Program—The draft strategy clarifies the applicability and the requirements of the existing regulatory program, identifies permitting and enforcement priorities, and describes EPA’s plans to strengthen and improve existing regulations.

Coordinated Research, Technical Innovation, Compliance Assistance, and Technology Transfer—USDA and EPA will establish coordinated research, technical innovation, technology transfer, and compliance assistance activities, and establish a single point information center.

Encouraging Industry Leadership—The animal agriculture industry can play a key role in helping to encourage adoption of CNMPs and in addressing water quality problems on individual AFOs. The draft strategy includes possible actions that USDA and EPA may take to promote industry involvement.

Data Coordination—Several kinds of data are useful in assessing and managing the water quality impacts of AFOs. USDA and EPA’s efforts to coordinate on data sharing will both protect the trust relationship between USDA and farmers and provide regulatory authorities with information that is useful in protecting water quality and public health.

Performance Measures and Accountability—USDA and EPA believe that it is critical to establish performance measures to gauge success in implementing this draft strategy and meeting relevant goals in each agency’s strategic plan established under the Government Performance and Results Act. USDA and EPA will develop an approach for measuring the effectiveness of efforts to minimize the water quality and public health impacts of AFOs.

Next Steps

USDA and EPA published the draft Unified National Strategy for AFOs in the **Federal Register** for public review on September 21, 1998. The draft strategy is also available on the World Wide Web at http://www.nrcs.usda.gov or http://www.epa.gov/owm/afostrat.htm.

USDA and EPA welcome your comments on the draft Unified National Strategy for AFOs. Comments are due by January 19, 1999.

Dated: November 9, 1998.

Glenda Humiston,

Deputy Under Secretary, Natural Resources and the Environment, Department of Agriculture, Washington, DC.

J. Charles Fox,

Assistant Administrator for Water, Environmental Protection Agency, Washington, DC.

[FR Doc. 98–30666 Filed 11–16–98; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Agdia Incorporated of Elkhart, Indiana, an exclusive license to S.N. 08/499,803, ''A Monoclonal Antibody to Vitellin of the Corn Earworm, *Helicoverpa zea*,'' filed July 7, 1995, U.S. Patent No. 5,656,437, issued August 12, 1997. Notice of Availability was published in the **Federal Register** on December 14, 1995.

DATES: Comments must be received on or before January 19, 1999.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 401, Building 005, BARC–W, 10300 Baltimore Avenue, Beltsville MD 20705–2350.

FOR FURTHER INFORMATION CONTACT: W.J. Phelps of the Office of Technology Transfer at the Beltsville address given above; telephone 301–504–6532.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Agdia Incorporated has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) calendar days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 98–30670 Filed 11–16–98; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–111–1]

Availability of an Environmental Assessment and Finding of No Significant Impact for Field Testing Pseudorabies Vaccine, Modified Live Virus

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment and finding of no significant impact concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed live viral pseudorabies vaccine for use in swine. A risk analysis, which forms the basis for the environmental assessment, has led us to conclude that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment. Based on our finding of no significant impact, we have determined that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine for field testing 14 days after the date of this notice, unless new, substantial issues bearing on the effects of this action are brought to our attention. We also intend to issue a veterinary biological product license for this vaccine, provided the field test data support the conclusions of the environmental assessment and finding of no significant impact and the product meets all other requirements for licensure.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the docket number, date, and complete title of this notice when requesting copies. Copies of the environmental assessment and finding of no significant impact (as well as the risk analysis with confidential business information removed) are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Jeanette Greenberg, Technical Writer-Editor, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, USDA, 4700 River Road Unit 148, Riverdale, MD 20737–1231; telephone (301) 734–5338; fax (301) 734–4314; or e-mail: Jeanette.B.Greenberg@usda.gov.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

In determining whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, APHIS conducted a risk analysis to assess the potential effects of this product on the safety of animals, public health, and the environment. Based on the risk analysis, APHIS has prepared an environmental assessment (EA). APHIS has concluded that field testing the unlicensed veterinary biological product will not significantly affect the quality of the human environment. Based on this finding of no significant impact (FONSI), we have determined that there is no need to prepare an environmental impact statement.

The EA and FONSI have been prepared by APHIS concerning the field testing of the following unlicensed veterinary biological product:

Requester: Ambico, Inc.

Product: Pseudorabies Vaccine, Modified Live Virus

Field test locations: Iowa, Indiana, and Minnesota.

The above-mentioned vaccine is for use as an aid in the program to eradicate pseudorabies in the U.S. swine population. The vaccine contains live pseudorabies virus with gI and tk gene deletions, which significantly reduce the pathogenicity of the vaccine virus compared with the wild type virus.

The EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial environmental issues are raised in response to this notice, APHIS intends to authorize shipment of the above product for the initiation of field tests 14 days from the date of this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA and FONSI that were generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and FONSI, APHIS does not intend to issue a separate EA to support the issuance of the product license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following completion of the field test provided no adverse impacts on the human environment are identified and provided the product meets all other requirements for licensure.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 10th day of November 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–30674 Filed 11–16–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 98–059N]

Meeting on HACCP-based Inspection Models Project for Slaughter Plants; Models Phase

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Agency is holding a public meeting to discuss its HACCP-based Inspection Models Project for slaughter plants. The morning session will provide general information on the Inspection Models Project and a briefing on the project's Baseline phase, which documents plant performance under current inspection procedures. By the time of the meeting, the Baseline phase will be completed for the first group of plants to participate in the project. The afternoon session will focus in some detail on the upcoming Inspection Models phase in this group of plants and will conclude with an open discussion.

DATES: The meeting will be held on December 2, 1998, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Washington Plaza Hotel in Washington, DC, 10 Thomas Circle NW (at Massachusetts Avenue and 14th Street), Washington DC 20009, (202) 842–1300. Transcripts of the meeting will be available in the FSIS Docket Room, Room 102, 300 12th Street SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: To register for the meeting, contact Ms. Jennifer Callahan of the FSIS Planning Staff at (202) 501–7138 or FAX (202) 501–7642. Attendees who require a sign language interpreter or other special accommodation should contact Ms. Callahan at the above numbers by November 25, 1998.

SUPPLEMENTARY INFORMATION: The Inspection Models Project is an outgrowth of the Agency's Pathogen Reduction/Hazard Analysis and Critical Control Point (PR/HACCP) Systems Final Rule, published on July 25, 1996. The PR/HACCP rule calls for the establishment of a HACCP-based food safety system to reduce the risk of foodborne illness from meat and poultry products.

In a **Federal Register** Notice of June 10, 1997, FSIS requested public comments on the design and development of new inspection models for slaughter and processing in a HACCP environment (62 FR 31553). This notice summarized recommendations by the National Academy of Sciences and the General Accounting Office that FSIS reduce its reliance on organoleptic (sensory) inspection and redeploy its resources by using inspection methods that are based on the risks inherent in meat and poultry slaughter operations. To accomplish these objectives, new inspection methods must be developed and tested that are consistent with the meat and poultry inspection laws and the systems now required by the PR/HACCP rule. The inspection models project is helping to define the respective responsibilities of FSIS and the regulated industry in slaughter establishments operating under HACCP systems.

A draft project protocol of July 7, 1998 identifies two objectives: (1) Determine the effectiveness of the present inspection system in slaughter establishments by collecting and analyzing organoleptic and microbial data on carcasses produced under the current system—the Baseline phase; and (2) test new inspection models at establishments where plant personnel perform slaughter process control and FSIS inspectors perform oversight and verification inspection activities and collect and analyze data to determine the effectiveness of the models and ensure the safety and wholesomeness of the products—the Inspection Models phase.

A public meeting was held in Washington DC on July 27, 1998 (63 FR 39068, July 21, 1998) to discuss the project. Baseline data were collected in three poultry plants and two hog plants from August through November. This public meeting will discuss results from the Baseline phase in these initial five plants and projected activities in the plants during the upcoming Inspection Models phase.

The meeting is open to the public on a space-available basis.

Done in Washington, DC, on November 9, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–30646 Filed 11–16–98; 8:45 am]

BILLING CODE 3410 DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Idaho, Montana, North Dakota, and Portions of South Dakota and Eastern Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Northern Region to publish legal notice of all decisions subject to appeal under 36 CFR parts 215 and 217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR part 215. The intended effect of this action is to inform interested members of the public which newspapers will be used

to publish legal notices for public comment or decisions; thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after November 18, 1998. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Kristine M. Lee; Regional Appeals and Litigation Coordinator; Northern Region; PO, Box 7669; Missoula, Montana 59807. Phone: (406) 329–3647.

The newspapers to be used are as follows:

Northern Regional Office

Regional Forester decisions in Montana: The Missoulian, Great Falls Tribune, and The Billings Gazette.

Regional Forester decisions in Northern Idaho and Eastern Washington:

The Spokesman Review.

Regional Forester decisions in North Dakota: Bismarck Tribune.

Regional Forester decisions in South Dakota: Rapid City Journal.

Beaverhead/Deerlodge—Montana Standard

Bitterroot—Ravalli Republic

Clearwater—Lewiston Morning Tribune

Custer—Billings Gazette (Montana)

Bismarck Tribune (North Dakota)

Rapid City Journal (South Dakota)

Flathead—Daily Interlake

Gallatin—Bozeman Chronicle

Helena—Independent Record

Idaho Panhandle—Spokesman Review

Kootenai—Daily Interlake

Lewis & Clark—Great Falls Tribune

Lolo—Missoulian

Nez Perce—Lewiston Morning Tribune

Supplemental notices may be placed in any newspaper, but time frames/deadlines will be calculated based upon notices in newspapers of record listed above.

Dated: November 10, 1998.

Kathleen A. McAllister,

Deputy Regional Forester.

[FR Doc. 98–30659 Filed 11–16–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Rocky Mountain Region: Colorado, Kansas, Nebraska, South Dakota, Eastern Wyoming; Legal Notice of the Opportunity To Comment on Certain Proposed Actions and of Decisions Subject to Notice and Comment

AGENCY: Forest Service, USDA.

ACTION: Notice; Newspapers for Legal Notices.

SUMMARY: This is a list of those newspapers that will be used to publish notice of all decisions which are subject to appeal under 36 CFR part 217, notice of the opportunity to comment on certain proposed actions pursuant to 36 CFR 215.5, and notice of decisions subject to appeal under the general provisions of 36 CFR part 215. As required at 36 CFR 215.5 and 215.9, such notice shall constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to public notice and comment and administrative appeal. Newspaper publications of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

EFFECTIVE DATE: Use of these newspapers for purposes of publishing the notices required under the provisions of 36 CFR part 215 shall begin November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Momper, Regional Appeals and Litigation Coordinator, Rocky Mountain Region, Box 25127, Lakewood, Colorado 80225, Area Code 303–275–5161.

SUPPLEMENTARY INFORMATION: Responsible Officials in the Rocky Mountain Region shall give notice of the opportunity to comment on certain proposed actions and of decisions subject to appeal pursuant to 36 CFR part 215 in the following newspapers which are listed by Forest Service unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. The day after the publication of the public notice in the primary newspaper shall be the first day of the appeal filing period.

Decisions by the Regional Forester: *The Denver Post,* published daily in Denver, Denver County, Colorado, for decisions affecting National Forest System lands in the States of Colorado, Nebraska, Kansas, and eastern Wyoming and for any decision of Region-wide impact. In addition, notice of decisions made by the Regional Forester will also be published in the *Rocky Mountain News,* published daily in Denver, Denver County, Colorado. Notice of decisions affecting National Forest System lands in the State of South Dakota will also be published in *The Rapid City Journal,* published daily in Rapid City, Pennington County, South Dakota. For those decisions affecting a particular unit, the newspaper specific to that unit will be used.

Arapaho and Roosevelt National Forests, Colorado

Forest Supervisor Decisions

The Denver Post, published daily in Denver, Denver County, Colorado.

District Ranger Decisions

Redfeather and Estes-Poudre Districts: *Coloradoan,* published daily in Fort Collins, Larimer County, Colorado.

Pawnee District: *Greeley Tribune,* published daily in Greeley, Weld County, Colorado.

Boulder District: *Boulder Daily Camera,* published daily in Boulder, Boulder County, Colorado.

Clear Creek District: *Clear Creek Courant,* published weekly in Idaho Springs, Clear Creek County, Colorado.

Sulphur District: *Granby Sky High News,* published weekly in Granby, Grand County, Colorado.

Grand Mesa, Uncompahrge and Gunnison National Forests, Colorado

Forest Supervisor Decisions

Grand Junction Daily Sentinel, published daily in Grand Junction, Mesa County, Colorado.

District Ranger Decisions

Collbran and Grand Junction Districts: *Grand Junction Daily Sentinel,* published daily in Grand Junction, Mesa County, Colorado.

Paonia District: *Delta County Independent,* published weekly in Delta, Delta County, Colorado.

Cebolla and Taylor River Districts: *Gunnison County Times,* pubished weekly in Gunnison, Gunnison County, Colorado.

Norwood District: *Telluride Daily Planet,* published daily in Telluride, San Miguel County, Colorado.

Ouray District: *Montrose Daily Press,* published daily in Montrose, Montrose County, Colorado.

Pike and San Isabel National Forests

Forest Supervisor Decisions

Pueblo Chieftain, published daily in Pueblo, Pueblo County, Colorado.

District Ranger Decisions

San Carlos District: *Pueblo Chieftain,* published daily in Pueblo, Pueblo County, Colorado.

Comanche District: *Plainsman Herald,* published weekly in Springfield, Baca County, Colorado. In addition, notice of decisions made by the District Ranger will also be published in the *La Junta Tribune Democrat,* published daily in La Junta, Otero County, Colorado, and in the *Ark Valley Journal,* published weekly in La Junta, Otero County, Colorado.

Cimarron District: *Tri-State News,* published weekly in Elkhart, Morton County, Kansas.

South Platte District: *Daily News Press,* published published daily in Castle Rock, Douglas County, Colorado. In addition, notice of decisions made by the District Ranger will also be published in the *High Timber Times,* published weekly in Conifer, Jefferson County, Colorado, and in the *Fairplay Flume,* published weekly in Fairplay, Park County, Colorado.

Leadville District: *Herald Democrat,* published weekly in Leadville, Lake County, Colorado.

Salida District: *The Mountain Mail,* published daily in Salida, Chaffee County, Colorado.

South Park District: *Fairplay Flume,* published weekly in Fairplay, Park County, Colorado.

Pikes Peak District: *Gazette Telegraph,* published daily in Colorado Springs, El Paso County, Colorado.

Rio Grande National Forest, Colorado

Forest Supervisor Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

District Ranger Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

Routt National Forest, Colorado

Forest Supervisor Decisions

Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming. In addition, for decisions affecting an individual district(s), the local district(s) newspaper will also be used.

District Ranger Decisions

Hahns Peak-Bears Ears District: *Steamboat Pilot,* published weekly in Steamboat Springs, Routt County, Colorado is the newspaper of record for decision made by the Hans Peak Bears Ears District Ranger. Additional notice to inform local communities about decision made by the District Ranger will also be placed in the *Hayden Valley Press,* published weekly in Hayden, Routt County, Colorado and in the *Northwest Colorado Daily Press,* published daily in Craig, Moffat County, Colorado.

Yampa and District: *Steamboat Pilot,* published weekly in Steamboat Springs, Routt County, Colorado.

Middle Park District; North Park District: *Jackson County Star,* published weekly in Walden, Jackson County, Colorado.

San Juan National Forest, Colorado

Forest Supervisor Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

District Ranger Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

White River National Forest, Colorado

Forest Supervisor Decisions

The Glenwood Post, published Monday through Saturday in Glenwood Springs, Garfield County, Colorado.

District Ranger Decisions

Aspen District: *Aspen Times,* published weekly in Aspen, Pitkin County, Colorado.

Blanco District: *Meeker Herald,* published weekly in Meeker, Rio Blanco County, Colorado.

Dillon District: *Summit Daily News,* published daily in Frisco, Summit County, Colorado.

Eagle District: *Eagle Valley Enterprise,* published weekly in Eagle, Eagle County, Colorado.

Holy Cross District: *Vail Trail,* published weekly in Vail, Eagle County, Colorado.

Rifle District: *Citizen Telegram,* published weekly in Rifle, Garfield County, Colorado.

Sopris District: *Valley Journal,* published weekly in Carbondale, Garfield County, Colorado.

Nebraska National Forest, Nebraska

Forest Supervisor Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota for decisions affecting National Forest System lands in the State of South Dakota.

The Omaha World Herald, published daily in Omaha, Douglas County, Nebraska for decisions affecting National Forest System lands in the State of Nebraska.

District Ranger Decisions

Bessey District: *The North Platte Telegraph,* published daily in North Platte, Lincoln County, Nebraska.

Pine District: *The Chadron Record,* published weekly in Chadron, Dawes County, Nebraska.

Samuel R. McKelvie National Forest: *The Valentine Midland News,* published weekly in Valentine, Cherry County, Nebraska.

Fall River and Wall Districts, Buffalo Gap National Grassland: *The Rapid City Journal,* published daily in Rapid City, Pennington County, South Dakota.

Fall River and Wall Districts: *The Rapid City Journal,* published daily in Rapid City, Pennington County, South Dakota.

Fort Pierre National Grassland: *The Capital Journal,* published Monday thru Friday in Pierre, Hughes County, South Dakota.

Black Hills National Forest, South Dakota and Eastern Wyoming

Forest Supervisor Decision

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

District Ranger Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Bighorn National Forest, Wyoming

Forest Supervisor Decisions

Sheridan Press, published daily in Sheridan, Sheridan County, Wyoming.

In addition, for decisions affecting an individual district(s), the local district(s) newspaper will be used (see listing below).

District Ranger Decisions

Tongue District: *Sheridan Press,* published daily in Sheridan, Sheridan County, Wyoming.

Buffalo District: *Buffalo Bulletin,* published weekly in Buffalo, Johnson County, Wyoming.

Medicine Wheel District: *Lovell Chronicle,* published weekly in Lovell, Big Horn County, Wyoming.

Tensleep District: *Northern Wyoming Daily News,* published daily in Worland, Washakie County, Wyoming.

Paintrock District: *Greybull Standard,* published weekly in Greybull, Big Horn County, Wyoming.

Medicine Bow National Forest, Wyoming

Forest Supervisor Decisions

Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.

District Ranger Decisions

Laramie District: *Laramie Daily Boomerang,* published daily in Laramie, Albany County, Wyoming.

Douglas District: *Casper Star-Tribune,* published daily in Casper, Natrona County, Wyoming.

Brush Creek and Hayden District: *Rawlins Daily Times,* published daily in Rawlins, Carbon County, Wyoming.

Shoshone National Forest, Wyoming

Forest Supervisor Decision

Cody Enterprise, published twice weekly in Cody, Park County, Wyoming.

District Ranger Decisions

Clarks Fork District: *Powell Tribune,* published twice weekly in Powell, Park County, Wyoming.

Wapiti and Greybull Districts: *Cody Enterprise,* published twice weekly in Cody, Park County, Wyoming.

Wind River District: *The Dubois Frontier,* published weekly in Dubois, Teton County, Wyoming.

Lander District; *Wyoming State Journal,* published twice weekly in Lander, Fremont County, Wyoming.

Dated: November 9, 1998.

Lyle Laverty,

Regional Forester.

[FR Doc. 98–30658 Filed 11–16–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Pend Oreille Priest Beetle Project; Idaho Panhandle National Forests, Bonner County Idaho and Pend Oreille County, Washington; Colville National Forests, Pend Oreille County, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) to disclose the potential environmental effects of proposed activities in forest stands infested with Douglas-fir bark beetle. Activities include reducing fuels in urban interface areas, restoring historic vegetation patterns in areas of significant mortality, and accomplishing other ecosystem restoration opportunities to benefit aquatic, watershed and wildlife habitat areas in the southern portion of the Priest Lake and the Newport Ranger Districts.

DATES: Written comments and suggestions should be received on or before December 17, 1998. The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in January, 1999. A Final Environmental Impact Statement will be published no sooner than February 16, 1999.

ADDRESSES: Submit written comments and suggestions on the proposal or requests to be placed on the project mailing list to Kent Dunstan, Priest Lake Ranger District, 32203 Hwy. 57, Priest River, ID 83856.

FOR FURTHER INFORMATION CONTACT: Pete Zimmerman, Sandpoint Ranger District, 1500 Hwy. 2, Suite 110, Sandpoint, ID 83864, (208) 263–5111.

SUPPLEMENTARY INFORMATION: Snow, ice and wind during the winter of 1996–97 damaged trees on the Idaho Panhandle (IPNF) and Colville National Forests. These events created a tremendous amount of forest debris on the ground in many areas including tops, limbs, and standing dead and down trees. Douglas-fir bark beetle populations increased after breeding in the winter storm damaged and weakened trees. Standing trees were attacked in the spring and summer of 1998. Aerial detection surveys conducted in 1998 showed extensive numbers of dead, mature Douglas-fir trees on national forest system, state, and private lands, especially in areas of past ice and winter storm damage.

Since the bark beetle outbreak is so widespread, we recognize there is not much we can do to control or stop it. There is, however, an opportunity to care for the lands affected by the beetle by focusing on restoration of the ecosystems where the beetle is causing significant amounts of the Douglas-fir trees to die.

With the amount of downed fuels and high level of public use in certain areas, the risk of severe fires is much higher. Fires igniting in these areas will be more difficult to control and the increased fuel loading is likely to result in more intense fires. Highly used recreation areas and areas adjacent to private land are particularly vulnerable because the potential for ignition is greater. In areas where urban or private values are at risk due to fuel accumulations related to the Douglas-fir beetle outbreak, fuels would be treated by timber harvest, burning and/or piling so as to reduce the risk of losing these values to wildfire.

In many of the beetle-attacked stands, there is almost twice as much Douglas-fir on the landscape than what was historically present, and a significant decrease of seral species such as ponderosa pine, white pine and larch, which are more resistant to insects and some diseases. In these areas, the intent would be to restore stand composition and structure to more closely resemble historic vegetation conditions. Regeneration harvest activities would be proposed in stands of at least five acres in size where greater than 50% of the stand within the area is projected to die from the current Douglas-fir beetle outbreak. Activities include harvest, site preparation and/or fuels hazard reduction with fire or by mechanical methods and tree planting.

In stands affected by Douglas-fir beetle that do not meet criteria for urban interface or vegetation restoration, selective harvest treatment activities would be proposed in stands where less than 50% of the stand within the area is projected to die from the current Douglas-fir beetle outbreak and also in areas of special management need or where public safety issues are a concern. Activities include harvest and fuel hazard reduction by fire or mechanical methods.

Aquatic, watershed and wildlife restoration activities would include closing or obliterating roads for watershed health and wildlife security and modifying, by reconstruction, other road elements that pose risks to watersheds. These activities may not be associated with timber sales. Where activities are associated with timber sales and along haul routes, watershed restoration would be achieved when practical.

Prescribed fire use to reduce fuel hazard and to prepare sites for regeneration would not be limited to timber harvest areas but may also be used where harvest is not practical.

Pest management techniques, including application of pheromones to protect high valued stands, would be used in those areas where such treatment would likely be effective.

As part of the proposed action, timber harvest will not occur in: (1) Allocated old-growth that maintains old-growth characteristics, (2) Riparian Habitat Conservation Areas, (3) Inventoried Roadless Areas, (4) stands where a minimum number of snags cannot be maintained, (5) areas of known populations of sensitive plant species, (6) areas where they result in a likely to adversely affect determination for Threatened or Endangered Species, (7) areas where harvest can affect sphagnum peatlands, and (8) proposed or designated Research Natural Areas. In addition, no permanent roads will be constructed as part of the Proposed Action. Temporary roads may be a part of the proposed action.

Preliminary issues identified are loss of road access, risk of fire in untreated areas, loss of timber value, effects on plants, wildlife and fish, and amount of ecosystem restoration accomplished.

The Forest Service will consider a range of alternatives. One of these will be the ''no action'' alternative, under which there would be no change from current management of the Forest. Additional alternatives will represent a range of strategies to accomplish the goals of this project. The Idaho Panhandle National Forests Land and Resource Management Plan and the Colville National Forest Plan as amended provide guidance for management objectives within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. Inland Native Fish Strategy guidelines (USDA Forest Service, 1995) supercede Forest Plan guidelines established for riparian areas.

Public participation will begin with the publication of this notice. Comments provided by the public and other agencies will be used to develop alternative strategies to this proposal. The public is encouraged to visit with Forest Service officials during the analysis and prior to the decision. The Forest Service is also seeking information, comments, and assistance from federal, state and local agencies and other individuals or organizations who may be interested in or affected by the proposed actions.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in January, 1999. At that time, the EPA will publish a Notice of Availability of the draft environmental impact statement in the **Federal Register.** The comment period on the draft environmental impact statement will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register.** A final environmental impact statement will be published after all comments are reviewed and responded to. Two Records of Decision will be published at that time: one for the Priest Lake Ranger District and one for the Newport Ranger District.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F.Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns regarding the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft environmental impact statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments may not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency ti withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denies, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

We are the responsible officials for this environmental impact statement and will decide which projects will be implemented. Addresses are: Priests Lake Ranger District, 32203 Hwy 57, Priest River, ID 83856 and Colville National Forest, 765 S. Main St., Colville, WA 99114.

Dated: November 9, 1998.

Kent L. Dunstan,

District Ranger, Priest Lake Ranger District, Idaho Panhandle National Forests.

Dated: November 10, 1998.

Robert L. Vaught,

Forest Supervisor, Colville National Forest.

[FR Doc. 98–30656 Filed 11–16–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Coeur d'Alene Beetle Project, Coeur d'Alene River Ranger District, Idaho Panhandle National Forests, Kootenai and Shoshone Counties Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) to disclose the potential environmental effects of proposed activities in forest stands infested with Douglas-fir bark beetle. Activities include reducing fuels in urban interface areas, restoring historic vegetation patterns in areas of significant mortality, and accomplishing other ecosystem restoration opportunities to benefit aquatic, watershed and wildlife habitat areas in the western and central portions of the Coeur d'Alene River Ranger District.

DATES: Written comments and suggestions should be received on or before December 17, 1998. The draft environmental impact statement is expected to be filed with the

Environmental Protection Agency (EPA) and available for public review in January, 1999. A Final Environmental Impact Statement will be published no sooner than February 16, 1999.

ADDRESSES: Submit written comments and suggestions on the proposal or requests to be placed on the project mailing list to Susan Jeheber-Mathews, Coeur d'Alene River Ranger District, 2502 East Sherman Ave., Coeur d'Alene ID 83814–5899.

FOR FURTHER INFORMATION CONTACT: Sherri Lionberger at Coeur d'Alene River Ranger District, 2502 East Sherman Ave., Coeur d'Alene, ID 83814–5899 (208) 664–2318.

SUPPLEMENTARY INFORMATION: Snow, ice and wind during the winter of 1996–97 damaged trees on the Idaho Panhandle National Forests (IPNF). These events created a tremendous amount of forest debris on the ground in many areas including tops, limbs, and standing dead and down trees. Douglas-fir bark beetle populations increased after breeding in the winter storm damaged and weakened trees. Standing trees were attacked in the spring and summer of 1998. Aerial detection surveys conducted in 1998 showed extensive numbers of dead, mature Douglas-fir trees on national forest system, state, and private lands, especially in areas of past ice and winter storm damage.

Since the bark beetle outbreak is so widespread, we recognize there is not much we can do to control or stop it. There is, however, an opportunity to care for the lands affected by the beetle by focusing on restoration of the ecosystems where the beetle is causing significant amounts of the Douglas-fir trees to die.

With the amount of downed fuels and high level of public use in certain areas, the risk of severe fires is much higher. Fires igniting in these areas will be more difficult to control and the increased fuel loading is likely to result in more intense fires. Highly used recreation areas and areas adjacent to private land are particularly vulnerable because the potential for ignition is greater. In areas where urban or private values are at risk due to fuel accumulations related to the Douglas-fir beetle outbreak, fuels would be treated by timber harvest, burning and/or piling so as to reduce the risk of losing these values to wildfire.

In many of the beetle-attacked stands, there is almost twice as much Douglas-fir on the landscape than what was historically present, and a significant decrease of seral species such as ponderosa pine, white pine and larch, which are more resistant to insects and some diseases. In these areas, the intent would be to restore stand composition and structure to more closely resemble historic vegetation conditions. Regeneration harvest activities would be proposed in stands of at least five acres in size where greater than 50% of the stand within the area is projected to die from the current Douglas-fir beetle outbreak. Activities include harvest, site preparation and or fuels hazard reduction with fire or by mechanical methods and tree planting.

In stands affected by Douglas-fir beetle that do not meet criteria for urban interface or vegetation restoration, selective harvest treatment activities would be proposed in stands where less than 50% of the stand within the area is projected to die from the current Douglas-fir beetle outbreak and also in areas of special management need or where public safety issues are a concern. Activities include harvest and fuel hazard reduction by fire or mechanical methods.

Aquatic, watershed and wildlife restoration activities would include closing or obliterating roads for watershed health and wildlife security and modifying, by reconstruction, other road elements that pose risks to watersheds. These activities may not be associated with timber sales. Where activities are associated with timber sales and along haul routes, watershed restoration would be achieved when practical.

Prescribed fire used to reduce fuel hazard and to prepare sites for regeneration would not be limited only to timber harvest areas but may also be used where harvest is not practical.

Pest management techniques, including application of pheromones to protect high valued stands, would be used in those areas where such treatment would likely be effective.

As part of the proposed action, timber harvest will not occur in (1) Allocated old-growth that maintains old-growth characteristics, (2) Riparian Habitat Conservation Areas, (3) Inventoried Roadless Areas, (4) stands where a minimum number of snags can not be maintained, (5) areas of known populations of sensitive plant species, (6) areas where they result in a likely to adversely affect determination for Threatened or Endangered Species, (7) areas where harvest can affect sphagnum peatlands, and (8) proposed or designated Research Natural Areas. In addition, no permanent roads will be constructed as part of the Proposed Action. Temporary roads may be a part of the proposed action.

Preliminary issues identified are loss of road access, risk of fire in untreated areas, loss of timber value, effects on plants, wildlife and fish, and amount of ecosystem restoration accomplished.

The Forest Service will consider a range of alternatives. One of these will be the ''no action'' alternative, under which there would be no change from current management of the Forest. Additional alternatives will represent a range of strategies to accomplish the goals of this project. The Idaho Panhandle National Forests Land and Resource Management Plan provides guidance for management objectives within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. Inland Native Fish Strategy guidelines (USDA Forest Service, 1995) supersede Forest Plan guidelines established for riparian areas.

Public participation will begin with the publication of this notice. Comments provided by the public and other agencies will be used to develop alternative strategies to address damage to timber as a result of beetle infestations in the Idaho Panhandle National Forests. The public is encouraged to visit with Forest Service officials during the analysis and prior to the decision. The Forest Service is also seeking information, comments, and assistance from federal, state and local agencies and other individuals or organizations who may be interested in or affected by the proposed actions.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in January, 1999. At that time, the EPA will publish a Notice of Availability of the draft environmental impact statement in the **Federal Register**. The comment period on the draft environmental impact statement will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. A final environmental impact statement will be published after all comments are reviewed and responded to. One Record of Decision will be published at that time.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns regarding the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft environmental impact statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments may not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

I am the responsible official for this environmental impact statement and will decide which projects will be implemented. My address is Coeur d'Alene River Ranger District, 2502 East Sherman Ave., Coeur d'Alene, ID 83814–5899.

Dated: November 9, 1998.

Susan Jeheber-Matthews,

District Ranger.

[FR Doc. 98–30657 Filed 11–16–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Maximum Dollar Amount on Loan and Grant Awards Under the Rural Economic Development Loan and Grant Program for Fiscal Year 1999

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS) hereby announces the maximum dollar amount on loan and grant awards under the Rural Economic Development Loan and Grant (REDLG) program for Fiscal Year (FY) 1999. The maximum dollar award on zero-interest loans for FY 1999 is $450,000. The maximum dollar award on grants for FY 1999 is $330,000. The maximum loan and grant awards stated in this notice are effective for loans and grants made during the fiscal year beginning October 1, 1998, and ending September 30, 1999. REDLG loans and grants are available to Rural Utilities Service electric and telephone utilities to assist in developing rural areas from an economic standpoint.

FOR FURTHER INFORMATION CONTACT: Patricia Wing, Loan Specialist, Rural Business-Cooperative Service, USDA, STOP 1521, Room 6870, 1400 Independence Avenue, SW, Washington, DC 20250, Telephone: (202) 720–9558. FAX: (202) 720–6561. E-mail: PWing@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The maximum loan and grant awards are calculated as 3.0 percent of the projected program level for zero-interest loans and grants during the fiscal year. The projected program level for zero-interest loans during FY 1999 is $15,000,000, and the projected program level for grants is $11,000,000. Applying the specified 3.0 percent to these program levels results in the maximum loan award of $450,000 and the maximum grant award of $330,000.

Dated: November 6, 1998.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 98–30671 Filed 11–16–98; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Associated Electric Cooperative; Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact with respect to its action related to the construction of a 200 megawatt simple cycle combustion turbine electric generation plant in Northwest Missouri by Associated Electric Cooperative (Associated). The finding of no significant impact is the conclusion of an environmental assessment prepared by RUS. The environmental assessment is based on a environmental analysis submitted to RUS by Associated. RUS conducted an independent evaluation of the environmental analysis and concurs with its scope and content. The environmental analysis has been incorporated by reference in the environmental assessment.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250, telephone (202) 720–0468, E-mail bquigel@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The preferred site for the plant is located in south-central Nodaway County, Missouri, approximately 5.5 miles southeast of Maryville and ½ mile southwest of the intersection of Highways N and F. The proposed project involves two 100-megawatt (nominal), simple-cycle combustion turbine generators. Simple-cycle units are typically used for peak power generation and operate only a few hundred to a few thousand hours per year. The combustion turbines for the proposed plant would be Westinghouse 501D5 simple-cycle/dry low-nitrogen oxides combustors. Initially, fuel for the combustion turbines would be natural gas only. Each main generating unit would be approximately 40 feet wide and 140 feet long. The exhaust stack would be 50 feet high. Together the combustion turbines would occupy less than six acres of a site located in Nodaway County in northwest Missouri. A maintenance building approximately 90 by 45-foot, a small control building, and a water storage container would also be located on the site next to the combustion turbines. A 150-foot high microwave tower would be located on the site, enabling control of the plant from a remote location. The plant would be connected to one of Associated's 161-kilovolt transmission lines. Natural gas would be supplied from either a 24-or 30-inch diameter gas line which passes northeast to southwest through northwestern Missouri. It is estimated that approximately 200 feet of two, 10 inch gas transmission lines will need to be constructed outside the proposed plant boundary to connect the plant to the existing gas line in the area.

Alternatives considered to constructing the project as proposed included no action, load management, power purchases, renewable energy, combined cycle combustion turbine technology, and an alternative site location.

Copies of the environmental assessment and finding of no significant impact along with the environmental analysis are available for review at, or can be obtained from, RUS at the address provided herein or from Jerry Bindel, Associated Electric Cooperative, P.O. Box 754, Springfield, Missouri, 65801–0754 telephone (417) 885–9272. Mr. Bindel's E-mail address is jbindel@aeci.org. These documents are also available at Maryville Public Library, 5th and Main Street, Maryville, Missouri. Interested parties wishing to comment on the adequacy of the environmental assessment should do so within 30 days of the publication of this notice. RUS will take no action that would approve clearing or construction activities related to the proposed combined cycle power plant prior to the expiration of the 30-day comment period.

Dated: November 10, 1998.

Blaine D. Stockton, Jr.,

Assistant Administrator, Electric Program.

[FR Doc. 98–30669 Filed 11–16–98; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket Number: 980929249–8283–02]

Fastener Quality Act; Statutorily Required Study; Re-Opening of Comment Period

AGENCY: United States Department of Commerce.

ACTION: Notice of inquiry; re-opening of comment period.

SUMMARY: On October 7, 1998, the Commerce Department published a request for comment concerning a study of the Fastener Quality Act (FQA) mandated by Pub. L. No. 105–234 (63 FR 53870). The comment period of that request for comment closed on November 6, 1998. This notice re-opens the comment period for that request, through November 30, 1998. In addition, this notice makes clear that comments received between November 6 and today will be considered as timely filed.

DATES: Comments must be received no later than November 30, 1998.

ADDRESSES: Comments must be submitted to: Dr. James E. Hill; Chief, Building Environment Division; Building and Fire Research Laboratory; National Institute of Standards and Technology; Building 226, Room B–306; Gaithersburg, MD 20899. Comments may also be submitted by e-mail to: fqastudy@nist.gov.

FOR FURTHER INFORMATION CONTACT: Dr. James Hill; Telephone: 301–975–5851; E-mail: james.hill@nist.gov. The Fastener Quality Act and the existing implementing regulations can be viewed at NIST's FQA website: http://www.nist.gov/fqa/fqa.htm.

SUPPLEMENTARY INFORMATION: On August 14, 1998, President Clinton signed Public Law 105–234. This law amended the Fastener Quality Act (FQA) by creating an exemption for certain aircraft fasteners. The new law also requires the Secretary of Commerce to submit to Congress a report on: (1) Changes in fastener manufacturing processes that have occurred since the enactment of the Fastener Quality Act; (2) a comparison of the Fastener Quality Act to other regulatory programs that regulate the various categories of fasteners, and an analysis of any duplication that exists among programs; and (3) any changes in that Act that may be warranted because of the changes reported under paragraphs (1) and (2). By notice published on October 7, 1998, the Commerce Department solicited public comments, through November 6, 1998, on the issues raised by the Secretary's reporting requirement (63 FR 53870).

Today's notice re-opens the period for public comment first announced in the October 7 notice, through November 30, 1998, and makes clear that comments received between November 6 and today will be considered as timely filed. For further information on the topics raised in the Secretary's reporting requirement and specific questions for which the Department seeks information, please refer to the October 7 notice.

Authority: Pub. L. No. 105–234.

Dated: November 10, 1998.

Andrew J. Pincus,

General Counsel.

[FR Doc. 98–30725 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–BW–P

DEPARTMENT OF COMMERCE

[A–570–815]

Sulfanilic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Final Results of the 1996–1997 Antidumping Duty Administrative Review of Sulfanilic Acid from the People's Republic of China.

SUMMARY: On July 13, 1998, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China (PRC). The review covers the period August 1, 1996 through July 31, 1997, and all PRC exporters of the subject merchandise.

We gave all interested parties an opportunity to comment on our preliminary results. Based on our review of the comments received, the margins in the final results have changed from those presented in the preliminary results.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: LaVonne Jackson, Doug Campau or Nithya Nagarajan, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

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 at 19 CFR part 351 (1998).

Background

On July 13, 1998, the Department of Commerce published in the **Federal Register** (63 FR 37528) the preliminary results of its administrative review of the antidumping duty order on sulfanilic acid from the PRC (57 FR 37524, August 19, 1992). This review covers exports of subject merchandise to the United States for the period of August 1, 1996 through July 31, 1997, and all exporters of sulfanilic acid, including, but not limited to, the following thirteen firms: China National Chemical Import and Export Corporation, Hebei Branch (Sinochem Hebei); China National Chemical Construction Corporation, Beijing Branch; China National Chemical Construction Corporation, Qingdao Branch; Sinochem Qingdao; Sinochem Shandong; Baoding No. 3 Chemical Factory; Jinxing Chemical Factory; Zhenxing Chemical Industry Co. (''Zhenxing''); Mancheng Xinyu Chemical Factory, Shijiazhuang; Mancheng Xinyu Chemical Factory, Beijing; Hainan Garden Trading Company; Yude Chemical Industry Company (''Yude'') and Shunping Lile Chemical Factory. We have now completed the administrative review in accordance with section 751(a) of the Act.

Scope of Review

Imports covered by this review are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.24 of the Harmonized Tariff Schedule (HTS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under the subheading 2921.42.24 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), classifiable under the HTS subheading 2921.42.79, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Use of Facts Otherwise Available

Only two firms, Yude and Zhenxing, responded to the Department's questionnaire and demonstrated that they are entitled to a separate rate. All firms that have not demonstrated that they qualify for a separate rate are deemed to be part of a single enterprise under the common control of the government (the ''PRC enterprise''). Therefore, all such entities receive a single margin, the ''PRC rate.'' We preliminarily determined in accordance with section 776(a) of the Act, that resort to facts otherwise available is appropriate in arriving at the country-wide rate because companies deemed to be part of the PRC enterprise for which a review was requested have not responded to the Department's antidumping questionnaire. Because PRC exporters of this product did not respond to the Department's questionnaire, the Department finds that the ''PRC enterprise'' has failed to cooperate by not acting to the best of its ability to comply with a request for information.

Where the Department must resort to facts otherwise available because a respondent fails to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to use an inference adverse to the interests of that respondent in choosing from the facts available. Section 776(b) also authorizes the Department to use, as adverse facts available, information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. The Statement of Administrative Action (SAA) accompanying the URAA clarifies that information from the petition and prior segments of the proceeding is ''secondary information.'' *See* H. Doc. 3216, 103rd Cong. 2d Sess. 870 (1996). If the Department relies on secondary information as facts available, section 776(c) of the Act provides that the Department will, to the extent practicable, corroborate such information using independent sources reasonably at its disposal. The SAA further provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. However, where corroboration is not practicable, the Department may use uncorroborated information.

In the present case the Department has based the country-wide margin on the final best information available margin from the investigation, which was originally based on information from the petition. *Notice of Final Determination of Sales at Less Than Fair Value,* 57 FR 37524 (August 19, 1992). *See also Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from South Africa,* 61 FR 24272 (May 14, 1996). In accordance with section 776(c) of the Act, we corroborated the data contained in the petition, as adjusted for initiation purposes, to the extent possible. The petition data on major material inputs are consistent with Indian import statistics, and also with price quotations obtained by the U.S. Embassies in Pakistan and India. Both of these corroborating sources were placed on the record during the investigation and have been added to the record of this review. In addition, we note that the petition used World Bank wage rates which we have repeatedly found to be a probative source of data. With regard to the values contained in the petition, the Department was provided no useful information by the respondent or other interested parties, and we are aware of no other independent sources of information that would enable us to further corroborate the margin calculation in the petition. We note that the SAA at 870 specifically states that where ''corroboration may not be practicable in a given circumstance,'' the Department may nevertheless apply an adverse inference. Based on these reasons, we preliminarily find that the information contained in the petition has probative value.

Accordingly, we have relied upon the information contained in the petition. We have assigned to all exporters other than Yude and Zhenxing a margin of

85.20 percent, the margin in the petition, as adjusted by the Department for initiation purposes.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from Yude, Zhenxing, PHT International, Inc. (''PHT'') (collectively Respondent), and from the Petitioner, Nation Ford Chemical Company.

Comment 1: Petitioner contends that the Department should apply the country-wide rate of 85.20 percent as the facts available to calculate Respondent's dumping margin because Zhenxing and PHT failed to disclose what they called Respondent's ''affiliation'' with Baoding Import Export Company (''Baoding''), a PRC trading company, until the relationship was discovered by the Department during verification.

Petitioner contends that Baoding and the Respondent are affiliated parties. According to the Petitioner, Zhenxing's U.S. sales of sodium sulfanilate during the period of review (POR) were made through Baoding. Petitioner argues that record evidence indicates that Baoding represented itself as the export agent of Zhenxing and that Respondents themselves characterized Baoding as a brokerage house to facilitate the export of sodium sulfanilate. Therefore, Petitioner reasons that Baoding, acting as Zhenxing's agent, is affiliated with Zhenxing. Petitioner argues that if Zhenxing and Baoding are affiliated, Baoding's failure to respond to the Departments original and subsequent questionnaires constitutes failure of Zhenxing to report all sales made by themselves and their affiliates.

Petitioner states that Respondent addressed the issue of the PRC trading company only in post-verification submissions. Petitioner contends that the Department typically rejects such unsubstantiated, eleventh hour claims made by Respondent that have failed to disclose material information in their questionnaire responses. *See Certain Welded Carbon Steel Pipes and Tubes from Thailand; Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53813 (Oct. 16, 1997).

Furthermore, Petitioner claims that fees paid by the Respondent to Baoding for its services are direct selling expenses which the Department was not able to verify. Consequently, a material part of the calculation of CEP has not been verified. Therefore, Petitioner contends that the Department must conclude that the Respondent did not act to the best of its ability to provide this information and that the Department cannot use the new information discovered at verification and provided in post-verification submissions to calculate the margin because it is not credible and cannot be verified.

Respondent argues that Baoding was not the exporter of the subject merchandise, is not related to PHT and acted only as the brokerage house to facilitate the process of moving the goods from the factory to the port and through export customs in China, and that PHT simply purchased these services from Baoding. Respondent contends that Zhenxing only sells the subject merchandise to PHT, and neither sold nor intends to sell the subject merchandise directly to any unaffiliated U.S. buyers or to Baoding. Respondent argues that the criteria set forth in *Engineered Process Gas Turbo-Compressor Systems from Japan*, 62 FR 24394 (May 5, 1997), for determining affiliation are not applicable to this case. Respondent argues that the relationship between PHT and Baoding was not one of principal and agent within the context of a sales transaction. Respondent claims that this relationship was a simple contractual relationship and that Baoding was not an agent/ reseller of sodium sulfanilate because Baoding did not act as a sales agent in negotiating the price or other terms of sale, interact with U.S. customers, maintain inventory of the subject merchandise, take title to the merchandise or bear risk of loss or process or otherwise add value to the merchandise. Therefore, Baoding was not required to respond to the Department's questionnaire with respect to those sales. Finally, Respondent states that its response to the Department's supplemental questionnaire with respect to Baoding was timely.

Department's Position: We agree with Respondent. On May 1, 1998, after the conclusion of verification and prior to calculating our preliminary results of review, the Department issued a supplemental questionnaire requesting further clarification on the relationship between Zhenxing, PHT, and Baoding and the services provided by Baoding for sales of sodium sulfanilate. Respondent submitted their response on May 14, 1998, stating that Baoding was unaffiliated with either PHT or Zhenxing. Respondent stated that Zhenxing does not sell the subject merchandise to Baoding and that Baoding has no function regarding sales of the subject merchandise. According to the Respondent, Baoding's function is to facilitate the exportation of the merchandise. Baoding provides the documents necessary for the exportation and helps to arrange the delivery of goods to port. In addition, Baoding did not take title to the subject merchandise nor does Baoding assume the management, storage or shipment of the subject merchandise. In return for its brokerage and handling services, Baoding is paid a fee by PHT consistent with standard industry practice. Based on this information, the Department determined that Baoding was unaffiliated to either PHT or Zhenxing for purposes of the preliminary results of review and adjusted normal value to include the cost of brokerage and handling expenses incurred by Zhenxing and PHT to make sales via Baoding, valued in an appropriate market economy surrogate country. For purposes of these final results of review, the Department has not received any additional information to indicate that Baoding is affiliated with either PHT or Zhenxing, therefore, consistent with our findings in the preliminary results of review, we have adjusted for the additional brokerage and handling expenses incurred on sales via Baoding.

Comment 2: Petitioner contends that the Department should apply the country-wide rate of 85.20 percent as the facts available to calculate Respondent's dumping margin because the Department was unable to verify a significant portion of the factors of production information submitted by the Respondent. Petitioner argues that discrepancies found at verification related to (1) coal usage, (2) electricity usage, and (3) labor hours understated the Respondent's factors of production and that new information used to recalculate Respondent's energy usage was untimely. Petitioner also argues that Respondent never corrected the usage data either in their supplemental questionnaire response or prior to the start of the factors of production verification.

Petitioner further contends that the Department's preliminary results of review correcting said discrepancies is inappropriate because the discrepancies involve major factors of production, the record of the review contains no explanation of the reasons for the discrepancies and the discrepancies that were discovered all favored Respondent, indicating a pattern of under-reporting.

Respondent argues that neither the Department's observation at verification of what it perceived to be unreconciled coal purchases in comparison to total coal usage, nor the difference between total predicted amount of electricity reported by Zhenxing and Zhenxing's final electricity consumption is significant. Further, Respondent argues that these verification findings did not create a pattern of under-reporting factors of production.

Department's Position: The Department agrees with Respondent regarding the use of verified information for coal usage, electricity, and labor factors of production. It is the Department's practice to allow respondents to correct for minor errors during the course of verification. In the instant case, while conducting the verification, Department officials noted certain errors in Zhenxing's factors of production response. Department officials then proceeded to verify and ensure that they obtained the most accurate factors of products which tied to the company's actual books and records. At the conclusion of verification, the Department determined that the errors found were minor in nature and did not require a revised response to be submitted. Therefore, in order to ensure that the most accurate factors of production were used to calculate NV in the preliminary results of review, the Department utilized the verified factors of production for coal usage, electricity, and labor. In regard to the Petitioner's argument that these discrepancies indicated a pattern of under-reporting, the Department has determined that the errors noted during verification were insignificant and did not constitute a pattern or under-reporting on behalf of the Respondent. Contrary to Petitioner's allegation, not every discrepancy involved favored Respondent. For purposes of the final results, the Department has therefore continued to use the verified information for these factors of production.

Comment 3: Petitioner claims that the use of Indian import prices for aniline as the surrogate value for aniline used by the PRC Respondent in this case is inappropriate because, it claims, the plain language of the statute does not permit the Department to use imported aniline prices when the NME respondents use domestically-sourced aniline. Petitioner argues that the Department incorrectly based the surrogate value for aniline on Indian sulfanilic acid production processes, instead of reported PRC production processes. Petitioner states that the Department must first identify the NME factors of production and then, using those same factors, obtain surrogate values from a market economy at a similar level of economic development. Petitioner contends that because Respondent uses domestically-sourced aniline to manufacture sulfanilic acid, the Department must value aniline using prices for aniline domestically produced in India. Petitioner argues that the Department has recently stated a clear preference for using domestic market prices in the surrogate country to value factors of production. As support for this position, Petitioner cites *Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review,* 63 FR 3085, 3087 (Jan. 21 1998) (''*Magnesium*''); *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-length Carbon Steel Plate from the People's Republic of China,* 62 FR 61964, 61966 (Nov 20, 1997) (''*Carbon Steel Plate*''); and *Notice of Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China,* 62 FR 9163 (Feb. 28, 1997) (''*Brake Drums*''). Petitioner also argues that the profitability of surrogate country producers in export markets is irrelevant to the Department's valuation of the factors of production utilized by the NME under investigation.

Petitioner contends that the values for imported aniline used in the preliminary results cannot be used because these values are based on subsidized prices and are not an accurate reflection of the price of aniline. Petitioner cites *Brake Drums* and *Tehnoimportexport* v. *United States,* 783 F. Supp. 1401 (CIT 1992) (''*Tehnoimportexport*''). According to the Petitioner, the Department has determined that the Indian Advanced License program is a countervailable subsidy under U.S. law. *Preliminary Affirmative Countervailing Duty Determination: Sulfanilic Acid From India,* 57 FR 35785 (Aug. 11, 1992); *Countervailing Duty Order: Sulfanilic Acid From India,* 58 FR 12026 (Mar. 2, 1993). Under this program, the normal 85% duty on imported aniline is not collected if sulfanilic acid produced with imported aniline is subsequently exported. Petitioner contends that Indian sulfanilic acid producers receive a government subsidy to the extent that they pay duty-free prices for imported aniline.

Petitioner states that the Department is precluded from using prices for imported aniline due to the reasons stated above. Petitioner argues that the statute requires the Department to use, instead, published domestic price information reported in Chemical Business and Chemical Weekly to value aniline in this review. Petitioner maintains that these publications are reliable sources, as evidenced by the Department's use of these sources in several antidumping investigations and reviews involving PRC products. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China,* 61 FR 19026, 19030 (Apr. 30, 1996) (''*Bicycles*''). Petitioner also argues that the Department used Chemical Weekly data as the surrogate value for another input, sulfuric acid, in the preliminary results of this case. Petitioner states that the domestic prices are contemporaneous, product specific, tax exclusive and publicly available and are therefore a reliable basis for use as a surrogate value.

Respondent argues that the Department correctly valued aniline using Indian import statistics because Indian sulfanilic producers used imported aniline to produce sulfanilic acid for export. Respondent refers to the initial investigation and the 1993–94 and 1994–95 administrative reviews of this case, in which the Department previously used Indian import statistics for valuing aniline. Respondent cites *Nation Ford Chemical Co.* v. *United States,* 985 F. Supp. 133 (CIT 1997) and *Nation Ford Chemical Co.* v. *United States,* 985 F. Supp. 138 (CIT 1997), in which the Court of International Trade (CIT) affirmed the Department's determinations in the 1993–94 and 1994–95 reviews, respectively, to use Indian import values as a surrogate for PRC aniline costs. Respondent also contends that the CIT determined that Petitioner's argument that the Department must use the Indian domestic price for aniline because Chinese producers use domestic aniline was erroneous because there was no basis in the statute for arguing that the factors of production must be ascertained in a single fashion. *Nation Ford Chemical Co.,* 985 F. Supp. at 136 (citing *Lasko Metal Prod., Inc.* v. *United States,* 43 F.3d 1442, 1446 (Fed. Cir. 1994) (''*Lasko*'') and 19 U.S.C. 1677b(c)(3)). In addition, Respondent contends that the CIT further stated that it was reasonable for the Department to conclude that Indian domestic prices were not adequately representative of the situation in the PRC. Respondent contends that the Court also notes that although a surrogate value must be representative of the situation in the non-market economy (NME), that does not mean that the Department must duplicate the exact production experience at the expense of choosing a surrogate value that most accurately represents what would be the fair market value of aniline in a market-economy PRC.

Respondent contends that the CIT has determined that the Indian subsidy program would have no impact on the price of imported aniline, and therefore rejected the identical subsidy argument Petitioners are making in this review. Respondent relies upon the CAFC's statement in Lasko that, in the underlying case, the best available information on what the supplies used by the Chinese manufacturers would cost in a market economy country was the price charged for those supplies on the international market. Respondent argues that, similarly, the best available information on the value of aniline used by the Indian producers to make sulfanilic acid for export is the import price for aniline, which reflects the cost of aniline on the international market.

Respondent also cites *Tehnoimportexport*, in which the CIT acknowledged that the Department has frequently used import statistics in NME country cases. Respondent argues further that the Department uses import statistics for at least one factor in almost every dumping case against China, even though the Chinese producers source the product from a domestic manufacturer in China. *See Notice of Final Determination of Sales at Less Than Fair Value: Sebacic Acid from the People's Republic of China,* 59 FR 28053 (May 31, 1994); *Bicycles*, and *Brake Drums*.

Respondent contends that the issue is which surrogate value from India best represents what the cost of aniline would be in China to the Chinese producer if the price were set by market forces. Respondent argues that the CIT states in *Tehnoimportexport*, 783 F. Supp. at 1406, that when the Department is faced with the decision between two reasonable alternatives and one alternative is favored over the other, the Department has the discretion to choose. Respondent also relies upon *Union Camp* v. *United States*, 941 F. Supp. 108, 116 (CIT 1996), *remand aff'd*, 963 F. Supp. 1212 (CIT 1997), and *Magnesium Corp. of America* v. *United States*, 938 F. Supp. 870 (CIT 1996) for the proposition that the Department has such discretion. Finally, Respondent argues that the Department's antidumping regulations published on May 19, 1997, state that aberrational surrogate input values should be disregarded. Respondent further argues that the Department has determined that the domestic price for aniline was aberrational because it did not reflect a market price for aniline but, instead, a price which has been inflated by India's protection of its national aniline industry.

Department's Position: We agree with Respondent that the Indian import values for aniline provide a better approximation than Indian domestic prices of what the aniline used by the Chinese manufacturers would cost were the PRC a market economy country. Evidence on the record of this review indicates that a two-tier pricing system for aniline exists in India as a result of the combination of an 85% tariff on imports of aniline and the effects of the Advanced Licence Program, which waives that tariff when imported aniline is used in the production of sulfanilic acid for export. Thus, Commerce had two main options in selecting a surrogate value for aniline: the Indian domestic price paid by the Indian producers of sulfanilic acid for the domestic market and the duty-free, Indian import price for aniline paid by Indian producers of sulfanilic acid for the export market. As the CIT has recognized with respect to prior reviews, the Department reasonably used the average Indian import price because the Indian price for domestically-produced aniline is artificially inflated due to a protective tariff that bears no relationship to the situation governing the aniline respondents source domestically in the PRC. Furthermore, because the costs constructed using the surrogate methodology are the costs for Chinese production for the export market, the costs incurred by Indian producers manufacturing sulfanilic acid for the export market are a better surrogate than are the costs incurred by Indian producers in manufacturing sulfanilic acid for their domestic market.

Petitioner cites *Magnesium, Carbon Steel Plate* and *Brake Drums* for the proposition that domestic prices are preferred unconditionally to import prices for factor valuation purposes. However, the three cases cited above refer to ''tax-exclusive domestic prices,'' and together with the Department's position above on the tariff problem, suggest that domestic prices are preferred only if both domestic and import prices are available on a tax-and duty-exclusive basis, all else being equal. When this is not the case, the Department must decide on a case-by-case basis which price is more appropriate for factor valuation purposes. In this case, because of the tariff problem discussed above, as well as uncertainty about the indirect taxes, if any, that the domestic price reflects, the Department has determined that the import price is more appropriate.

Petitioner's claim that the ''factor of production'' to be valued is ''domestic aniline,'' such that the statute requires the value of this factor to be assigned based on aniline produced domestically in India, has no support in law or fact. There is no indication on the record that the aniline used by the Chinese producers, which their public response indicates is locally sourced rather than imported, is physically or chemically different from the aniline that is produced in India or imported into India, or that the sulfanilic acid ''production process'' is different in either China or India depending upon whether imported or domestically sourced aniline is used. There is no reason why the Department must base its valuation on ''domestic'' (Indian-produced) aniline simply because the PRC factories use ''domestic'' (PRC-produced) aniline. Aniline is a generic, fungible input, not altered by whether it is imported or sourced in the same country in which it is used. The factor to be valued in this case is not ''domestic aniline'' but simply ''aniline.''

Nor is the Department compelled to use Indian domestic values simply because some domestic market exists. The CIT has long recognized that the Department has often used import statistics (to value both inputs imported into NME countries and imports sourced locally in NME countries) and that import prices into the surrogate country are an acceptable reflection of the value of that input in the surrogate country. *See, e.g., Tehnoimportexport* and the *Nation Ford* cases cited above. In this case, as in prior reviews of this order, the prices for domestically produced aniline on the record of this review are not suitable for use as surrogates for the PRC cost of aniline, because these prices are artificially high due to India's 85% import tax.

With respect to the question of whether Indian producers could profitably produce sulfanilic acid for export using Indian-sourced aniline, we note that we have not based our choice of surrogate value for aniline on Respondent's suggestion that this would not be possible.

No such finding is necessary. The aniline purchase choices of Indian manufacturers of sulfanilic acid (as reflected in the record) are relevant primarily as an indication that the price of aniline, when used for production of sulfanilic acid for sale in India, is unusually high, and thus, inappropriate for purposes of valuation of PRC export production costs for sulfanilic acid.

Petitioner's argument that the aniline import values are ''subsidized prices'' which therefore cannot be used as surrogate values misses the mark. Assuming, for the purposes of argument, that the Indian Advanced License program identified in 1992 as constituting a subsidy to Indian-produced sulfanilic acid would still be found to be countervailable, this program would constitute a subsidy to Indian-produced sulfanilic acid, not to aniline imported into India from other countries. Thus, Commerce would avoid using, as a surrogate value, the export value of Indian-produced sulfanilic acid, but not the import value of aniline. The Indian Import Statistics used by the Department to value aniline are pre-tariff prices, which are unaffected by whether or not subsequently added duties charged to the importer are waived on a given shipment. The sort of subsidy the Department is concerned with when it uses import prices is a producer-country subsidy that would artificially lower the import price. India has no interest in subsidizing aniline produced in other countries and imported into India. Because any subsidy which may be associated with the importation of aniline under the Advanced License Program for purposes of producing sulfanilic acid for export is a subsidy not to aniline but to sulfanilic acid, it does not provide a reason for rejecting aniline import values for purposes of serving as surrogates for the cost of aniline (not sulfanilic acid) to PRC producers. Therefore, for the purposes of these final results, the Department has continued to use Indian import prices as the surrogate value for aniline.

Finally, there is no merit to Petitioner's inference that prices published in certain Indian periodicals can only be rejected as surrogate values for Chinese prices if the periodicals are found to be unreliable sources of data. The problem with this data is not its reliability as to Indian prices, but the inappropriateness in this case of Indian domestic price data for aniline as a surrogate value for aniline sourced in China by the Chinese respondent.

Comment 4: Petitioner argues, alternatively, that the Department should adjust the import statistics to include import duties and an importers' mark-up in order to reflect what they call the true cost of imported aniline. Petitioner contends that the Indian Advance License program is similar to duty drawback. In the case of duty drawback, the customs duty refunded to the importer would be added to the U.S. price under 19 U.S.C. 1677a(d)(1)(B) if the Respondent could show that the importer took advantage of the duty drawback program. Petitioner argues that there is no evidence that any of the Indian producers of sulfanilic acid took advantage of the Advanced License program. Petitioner contends that the burden is on the Respondent to show Indian sulfanilic acid producers either did not pay customs duties or received refunds of customs duties payable on imports of aniline upon the exportation of finished sulfanilic acid. Petitioner also argues that the fact that the Indian Advanced License program has been found to be a countervailable subsidy under U.S. law provides another reason why the Department should add the import duties to the import values used as the surrogate value of aniline. Petitioner also argues that based on the absence of evidence on record that Indian sulfanilic acid producers purchased imported aniline directly and not through importers the Department should conclude that importer/middlemen import aniline and re-sell to sulfanilic acid producers with a mark-up added. Petitioner contends that the appropriate rate for the importers' mark-up is 28.44 percent of the CIF value. This rate is based upon information placed on record by the Petitioner establishing profit rates for Indian import trading companies. Petitioner contends that the Department should add 28.44 percent of the CIF value to the surrogate cost of aniline.

Respondent contends that, in the two *Nation Ford* cases cited above, the CIT determined that the Department was justified in not adding import duties and an importer mark-up to import prices because there was evidence on the record that Indian producers did not pay import duties on the aniline used to produce sulfanilic acid for export and there was no evidence on the records of an importer's markup. Respondent argues that the Court stated that the Department's refusal to add import duties or markups on imported aniline given the absence of proof that Indian producers paid import duties or markups on imported aniline was supported by the record.

Department's Position: We agree with Respondent that we should not add to the Indian import values an amount corresponding to the 85% tax levied by the Indian government on imported aniline which is not subsequently used in the manufacture of another product for export. Because these Indian import duties do not represent costs that a PRC producer would pay if the PRC were a market economy, it is the Department's practice to refrain from including any such duties in an NME surrogate price. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order,* 62 FR 6173, 6177 (February 11, 1997) (Comment 3); *Certain Helical Spring Lockwashers from the PRC,* 58 FR 48833, 48843 (September 20, 1993) (Comments 12 and 13). In this case, there are also two additional reasons for not adding on the amount of the import tax. The 85% tax at issue is not only unique to India; it is also abnormally high for an import tax, and is, furthermore, not even paid by producers of sulfanilic acid for the export market.

Respondent has placed on the record of this review published Indian government materials describing the operation of the Advance License system and its use to avoid payment of duties on aniline used to produce sulfanilic acid for export from India. Respondent has also placed on the record, *inter alia,* a letter from an Indian sulfanilic acid exporter explaining in detail how it imports aniline duty free, works with an Indian sulfanilic acid producer to produce sulfanilic acid from the imported aniline, and then exports the sulfanilic acid without paying duty on the imported aniline, and a letter from an Indian sulfanilic acid producer stating that it uses imported aniline to produce sulfanilic acid. Thus, Petitioner's claim that there is no evidence on the record of this review that Indian producers of sulfanilic acid used the Advance License program and thus avoided payment of the 85% duty is without basis.

Also without basis is Petitioner's claim that the Department must add the 85% import tax to the import values absent the same type of evidence required to support a duty drawback adjustment to U.S. price. The PRC Respondent in this review is not seeking a duty drawback adjustment to a United States price for sulfanilic acid exports from India (the country granting the duty drawback), and is not privy to the confidential documents of the Indian sulfanilic acid companies involved. What we are attempting to determine in this case is a surrogate value for Chinese aniline. The question of whether particular Indian exporters of sulfanilic acid imported sufficient aniline to qualify for duty drawback might be relevant if we were determining the U.S. price of Indian sulfanilic acid. However, it is simply immaterial to the question of the value of Chinese aniline.

Finally, Petitioner has no basis for insisting that the 85% duty be added onto the aniline import value because of an alleged subsidy to the price of imported aniline. As explained above, any subsidy that may exist is a subsidy to Indian-produced sulfanilic acid, not to aniline produced elsewhere and imported into India.

The record also provides no support for Petitioner's contention that we must add to the constructed valuation of the cost of the Chinese aniline an amount corresponding to an importer's markup.

The Chinese producers of sulfanilic acid source their aniline directly, not through a middleman. Furthermore, the record contains no indication that Indian producers of sulfanilic acid for exportation pay an importer's markup. Indeed, the only arrangement reflected in the record involves a tolling arrangement rather than purchase of aniline from an importer. In the *Nation Ford* cases, the CIT rejected a similar claim by petitioner. Because the record of this review involves similar facts, we again determine that it is not appropriate to increase the cost of aniline by the cost of a hypothetical importer's markup.

Comment 5: Respondent, relying upon the Department's verification findings in this review, contends that the Department used incorrect factors of production (FOP) for aniline and sulfuric acid when calculating the material costs for producing crude sulfanilic acid. Respondent states that the factors verification report accurately reported the consumption of raw materials and production of crude sulfanilic acid, but that these values were not carried over into the computer programs.

Petitioner argues that, in the preliminary results, the Department used the aniline and sulfuric acid usage amounts Respondent originally reported in its questionnaire response and that the Department, acting on its own initiative, corrected the denominator of the calculations to use the appropriate yield data. However, Respondent did not correct the numerators of the calculations in its supplemental questionnaire response or prior to the start of the production verification. Petitioner contends that Respondent brought these alleged errors to the Department's attention for the first time in its case brief.

Petitioner argues that pursuant to *NTN Bearing Corp.* v. *United States,* 74 F.3d 1204 (Fed. Cir. 1995), the Department's policy is to correct a respondent's alleged clerical errors that are brought to the Department's attention for the first time in the respondent's case brief only if all applicable criteria are met. Petitioner refers to the Department's decisions *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; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 63 FR 20585, 20611 (Apr. 27, 1998), citing *Certain Fresh-Cut Flowers From Columbia; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 42833 (Aug. 19, 1996). Petitioner argues that the alleged errors fail to meet at least three of the criteria outlined in the Department's policy: Respondent has not established that the alleged error is a clerical error and not an error in judgement or a substantive error, the Respondent did not avail itself of the earliest possible time to correct the alleged error, and the alleged clerical errors entail a substantial revision of the Respondent's response. Petitioner concludes that these alleged errors entail a substantial revision of the Respondent's data and may not be corrected under the Department's policy.

Department's Position: We agree with Respondent and have corrected the FOP data for aniline and sulfuric acid used to calculate material costs for producing crude sulfanilic acid. When it issued the preliminary results of this review, the Department intended to correct both the FOP and the yield to reflect verified totals. However, when making this correction, we inadvertently did not substitute the original FOP for the verified FOP. Respondent noted this error based on the preliminary analysis memo dated July 6, 1998. In accordance with § 351.224(a) of the Department's regulations, the Department disclosed the calculation of material costs for producing crude sulfanilic acid in the preliminary analysis memo. In response, the Respondent brought the errors to the Department's attention.

Comment 6: Petitioner contends that, in the preliminary results, the Department failed to calculate and deduct from the CEP starting price the inventory carrying costs incurred by PHT during the time between the exportation of the subject merchandise from the PRC and the delivery to the first unaffiliated customer in the United States. Petitioner argues that the costs of carrying inventory during the time of exportation from the PRC and delivery to the first unaffiliated customer in the United States were not related to Zhenxing's sales to PHT. Therefore, those expenses must be calculated and deducted from the CEP starting price pursuant to 19 CFR 351.402(b) because they relate to the sale to the first unaffiliated customer in the United States.

Respondent cites *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews,* 63 FR 33320, 33344 (June 18, 1998), in which the Department stated that its regulations clearly direct that any expense that is related solely to the sale to an affiliated importer in the United States should not be deducted from the starting price. Respondent argues that, similarly, the inventory carrying costs in this case should not be deducted from the starting price.

Department's Position: The Department agrees with Petitioner in part. Pursuant to 19 CFR 351.402, the Department, in calculating the CEP, deducts from the starting price those expenses associated with economic activity in the United States. Inventory carrying costs between Zhenxing and PHT are not associated with economic activities in the United States because, they are not associated with PHT's sales to unaffiliated U.S. parties. Therefore, the Department has not deducted the inventory carrying costs between Zhenxing and PHT from the starting price in calculating CEP. However, Petitioner is correct in arguing that the Department should adjust the U.S. price for inventory carrying costs incurred by PHT prior to its sale and delivery to unaffiliated U.S. customers. The Department has corrected the final CEP calculation for these inventory carrying costs. (*See* Final Analysis Memo dated November 10, 1998.)

Comment 7: Petitioner contends that the Department failed to calculate an assessment rate applicable to PHT. Petitioner states that this failure is contrary to the Department's regulations, which state the assessment rate for each importer of the subject merchandise under review will normally be calculated by dividing the dumping margin found for the subject merchandise examined by the entered value of such merchandise for normal customs purposes. 19 CFR 351.212(b)(1).

Department's Position: We agree with the Petitioner. The Department has calculated an importer specific assessment rate for PHT and has included a reference to this calculation in the final results of this review.

Comment 8: Petitioner contends that the Department's preliminary calculation of electricity usage by Zhenxing contained critical errors. Petitioner states that the number of kilowatt hours of electricity reported in Zhenxing's records did not reconcile to the actual electricity bills and, as a result, the Department used, as facts otherwise available, the number of kilowatt hours reported on the electricity bills. Petitioner adds that because the August 1996 bill was missing the Department stated that it would use ''the highest monthly amount recorded on the available electricity bills.'' Petitioner contends that the Department used an incorrect number of hours (the number for March 1997) as the facts available for the missing August 1996 number of hours. Additionally, Petitioner states the Department did not use the correct number of hours reported on the July1997 bill in its calculation. Petitioner concludes that the Department should require Respondent to submit all of the actual electricity bills for the record and actual amounts should be used to calculate energy usage.

Respondent argues that the Department's calculation of electricity usage is accurate and that the Department was correct in selecting the March 1997 figure as a surrogate value for August 1996, because the March figure is truly the highest monthly amount recorded on the available electric bills.

Department's Position: We agree with the Respondent in part. Consistent with the preliminary results of this case, as facts available we have used the number of kilowatt hours reported on Respondent's actual electric bills in determining the quantities of electricity used. Additionally, as facts available, we used the highest monthly kilowatt usage recorded on a verified electric bill (*i.e.*, that for March 1997) as the electricity consumption factor for August 1996, for which the electricity bill could not be located.

We agree with Petitioner that the Department made an error in the process of transferring to the energy usage portion of its computer program the verified number of kilowatt hours billed for July 1997. The Department has corrected this error in calculating the final results.

Comment 9: Respondent contends that, with respect to the credit expenses incurred on U.S. sales, the Department should have calculated a daily interest rate using a 365 day year rather than a 360 day year. Respondent cites the Department's Antidumping Manual, which states that the imputed credit costs are calculated using 365 days unless a firm uses 360 days as a credit base rather than 365 days, in which case 360 days would be used in the calculation. Respondent argues that the Department did not state in the preliminary results that the Respondent uses 360 days as a credit base.

Petitioner contends that Respondent's argument that the Department must use 365 days in the U.S. credit expense calculation because it did not state in the disclosure arguments that Respondent uses 360 days as a credit base is incorrect. Petitioner argues that the burden to establish the appropriate credit base was on the Respondent and that Respondent has no standing to contest the Department's use of 360 days instead of 365 days in the credit expense calculation.

Department's Position: We agree with the Respondent. The Department's normal practice is to calculate credit costs by dividing the number of days between shipment and payment by 365, then multiplying by the interest rate and unit price. Only if the record shows that a firm uses 360 days as the credit base do we divide the number of days by 360. In this case there is no indication that either Zhenxing or PHT used a 360 day credit base. Therefore, the Department has corrected its final calculation of imputed credit costs utilizing 365 days rather than 360 days.

Clerical Errors

Petitioner contends that the Department's preliminary calculation of the materials cost of crude sulfanilic acid contained a clerical error which understates the constructed value of the subject merchandise. Respondent agrees with the Petitioner that the Department should correct the clerical error in the calculation of crude sulfanilic acid. We agree and have corrected the calculation of the materials cost of crude sulfanilic acid.

Respondent argues that the Department erred when it used a conversion factor of 2.2 pounds per kilogram rather than the factor of 2.204623 provided in The New International Webster's Comprehensive Dictionary of the English Language for converting values expressed in dollars per kilogram to dollars per pound in the calculation of net U.S. prices and dumping margins for PHT's sales. Petitioner states in its rebuttal brief that it does not object to the Department's use of a more precise factor. The Department has revised its preliminary calculations to reflect the conversion value of 2.204623 pounds per kilogram.

Respondent argues that the Department compounded the preceding error when it attempted to convert values expressed in dollars per kilogram to dollars per pound by multiplying dollars by the incorrect factor rather than dividing the dollars per kilogram by the correct factor. Petitioner does not object to the correction of this error. The Department has corrected the final values to reflect the correct conversion formula.

Final Results of Review

As a result of our review of the comments received, we have determined that the following margins exist:

Manufacturer/producer/exporter	Time period	Margin (percent)
Yude Chemical Industry, Co./Zhenxing Chemical Industry, Co. ...	8/1/96–7/31/97	.29
PRC Rate[1]	8/1/96–7/31/97	85.20

[1] This rate will be applied to all firms other than Yude and Zhenxing, including all firms which did not respond to our questionnaire requests.

* Exporters Yude and Zhenxing have been collapsed for the purposes of this administrative review. *See Sulfanilic Acid from the People's Republic of China: Preliminary Results of Antidumping Administrative Review,* 63 FR 37528 (July 13, 1998).

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Because the number of transactions involved in the review and other simplification methods prevent entry-by-entry assessments, we have calculated exporter/importer-specific assessment rates by dividing the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. While the Department is aware that the entered value of the reviewed sales is not necessarily equal to the entered value of entries during the POR (particularly for CEP sales), the use of the entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales.

The following deposit requirements will be effective upon publication of these final results for all shipments of sulfanilic acid from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) No cash deposit will be required for Yude and Zhenxing as the rate above is de minimis (*i.e.*, less than .5 percent); (2) the cash deposit rate for all other PRC exporters (*i.e.*, the PRC rate) will be 85.20%; and (3) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. 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 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 351.211.

Dated: November 10, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–30741 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1996–1997 Antidumping Duty Administrative Review and New Shipper Review and Determination Not To Revoke Order in Part

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

ACTION: Notice of final results of 1996–1997 antidumping duty administrative review and new shipper review and notice of determination not to revoke order in part of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China.

SUMMARY: On July 10, 1998, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China. In addition, on August 5, 1998, the Department of Commerce published a notice of intent not to revoke the order in part. The period of review is June 1, 1996, through May 31, 1997. Based on our analysis of comments received, we have made changes to the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins are listed below in the section entitled *Final Results of Review.*

We have determined that sales have been made below normal value during the period of review. Accordingly, we will instruct the Customs Service to assess antidumping duties based on the difference between export price or constructed export price and normal value.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Zak Smith or James Breeden, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington D.C. 20230; telephone (202) 482–0189 and (202) 482–1174, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, all references to the Department of Commerce's ("the Department's") regulations are to 19 CFR 353 (April 1997).

Background

On July 10, 1998, we published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on tapered roller bearings ("TRBs") from the People's Republic of China ("PRC"). *See* Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review, 63 FR 37339 (July 10, 1998) ("Preliminary Results"). In addition, on August 5, 1998, we published a notice of intent not to revoke the order in part. *See* Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Notice of Intent Not to Revoke the Antidumping Duty Order in Part, 63 FR 41801 (August 5, 1998). We gave interested parties an opportunity to comment on our Preliminary Results and held a public hearing on September 9, 1998. The following parties submitted comments and/or rebuttals: The Timken Company ("Timken"); Wafangdian Bearing Factory ("Wafangdian"), Luoyang Bearing Factory ("Luoyang"); China National Machinery Import & Export Corp. ("CMC"); Liaoning MEC Group Co. Ltd. ("Liaoning"); Wanxiang Group Corp. ("Wanxiang"); Xiangfan Machinery Import & Export (Group) Corp. ("Xiangfan"); Zhejiang Machinery Import & Export Corp. ("Zhejiang"); Zhejiang Changshan Bearing (Group) Co., Ltd. ("ZX"); Premier Bearing and Equipment, Ltd. ("Premier"); Peer Bearing Company/Chin Jun Industrial Limited ("Chin Jun"); and L&S Bearing.

We have conducted this administrative review and new shipper review in accordance with section 751(a) of the Act.

Scope of Review

Merchandise covered by this review includes TRBs and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order and this review is dispositive.

Changes Since the Preliminary Results

We have made certain changes to our margin calculations pursuant to comments we received from interested parties and clerical errors we discovered since the Preliminary Results.

For All Companies

The changes we have made that affect all companies and the comments discussing these changes are listed below.

Valuation of Certain Steel Inputs—Comments 3, 4, and 20
Valuation of Scrap—Comment 5
Valuation of Labor—Comment 10

Valuation of Overhead, SG&A, and Profit—Comments 14, 15, and 18
Valuation of Brokerage and Handling—Comment 24
Valuation of Boxes for Packing—Comment 35

For Premier

We changed our treatment of those sales for which Premier did not report factors of production (''FOP'') data. As facts available we are using the weight-averaged margin calculated for those U.S. sales for which FOP data were reported. See our response to Comment 26.

We have also recalculated Premier's margin to apply its actual costs for inland freight. See our response to Comment 27.

For CMC

We did not use CMC's most recent database in the Preliminary Results. We have corrected this error for the final results. See our response to Comment 34.

For Chin Jun

In the Preliminary Results, we did not match all of Chin Jun's sales to the appropriate FOP data. We have reviewed our calculations and made the necessary changes. See our response to Comment 37.

Analysis of Comments Received

1. Valuation of Factors of Production

1(a) Material Valuation

Comment 1: Use of Indian Bearing Manufacturers' Annual Reports for Steel Input Values

Timken argues that the values for bearing quality steel used in the production of certain TRB components should be based upon the published annual reports of Indian bearing manufacturers. Timken contends that the Department's stated preference is to use reliable domestic market prices versus equally reliable import prices. Timken cites to Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, 62 FR 61964 (November 20, 1997) (''Carbon Plate'') for this position. Therefore, the Department should use the material costs incurred in India by bearing manufacturers.

Timken argues further that, in comparison to the other values available to the Department, data on Indian bearing manufacturers' raw material costs are more narrowly descriptive of bearing quality steel. Moreover, the Indian bearing manufacturers' price information is contemporaneous with the period of review (''POR''). Timken notes that, while the Department has rejected the use of Indian bearing manufacturers' data in the past, it did so because the available information was from only one bearing producer. That one manufacturer, SKF India, produced more than just bearings and its information did not correspond precisely to the POR. *See* Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order, 62 FR 6189, 6193 (February 11, 1997) (''TRBs VII''). Timken notes that, in this review, the information on the record includes contemporaneous data from eight Indian manufacturers that produce only or almost exclusively antifriction bearings.

Moreover, Timken argues that the materials cost data from the Indian bearing manufacturers are sufficiently detailed to separate the various steel inputs used in the production of TRB components. In support of using the Indian bearing manufacturers' data, Timken contends that the affidavit it submitted from one of its industry experts attests that the same grade of bearing quality steel is typically used for all types of antifriction bearings produced in India and China. Because of this, and the fact that the Indian financial statements are sufficiently detailed, Timken argues that the costs reported by the Indian bearing producers are the best source of surrogate values for bearing quality steel bars used by the Chinese TRB manufacturers.

Respondents disagree, arguing that the Indian producers' steel prices are inherently flawed because several of the producers do not provide separate prices for bar, rod, and sheet steel. Instead, several companies' annual reports provide a single figure for all types of steel used in the factory, including steel used in textile bearings, ball bearings, and other types of products which are not subject to this review. Furthermore, these companies' annual reports could include innumerable types of steel including tube steel, stainless steel, or machined ''green parts.'' Given this fact, the respondents maintain, the Department cannot know what types of steel were included in the material cost calculations.

Additionally, respondents argue that the Indian producers' prices for steel or any other factor input include Indian duties and internal taxes. Finally, respondents point out that Timken's suggestion of using Indian producers' values has been rejected by the Department in two prior reviews. *See* Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results and Partial Termination of Antidumping Duty Administrative Review, 62 FR 6173 (February 11, 1997) (''TRBS VIII'') and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Administrative Review, 62 FR 61276 (November 17, 1997) (''TRBs IX'').

Department's position: We have not adopted Timken's suggestion to use Indian bearing manufacturers' data on steel cost. Of the eight Indian manufacturers cited by Timken, only three break out steel costs according to the type of steel used in the production of bearings (*e.g.,* steel bar, steel sheet, steel strip). Because the other five companies' annual reports do not specify the types of steel used in production, we are unable to accurately value the specific types of steel used in the production of subject merchandise.

For the three companies that do break out their steel costs by broad types of steel, only Asian Bearing separately identifies ''steel bars,'' the steel input used by the Chinese respondents to produce certain TRB components (cups, cones, & rollers). However, because Asian Bearing provides an average cost for steel bar and does not provide specific costs according to the type of bar used (*i.e.,* hot-rolled versus cold-rolled), the Department is unable to accurately value the two types of steel bar used in the production of cups and cones versus that used in the production of rollers. Furthermore, the annual report does not specify whether the steel bar is only used by Asian Bearings in the production of tapered roller bearings or whether it is used to produce other products manufactured by the company. To the extent that Asian Bearings uses hot-rolled and cold-rolled steel bars in different proportions than the PRC TRB producers, Asian Bearings' average cost of steel bars is not an accurate value to apply to the PRC procucers' factors.

Additionally, section 773(c)(1) of the Act states that, for purposes of determining normal value (''NV'') in a nonmarket economy (''NME'') country, ''the valuation of the factors of production shall be based on the best available information regarding the values of such factors * * *.'' As set forth in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews, 61 FR 65527

(December 13, 1996) (''TRBs IV–VI''), TRBs VII, and TRBs IX, the Department's preference is to value factors using published information. We have a longstanding practice of relying, to the extent possible, on public statistics on surrogate countries to value any factors for which such information is available over company-specific data. *See* Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China, 57 FR 21058 (May 18, 1992). In our view, public statistics provide a more representative value for these material inputs than a single company's information.

Because we have other surrogate data that allow us to value hot-rolled and cold-rolled bar individually and because the other data are taken from public statistics (not a single company's information), we are not using the data on materials costs from the Indian bearing manufacturers' financial statements.

Comment 2: Use of Indian Import Statistics for Steel Input Values

Timken argues that, as an alternative to the cost data of the Indian bearing producers, Indian (not Indonesian) import statistics are the next best source from which to value bearing quality steel bar used in the production of cups and cones. First, Timken questions the reliability of the benchmark used by the Department to evaluate, and subsequently discard, Indian import data on bearing quality steel bars. In doing so, Timken contends that the U.S. import statistics used by the Department as an indication of the world market price and, hence, as a benchmark for bearing quality steel are far lower than the world market price for this type of steel. Second, Timken argues that, when compared to other indicia of world market prices (including the costs reported by the Indian bearing manufacturers), the Indian import statistics are a reliable source from which to obtain steel bar values.

Timken supports its argument by noting that the U.S. import statistics for bearing quality steel bar are skewed by large volumes of imports from Japan of carbon steel bar used in the manufacturing of wheel hub units and not in the production of TRBs. Timken notes that, when those imports are removed, the average value of U.S. imports is $889 per MT. Timken states that another reason for the variation in the prices between U.S. and Indian import statistics is the physical difference in the steel itself. Timken argues that the U.S. import statistics include two types of bearing quality steel: case-hardened and through-hardened, which vary significantly in price. Therefore, the U.S. statistics do not exclusively represent the type of steel used by the PRC producers (through-hardened), and they are unreliable as a basis for evaluation of Indian values.

Timken argues that several market prices confirm a benchmark of $900 per MT for 52100 grade steel. Timken notes that the price charged by SKF for sales from its subsidiary Ovako, Timken's own large-quantity prices, and U.S. imports from Sweden confirm the accuracy of a $900 per MT benchmark.

Finally, Timken contends that, measured against a more reliable world benchmark, Indian import statistics for harmonized tariff schedule (''HTS'') category 7228.30 (for hot-rolled steel bars and rods) are on par with world market prices, around $900 per MT. Timken insists that the reliability of the Indian import values is also supported by the values found in the Indian bearing producers' annual reports.

Respondents argue against the use of Indian import data when calculating material costs for steel used in the production of cups and cones. Respondents note that in prior reviews, as well as in the Preliminary Results, the Department correctly determined, after a comprehensive analysis, that the Indian import statistics for category 7228.30 were unreliable.

Respondents contend that Timken's argument that the U.S. import statistics for category 7228.30.20 are skewed is speculative. Respondents refute Timken's attempt to distinguish between different types of steel used by arguing that there is no evidence on the record that the Chinese producers used case-hardened versus through-hardened nor is there documentation on the record as to the price differentials between case-or through-hardened steel or between different grades of bearing steel.

Respondents also disagree with Timken's suggestion that Indian bearing manufacturers' steel costs establish the accuracy of Indian import statistics. Respondents contend that Timken's use of steel bar prices for Asian Bearing at $938 per MT does not support the validity of Indian import data at a price of $1,384 per MT. Furthermore, respondents point out that the information in Asian Bearing's annual report does not indicate if the steel bars used are hot-rolled, cold-rolled, case-hardened or through-hardened, nor is the grade indicated, which Timken has argued is of vital importance when analyzing the reliability of a surrogate or benchmark. If Timken wanted to compare import statistics with actual transaction prices, respondents add, it should look to the actual prices paid by the Chinese respondents themselves. According to respondents, such prices prove that the Indian import prices are not reliable or reasonable surrogate values.

Department's position: In selecting a surrogate value for steel used in the production of cups and cones, the Department has consistently found that data for Indian import category 7228.30 (hot-rolled bars and rods of alloy steel) are unreliable. In examining Indian import statistics, we were unable to isolate bearing quality steel because none of the eight-digit tariff categories within the Indian basket category 7228.30 specifically included bearing quality steel bar. We examined each of the Indian eight-digit categories and found that only the ''Others'' category (7228.3019) could contain the type of bearing quality steel used in the production of cups and cones, in addition to other types of alloy steel. In comparing these data to other market values, including U.S. imports from category 7228.30.20 (the only import category on the record which explicitly contains only bearing quality steel), the Department found the Indian values to be unreliable because the values for these imports were significantly higher (*See* Memorandum to the File: ''Selection of a surrogate country and steel value sources,'' dated June 1, 1998).

The Department used U.S. import data under HTS category 7228.30.2000 (Other Bars and Rod, Ball Bearing Steel, Not Furthermore Worked Than Hot-Rolled or Extruded) as a benchmark for hot-rolled bearing quality steel bar because these data are specific to the type of steel used by the Chinese respondents and are the most precise source of market prices for this product on the record. The use of such a benchmark was upheld on numerous occasions and most recently in *Peer Bearing* v. *United States*, 12 F. Supp. 2d 445 (CIT 1998) (''Peer'').

We do not agree that Japanese values included in the U.S. import statistics create a distortion which would make the U.S. statistics an inappropriate benchmark. Timken's argument is speculative because the affidavit submitted in support of this claim does not definitively indicate that the Japanese imports are not bearing quality steel of the type used in the production of TRBs.

Furthermore, we disagree with Timken's argument regarding the unreliability of U.S. import statistics as a benchmark due to the inclusion of two types of bearing quality (case-hardened and through-hardened) steel which vary significantly in price. There is no definitive evidence on the record indicating that the Indian import statistics do not also include case-hardened and through-hardened steel as well.

Finally, even if we were to accept Timken's argument and disregard U.S. imports from Japan, the Indian import prices of $1,384 per MT remain substantially higher than a potentially re-calculated average U.S. import price of $889. Thus, even if the Department were to accept Timken's argument that an appropriate benchmark for steel used in the production of cups and cones should be $900 per MT, based on SKF's transfer prices, Timken's own steel prices, and U.S. imports from Sweden, the Indian import values are still over 50 percent higher than Timken's proposed benchmark. We therefore continue to base our comparison on the U.S. benchmark.

Comment 3: Reliability of Indonesian Import Statistics

Timken argues that Indonesian import statistics are not reliable as the basis for valuing bearing quality steel bar used by the Chinese manufacturers in the production of cups and cones because (1) there is no evidence of a significant bearing industry in Indonesia that would import substantial amounts of bearing quality steel bar; and (2) the Indonesian tariff category selected by the Department is too broad to be a reliable indicator of bearing quality steel prices.

With respect to the first point, Timken contends that the record in the instant proceeding indicates that there were only two significant bearing producers operating in Indonesia during the POR: PT Logam and PT NSK. Timken argues that, using U.S. import statistics to determine the ratio of bearing units to weight for the size ranges manufactured at PT Logam and PT NSK, it can be deduced that the two companies together produced at most 2,650 MT of bearings. However, Timken maintains, Indonesian imports under heading 7228.30 for the period of January–October 1997 (excluding NME imports) were 24,853 MT. Timken therefore argues that because the Indonesian bearing producers could have used no more than 20 percent of the steel imports for their own production, the remainder of imports under heading 7228.30 must have consisted of non-bearing quality steel.

Timken also argues that Japanese export statistics show that only 2,974 MT of Japan's exports to Indonesia during the POR were exported under tariff categories which might include bearing quality steel bars used in the production of cups and cones. The balance (9,405 MT), Timken argues, consisted of other types of alloy steel bar. Furthermore, looking at the same export statistics, Timken argues that a substantial quantity (1,570 MT) of the total Japanese exports under category 7228.30 consisted of ''other'' alloy steel bar that had a value far below any benchmark estimate of world market prices for bearing quality steel. Therefore, Timken continues, Indonesian imports under heading 7228.30 are not solely or even primarily bearing quality steel.

With respect to the second point, Timken argues that the Indonesian tariff category selected by the Department is too broad and includes a variety of hot-rolled alloy steel bars that are excluded from the corresponding Indian tariff category. For example, Timken states that the Indonesian category includes different qualities of alloy steel bar, including bright bar of alloy tool steel, other bright bar, spring steel, sulphur bearing steel, and tool and die steel.

Respondents argue that Indonesian import statistics are reliable in valuing steel bar because there is ample evidence of a significant bearing industry in Indonesia due to the presence of two large multinational bearing factories and the fact that Indonesia actually exports bearings. Respondents also argue that the Indonesian import values are reliable because they are comparable to the U.S. import values for the same category of steel, unlike the Indian values which are considerably higher.

Respondents also argue that the volume of Indonesian imports under 7228.30 is not too large to be a reliable indicator of bearing quality steel. Respondents argue that Timken has not proven that there is not a significant bearing industry in Indonesia. Respondents also reject Timken's argument that Indonesian imports are too large. Respondents explain that Indonesia, unlike the United States, does not produce much bearing steel, and, therefore, must import most of it.

Respondents state that it is quite possible that both Indonesian and Indian tariff classifications for this input include steel which is not bearing quality. Additionally, respondents contend that Timken has not provided any evidence that the Indian tariff classification 7228.3019 actually includes bearing quality steel. Given these difficulties, respondents believe that the Department correctly used U.S. prices as a benchmark to determine steel values for cups and cones and, thus, cross-check the validity of the Indonesian import statistics.

Respondents dispute Timken's contention that the Indonesian steel category is unreliable because it is overly broad. Respondents state that the Indonesian data are consistent with U.S. prices for bearing quality steel and, therefore, are more reliable than the Indian values. Respondents also maintain that even if the Indian category contained ''bearing quality steel bar used in tapered roller bearings,'' the Department would be under no obligation to use those data unless it determined that these data were reasonable and reliable, which has not been the case.

Department's Position: In determining a value for the steel used in the production of cups and cones, the Department reviewed several data sources, including: U.S., Indian, and Indonesian import statistics, and Japanese export data in order to determine the most accurate value for steel inputs. As explained in comment 2 above, we are not using import data from India, the primary surrogate country, because the import category for hot-rolled bars and rods of alloy steel bars is an ''others'' category which includes several types of steel in addition to bearing quality steel and bearing quality steel cannot be segregated. Moreover, when compared with the U.S. import statistics for the HTS category which only includes bearing quality steel bars and rods, the Indian values are unreliably high.

A similar comparison was made between the U.S. benchmark and Indonesian import statistics. As correctly pointed out by Timken and respondents, the Indonesian import category 7228.30 most probably includes several types of hot-rolled bars and rods of alloy steel, in addition to the bearing quality steel bars and rods used in cup and cone production. However, when compared with the benchmark, the Indonesian data are consistent.

Nevertheless, we were persuaded by Timken's arguments regarding the volume of steel imported into Indonesia versus the volume of bearing quality steel that could actually be consumed in Indonesia. Thus, we have looked more closely at the Indonesian import values. In particular, we examined Japanese data on exports to Indonesia. The Japanese export statistics provide a breakdown of the broad six-digit 7228.30 category into several more narrowly defined eight-digit categories. As Timken correctly points out, these statistics indicate approximately 2,974 metric tons of exports were made to

Indonesia during the POR under Japanese HS code 7228.30.900, ''Bars and Rods, of Other Alloy Steel,'' a category which would include bearing quality steel bar.

Based on our review of these data, the Department has decided to use the Japanese export data to Indonesia for category 7228.30.900 to value steel bar as best available information. In using these data, we have isolated the narrowest category most likely containing bearing quality steel bar.

In our calculation of the average per MT price of the Japanese exports to Indonesia, we excluded one shipment, the value of which was far below the average price, and another shipment, the value of which was far above the average price. On this basis, we calculated an average price of $755 per MT. This value is consistent with the U.S. benchmark of approximately $750 per MT.

Because this Japanese tariff category is the narrowest category which could contain bearing quality steel and because it is consistent with our benchmark, we believe it is the best alternative for valuing steel used in the production of cups and cones. Moreover, we view the data on Japanese exports to Indonesia as an Indonesian value, *i.e.*, it is a value from a country comparable to the PRC. Although the data are from Japanese statistics, we have used those statistics to ''refine'' the Indonesian data in an attempt to make the import category conform better to the input used by the PRC TRB producers.

Comment 4: Steel Input Values Falling Outside the Period of Review

Timken argues that, if the Department relies on Indonesian import statistics, such data should be limited to the POR. Timken contends that, in the Preliminary Results, the Department departed from recent precedent in prior TRBs from the PRC cases in using factor values for a period of time outside the POR.

Respondents contend that Timken's arguments are without merit because the Department routinely uses data which fall outside the POR when necessary to ensure a reasonable surrogate value. In Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews, 63 FR 16758 (April 6, 1998) (''Hand Tools 1998''), respondents state that the Department used Indian import statistics for the period April 1995 through March 1996 to value steel for a POR of February 1996 through January 1997. Respondents point out that there was only an overlap of two months in that case, and the rest of the data were from outside the POR. Furthermore, respondents argue that data from a greater period of time will include a greater volume of imports and, thus, will be less likely to be affected by price fluctuations.

Department's Position: We agree with Timken. Whenever possible, the Department attempts to use data that are contemporaneous with the POR. See TRBs IX, 62 FR at 61283. Since we have sufficient data from the POR to calculate a reasonably accurate value, we do not need to use data from ouside the POR. Therefore, for the final results, the data used to value hot-rolled bars and rods used in the production of cups and cones are contemporaneous with the POR. See Comment 3 above and the Memorandum to Susan Kuhbach; ''Factors of Production Values Used for the Final Results,'' dated November 9, 1998.

Comment 5: Proper Import Category for Steel Scrap Valuation

Timken argues that if the Department uses an import category for alloy steel scrap for purposes of valuing roller scrap, the value used should be based on Indian imports under HTS category heading 7204.29.09, not 7204.29. Timken contends that the Department departed from recent precedent in the Preliminary Results by using category 7204.29. Specifically, Timken notes that in TRBs VII, the Department used the more narrow category of 7204.29.09. Timken further argues that subcategory 7204.29.09 ''waste and scrap of other alloy steel'' includes bearing steel and is, therefore, a more appropriate subcategory from which to value roller scrap.

Respondents argue that the Department properly valued roller scrap steel using the broader six-digit category 7204.29 ''waste and scrap of other alloy steel.'' Respondents contend that Timken offers no evidence that bearing quality steel is included only in the ''other'' eight-digit subcategory (7204.29.09), except for the fact that the Department has used this subcategory in prior reviews. Furthermore, respondents assert that it is incumbent upon Timken to establish the reason bearing quality steel could not be classified under the broader Indian customs category and by using the broader category, the Department ensures that bearing quality steel is included in the data.

Department's position: We agree with Timken that it is appropriate to exclude specific subcategories that do not relate to the type of scrap that would be generated from TRB roller production. In the Preliminary Results, the Department used the broad six-digit Indian import data under category 7204.29 (which included subcategories: 7204.29.01, ''waste and scrap of high speed steel,'' and 7204.29.09, ''others'') to value scrap derived in the production of rollers. We disagree with respondents that in using the broader 7204.29 category the Department ensures that bearing quality steel is included in the data because although both subcategories 7204.29.01 and 7204.29.09 contain scrap derived from alloy steel, subcategory 7204.29.01 (''waste and scrap of high speed steel'') contains the residue from high speed steel which is not the same type of steel used in bearing production. Therefore, subcategory 7204.29.09 (''other'') is the only subcategory under the broader 7204.29 category that could possibly contain scrap generated from bearing quality steel.

Therefore, consistent with prior reviews, we determine that category 7204.29.09 best captures the type of scrap generated from the production of rollers and we have recalculated the surrogate value for this scrap excluding data from subcategory 7204.29.01. However, the Department notes that we continue to use the broad category 7204.29 to value scrap from the production of cups and cones because the Indonesian import data do not provide a further breakdown of this category into subheadings. Therefore, for scrap generated from cups and cone production, we used data under Indonesian import category 7204.29, ''other waste and scrap of alloy steel.''

Comment 6: Scrap Valuation

Timken argues that the values used by the Department for scrap in the Preliminary Results are too high when compared with world market prices for scrap. Timken contends that the PRC bearing producers' scrap consists of low quality turnings, shavings, and chips. Timken states that the scrap values selected by the Department reflect prices of high-quality scrap, not the residue from bearing production. Timken supports its argument by noting that scrap prices reported in the American Metal Market for ''shop turnings,'' a low quality scrap, averaged only $82 per MT delivered, whereas the value the Department selected cup and cone scrap was $150 per MT. Furthermore, Timken argues that U.S. import data, which the Department has insisted are a reliable indicator of world market prices, show that ''turnings'' scrap imported under heading 7204.41.0060 was valued at $104 per

MT during the POR. Timken argues, by comparison with these and other prices, the Indonesian value at $150 per MT is not representative of Chinese scrap values.

Respondents argue that Timken does not provide evidence that the scrap it is using as a basis of comparison is derived from bearing quality steel. Respondents point out that the U.S. import statistics for HTS 7204.29.00 (the tariff heading used to develop Indonesian surrogate data for scrap from cup and cone production), shows a scrap value of $128 per MT. Thus the Indonesian value is consistent with the U.S. import price for alloy steel waste.

Department's position: We disagree with Timken that the import categories selected by the Department to value scrap generated from the production of cups, cones, and rollers do not reasonably reflect the value of scrap generated in the PRC production process. Timken's comparison of the surrogate value used for scrap generated from cup and cone production to other scrap values is the equivalent of comparing apples to oranges. While the PRC cup and cone production process may generate lower quality scrap, it remains bearing-quality steel scrap. Timken, however, is looking at values for scrap from steel which is of a grade and value inferior to that. The HTS category which Timken uses for its comparison (7204.41.0060 ''borings, shovelings, and turnings'' does not include scrap generated from bearing quality steel.

Since steel used in the production of cups and cones is bearing quality steel, the scrap resulting from the production thereof must be of a corresponding grade. For that reason, it is appropriate to use an import category for scrap containing alloy steel, as is the case for import category 7204.29.

Regarding Timken's argument that the scrap values selected by the Department should be adjusted to reflect the low quality of the scrap generated in the Chinese production process there are no further subcategories under 7204.29 which differentiate between different values of scrap within that particular broad category. Of the information contained on the record, only the broad U.S. HTS categories 7204.41 and 7204.49 provide for a break-down of scrap into sub-categories based on the size and quality of scrap. However, these categories do not include bearing quality steel.

The Department has not adjusted the values for scrap from the Preliminary Results, with the exception of the change described in Comment 5 above relating to roller scrap.

1(b) Labor Valuation

Comment 7: Using labor costs reported by Indian bearing manufacturers

Timken argues that the best available information regarding surrogate labor rates is the data provided by the Indian bearing producers' financial statements. In response to the Department's rejection of this information on the basis that it is not possible to allocate direct labor hours to the subject merchandise because these companies produce other products, Timken asserts that the Indian companies produce only or almost exclusively antifriction bearings. *See* Memorandum to Susan Kuhbach: ''Selection of surrogate labor wage rates for preliminary results of review,'' dated June 30, 1998) (''Wage Rates Memo''). Timken contends that neither in this review nor any other segment involving TRBs or antifriction bearings has any party indicated that hourly labor costs within the same company vary according to the type of antifriction bearing produced. Moreover, Timken argues that the data from the International Labor Organization's (''ILO'') *Yearbook of Labor Statistics* (''YLS''), which the Department used in its Preliminary Results, are less reliable because the YLS categories cover broad groups of industries, including companies that do not produce bearings at all.

Wafangdian and Luoyang disagree with Timken and contend that the Indian bearing producers' financial statements show that labor rates vary widely among producers. Furthermore, in contrast to the Chinese data, the Indian financial statements include labor costs associated with selling, general, and administrative expenses (''SG&A''). CMC, Liaoning, Wanxiang, Xiangfan, Zhejiang, and Premier argue that it would be a vast overstatement to use the Indian bearings producers' labor rates because they include the costs of senior management and of labor used in the production of merchandise other than bearings. Moreover, as upheld recently in Peer, the Department should use objective, industry-wide values that represent the industry norm rather than company-specific values because the surrogate producer is not the subject of valuation. Therefore, the Department should reject Timken's argument and continue to apply widely published YLS data for the final results.

Department's position: In order to provide for transparency and predictability, it has been the Department's policy in NME cases to rely, to the extent possible, on publicly available statistical information from the first choice surrogate country to value FOP over company-specific data. *See* TRBs IX. While we acknowledge that such data (e.g., YLS data) cover different types of labor and different products, their public, published nature makes them preferable to financial report data, which could vary dramatically, depending on which producers' data go into the calculation. Therefore, contrary to Timken's assertion, we continue to believe that the use of the Indian bearing companies' data in valuing labor costs could lead to distortive results and the use of public statistical information for valuing labor aids in increasing the transparency and predictability of our calculations.

Comment 8: The Yearbook of Labor Statistics vs. Investing, Licensing & Trading Conditions Abroad

If the Department declines to use company-specific data, Timken argues that the Department should base surrogate labor rates on data from the Investing, Licensing & Trading Conditions Abroad; India (''IL&T'') as it has done in the past three administrative reviews of this case, rather than on the YLS data. According to Timken, the IL&T is preferable for two reasons: (1) it provides separate wage ranges for various skill categories, which the YLS does not, and (2) its data are more contemporaneous with the POR than the YLS data.

In response to the Department's contention that the monthly wages reported by the IL&T are the wages mandated by Indian law and not the wages actually paid, Timken argues that the Department has no basis to assume that the actual wages are different from the wages mandated by the government. Timken also rejects the Department's argument that the IL&T rates should not be used because they do not include fringe benefits paid to workers. Timken argues that the cost of such benefits is easily calculated as exemplified by the Department's past practice.

CMC, Liaoning, Wanxiang, Xiangfan, Zhejiang, and Premier concur with the Department that the wages reported in the IL&T are based on wages stipulated by Indian law rather than a survey of average wages actually paid, and that these wage rates do not include benefits normally added to base pay. Respondents refer to the notation in the IL&T which states that ''these rates are purely indicative; wages vary greatly by state and industry.'' Accordingly, the Department properly applied the YLS labor rate which represents the industry norm and more accurately reflects the cost of labor in India. Furthermore, respondents argue that Timken has overlooked the Department's extensive application of the YLS single average Indian labor rate as a surrogate in recent antidumping reviews involving China.

Wafangdian and Luoyang argue that the IL&T data are based on theoretical values. Given the Department's preference to use actual values, the YLS data are preferable because they are based on actual values collected by government agencies.

Department's Position: We disagree with Timken's contention that the IL&T data represent surrogate labor values preferable to the YLS. Consistent with the Department's practice we have applied a single average labor rate to all reported skill levels. *See*, e.g., Manganese Metal from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 63 FR 12440, 12446 (March 13, 1998) (''Manganese Metal''); Certain Helical Spring Lock Washers from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 62 FR 61794, 61780 (November 19, 1997); Heavy Forged Hand Tools from the People's Republic of China: Final Results of Antidumping Administrative Reviews, 62 FR 11814, 11815 (March 13, 1997). Therefore, the specificity afforded by the IL&T data with regard to different wages for different skill levels is not an important consideration.

Moreover, the Department learned in a past NME case that the reported average monthly wages provided in the IL&T are based solely on wages stipulated by Indian law rather than on any survey of average wages actually paid. *See* Manganese Metal. Given that wages in India vary considerably by industry and region, there is no basis on which to conclude that wages mandated by Indian law reflect average wage rates across the Indian economy. Also, it appears from the text in the IL&T data that the wage rates do not include additional mandatory and voluntary benefits which normally add an additional 40–50% to the base pay. The Department, in choosing a surrogate labor value, seeks to obtain the average fully-loaded cost (i.e., including all costs and benefits in addition to basic wage) of employing labor on as industry-specific a basis as possible. Unlike the IL&T, the YLS provides fully-loaded labor rates for the basic metals industry in India as a whole. Accordingly, we have continued to use YLS for the final results.

Comment 9: Valuation of SG&A and Indirect Labor

Timken argues that indirect and SG&A labor rates are understated and are significantly higher than the wage rates applied to direct labor. Timken claims that all evidence on the record indicates that indirect and SG&A labor consists of highly skilled workers who would receive a much higher compensation, compared to direct production workers who are predominately unskilled. Thus, by using the YLS' single undifferentiated hourly labor rate for all workers in manufacturing, the Department disregarded the significant differences in labor costs among different skill levels for direct workers and different specialized skills for indirect and administrative workers. Timken suggests using the IL&T, which provides labor rates by skill levels, to reflect the higher skill levels of the indirect and SG&A laborers.

Wafangdian and Luoyang reject Timken's contention and suggestion. They argue against using the IL&T because these data are based on estimated differences between skill levels and the evidence on the record does not establish the skill level of indirect laborers involved in the production of the subject merchandise. Therefore, the Department has no reliable means to develop a rate for indirect labor.

CMC, Liaoning, Wanxiang, Xiangfan, Zhejiang, and Premier contend that the Department's valuation of indirect and SG&A labor is consistent with prior reviews and avoids the aberrations that would result if a blended rate was applied to direct labor and separate surrogate skilled rates were applied to indirect and SG&A labor as suggested by Timken. Respondents also comment that Timken's recommendation to apply IL&T data is inappropriate as they contain no basket category for overhead and SG&A labor.

Department's Position: As explained above, we have used YLS data for wage rates. The YLS data provide a single blended labor rate relevant to the fabricated metals industry for India as a whole. This blended labor rate includes direct, indirect, and SG&A labor hours, as well as among skilled, semi-skilled, and unskilled workers. Also, as respondents note, it would be inconsistent to apply a blended rate to direct labor and a separate surrogate skilled rate to indirect and SG&A labor. For these reasons, we have continued to apply the blended rate from the YLS to SG&A and indirect labor for our final results.

Comment 10: YLS Category 381 vs. 382

Timken argues that if the Department decides to continue using the YLS in the final determination, it should apply the wage rate for category 382 (manufacture of machinery, except electrical) rather than category 381 (manufacture of fabricated metal products, except machinery and equipment) as used in the Preliminary Results. Timken notes that subcategory 3829 02 of the United Nations' *International Standard Industrial Classification of All Economic Activities* (''ISIC'') includes the manufacture of bearings, gears, gearing and driving elements. Moreover, in previous administrative reviews where the Department relied upon the YLS, it applied the wage rate for category 382.

Wafangdian and Luoyang state that it is not clear that the Department should use category 382. First, they argue that the ISIC definitions referenced by Timkens may not be used by the ILO. Second, the ISIC definition for subcategory 3829 02 may be limited to driving elements that include bearings for driving elements only, rather than TRBs in general. Absent this information, the Department should continue to use category 381.

CMC, Liaoning, Wanxiang, Xiangfan, Zhejiang, and Premier note that in the 1990–93 reviews, Timken argued that the Department should not use category 382 for purposes of labor costs because the category was ''too broad.'' Respondents argue that Timken cannot have it both ways. Furthermore, respondents state that category 381 has been used in prior administrative reviews of bearing and steel cases and that it accurately reflects the cost of labor engaged in the manufacture of metal products.

Department's Position: We agree with Timken with respect to the use of ISIC major group 382. Upon further review, we found that labor associated with bearing production is included in category 382 and that the labor categories that comprise ISIC major group 381 are not relevant to bearing production. Therefore, the Department has used major group 382 for the final results of these reviews.

Comment 11: Number of Labor Hours Used To Produce TRBs

Timken argues that the verifications conducted by the Department confirm its allegation that labor usage is uniformly understated by respondents. Timken asserts that respondents excluded from their responses any labor hours in which direct labor workers were not actively producing bearings. Timken substantiates its argument by referring to the verifications conducted at Xiangfan and Luoyang in which the Department discovered that labor hours reported were understated due to, respectively, the reporting of standard processing times as opposed to actual hours worked and the omission of downtime from the reported direct labor hours. Timken argues the relevant issue is whether direct laborers would have been paid for idle time or downtime in the surrogate country. As such, respondents should have reported total hours on site as opposed to the hours for which work was paid. Overall, Timken maintains that the Department should increase the number of labor hours for all respondents, using data provided by Timken as ''facts available.'' At the least, for those respondents that reported direct labor hours accurately but omitted idle time, Timken suggests that the Department increase indirect labor hours to account for the missing labor.

CMC, Liaoning, Wanxiang, Xiangfan, Zhejiang, and Premier object to Timken's argument. They contend that Timken is attempting to expand the definition of direct labor beyond its reasonable terms. Noting that Timken's argument to capture ''total hours on-site'' and not merely for which work was paid, would serve to double count the labor dedicated to indirect labor tasks. Therefore, the Department should not engage in Timken's speculative adjustments and should apply the reported and verified labor data from respondents.

Department's Position: It is the Department's practice to value labor by determining the number of hours (including downtime) which are needed to produce the subject merchandise in the facilities in the state-controlled-economy country and applying the surrogate wage rate. At verification, we closely examined respondents' accounting systems to determine how they calculated the labor hours reported in their submissions. As Timken notes, we did find inconsistencies in the labor data reported by Xiangfan and Luoyang. For these companies, we made adjustments in our Preliminary Results to accurately reflect the total amount of actual labor hours worked. Additionally, for Luoyang and Wafangdian we increased the amount of labor hours by the amount of unreported downtime associated with the production of the subject merchandise in order to capture total labor hours. Thus, were we to adjust indirect labor by the amount of idle time as Timken recommends, we would increase the indirect labor percentage and decrease the total direct labor figure by the amount of labor that was reclassified. The net result of this adjustment would yield no difference in the total labor used by these companies to produce the subject merchandise.

In summary, for certain companies we discovered at verification unreported labor hours related to downtime. For these companies, and for those companies for which we were unable to verify certain aspects of the labor hours reported, we corrected the reported hours appropriately. For other companies, the number of labor hours verified. For these companies, no changes were made to the reported figures.

1(c) Overhead, SG&A and Profit

Comment 12: Adjustment to Factory Overhead and SG&A Ratios

Timken argues that the methodology used by the Department in the Preliminary Results deliberately understates factory overhead and SG&A costs and, consequently, NV. This distortion, according to Timken, is due to the fact that the Department used reported materials and labor costs, calculated as the average of the reported costs of eight Indian bearings producers, as the denominator in deriving the surrogate overhead and SG&A ratios. However, the Department then applied these ratios to the lower cost of materials and labor it calculated using other, lower-valued surrogate sources. Timken contends that the Indian producers' materials costs on average are much higher than the Department's calculated total materials costs because the Indian producers use higher cost materials (than those reflected in the surrogate materials values), and because their material costs include high import duties paid in India.

Timken argues that the Department has the legal authority to adjust surrogate overhead and SG&A ratios in order to derive the most accurate dumping margin possible. Therefore, Timken contends, the Department should adjust the denominator used in calculating the overhead and SG&A ratios by the ratio of Indonesian steel and labor values to the eight-producer average materials and labor costs. An alternative methodology, Timken suggests, would be to make a similar adjustment using only the reported costs of Asian Bearing Company (''Asian''), rather than the eight-producer average. This alternative would be reasonable, Timken claims, because Asia Bearing reportedly produces only antifriction bearings and has clearly identified its raw material inputs in its financial statements.

Respondents state that the Department should continue its practice of not making these kind of adjustments to surrogate values. They cite Peer to support the Department's practice of not adjusting surrogates as upheld by the court in previous reviews. Moreover, the Department should not make Timken's proposed adjustment because the record is unclear as to what the exact materials used by the Indian factories are. Therefore, an adjustment would not necessarily improve the reliability of the overhead or SG&A data. Furthermore, respondents contend, the fact that the Indian producers' reported costs are higher merely reflects the fact that these factories are more modern and located in a more industrialized country than are the PRC factories. In fact, argue respondents, the surrogate ratios are already too high and should, instead, be lowered. Finally, respondents state that differences in overhead costs reflect the unique circumstances of each respective company. Adjusting the costs of one to reflect the costs of another would be ''mixing apples and oranges.''

Likewise, respondents urge the Department to reject Timken's alternative proposal of adjusting the surrogate values using Asian Bearing's reported costs only. Respondents argue that the Department has repeatedly rejected the use of this company's data in the past because the company is a ''sick'' company. Moreover, it would be inappropriate to rely simply on the reported costs of one factory where public data, more reflective of the industry generally, are available.

Respondents also object to Timken's proposal to adjust the surrogate value ratios. According to respondents, the Act, requires the Department to value NME factor inputs using the best available information. The Indian producers' costs, as reported in their financial statements, represent the best available information for valuing factory overhead and SG&A. The Act does not, respondents continue, require the Department to substitute specific Indian producers' costs for Chinese FOP data.

Department's Position: We disagree with Timken's contention that an adjustment to our surrogate ratios for factory overhead and SG&A is necessary. Timken has raised this issue in earlier reviews, and our position (which was upheld in Peer) is unchanged.

First, Timken is incorrect in stating that the Department calculated overhead and SG&A costs as a percentage of materials and labor costs. Rather, we calculated these ratios as a percent of direct materials inputs, direct energy inputs, as well as the ''Consumption of Traded Goods.'' Neither direct nor indirect labor was included in either the numerator or denominator of the surrogate ratios.

Second, consistent with our methodology discussed, among other places, in TRBs VIII and TRBS IX (62 FR at 6178 and 62 FR 61287, respectively) although we prefer to base our surrogate values on industry-wide, public information for producers of merchandise under review during the POR, such information is not available for factory overhead and SG&A rates in this review. For these final results, we therefore have based our surrogate values for overhead and SG&A (excluding labor) on the average reported costs of Indian producers of like or similar merchandise. In deriving these ratios, we used the average of the Indian producers' reported data with respect to the numerator (reported overhead and SG&A expenses) and the denominator (direct input costs excluding labor), thus yielding internally consistent ratios. These ratios, when multiplied by our calculated FOP values, constitute the best available information concerning overhead and SG&A expenses that would be incurred by a PRC bearings producers given such FOP data. Timken's recommended adjustment (including the proposed alternative adjustment based solely on Asia Bearing's reported costs) would itself distort the ratios rather than correct the alleged distortions in our calculations.

Third, with regard to Timken's assertion that the reported Indian producers' materials costs include high import duties which have the effect of lowering the calculated surrogate ratios for overhead and SG&A, we note that Timken has not provided any information regarding the amount of import duties that are included, nor has Timken provided a means of identifying and eliminating such duties from our calculations. Although we would not normally include import duties in the surrogate values for materials costs, we have no evidence as to the amount of duties, if any, included in the Indian producers' reported costs. Therefore, we did not deduct an amount for import duties from the reported materials costs for the Indian producers when calculating the overhead and SG&A ratios.

We likewise disagree with the contention of respondents that the Department's calculated costs for overhead and SG&A are, in fact, too high because they are based on the reported costs of Indian producers which are much more sophisticated than the PRC producers. For the reasons enumerated above, the average of the reported costs of the Indian bearings producers represent the best surrogate information available for valuing overhead and SG&A in this review. (As detailed in Comment 14 below, for our final results we have only used the reported cost data of six of the Indian producers.)

Comment 13: Excluding ''Consumption of Traded Goods'' From Overhead Rate Calculation

Timken argues that the Department should exclude the category ''Consumption of Traded Goods'' from the denominator in calculating the factory overhead ratio because this traded goods category includes items which are only purchased and sold—but not produced—by the Indian bearings producers and, therefore, have nothing to do with the producers' manufacturing operations. Timken notes that the traded goods category is listed separately in the producers' financial statements from those products noted as ''manufactured and sold.'' Thus, because traded goods are neither produced directly nor used as inputs in manufacturing other products, the producers do not incur any factory overhead expense for these products.

Respondents argue that ''Consumption of Traded Goods'' should be included in the denominator of the factory overhead ratio. Respondents counter Timken's argument by noting that the Department has specifically rejected Timken's argument for excluding this category in previous reviews. *See,* e.g., TRBs IX. Respondents further contend that Timken is making an implicit argument that other expenses, such as depreciation, warehousing and maintenance expenses, incurred as a result of these traded goods should be included in the numerator of the overhead ratio, whereas the traded goods amount itself should not be included in the denominator. This, respondents state, would distort the costs of these Indian producers and, therefore, is illogical.

Department's Position: The Department has addressed this issue previously in TRBs VIII and TRBs IX (62 FR at 6182 and 62 FR at 61288, respectively). In both cases, we rejected Timken's argument that the ''Consumption of Traded Goods'' category should be excluded from the denominator of the overhead ratio. As we explained in TRBs IX, these traded goods are not overhead expenses but, instead, reflect the common practice of manufacturers of purchasing finished and semi-finished goods to meet their clients' demand. The Indian bearings producers incur the expense of, inter alia, purchasing and warehousing these products. Because these purchased goods are an integral portion of the costs of goods sold, they are ordinary business expenses that we cannot ignore. Therefore, for the final results we have included ''Consumption of Traded Goods'' as a component of the denominator of the factory overhead ratio.

Comment 14: Excluding Asian Bearing Company and National Engineering Company

Respondents argue that the Department should not include the companies Asian and National Engineering Company (''NEI'') among the list of Indian bearings producers utilized for calculating factory overhead, SG&A and profit ratios. Respondents contend that, in past reviews, the Department has deliberately excluded data from Asian on the grounds that it is a ''sick'' company (as defined under Indian law) and that its accounting practices are suspect. Respondents further contend that the calculated overhead and SG&A ratios for Asian and NEI are clearly aberrational and, as such, not reflective of the Indian bearings industry. Respondents also argue that NEI's data are clearly extraordinary and, as such, should not be used. Therefore, respondents argue, the Department should exercise its discretion to exclude aberrational data by basing its overhead, SG&A and profit calculations on the reported data for the remaining six Indian bearing producers only.

Timken counters that Asian's data should not be excluded merely on the grounds that it is a ''sick'' company. In fact, Timken argues, having sick company status has enabled Asian to reduce certain overhead and SG&A costs such as interest and depreciation charges. There is, moreover, no evidence or reason to believe that any of Asian's other direct, overhead or SG&A costs would be affected by the company's sick status. Furthermore, Timken continues, there is no justification for excluding a sick company from a sample of companies meant to reflect the industry at large. Any industry or country has a certain number of non-profitable companies, and this should be reflected in the industry-wide data. Finally, the fact that Asian's interest expense accounts for a slightly higher portion of its total costs is not a basis for excluding this company.

With regard to NEI's data, Timken argues that simply because the overhead rate of this company is different from that of the other companies does not establish that NEI's rates are unreliable or aberrational. Timken argues that if by this logic NEI's data were aberrational, then another Indian producer FAG should also be excluded on the grounds that its ratios are extraordinarily low. Timken, citing TRBs VIII, notes that the Department acknowledges that differences in various companies' overhead and SG&A ratios can be due to differences in the input materials used, the payment of import duties on the input materials, the capital structure of the company, and the company's accounting practices. Thus, in this case, argues Timken, the differences in the ratios of the various Indian bearings producers could result from the fact that some of them are more fully integrated and, therefore, have higher capital costs. Given these differences in company structure and practice, Timken argues, taking an average of all eight of the Indian producers' reported costs yields the most reasonable mix of different practices, and most fairly serves as a surrogate.

Department's Position: We agree with respondents that data for Asian and NEI should be excluded from the average of reported costs for Indian bearings producers. In the Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof From the People's Republic of China, 56 FR 67590, 67594 (December 31, 1991), the Department stated that, ''we believe that Asian is not an appropriate surrogate primarily because the Auditor's Report notes that the financial statements are not presented in accordance with the generally accepted accounting principles (''GAAP'') of India.'' In this review, the Auditor's Report included with Asian's 1996–97 financial statements expresses a clear reservation about how certain interest expenses (with their corresponding effects on depreciation and other expenses) have been reported, noting that the methodology is not in accordance with accounting principles recommended by the Institute of Chartered Accountants of India. The Auditor's Report also notes that Asian continues to be a ''sick'' company as defined by India's Sick Industrial Companies Act. Likewise, the auditors' endorsement of NEI's 1996–97 Financial Statements, as contained in the Auditor's Report, includes qualifications regarding, inter alia, the company's treatment of various overhead and SG&A expenses.

With regard to Timken's arguments concerning Asian and NEI, although we recognize, as respondents argue, that the overhead and SG&A ratios for Asian and NEI generally are higher than those of the other six producers, this apparent difference is not our primary reason for excluding the Asian and NEI data. Rather, we have excluded the data for Asian and NEI in calculating surrogate overhead, SG&A and profit ratios primarily because, according to the Auditor's Reports, the methodology used in recording and reporting the financial condition of these two companies appears, in certain instances, to be inconsistent with the methodology (i.e., Indian GAAP) used by the remaining six companies. Given these significant differences, it would be incongruous to combine the reported data of all eight companies.

Comment 15: Excluding Excise Duties From the Overhead Calculation

Respondents argue that the Department improperly included excise duties in the overhead costs of the Indian producers on which the Department based its calculation of the surrogate overhead ratio. Respondents argue this is incorrect because excise duties are not paid on exported merchandise but, rather, only on goods consumed in the domestic market. The Act, respondents note, states that the cost of materials should be ''exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used.'' Respondents further argue that it has been the established practice of the Department to exclude Indian excise taxes in other proceedings. *See,* e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the PRC, 61 FR 19026, 19039 (April 30, 1996) (''Bicycles from the PRC''). Respondents also notes that the Department, in the preamble to the current regulations, states that '' * * * Congress has now established conclusively that dumping comparisons are to be tax-neutral in all cases.''

Timken counters that the Indian producers report that this excise tax is paid on finished products and, therefore, does not apply to raw materials. Thus, Timken contends, this tax is not within the plain language of the Act. Moreover, according to Timken, the fact that some of the Indian producers reported excise tax while others did not indicates that this amount represents a net excise tax paid, with any refunded amount already deducted.

Timken continues by arguing that the record only indicates that such taxes are merely ''refundable,'' and does not explicitly state that the excise duties were, in fact, actually recovered. They state that there is no basis to assume that all excise taxes would be refunded, that all Indian producers obtained or could obtain refunds, or that PRC producers, operating in a market economy, would not pay any taxes on finished goods. Timken concludes by arguing that the Department's past practice of excluding ''refundable'' taxes in PRC cases is at odds with Department practice in market economy cases where the respondent is required to show that the refundable taxes were paid on material inputs that were used in the manufacture of subject merchandise, and that these taxes were actually recovered from the government.

Department's Position: We agree with respondents that the excise tax reportedly paid by the Indian bearings producers should not be included in the overhead cost calculation. In the final determination of Bicycles from the PRC (61 FR at 19039), we stated that '' * * * it is the Department's practice to use, if possible, tax exclusive values as surrogates in NME cases. * * * Moreover, we have found in previous cases involving products from India that excise duties and/or taxes paid by Indian producers were refundable to the producer by the Indian government. * * * Therefore, we have not only removed the amount of excise duty and/or tax from TI's financial data, but also from the financial data of the other Indian producers, where possible, which we have used to calculate surrogate percentages.''

With regard to Timken's arguments, we note that the fact that some of the Indian producers do not appear to be reporting excise tax paid may only reflect that they have not separately itemized that expense in their statements; it does not necessarily indicate, as Timken contends, that this represents net excise tax paid, exclusive of any refunded amount. Moreover, there is no evidence on the record to suggest that these Indian companies did not recover the refundable taxes. In order, therefore, to be consistent with the intent of the Act and general Department practice, in these final results we have excluded the excise tax, where it has been specifically identified, from the reported costs of the Indian bearings producers.

Comment 16: Excluding ''Net Loss (Gain) on Fixed Assets Sold''

Respondents contend that the Department improperly included the category ''Net Loss (Gain) on Fixed Assets Sold'' as an element of overhead. This category should be excluded from overhead expenses, respondents argue, because these losses (gains) are incurred independent of manufacturing or selling activities.

Timken counters that, contrary to the assertion of respondents, it is reasonable to expect that the sales of fixed assets by companies, whose primary business included bearings, would be related to the production or sale of bearings. Losses arising from the sale of these assets reflect the fact that depreciation charges for these assets in prior years were inadequate to fully account for the decline in value over the assets' life. Likewise, losses on assets employed in sales or generally in support of corporate operations reflect the same adjustment to depreciation. Thus, these losses represent overhead costs tied to bearings manufacture. Timken further notes that in previous reviews, the Department has included these losses in our overhead calculation.

Department's Position: We agree with Timken that the ''Net Loss (Gain) on Fixed Assets Sold'' should be included in the calculation of the overhead ratio. The Department has addressed this issue previously in TRBs VIII. In that review, we stated that losses ''* * * incurred in selling fixed assets used to manufacture merchandise clearly [are] related to manufacturing activities.'' *See* TRBs VIII, 62 FR at 6184. For that reason, in our final results of this review we have continued to included this category as an overhead expense.

Comment 17: Excluding ''Other Expenses'' From Factory Overhead and SG&A Calculations

Respondents argue that the category ''Other Expenses'' or ''Miscellaneous Expenses'' noted in several of the Indian producers' financial statements should not be included in the overhead and SG&A calculations because there is insufficient information to determine whether all of these expenses are related to the production of TRBs. Moreover, assuming all expenses are related to TRBs production, there is insufficient information to determine the extent to which these should be properly categorized as overhead, SG&A or some other expense. Respondents continue by noting that some of these ''other'' expenses, such as ''auditors' fees,'' ''director's fees,'' and expenses related to ''Agricultural & Dairy Farm,'' which are specified in some producers' financial statements are clearly irrelevant to TRBs production in the PRC and, as such, should be excluded.

Respondents also argue that it is improper to allocate ''other'' and ''miscellaneous'' expenses to only overhead and SG&A because these may also include expenses related to labor or raw materials. Thus, argue respondents, these unspecified expenses ought to be allocated equally to raw materials, labor, overhead and SG&A.

Timken counters that it is unreasonable for respondents to suggest that the Department exclude an entire category of expenses on the grounds that its description is not sufficiently precise to either relate the expenses directly to the production of TRBs, or to classify them as overhead or SG&A. In allocating these other expenses to overhead and SG&A, absent specific information as to the cost category of each expense the Department has relied, as in the past, on its general expertise of accounting practices and principles. Moreover, Timken continues, the financial statements of many of the producers do, in fact, provide considerable detail for a large portion of these other costs. The line-item detail that is available for some of the expenses confirms that these expenses are properly classified as either overhead or SG&A. Thus, absent specific evidence to the contrary, the Department is correct in categorizing these costs as overhead and SG&A.

Department's Position: We agree with the Timken that the ''other'' and ''miscellaneous'' expenses have been properly classified as part of factory overhead or SG&A (with the exception of those expenses detailed in the following comment below). We recognize the fact that there is limited information regarding any of the expenses included in these catch-all categories. However, most of the financial statements do include separate itemized categories for raw materials consumed, and payments to and provisions for employees. Contrary to the assertion of respondents, there is no reason to believe that materials and labor costs are also included in the ''other'' or ''miscellaneous'' expense categories. Consequently, all expenses not identified as direct material inputs, direct or indirect labor, energy, or other costs which the Department values separately (such as packing, freight, etc.) have been included in either the overhead or SG&A category. Where it was unclear whether an expense would be more properly categorized as overhead rather than SG&A (or vice-versa), we generally allocated the expense amount evenly between the two categories.

With regard to respondents' contention that several of the expenses included as overhead or SG&A are not relevant to TRB production in the PRC, and with regard to the issue of surrogate values for overhead and SG&A in general, we cite to the Department's position on these matters in Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Republic of Romania; Final Results and Recission in Part of Antidumping Duty Administrative Review, 61 FR 51427 (October 2, 1996) (''TRBs from Romania''). In that review, we stated, ''[t]he Department generally does not dissect the overhead rate on a surrogate country and apply only components relevant to the producer. It is generally not possible to break the surrogate overhead value into its individual components at a level of detail that would be necessary to value each individual component of the NME producer's overhead. * * * Rarely, if ever, will it be known that there is an exact correlation between overhead expense components of the NME producer and the components of the surrogate overhead expenses. Therefore, * * * the Department normally bases normal value completely on factor values from a surrogate country on the premise that the actual experience in the NME cannot meaningfully be considered. Accordingly, Department practice is to accept a valid surrogate overhead rate as wholly applicable to the NME producer in question.'' *See* TRBs from Romania, 61 FR at 51429. For these reasons, we have continued to include these other expenses in our overhead and SG&A calculations for the final results.

Comment 18: The Double-Counting of Certain Expenses

Respondents argue that, in the Preliminary Results, the Department included in its surrogate overhead or SG&A calculations expenses related to packing, freight, discounts and rebates, commissions, and brokerage. Because these types of expenses are also valued directly (individually) elsewhere in the Department's FOP calculation, they have been double-counted. For the final results, respondents argue that these types of expenses should be excluded from the overhead and SG&A calculations.

Department's Position: We agree, in part, with respondents that, where certain costs have been separately calculated elsewhere in the FOP calculations, they should not be included in overhead or SG&A. Consequently, where it was possible to distinguish expenses directly related to packing, freight, discounts and rebates, and brokerage from other expense categories in the Indian producers' financial statements, we have excluded those expense items from the overhead and SG&A calculations for the final results.

We disagree with respondents' contention, however, that commissions should likewise be excluded. These are standard selling costs and, as such, are properly categorized under SG&A. Whether PRC producers have commissioned sales staff is irrelevant. As discussed in the Department's Position under the previous comment, the Department does not tailor surrogate overhead or SG&A rates to match the circumstances in the NME country. We note that in our Preliminary Results, where commissions were identified separately in the Indian producers' financial statements, we incorrectly included these as labor costs. For these final results, however, we have included all commission expenses, where possible, as part of SG&A only.

Comment 19: Offsetting Interest and Other Expense With Interest and Other Income

Respondents argue that the Department should offset the interest expense and other expenses which it has included in the surrogate overhead and SG&A calculations with interest revenue and other revenues, respectively.

Timken counters that there is no evidence in the financial statements that the interest or other income earned by these Indian producers relate to their TRB operations. Timken argues the Department's practice with regard to market economy cases is to offset expenses only in cases where the corresponding income is short term in nature and earned on investment activity related to the subject merchandise.

Department's Position: We agree with the Timken that interest expense and other expenses should not be offset with interest and other income. There is no evidence on the record to indicate that these expense and income categories are related to each other and to the production of TRBs. For the final results, therefore, no offsets to interest and other expenses have been made.

2. Market Economy Inputs

For those TRB producers which purchased steel from market economy suppliers and paid in hard currency, the Department, in its Preliminary Results, valued steel inputs at actual prices paid in market economy currencies. However, consistent with our past practice, we used surrogate data for TRB producers who purchased imported steel inputs from trading companies and paid in renminbi. Because this methodology was subject to court challenge (*see Olympia Industrial, Inc.* v. *United States*), Slip Op. 98–49 (CIT 1998) (''*Olympia II*''), we have reexamined our approach for the final results, and considered the comments received from interested parties as discussed below.

Comment 20: Use of Market Economy Inputs

Timken argues that the Department should not regard the prices paid by respondents for imported steel inputs as ''market prices.'' In the final results, Timken urges the Department to reject the import values used in the Preliminary Results because they are not reliable indicators of market economy prices for steel inputs.

In support of its position, Timken maintains that the statute directs the Department to use the prices in one or more market economies which (1) are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise (*see* section 773(c)(4) of the Act). Thus, Timken argues that, unless the Department determines that the country of origin is comparable to China and is a significant producer of the subject merchandise, it would be unlawful to use import values that do not meet these two criteria.

Furthermore, Timken believes that it is likely that steel exported to the PRC is dumped or otherwise atypical of the price normally charged in the country of origin. Therefore, Timken argues, the price of steel imported to the PRC does not reflect the price charged in the exporting country, as required by the statute. Moreover, Timken contends that the use of a steel price from a country that is not at a level of economic development comparable to that of the PRC will distort the Department's NME methodology. Timken also argues that if the Department were to use import prices, it must reject values that do not represent arm's length sales, that do not reflect commercial quantities, or that otherwise do not reasonably reflect the actual cost of production in a comparable market economy country.

Timken also states that in *Olympia II*, the CIT reviewed its earlier remand order which instructed the Department to examine whether the import data submitted by Chinese trading companies were reliable. Timken argues that the Court did not require the Department to automatically accept import prices from market economy suppliers as factor values without examining whether such values are reliable and adequate in accordance with section 773(c)(4) of the Act.

Wafangdian and Luoyang argue that the Department should apply the three-pronged test set forth in the *Olympia II* remand to test the reliability of the reported import prices (*i.e.*, value and volume of steel imports, type and quality of the imported steel, and consumption of imported steel by the NME producers; *see Olympia II*, Slip Op. 98–49 at 7). Specifically, Wafangdian and Luoyang suggest that the Department apply the test on a shipper-by-shipper basis by determining if (1) the trading company imports the steel, (2) the steel is used to produce the subject merchandise, (3) the value of the steel is reliable and non-aberrational, and (4) the quantity is meaningful. These respondents urge the Department to use actual prices wherever possible in the interest of fairness, accuracy, and predictability.

In response to Timken's arguments, Wafangdian and Luoyang contend that the statute is silent on the issue of prices on inputs imported into an NME. However, they argue that section 351.408(c)(1) of the new regulations directs the Department to use the price paid to the market economy supplier in cases where an FOP is imported from a market economy supplier and paid for in hard currency. Citing section 773(c)(1) of the Act, which requires the Department to value the FOP data using ''the best available information regarding the values of such factors in a market economy country,'' these respondents claim that the best available information is the price actually paid for the input. They agree with Timken that aberrational prices should be rejected, but argue that as long as the transaction is bona fide, the price should be presumed to be valid.

With respect to Timken's argument that the Department should investigate whether the prices of imported inputs are reliable, Wafangdian and Luoyang assert that it is clear from *Lasko Metal Products, Inc.* v. *United States*, 43 F.3d 1442, 1443 (Fed. Cir. 1994) (''*Lasko*''), that the import price is the best available information if the input is used to produce the subject merchandise and the import price is not aberrational. The same standard should be applied to situations where the NME importer is a trading company, which is the case in *Olympia II*, according to Wafangdian and Luoyang.

Another group of respondents believes that Timken's argument with respect to the use of actual import prices involves a strained interpretation of the statute. They say that Timken is wrong in asserting that the statute requires that the country of origin must be at the same level of economic development as the importing country and that the exporting country must be a significant producer of the merchandise. These respondents argue that the statute grants the Department broad discretion to determine which is the best available information as demonstrated by long-established Department practice and court rulings. These respondents urge the Department to use the actual import prices paid by trading companies in market economy currencies.

Department's Position: The Department interprets section 773(c)(1) of the Act as authorizing a narrow exception to the statutory preference for selected surrogate country data. This exception applies only when the NME producer sources an input from a market-economy source and pays in a market-economy country currency. The court upheld this interpretation in *Lasko*. However, nothing in the *Lasko* decision alters the statutory mechanism for selection of surrogate values. Thus, as the court acknowledged in *Olympia Indus., Inc.* v. *United States,* Slip. Op. 97–44 (April 10, 1997) (''*Olympia I*''), import prices that pass through a trading company are not actual costs to the producer but rather, an alternative surrogate value. Specifically, the court states in *Olympia II*, ''As with the surrogate country data, it may be true that the trading company data does not represent actual prices paid for the steel input by the PRC * * * manufacturers. And, in this sense, the use of trading company data would also create a fiction'' (*see Olympia II,* Slip Op. 98–49 at 12). Therefore, the question is whether trading company import prices, as alternate surrogate data, are preferable to surrogate data from a market-economy country that is a significant producer and at a level of comparable economic development.

To assess the reliability of the Chinese trading company's steel prices, we have examined the factors outlined in the *Olympia II* remand: (1) the value and volume of steel imports, (2) the type and quality of the imported steel, and (3) consumption of imported steel by the NME producer. The record evidence demonstrates that the Chinese trading company purchased steel from a market-economy country, in a convertible currency. This company used a portion of the steel in its own production of TRBs but also sold a portion of the steel to an unrelated manufacturer. Based on the invoices for the imported steel, and the specifications of the steel sourced by the factories domestically, we conclude that the imported steel is of the same grade and has the same range of sizes as steel that the NME manufacturers used to produce the subject merchandise.

Regarding the value of the steel imported by the trading company, we found that the price paid by the trading company is within the range of prices created by the actual steel prices paid by PRC producers and our surrogate value. Consequently, the price paid by the PRC trading company is not aberrational. With respect to volume and consumption of steel by the NME producer we note that the amount of steel imported by the trading company was significant and that the NME producer in question consumed a significant amount of imported steel to produce the subject merchandise.

Based on the above, we are using the trading company import steel price as surrogate data for those companies that actually used the imported steel.

3. Exchange Rates

Comment 21: Exchange Rates

Wafangdian and Luoyang contend that the conversion of foreign-currency denominated surrogate factor values using the POR average exchange rate is contrary to the Act which, they argue, requires conversion based on the date of sale. Section 773A(a) of the Act states, ''[i]n an antidumping proceeding * * * [the Department] shall convert foreign currencies into United States dollars using the exchange rate in effect on the date of sale of the subject merchandise. * * *'' These parties state that conversion of factor values based on date of sale would be consistent with Department practice, citing Hand Tools 1998 and Notice of Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China, 62 FR 9160 (February 28, 1997) (''Brake Drums and Rotors'').

Timken counters that the use of daily exchange rates to convert foreign-currency denominated surrogate values is ''falsely accurate'' when the surrogate values themselves are annual averages of factor utilization rates and surrogate values. For example, Timken states that steel values are based on average import statistics for the POR, labor rates are based on annual YLS data, and overhead, SG&A and profit are based on annual reports. Timken states that section 773(c)(1) of the Act requires that the Department use ''the best information regarding the values of such factors * * * considered to be appropriate by the [Department],'' and that the Statement of Administrative Action (''SAA'') (at 841) states that the Department's practice is to ''ensure that the process of currency conversion does not distort dumping margins.'' Consequently, Timken contends that if the best surrogate values are annual averages then conversion of those values to dollars requires an average exchange rate. Timken asserts that, by applying an average exchange rate to the average surrogate values, Commerce is in fact applying a daily exchange rate.

Alternatively, Timken states that if respondents had desired a daily exchange rate they should have provided daily production factors. Timken states that if the Department decides that a daily rate should be used then, to avoid distortion, it should attempt to compute daily or, at least, weekly or monthly surrogate values.

Department's Position: In NME cases, the underlying data for valuing factors are often expressed in multiple currencies, including U.S. dollars. In fact, many of the factor values, such as the surrogate values obtained from certain import data and wage rates, will already be expressed in dollars. Because of this, the Department typically does not calculate NV in terms of the domestic currency of the surrogate country. Instead, individual factor values that are expressed in currencies other than dollars, are converted to dollars using an average POR exchange rate. Consequently, NV is expressed in dollars and no currency conversion, pursuant to section 773(A) of the Act, is necessary.

We acknowledge that the Department converted certain surrogate factor values denominated in foreign currencies to U.S. dollars on the date of sale in Hand Tools 1998. However, we disagree with respondents that it is the Department's practice to put foreign currency denominated surrogate values in U.S. dollars by using a date of sale exchange rate. In fact, the Department has had a long-standing practice of converting such values using a POR/POI average exchange rate. Both prior to and since the implementation of the URAA, it has been the Department's practice to convert POR/POI-contemporaneous foreign currency surrogate values to U.S. dollars using the average POR/POI exchange rate (*see*, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium and Nitrided Vanadium From the Russian Federation, 60 FR 27957 (May 26, 1995); and the public versions of the surrogate valuation memoranda for the following PRC final determinations: Certain Cased Pencils, Polyvinyl Alcohol, Natural Bristle Paint Brushes and Brush Heads, Brake Drums and Brake Rotors [1], Collated Roofing Nails, Pure Magnesium, and Manganese Metal, dated October 31, 1994, March 22, 1996, September 20, 1996, February 21, 1997, May 15, 1997 and January 14, 1998, and March 9, 1998, respectively. See Memorandum to File, ''Placement of

[1] Despite respondents' assertion to the contrary, surrogate values were converted to U.S. dollars based on a POI average exchange rate, as is clear in the calculation memorandum.

Prior Surrogate Valuation Memoranda on Record,'' dated November 9, 1998 (''Prior Surrogate Valuation Memoranda''). Additionally, since the decision in Hand Tools 1998, the Department has continued to use POR-average exchange rates in other cases (*see*, e.g., Porcelain-on-Steel Cooking Ware From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review and Intent Not To Revoke Antidumping Duty Order, In Part, 63 FR 27261 (May 18, 1998)), continuing the practice of using average exchange rates as detailed in that cases preliminary determination at 63 FR 1434, 1436; and the public version of the calculation memorandum dated August 7, 1998 for Sebacic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 63 FR 43373 (August 13, 1998). See Prior Surrogate Valuation Memoranda.

Finally, when read as a whole, along with the SAA and various court decisions, we do not believe that the Act requires the conversion of surrogate values to U.S. dollars using a daily exchange rate. The SAA states that the URAA ''*tracks existing practice*, the goal of which is to ensure that the process of currency conversion does not distort dumping margins.'' *See* SAA at 841. As detailed above, the use of POR/POI average exchange rates to convert surrogate values has been the Department's general practice, with origins prior to the implementation of the URAA. Given the language of the SAA, we disagree that the intent of section 773A(a) of the Act was to change the Department's practice in this regard. Additionally, the courts have given great deference to the Department in applying section 773(c)(1) of the Act in resolving any variance between Department practice and other provisions of the Act in NME cases. *See*, e.g., Lasko. Section 773(c)(1) states that in NME cases ''the valuation of the factors of production shall be based on the best available information,'' and the Department has stated that it has an obligation to choose surrogate values that emphasize ''accuracy, fairness, and predictability''. *See* Final Determinations of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans From the People's Republic of China, 56 FR 55271, 55275 (October 25, 1991). Since, as Timken notes, we are converting POI/POR average values, use of a POI/POR average exchange rate may enhance the accuracy of our calculations.

In addition, there are other instances where the Department uses an exchange rate other than one tied to a sale date. For example, when computing NV based on CV in a market economy case, the Department does not require respondents in antidumping proceedings to convert foreign currency purchases of input products based on the date of a sale, but rather on the date the currency transaction took place. In the portion of section 773A(a) dealing with transactions in the forward market there is an indication that the intent of this section was to make currency conversions based on the date of sale only if the conversion is ''directly linked to an export sale under consideration.'' This indicates that this section does not address currency conversion for inputs used in the production process. Instead, this provision seems to clearly address conversion of NV, circumstance of sale adjustments, and actual movement charges associated with sales. We therefore are continuing to use an average currency conversion rate in this case.

4. Freight

Comment 22: Ocean Freight

Respondents argue that the Department should use ocean freight rates provided by the Federal Maritime Commission (''FMC'') rather than rate quotes received from private shipping companies when calculating ocean freight costs. Respondents propose that the Department use these values because they represent actual costs and fulfill the Department's statutory obligation of calculating dumping margins as accurately as possible. Respondents suggest that the shipping company rate quotes are uncorroborated and potentially inflated. Because the FMC data are numerically closer to freight costs derived from IM–145 data, respondents suggest that they are the accurate and appropriate values to use. Citing Carbon Plate, respondents state that the Department has consistently relied on actual costs and not theoretical quotations in dumping cases.

Timken suggests that respondents' data, a 1995 Federal Maritime Commission & Company Quotes report for 20- and 40-foot containers shipped from China to the United States, do not reflect actual costs for the POR. Timken points out that there is neither evidence supporting the FMC data as actual costs, nor evidence showing that the Maersk rate quotes the Department used in its Preliminary Results were inflated. Timken finds that the name of the FMC report, specifically the phrase ''Company Quotes,'' suggests that the FMC information does not reflect actual costs. Timken finds that the Maersk rate quotes are contemporaneous with the POR, where the FMC data are not, and that the FMC data do not provide any advantage over the source used for the Preliminary Results. Furthermore, Timken concludes that the Maersk quotes also contain surcharges and adjustments which may not be included in the FMC data, making the FMC data more appealing to respondents. Timken notes that in Carbon Plate, IM–145 data were used because the values published in *Shipping Intelligence Weekly* were ''average earnings'' and rates for only the most efficient vessels. Maersk data are neither averages nor limited to certain vessels. Timken also points out that the Maersk data are more detailed and not affected by transfer prices which are possibly included in the values reported in respondents' exhibit.

Department's Position: We agree with Timken and have continued to use the Maersk rate quotes for valuing ocean freight. The Maersk rates quotes reflect actual ocean freight costs that Chinese TRB producers would face, are contemporaneous with the POR, and include all the applicable surcharges incurred for the shipment of TRBs.

Comment 23: Application of Sigma

Wafangdian and Luoyang argue that the Department disregarded the Court's decision in Sigma Corporation v. United States, 117 F.3d 1401 (Fed. Cir. 1997) (''Sigma'') by applying the SG&A, overhead and profit ratios to the inland freight component of input costs. Additionally, Wafangdian and Luoyang argue that the Department's practice of limiting the amount of inland transportation included in the surrogate valuation of an imported input to the shorter of the distance between the port and the factory or the distance between the domestic supplier and the factory is inaccurate in certain circumstances. Specifically, Wafangdian and Luoyang state that, if the distance is shorter than 25 kilometers, then this distance already is included in the surrogate value and, therefore, should not be separately valued. Furthermore, Wafangdian and Luoyang argue that the Department aggravates this double-counting by applying overhead, SG&A and profit to the surrogate value calculation.

With respect to respondents' first point, Timken replies that Sigma does not address the issue of application of overhead, SG&A and profit rates to the inland freight component of input costs, nor does it require the Department to distort these rates as suggested. In fact, Timken states, when the Department adds the freight component prior to the application of these rates, it takes into account the fact that the denominator of the rates includes such freight costs, as admitted by respondents.

Department's Position: We agree with Timken that Sigma does not address the issue of the application of the overhead, SG&A and profit ratios and the appropriateness of applying these ratios to the freight component of input costs. Given that the Indian financial statements include these costs, which are included in the denominator of the ratio calculations, it is appropriate to apply these ratios to the freight component of input costs. We also disagree with respondents' second point that the inland freight from the Chinese port to respondents' factory is included in the import price which we are using as the surrogate value. Rather, it is clear from the purchase invoice that the input was sold to respondents under ''Cost and Freight—Chinese Port'' terms. As a result, we have followed our normal practice of including in the surrogate a valuation of the imported input which is the shorter of the distance between the port and the factory or the distance between the domestic supplier and factory (*see*, e.g., Natural Bristle Paintbrushes and Brush Heads From The People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review, 62 FR 60228, 60230 (November 7, 1997)).

Comment 24: Surrogate Value for Brokerage and Handling

Wafangdian and Luoyang argue that the Department made an error when it calculated the surrogate value for brokerage and handling in the Preliminary Results. The FOP memorandum used in the Preliminary Results indicates that the Department used brokerage and handling data for the period August-October 1993. In order to calculate the corresponding value for the POR, the Department used an inflator which was obtained by dividing the average wholesale price index (''WPI'') for the POR by the WPI for 1993. Wafangdian and Luoyang claim that the surrogate value used was for the period October 1993-January 1994 (not August-October 1993). Furthermore, they argue, as a denominator, the Department should use the average WPI for the few months corresponding to the source data and not the average WPI for the entire 1993.

Timken responds that the Preliminary Results clearly indicates that the Department used surrogate brokerage and handling data for the period August–October 1993. Therefore, Timken argues, the Department should either continue to use the average WPI for the entire 1993 or use the WPI for the period August–October 1993.

Department's Position: We agree with respondents that the average WPI for 1993 is unnecessarily broad. Moreover, we note that the FOP memorandum used in the Preliminary Results incorrectly stated that the source data were for the period August–October 1993. The dates of the data should correspond with the shipping dates, which are actually October 1993 to February 1994. Therefore, to calculate the most accurate value for brokerage and handling, we have inflated the monthly source data by the corresponding monthly WPI. In addition, when making these adjustments, we noted that all observations for each shipment date were identical, but some shipments had more observations than others. Consequently, using all observations (as was done in the Preliminary Results) gives disproportionate weight to certain sales. Therefore, we determine that it is more appropriate to use only one observation from each shipment date. We then calculated a simple average of those values.

5. Miscellaneous Issues

Comment 25: Valuation of Electricity Inputs

Timken contends that the Department should change its methodology for valuing electricity and use average electricity rates for large industries in the areas where Indian bearing producers are located rather than a simple average of Indian regional electricity prices for large industries. Timken states that it is an abuse of discretion for the Department to adopt a less accurate national average rate for India and ignore the available evidence specific to the production of bearings where there is (data of) greater precision on the record. Timken dismisses the Department's precedents in Notice of Final Determination of Sales at Less Than Fair Value; Polyvinyl Alcohol From the People's Republic of China, 61 FR 14057, 14062 (March 29, 1996) (''PVA'') and Manganese Metal (63 FR at 12446) as to valuation of electricity as irrelevant because those cases dealt with the relationship between energy prices and the location of the industry, and specifically, with the reasons for regional differences in electricity prices. Timken argues that the Department should select an industry-specific surrogate value for electricity as it does for material inputs such as bearing quality steel, labor and other capital costs including overhead, SG&A, and profits ratios so that its surrogate valuation is predictable and rational.

Respondents argue to the contrary that the Department should continue to apply average Indian electricity rates for the purpose of the final results. Respondents state that the Department has a well-settled practice of using electricity rates from the country as a whole as a surrogate value and cites recent cases. *See*, e,g., PVA, 61 FR at 14062; Manganese Metal, 63 FR at 12446; Notice of Preliminary Results of the Antidumping Duty Administrative Review of Chrome-plated Lug Nuts from the People's Republic of China, 63 FR 31719, 31722 (June 10, 1998) (''Lug Nuts''); and Notice of Preliminary Results of Antidumping Administrative Review of Sulfanic Acid from the People's Republic of China, 62 FR 25917, 25919 (May 12, 1997) (''Sulfanic Acid'').

Department's Position: We agree with respondents. The Department established a practice of using a simple average of country-wide Indian state electricity rates as a surrogate value for Chinese electricity rates unless a party has shown that a company can be located only in a specific state (*See* Manganese Metal, 63 FR at 12446, PVA, 61 FR at 14062, Sulfanic Acid, 62 FR at 25919 and Lug Nuts, 63 FR at 31722.) Timken's argument of using industry and state-specific electricity rates as a surrogate value was considered and rejected in PVA, 61 FR at 14062, wherein we stated, ''* * * [t]here is insufficient basis to assume that the electricity rates from the Indian states selected by Timken are more appropriate for surrogate value than electricity rates in other states. Other factors beside production level, such as methods of generation and transmission as well as overall demand, are determinants of price. Since there is not sufficient information on the record to weigh the appropriateness of using one Indian state's electricity rates over those in another, we have based the surrogate value on the simple average of all Indian state rates. * * *'' In Manganese Metal, 63 FR at 12446, we again rejected a similar industry and state-specific electricity rates argument and explained that, ''* * * [t]here is insufficient evidence on the record from which to conclude that the developments affecting the electricity prices of Indian ferromanganese necessarily reflect conditions in which the PRC manganese metal producers likewise must operate. * * * In lieu of concrete evidence that the higher state-specific rates are directly a result of the presence of manufacturers of identical or comparable merchandise, Departmental practice in past cases has been to take a simple average of electricity rates for the surrogate country as a whole.'' In the instant case, there is no evidence on the record to show that there is a direct or causal relationship between the presence of TRB producers in a locale and the electricity rates for that locale.

We disagree with Timken's assertion that the Department is abusing its discretion by using a simple average of country-wide electricity rates as a surrogate value. Electricity prices are subject to a number of influences specific to the location of the plant. These include: local market conditions, state intervention, methods of transmission, distribution of power generation and privatization. Simply put, there are more variables to consider and weigh than the location of the industry because of the nature of the electricity industry in India. Thus, it is fair and reasonable to use a simple average for large industries in all Indian states as a surrogate value for electricity rates.

Comment 26: Premier has acted to the best of its ability

Premier argues that the Department's use of adverse facts available in the Preliminary Results, because it was unable to supply information from its unaffiliated suppliers, was not appropriate; nor was it consistent with the Department's past treatment. Premier argues that, despite its incomplete questionnaire response, it has cooperated to the best of its ability. Premier notes that it has provided evidence of its attempts to contact its suppliers in order to acquire FOP data and has provided, in several cases, its suppliers' letters refusing to provide these data. Premier suggests that because this concrete evidence is now on the record, Premier has proven that it acted to the best of its ability in cooperating with the Department in this review and therefore, should not be adversely treated in the application of facts available. According to Premier, its actions in this review are identical to those in TRBS VIII where Premier cooperated with the Department, yet was unable to provide FOP data for all of its sales. The Department should, therefore, not resort to an adverse rate for those sales not covered by the FOP data supplied by Premier. Premier suggests that the Department use a methodology like that used for Chin Jun in the Preliminary Results of this review, where the Department applied a weighted average margin calculated from those sales for which acceptable data were available to sales not represented by FOP data.

Timken insists that the Department rely upon adverse facts available when substantial data are missing for a particular respondent, as in the case of Premier. Timken cites TRBs IV–VI showing that the Department applied ''best information available'' to determine margins for Peer and Chin Jun when FOP data were not available. The Department used the company specific dumping margin from the previous POR for these sales. Timken also cites *National Steel* v. *United States*, 870 F. Supp. 1130, 1136 (CIT 1994) where the Court of International Trade found that the ''quality and completeness of the data, and not Peer's cooperation are the determining factors in establishing the appropriateness of the partial BIA rate.''

Timken suggests that the Department is not required by the statute to analyze the reasons why a respondent was not able to provide the information requested by the Department. According to the Timken, citing *Koyo Seiko Co., Ltd.* v. *United States*, 905 F. Supp. 1112, 1116–17 (CIT 1995), the Department has the authority to ''resort to the highest rate assigned * * * in a previous review as partial BIA for those sales.'' Timken suggests that the Department should create an incentive for Premier's suppliers to come forward in the future by applying an adverse rate to those sales that are not represented by FOP data. According to Timkin, if the Department applies Premier's calculated margin to sales that are not represented by FOP data, this only encourages producers to sell through exporters that have separate rates. If an adverse rate was applied to these producers, it would encourage them to come forward in the future and supply the factor values.

Timken further contends that Premier has not shown that it has acted to the best of its ability to provide factor information in this review. Timken reminds the Department that Premier has participated in all of the Department's reviews of this case. According to Timken, Premier's efforts to prove that it attempted to provide the factors data bring into question the accuracy and completeness of Premier's responses. Timken notes that there were inconsistencies between the lists of suppliers in various responses and suggests that this could reflect additional insufficiencies in Premier's sales listings. Timken suggests that the Department reject all of Premier's partial responses and apply adverse facts available to all of Premier's sales.

Department's Position: We are continuing to apply a partial adverse facts available rate to Premier's U.S. sales that are lacking corresponding FOP data. Section 776(b) of the Act provides that an adverse inference may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information. Furthermore, section 353.37 of the Department's regulations states that ''[I]f an interested party refuses to provide factual information requested by the Secretary or otherwise impedes the proceeding, the Secretary may take that into account in determining what is the best information available'' (54 FR 12784).

In this case, we determine that Premier has not acted to the best of its ability. Premier was unable to provide letters from all of its suppliers responding to Premier's request for information. Instead, it relies heavily on an affidavit from its marketing executive stating that he had contacted the companies listed in Premier's response. Moreover, Premier submitted contradictory information as to whom its suppliers were, correcting misinformation only after repeated questions by the Department. Taking into account that this is the tenth review of the antidumping order on TRBs from the PRC, and that Premier has participated in several reviews, we find that Premier has not acted to the best of its ability.

For these reasons, the Department finds that applying adverse facts available is appropriate. Therefore, as in the Preliminary Results, we are applying a rate of 25.56 percent ad valorem to Premier's U.S. sales for which factors data was not provided.

Comment 27: Premier's Inland Freight Expenses

Premier claims that its inland transportation was provided by market-economy companies. Upon the Department's request, Premier clarified information in its response concerning the use of market economy freight forwarders to transport goods from China to the United States. Premier contends that these freight forwarders are Hong Kong companies and were paid in hard currency. Premier insists that the Department should apply the actual market economy inputs to value these factors for the final results.

Department's Position: Premier has reported that its freight forwarding expenses, including inland freight charges, were paid in hard currency. Absent evidence on the record to the contrary, for purposes of these final results, the Department has recalculated Premier's margin to apply its actual costs for inland freight.

Comment 28: Revocation of Order for Luoyang

Luoyang argues that the Department should revoke the order with respect to TRBs produced and/or exported by Luoyang. Luoyang states that it provided the Department with the necessary certifications stating that it had not sold subject merchandise as less than fair value during the current review period and would not do so in the future, and agreed to reinstatement of the order if goods were subsequently sold at less than NV. Luoyang states that after corrections are made, it will receive a zero dumping margin in the final results.

Timken argues that Luoyang does not qualify for revocation because it received a margin of 2.35 percent in TRBs IX and received a margin of 1.82 percent in the Preliminary Results. Therefore, according to Timken, Luoyang does not currently have three consecutive years of no dumping, as required by the Department's regulations (*see* 19 CFR 353.25(a)(2)(i)), to qualify for revocation, even though it did have three consecutive years of no dumping prior to the 1995–96 review.

Department's Position: As Timken points out, Luoyang received a margin of 2.35 percent in the preceding review. Given that Luoyang does not meet the Department's first criterion for revocation, namely that at the time of revocation that a respondent have three years of no sales of subject merchandise at less than fair value, we are not revoking the order with respect to this respondent.

Comment 29: Luoyang's Imported Steel Surrogate Value

Timken notes several apparent discrepancies between Luoyang's FOP database, the verification report, and the Department's calculation memorandum, with regard to Luoyang's use of imported steel.

Luoyang states that any inconsistencies in its database were clarified prior to verification, confirmed by the Department at verification, and reflected in the Department's Preliminary Results.

Department's Position: We agree with Luoyang that our Preliminary Results reflected the clarifications to its FOP database submitted prior to verification, and that these clarifications were verified by the Department. Therefore, no adjustments were necessary.

Comment 30: Luoyang's Well and Circulation Pump Electricity

Luoyang contends that the Department improperly included the electricity Luoyang used to power its well and water circulation pumps as part of its electricity factor usage. Luoyang argues that, because this electricity is used to provide water as a coolant for the turning and grinding stages of production and cannot be directly linked to production output, it should be included in overhead rather than considered as a direct cost. Consistent with the Department's decision in TRBs VIII that power which cannot be directly linked to production output be incorporated as overhead, Luoyang states that the electricity used by the well and circulation pumps should be included in overhead.

Timken counters that section 773(c)(3) of the Act requires that the Department separately identify, quantify and value all ''energy and utilities consumed'' in producing subject merchandise. Timken contends that, given the statutory language, there is no basis for allocating electricity usage between direct costs and other activities. Furthermore, Timken states that there is no apparent method for splitting the energy costs of the eight Indian producers between direct input costs and overhead, nor does Luoyang offer any such methodology.

Department's Position: As explained in the Preliminary Results, we separately quantified and valued the energy consumed in producing the subject merchandise separate from overhead. This means that we did not include the Indian producers' energy in calculating overhead, and our overhead ratio is net of energy. Therefore, it is appropriate to value Luoyang's electricity as a direct cost.

Our treatment of electricity in this case can be distinguished from TRBs VIII, where we incorporated the consumption of energy as part of overhead. The present case is distinct because we have been able to directly quantify and value energy as a factor input. Furthermore, as Timken has noted, it would be impossible to split the energy costs of the Indian producers between direct input costs and overhead. Thus, any attempt to make the adjustment Luoyang has recommended, would lead to inaccurate overhead and SG&A ratios. Therefore, we have not altered our calculation methodology for these final results.

Comment 31: Factor Value for Cages for Luoyang

Luoyang alleges that, in the Preliminary Results, the Department erroneously applied an imported steel input value for one of the TRB components instead of applying the scrap value. Luoyang argues that it reported that a particular TRB component was manufactured with scrap sourced within the factory. Luoyang explains that, rather than selling the scrap derived from the production of non-subject merchandise, Luoyang instead reuses the recovered scrap in the manufacture of a TRB component. Accordingly, Luoyang maintains, the factor value of the reused scrap steel should equate to the scrap value and not the full imported steel value.

Timken argues that Luoyang does not use ''scrap'' to manufacture certain components, but Luoyang, as described in the verification report, uses the same piece of steel sheet to cut patterns for components of different sizes. Timken contends that these smaller pieces cannot be defined as ''scrap'' because they are new steel material. Furthermore, Timken maintains that scrap is not sold in uniform cut-to-size batches and that the raw material used for both the larger and smaller components was steel sheet, not scrap.

Department's Position: We agree with Timken. As set forth in TRBs IV–VII we have valued scrap-steel inputs as new steel because the scrap input reported by Luoyang was not purchased as scrap, but rather, Luoyang paid the full price for this steel. According to Luoyang's verification report, the pattern for the TRB component in question is cut from the same material that a larger non-subject merchandise component is made from. *See* Memorandum to Susan H. Kuhbach: ''Verification of Factors of Production for Luoyang Bering Corporation (Group) Company Limited'' dated June 18, 1998. Therefore, this component was made from first quality steel sheet and not from scrap as Luoyang maintains. Furthermore, as indicated in the verification report, the steel sheet that remains when the larger component is cut, is never recorded as scrap nor is it entered into the scrap warehouse. Therefore, we valued the steel input for this component from the market-economy source reported by Luoyang and not as scrap.

Comment 32: Reported Amounts for Pallets for Luoyang

Luoyang maintains that in the Preliminary Results the Department correctly concluded that the pallets used to ship the subject merchandise were reported in kilograms. Luoyang contends that it provided the requested per-unit amount of packing materials in its revised factors of production database. Therefore, Luoyang argues that the Department should continue to use these data for the final results.

Timken argues that based on Luoyang's confusing descriptions of the data, it is unclear whether the pallets were reported in kilograms, on a per-kilogram basis, or on a per-unit basis, and that the Department must ascertain what was actually reported and make any necessary correction to the final results.

Department's Position: We agree with Luoyang. In the Preliminary Results, we assumed that Luoyang's usage of pallets was reported on a per kilogram basis. Upon further review, the pallets used by Luoyang were reported in kilograms. Therefore, we are not changing our treatment of Luoyang's pallet valuation.

Comment 33: Imported Steel for Tolled Bearing Production

Respondent CMC argues that it appears the Department erroneously applied surrogate values rather than the actual costs of imported steel which was used by one of its suppliers through a tolling arrangement. Citing a memorandum issued in conjunction with the Preliminary Results (*see* Memorandum to Richard Moreland: ''Market Economy Inputs,'' dated June 30, 1998), CMC notes that the Department indicated that it would use the price actually paid for this imported steel when calculating CMC's margin in the Preliminary Results. CMC asks the Department to use the imported price in its final results.

Department's Position: Contrary to CMC's assertion, we did, in fact, use the price of the steel imported by CMC to value steel for this producer. We have modified the description in the log of the margin program to more clearly reflect the use of this value.

Comment 34: Imported Steel for One of CMC's Suppliers

Timken argues that the Department should not apply an imported steel value to reported steel factors for one of CMC's suppliers, as CMC provided no evidence that this steel was imported. Further, Timken notes that it appears that the Department did not use the most recent database submitted by this supplier in its preliminary calculations.

Respondent CMC agrees with Timken that the Department used the wrong data submission in its preliminary calculation. CMC argues, however, that the Department should use the value of imported steel value for this factor.

Department's Position: We agree that we erred in our Preliminary Results by using the wrong database, and we have corrected this for the final results. We have continued to value steel factors for this producer using the surrogate value for steel. CMC did not provide any support for its claim in earlier responses that this supplier used imported steel, and, further, CMC reclassified this steel as ''domestic'' in its most recent data submission.

Comment 35: Surrogate packing costs for boxes

In our Preliminary Results, we calculated surrogate values for the packing materials using Indian import statistics. Wafangdian argues that the Indian import statistics for wooden crates (which is one of several types of packing material used by TRB producers and exporters) included an aberrational figure, the cost of crates imported from Germany. According to Wafangdian, the cost of the German crates was not only extraordinarily high compared to other imported crates, but also substantially higher than Indonesian surrogate values for packing materials. Wafangdian, therefore, asks the Department to exclude the German value from its calculation of the surrogate packing cost.

Timken agrees that the calculation of the surrogate packing cost is erroneous, but not for the reason claimed by Wafangdian. Timken notes that, while the Department's calculation is in ''Rs. per kilo,'' Indian import data for wooden crates are recorded in kilos only for April and May 1996, whereas later import statistics are recorded in number of units. Therefore, Timken says, the Department should use only the import data for the period April-May 1996.

Department's Position: We disagree with Wafangdian that the German prices should be excluded from the calculation. Because we do not have specific information on the sizes of the boxes being imported, it is inappropriate to selectively exclude certain imports from the calculations. Therefore, we believe it is appropriate to use the average value for all wooden crates within HTS category 4415.1000 in its entirety.

We agree with Timken with respect to the reporting of the value in the Indian import statistics and we acknowledge that the numbers reported for April 1996—March 1997 are labeled as number of units. However, we question whether this was simply a labeling error, given the inconsistent treatment of Nepal's exports to India. In that case, the data did not change from one reporting period to the next; however, in one instance the figures are reported in kgs and in another they are reported in units. Moreover, it is not appropriate to only use April and May 1996 data, as Timken has suggested, since these data are outside of the POR. Therefore, to confirm that we are using data reported only in Rs/kg, we have obtained the same Indian import statistics for HTS category 4415.1000 for the months June 1996 through January 1997. The monthly statistics for June 1996 through January 1997 are all reported in kgs. Therefore, for these final results, we used only data that are clearly labeled as Rs/kg and we calculated a POR average of 116.31 Rs/kg. Since these data are contemporaneous with the POR, no inflation adjustment is necessary.

Comment 36: Surrogate for boxes used by Wafangdian

Wafangdian argues that the Department should use Indonesian import statistics to value its wooden boxes (HTS 4415.10110), rather than Indian import statistics, because this figure is more specific to the plywood boxes used by Wafangdian during the POR.

Department's Position: We have not adopted Wafangdian's suggestion. There is no evidence on the record that indicates that the boxes used by Wafangdian are more like the boxes covered by Indonesian import statistics than those covered by Indian import statistics. Therefore, we have continued to use Indian import statistics for valuing the wooden boxes used by Wafandian.

Comment 37: Inappropriate use of facts available

Chin Jun claims that the Department inadvertently resorted to facts available for models where FOP data were available. Chin Jun argues that these models were produced by ZX and that the Department, therefore, should use ZX's FOP data.

Department's Position: We agree with Chin Jun that ZX's FOP data should be applied to the appropriate corresponding U.S. sales. We have reviewed our calculations and made the necessary changes.

Final Results of the Review

As a result of our analysis of the comments we received, we determine the following weighted-average margins to exist for the period June 1, 1996, through May 31, 1997:

Manufacturer/exporter	Margin (percent)
Wafangdian	0.00
Luoyang	3.20
CMC	0.03
Xiangfan	33.18
Zhejiang	0.05
Wanxiang	0.00
Liaoning	0.02
Premier	7.21

Manufacturer/exporter	Margin (percent)
Chin Jun	0.04
ZX (the new shipper)	0.00
PRC Rate	33.18

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. With respect to export price sales for these final results, we divided the total dumping margins (calculated as the difference between NV and export price) for each importer/customer by the total number of units sold to that importer/customer. We will direct Customs to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer/customer for the review period will be almost exactly equal to the total dumping margins.

For constructed export price sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer/customer. We will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of that importer's/customer's entries during the review period. While the Department is aware that the entered value of sales during the POR is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR.

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of TRBs entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the PRC companies named above will be the rates shown above, except that for exporters with de minimis rates, i.e., less than 0.50 percent, no deposit will be required; (2) for all remaining PRC exporters, all of which were found not to be entitled to separate rates, the cash deposit will be 33.18 percent (the proceeding's highest margin); (3) for non-PRC exporters, Premier and Chin Jun, the cash deposit rates will be the rates established above; (4) for non-PRC exporters of subject merchandise from the PRC, other than Premier and Chin Jun, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26(b) 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 the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d) or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–30739 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–054; A–588–604]

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; Final Results of Antidumping Duty Administrative Reviews

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

ACTION: Notice of Final Results of Administrative Reviews

SUMMARY: On July 10, 1998, the Department of Commerce (the Department) published the preliminary results of the 1996–97 administrative reviews of the antidumping duty order on tapered roller bearings (TRBs) and parts thereof, finished and unfinished, from Japan (A–588–604), and the antidumping finding on TRBs, four inches or less in outside diameter, and components thereof, from Japan (A–588–054) (*see 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; Preliminary Results of Antidumping Duty Administrative Reviews,* 63 FR 37344 (July 10, 1998) (*TRB Prelim*)). The review of the A–588–054 finding covers one manufacturer/exporter of the subject merchandise to the United States during the period October 1, 1996, through September 30, 1997. The review of the A–588–604 order covers one manufacturer/exporter and the period October 1, 1996, through September 30, 1997. 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 our preliminary results of review.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Charles Ranado or Stephanie Arthur, Office of AD/CVD Enforcement III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–3518 or 6312, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are in reference to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to 19 CFR part 351 (April 1, 1998).

Background

On August 18, 1976, the Treasury Department published in the **Federal Register** (41 FR 34974) the antidumping finding on TRBs from Japan, and on October 6, 1987, the Department published the antidumping duty order on TRBs from Japan (52 FR 37352). On

October 2, 1997 (62 FR 51628), the Department published the notice of ''Opportunity to Request Administrative Review'' for both TRB cases. Two respondents, Koyo Seiko Co., Ltd. (Koyo) and NTN Corporation (NTN), requested administrative reviews.[1] We initiated the A–588–054 and A–588–604 administrative reviews for the period October 1, 1996, through September 30, 1997, on November 26, 1997 (62 FR 63069). On July 10, 1998, we published in the **Federal Register** the preliminary results of the 1996–97 administrative reviews of the antidumping duty order and finding on TRBs from Japan (*see TRB Prelim* at 37348). The Department has now completed these reviews in accordance with section 751 of the Act, as amended.

Scope of the Review

Imports covered by the A–588–054 finding are sales or entries of TRBs, four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. This merchandise is classified under Harmonized Tariff Schedule (HTS) item numbers 8482.20.00 and 8482.99.30. Imports covered by the A–588–604 order include TRBs and parts thereof, finished and unfinished, which are flange, take-up cartridge, and hanger units incorporating TRBs, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. Products subject to the A–588–054 finding are not included within the scope of this order, except for those manufactured by NTN Corporation (NTN). This merchandise is currently classifiable under HTS item numbers 8482.99.30, 8483.20.40, 8482.20.20, 8483.20.80, 8482.91.00, 8484.30.80, 8483.90.20, 8483.90.30, and 8483.90.60. These HTS item numbers and those for the A–588–054 finding are provided for convenience and Customs purposes. The written description remains dispositive.

The A–588–054 review covers TRB sales by one TRB manufacturer/exporter, Koyo Seiko Ltd. (Koyo). The review of the A–588–604 case covers TRB sales by one manufacturer/exporter, NTN Corporation (NTN). The period of review (POR) for both cases is October 1, 1996 through September 30, 1997.

[1] While two additional respondents (NSK Ltd. and Fuji Heavy Industries) requested reviews in both the A–588–054 and A–588–604 cases, both later withdrew their requests in a timely manner (*see TRB Prelim* at 37344).

Analysis of Comments Received

We received case briefs from NTN and the petitioner, The Timken Co. (Timken), on August 10, 1998. We received rebuttal briefs from the same two parties, as well as from Koyo, on August 17, 1998. All comments in the case and rebuttal briefs we received are addressed below in the following order:

1. Adjustments to Normal Value
2. Adjustments to United States Price
3. Cost of Production and Constructed Value
4. Miscellaneous Comments Related to Level of Trade, the Arm's-Length Test, Sample Sales, and Model Matching
5. Clerical Errors

1. Adjustments to Normal Value

Comment 1: Timken argues that as 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, Final Results of Antidumping Duty Administrative Reviews*, 63 FR 2558 (January 15, 1998) (*95/96 TRB Final*), there is once again a discrepancy between the total home market billing adjustments reported in NTN's computer sales tape and the total figures reported in its supplemental questionnaire response. Thus, Timken contends that NTN's sales tape is inconsistent with its questionnaire response and, given these inconsistences, the Department should adjust the sales tape to conform to the questionnaire response.

NTN claims that there is no merit to Timken's claim because there is no discrepancy between NTN's sales data and its reported figures. NTN argues that the alleged discrepancy is solely the result of Timken's manipulation of NTN's data and that there is no evidence to show that its sales data and its questionnaire response are inconsistent. Furthermore, NTN notes that in its May 19, 1998 supplemental response it has supplied information requested by the Department reconciling the billing adjustment totals reported on its computer tape and in its volume and value worksheet. Since there is no reason to doubt the accuracy of these data, NTN contends, the Department should accept NTN's home market billing adjustments as reported.

Department's Position: We agree with the petitioner. In the *95/96 TRB Final* Timken argued that because there were certain inconsistencies between NTN's computer tape home market billing adjustment total and the billing adjustment figure reported in NTN's volume and value worksheet, the Department should modify accordingly the reported adjustments to be consistent with those appearing on the volume and value reconciliation worksheets (*see 95/96 TRB Final* at 2563). For the current review, as Timken has indicated, these same inconsistencies exist between NTN's reported data and its volume and value reconciliation worksheets (provided as Exhibits A–2a through A–2c of NTN's May 19, 1998 supplemental questionnaire response). NTN attempts to explain such inconsistencies in its supplemental response at page 4 and at Exhibit A–2c, using a hypothetical example which purportedly demonstrates why it claims the totals reported on the sales tape and the totals reported on the volume and value worksheet are not necessarily equal. However, NTN's attempt to reconcile these totals does not sufficiently explain the significant discrepancies between them. Therefore, for these final results, we have adjusted NTN's reported home market billing adjustment total to be consistent with that on its volume and value worksheet. For a detailed description of our methodology, please refer to the proprietary version of the Department's Final Analysis Memorandum for NTN, dated November 9, 1998.

Comment 2: Timken claims that Koyo's indirect selling expenses (ISEs) have been allocated improperly. Timken maintains that Koyo reported selling expenses that could not be identified to a particular market or general and administrative expenses (G&A) on the basis of ''various factors, such as number of employees working in the offices responsible for sales to the different markets, etc.'' *See* Timken case brief at 11, quoting Koyo section D questionnaire response dated February 11, 1998 at 22. Timken asserts that despite the Department's additional request for a detailed explanation of this allocation, Koyo instead submitted exhibit D–22 to its supplemental response which does not explain Koyo's allocation of its expenses between home market and export sales. In fact, Timken believes that exhibit D–22 demonstrates that Koyo allocated home market and export ISEs in a radically different fashion, and that this exhibit indicates that export selling expenses have not been properly allocated to export sales. Timken claims that despite repeated requests, Koyo has failed to provide information justifying its expense allocation. For these reasons Timken maintains that the Department should substitute an allocation of these expenses between home market, U.S., and third-country exports that is supported by the record, such as allocation on the basis of cost of goods sold (COGS) or sales value.

Koyo responds that Timken fails to identify any flaws in its allocation methodology; rather, Timken simply asserts that there must be something wrong because Koyo's methodology results in the allocation of different proportional amounts of individual ISEs to home market and export sales. Koyo believes that the information Timken has provided demonstrating that, as a percentage of COGS, the ratio of the amounts of certain expenses allocated to export sales and home market sales varies among expenses, should be rejected based on the fact that Koyo's methodology is well established and has been used in numerous antifriction bearings (AFBs) and TRB reviews.

Koyo also claims that even if petitioner's proposal would lead to more accurate results, ''it is unconscionable for petitioner to wait this many years before coming forward with a proposed revision to a well-established and repeatedly accepted methodology.'' Koyo rebuttal brief at 5. Koyo argues that at some point in time the interest in predictability in the methodologies used to calculate margins outweighs the quixotic desire to achieve more precise results. *Id.* Koyo asserts that this can be seen in *Shikoku Chemicals Corp.* v. *United States* 795 F. Supp. 417, 421 (1992), in which the Court of International Trade (CIT) stated: ''[a]t some point, Commerce must be bound by its prior action so that parties have a chance to purge themselves of antidumping liabilities.'' *Id.*

Furthermore, Koyo asserts that its selling expense allocation methodology has been subject to numerous verifications by the Department in both the AFBs and TRBs reviews in which the Department has never found any distortions with its methodology nor any reason to reallocate its ISEs. Koyo cites to a recent CIT decision (*Timken Co.* v. *United States,* Slip Op. 98–92 (July 2, 1998) (*Timken 98–92*)), in which the CIT noted that ''the Department may rely on the knowledge of a respondent's records and database obtained from past reviews in determining the reasonableness of its reporting methodologies in a current review.'' Koyo rebuttal brief at 6. Koyo claims that the Department's 1995–96 verification report, which Koyo attaches as an exhibit to its rebuttal brief, clearly lays out the details of its methodology. Koyo asserts that, as can be seen from exhibit 3 of this report, different expenses are allocated to export and home market sales on a different basis, which Koyo believes is ''more relevant to the particular expenses involved, and thus provides a far more reasonable basis for allocation than simply allocating everything on the basis of COGS or sales value, as suggested by Timken.'' *Id.* Koyo believes that it is not surprising, given the detail of its allocation bases, that its methodology would lead to different ratios for the different expense types allocated to export and home market sales. Thus, Koyo claims that its methodology is sufficiently accurate to account for differences in the manner in which the different categories of ISEs were incurred. In addition, Koyo notes that the ratios Timken generated as a percentage of COGS are understandably different, given that in selling for export, Koyo ''deals almost exclusively with a single entity in each country. . . while in selling in the home market Koyo must deal with a broad range of customers.'' *Id.* at 7. As a result, the ISEs allocated to one market would understandably differ from those allocated to another.

Finally, Koyo argues that Timken's assertion that ''apparently * * * Koyo has limited the expenses attributed to export sales to those attributable to its export sales department'' is wrong. Koyo rebuttal brief at 7, quoting Timken case brief. Koyo believes that Timken reaches this conclusion based on the fact that the heading ''export department'' appears at the top of the chart listed in exhibit D–22 of its supplemental response. However, Koyo claims that this heading describes the offices to which the expenses were allocated (*i.e.,* to third-country sales and U.S. sales, all of which are within the ''export department''), not the offices from which the expenses were obtained. *Id.* at 8. Further, Koyo asserts that as can be seen from verification Exhibit 3 of its 1995–96 home market verification report, the expenses were obtained from all of Koyo's offices, ''including its branch offices throughout Japan, its head office in Osaka, and the departments within some of its plants that have sales responsibilities.'' *Id.*

Department's Position: We disagree with petitioner. Timken claims that the Department must reject Koyo's ISEs because it has not allocated these expenses properly and has failed to provide a detailed explanation of these expenses, despite the Department's additional request for information. In our supplemental questionnaire we requested that Koyo provide further clarification concerning its ISEs. Koyo not only submitted the referenced exhibit D–22, but also provided the Department with further explanation of both its U.S. and home market ISEs (*see* Koyo's 1996–97 supplemental questionnaire, May 15, 1998, pages 19 and 27 and exhibits B–14 (consolidated HM sales worksheet), C–11 (export selling expenses incurred in Japan), C–24 (Reconciliation of Marine Insurance and export sales value), C–25 (1996/1997 SG&A allocation worksheet), and D–22 (fiscal year SG&A allocation worksheet). The additional information provided by Koyo demonstrates that it made a reasonable attempt to answer our questions and supply the Department with the appropriate material regarding its ISE allocation methodology.

Timken also believes that Koyo's exhibit D–22 proves that its ISEs are allocated in a disproportionate manner between home market and export sales. As mentioned in past TRBs reviews (*see 95/96 TRB Final* at 2569), we believe that Koyo's allocation methodology does not produce distortive results. As Koyo stated, in our 1995–96 verification report we specifically reviewed Koyo's ISE allocation and noted that we found no discrepancies with its allocation methodology. In fact, we specifically stated that:

> Because its allocation methodologies have been repeatedly verified in past TRBs reviews, and because Koyo's methodology has not changed for this review, this report does not describe them in detail. Nevertheless, we did review these allocations in detail at this verification and found no discrepancies.

See Koyo Seiko 95–96 Home Market Verification report dated June 20, 1997 at 10.

While we have not verified Koyo's allocation in this review, because its allocation methodology for its ISEs is identical in this review to that used in the 1995–96 review, we have no reason to believe that Koyo's allocation methodology produces distortive results. Further, we agree with Koyo that its allocation methodology provides a more accurate allocation than Timken's proposed methodology of allocating ISEs by COGS or sales value. For instance, based on exhibit 3 of Koyo's 1995–96 home market verification report, it is clear that Koyo's ISE allocation varies by market (home market and U.S.). This allocation methodology is very detailed and yields more accurate results than Timken's proposed methodology. We have reviewed this allocation in past AFBs and TRBs reviews and, as stated previously, have verified this expense in detail without discrepancy.

In addition, petitioner's claim that Koyo's exhibit D–22 indicates that export selling expenses have not properly been allocated to export sales seems to be based on a misunderstanding of the exhibit. The heading on exhibit D–22 reads ''export department.'' It appears as though Timken misinterprets this to mean that Koyo has limited the expenses attributed to export sales to those attributable to its export sales department. However, exhibit 3 of Koyo's 1995–96 verification report, which Koyo has attached to its rebuttal brief in this review to explain its methodology to address Timken's related concern, clearly indicates that Koyo's expenses were obtained from all of Koyo's offices, not just the export department. Specifically, page two of this exhibit, titled ''Key to Koyo's SG&A Allocation Methodology'', details this allocation and gives further explanation of the nature of the expenses incurred. Based on a review of Koyo's ISEs we believe that this heading simply describes the office to which the expenses were allocated (*i.e.*, to third-country sales and U.S. sales which are within the ''export department''), not the entirety of Koyo's export selling expenses. Also, as stated above, we have verified documentation regarding this issue in past TRBs reviews without discrepancy.

Therefore, because Koyo's ISEs have been thoroughly examined in numerous TRB reviews and verifications without discrepancy, and because the record in this review indicates that Koyo's allocation produces reasonably accurate results, for these final results we have accepted Koyo's reported ISEs.

Comment 3: Timken argues that the Department should not make an adjustment to normal value (NV) for Koyo's home market billing adjustments because they are distortive, have not been reported to the best of Koyo's ability, and are not accurate.

Timken claims that in the *95/96 TRB Final* at 2566 the Department stated that:

> [W]e have granted claims for PSPAs [post-sale price adjustments] as direct adjustments to NV if we determined that a respondent, in reporting these adjustments, acted to the best of its ability in providing information and meeting the requirements we have established with respect to these adjustments, and that its reporting methodology was not unreasonably distortive.

First, Timken notes that Koyo reported customer-specific lump-sum adjustments because Koyo's records do not permit transaction-specific adjustments. Timken asserts that the resulting lump-sum billing factors produce distortive results because Koyo has calculated these factors on the basis of customer codes used for sales to a single customer rather than those for specific ''ship-to'' or ''bill-to'' codes. While it may be asserted that these adjustments should be aggregated because they were all granted to the same customer, Timken believes this is not clear from the record evidence because Koyo's response does not contain a full listing of all the customer codes that it aggregated. Regardless, Timken claims that ''these lump-sum adjustments were granted for specific, identified sets of sales which, in some instances, did not include any in-scope merchandise, and [that] these lump-sum adjustments attributable to one set of sales have distorted the amounts attributed to other sales of similar merchandise reported by Koyo.'' Timken case brief at 16. Therefore, Timken avers, Koyo's adjustments must be rejected.

Second, Timken asserts that even if the Department determined that Koyo's calculations were not distortive, the calculations should still be rejected because Koyo did not act to the best of its ability in reporting its adjustments. Specifically, Timken claims that Koyo is able to report its data more accurately because, based on exhibit B–12 (Billing Adjustment for Selected Home Market Customers) of its supplemental response, ''it appears as though Koyo could have not only excluded sales to customers who made no purchases of similar merchandise, but also could have calculated individual ratios for each individual customer code.'' Timken case brief at 17. To further support this claim, Timken adds that, after comparing exhibit B–1 (Home Market Customer Codes) of Koyo's section B response to exhibit B–12, it is clear that Koyo is able to distinguish between customers who purchased TRBs which were under four inches in outside diameter from those who did not because all of the customers that appear in exhibit B–12 who did not purchase under-four-inch TRBs are excluded from the Exhibit B–1 customer list. Therefore, Timken argues that Koyo did not act to the best of its ability in reporting home market lump-sum billing adjustments. *Id.*

Third, Timken claims that the exact same ratio has been used to calculate lump-sum PSPAs, reported as BILADJH2, for each customer regardless of when the sale took place. Timken claims that exhibit B–12 of Koyo's supplemental response shows that these ratios have been calculated based on POR data. These POR-specific ratios, Timken asserts, were applied to sales transactions occurring outside the POR, *i.e.*, during the ''window'' months included in Koyo's home market sales data. Timken alleges that applying these ratios to sales outside of the review period produces inaccurate results. For the reasons stated above, Timken believes the Department should reject all of Koyo's negative home market lump-sum billing adjustments.

In response to Timken's arguments, Koyo first clarifies that Timken's argument applies only to its lump-sum billing adjustments, reported as BILADJH2. Koyo argues that Timken's challenge to its longstanding practice of aggregating lump-sum billing adjustments for customers to which Koyo has assigned multiple customer codes to calculate a customer-specific BILADJH2 must be rejected because it is ''based on the false premise that lump-sum adjustments recorded for a particular customer code applied to sales only to that customer code.'' Koyo rebuttal brief at 8–9. Moreover, Koyo points out that the CIT has already upheld the Department's post-URAA acceptance of its PSPAs as ''supported by substantial evidence and fully in accordance with law.'' *Id.*, quoting *Timken 98–92* at 16.

Koyo explains that, as the Department is aware, it negotiates with its customers lump-sum billing adjustments covering both scope and non-scope merchandise (*see* Koyo's 1996–97 TRB Section B Questionnaire Response at 12–14 (February 10, 1998), and Koyo's TRB Supplemental Questionnaire Response at 15 (May 15, 1998)), and that a single customer may have multiple customer codes reflecting shipment to different locations. After Koyo has negotiated a lump-sum adjustment with a customer, Koyo continues, the salesman must then enter that adjustment into Koyo's books. For customers with multiple customer codes, Koyo claims the salesman has the discretion to choose the customer code under which to enter the adjustment. However, Koyo claims that this adjustment may have applied to sales shipped to various other destinations (*i.e.*, customer codes), in addition to that to which the salesman assigns the adjustment. Thus, Koyo asserts that ''the fact that a particular lump-sum adjustment is entered under a particular customer code does not mean that the adjustment applied only to shipments to that customer.'' Koyo rebuttal brief at 9. Accordingly, Koyo claims that its ''well-established methodology properly aggregates all lump-sum adjustment amounts and all sales amounts from multiple customer codes for a single customer to ensure consistency between the numerator and denominator of the adjustment factor calculation.'' *Id.* at 9–10. Koyo argues that the CIT upheld the fact that it reports its lump-sum billing adjustment in a non-distortive manner and to the best of its ability.

Koyo also argues that Timken's claim fails as a legal matter for it has always calculated its lump-sum billing adjustments for each customer, not each customer code, and that the Department has nevertheless accepted its lump-sum billing adjustments. Koyo asserts that it is inappropriate for Timken to now propose that the Department change this policy because, according to *Shikoku Chemicals,* 795 F.Supp. at 421, ''[p]rinciples of fairness prevent [the Department] from changing its methodology at this late stage.'' Koyo rebuttal brief at 11, quoting *Shikoku Chemicals.* Further, Koyo claims that the Department's acceptance of its allocated billing adjustment is consistent with what Koyo maintains was one of the goals of the URAA, which was to liberalize certain reporting requirements imposed on respondents in antidumping reviews. Koyo states that following this Congressional mandate, the Department has adopted a more lenient policy of accepting allocations, as evidenced in its new regulations (*e.g.,* 19 CFR 351.401(g)(1)) and its decisions, such as that to accept Koyo's allocated lump-sum adjustments. According to Koyo, the CIT specifically approved the Department's new policy of ''substitut[ing] a rigid rule with a more reasonable method . . . especially in light of the more lenient statutory instructions of section 782(e) of the Act.'' *Id.,* quoting *Timken 98–92* at 16.

Koyo also asserts that it has calculated all of its home market expenses on the basis of POR data, and then applied those factors to sales within the extended POR, including the window months (*i.e.,* the three months prior to and two months after the POR itself), and has done so in every TRBs and AFBs review. Further, Koyo argues that ''the Department has consistently accepted this methodology, and, indeed, Timken has never before challenged it.'' *Id.* at 12.

Finally, Koyo asserts that if the Department were to accept any of Timken's suggested fundamental changes to its reporting methodology, it could not do so in this review because the CIT has repeatedly held that the Department may not apply retroactively changes in policy. *Id.,* citing *Badger-Powhatan* v. *United States,* 633 F Supp. 1364 (CIT 1986). This is particularly so, Koyo continues, when a party has relied on past practice to its own detriment. *Id.,* citing *IPSCO, Inc.* v. *United States,* 687 F. Supp. 614 (CIT 1988). Also, Koyo argues that the courts have repeatedly prohibited the Department from penalizing parties for failing to provide information never requested (*see e.g., Olympic Adhesives Inc.* v. *United States,* 899 F 2d. 1656, 1572–75 (Fed. Cir. 1990)). Therefore, Koyo maintains that if the Department were to impose such a significant reporting change, it could only do so in the next review.

Department's Position: We agree with Koyo. As Timken points out, in *95/96 TRB Final* we granted Koyo's claims for its lump-sum billing adjustments as direct adjustments to NV because we determined that Koyo, in reporting these adjustments, acted to the best of its ability in providing information and met the requirements with respect to these adjustments, and that its reporting methodology was not unreasonably distortive (*see* section 782(e) of the Act). We did not treat Koyo's lump-sum billing adjustment as a direct or indirect selling expense, but as a direct adjustment to identify the correct starting price. Koyo's record in the 1995–96 review and the instant review are identical with respect to its lump-sum billing adjustment. Based on this information, we believe that for the current review Koyo acted to the best of its ability in providing information regarding its PSPAs, and that its methodology is not unreasonably distortive.

Also, our decision to accept Koyo's methodology was recently upheld by the CIT in *Timken 98–92* at 16, in which the CIT ruled that ''Commerce's decision to accept the PSPAs at issue [including Koyo's BILADJH2] is supported by substantial evidence and is fully in accordance with the post-URAA statutory language and the direction of the SAA [Statement of Administrative Action].'' Koyo's allocation methodology in the current review is identical to that used in both the 1994–95 and 1995–96 reviews. Accordingly, as in past reviews, we have accepted Koyo's lump-sum billing adjustment in this review because it was not feasible for Koyo to report this adjustment on a more specific basis, and a review of its allocation methodology demonstrates that it does not cause unreasonable inaccuracies or distortions (*see 95/96 TRB Final* at 2566 and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews,* 63 FR 33320, 33328 (June 18, 1998) (*96/97 AFB Final*)).

In applying this standard we have not rejected an allocation method solely because the allocation includes adjustments granted on non-scope merchandise. However, such allocations are not acceptable where we have reason to believe that respondents did not grant such adjustments in proportionate amounts with respect to sales of out-of-scope and in-scope merchandise. We have made this determination by examining the extent to which the out-of-scope merchandise included in the allocation pool is different from the in-scope merchandise in terms of value and physical characteristics, and the manner in which it is sold. Significant differences in such terms may increase the likelihood that respondents did not grant price adjustments in proportionate amounts with respect to sales of subject and non-subject merchandise. While we scrutinize any such differences carefully between in-scope and out-of-scope sales in terms of their potential for distorting reported per-unit adjustments on the sales involved in our analysis, it would be unreasonable to require that respondents provide sale-specific adjustment data on non-scope merchandise in order to prove that there is no possibility for distortion. Such a requirement would defeat the purpose of permitting the use of reasonable allocations by a respondent that has cooperated to the best of its ability.

With respect to Timken's assertion that Koyo records its lump-sum billing adjustment in a distortive manner, we disagree. As explained by Koyo, its lump-sum billing adjustment is incurred at one customer ''ship-to'' location but may be recorded under numerous customer codes. More importantly, however, is the fact that regardless of which ''ship-to'' location Koyo records its lump-sum billing adjustment, Koyo records this billing adjustment on a customer-specific basis. Given the large number of sales involved, it is reasonable for Koyo to record this adjustment on a customer, not ''ship-to'', basis (*see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 62 FR 54043, 54050–1 (October 17, 1997) (*95/96 AFB Final*)). While our preference is for transaction-specific reporting, we recognize that this is not always possible, and therefore it is inappropriate to reject allocations that are not unreasonably distortive where a fully cooperating respondent is unable to report the information in a more specific manner (*see* section 782(e) of the Act). We have verified this allocation on numerous occasions in past TRBs and AFBs reviews and have determined that Koyo's allocation produces reasonably accurate results.

In addition, in past AFBs and TRBs reviews we have allowed Koyo to calculate a billing adjustment factor on a POR (12-month) basis and apply this factor to the additional window period (the three months prior to and two months after the POR). Timken alleges that this method is distortive but offers no evidence to support its claim. We have reviewed this method in numerous TRBs and AFBs reviews and determined that Koyo's methodology does not produce distortive results (*see, e.g., 95/96 TRB Final* and 96/97 AFB Final).

Based on our examination of the record in these reviews, we are satisfied that Koyo's records do not allow it to report this billing adjustment on a transaction-specific basis. Further, we believe that Koyo acted to the best of its ability in calculating the reported adjustment on as narrow a basis as its records allowed. Furthermore, we have verified Koyo's allocation methodology in past reviews and have determined that it does not produce distortive results, and there is no information on the record of this review to reasonably lead us to conclude otherwise in this case. Therefore, for these final results we have made a direct adjustment to NV for Koyo's lump-sum billing adjustments.

2. Adjustments to United States Price

Comment 4: NTN argues that the Department's decision to ignore adjustments to its U.S. ISEs for expenses incurred when financing cash deposits for antidumping duties is contrary to both the Department's position in past reviews and judicial precedent, and that it inappropriately denies an adjustment for expenses incurred solely as a result of the existence of an antidumping order.

NTN asserts that the CIT has previously held that these imputed interest expenses do not constitute selling expenses, and cites *PQ Corp.* v. *United States*, 11 CIT 53, 67 (1987) (*PQ Corp*), in which the CIT stated, ''if deposits of estimated antidumping duties entered into the calculation of present dumping margins, then those deposits would work to open up a margin where none otherwise exists.'' NTN case brief at 3, quoting *PQ Corp.* NTN claims that the rationale in *PQ Corp* applies similarly to the payment of interest on cash deposits, and asserts that if the Department were to allow interest expenses from prior reviews to affect the calculation of margins for present reviews, it would cause an unending cycle which would prevent the Department from ever revoking an antidumping order. *Id.* at 4.

NTN maintains that the CIT, in *Timken* v. *United States*, Slip Op. 97–87 (July 3, 1997) (*Timken*), upheld NTN's adjustments to U.S. ISEs for interest incurred when financing cash deposits, and notes that the Department itself argued in support of such an adjustment. NTN argues that, as set forth in *Timken*, interest expenses attributable to cash deposit financing do not result from selling merchandise in the United States.

NTN also references the CIT's decision in *Federal Mogul Corp.* v. *United States*, Slip Op. 96–193 (December 12, 1996), claiming that the CIT explicitly rejected the petitioner's argument that interest expenses constituted selling expenses because they were incurred as a result of NTN's ''decision'' to sell the subject merchandise at less than fair value. Additionally, argues NTN, the Court rejected the petitioner's argument that allowing such an adjustment was duplicative of interest paid on the refund of excess cash deposits. NTN states that the CIT noted that section 737(b) and section 778 of the Act compensate NTN for dumping duties paid by NTN but which the Department later determines that NTN does not owe. Conversely, NTN holds, the adjustment for interest expenses on cash deposits is an actual expense for which the statute does not compensate NTN. Therefore, the Department should not ignore adjustments to NTN's U.S. ISEs for expenses incurred when financing cash deposits. *Id.* at 4 and 5.

Timken responds by quoting at some length *95/96 TRB Final* at 2571, in which the Department rejected NTN's claim for a downward adjustment to U.S. ISEs for interest incurred when financing cash deposits, because the Department found that financial expenses allegedly associated with cash deposits are not a direct, inevitable consequence of an antidumping order. Therefore, Timken concludes that the Department should continue to reject NTN's claim for an adjustment to U.S. ISEs for interest incurred on cash deposits.

Department's Position: We disagree with NTN that we should allow an adjustment to NTN's U.S. ISEs for expenses which NTN claims are related to financing of cash deposits. Antidumping duties, cash deposits of antidumping duties, and other expenses such as legal fees associated with participation in an antidumping case are not expenses that we should deduct from U.S. price. To do so would involve a circular logic that could result in an unending spiral of deductions for an amount that is intended to represent the actual offset for the dumping (*see, e.g., 95/96 TRB Final* at 2571, *Certain Cut-to-Length Carbon Steel Plate from Germany; Final Results of Antidumping Duty Administrative Review*, 62 FR 18390, 18395 (April 15, 1997), and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360, 28413–4 (June 24, 1992) (*90/91 AFB Final*)). Underlying our logic in all of these instances is an attempt to distinguish between business expenses that arise from economic activities in the United States and business expenses that are direct, inevitable consequences of an antidumping duty order.

Financial expenses allegedly associated with cash deposits are not a direct, inevitable consequence of an antidumping duty order. As we stated previously in the *95/96 TRB Final* at 2571: ''* * * money is fungible. If an importer acquires a loan to cover one operating cost, that may simply mean that it will not be necessary to borrow money to cover a different operating cost.'' (*See also 96/97 AFB Final*). There is nothing inevitable about a company having to finance cash deposits and there is no way for the Department to trace the motivation or use of such funds even if it were.

Even if a respondent has a loan amount that equals its cash deposits or can demonstrate a ''paper trail'' connecting the loan amount to cash deposits, we do not consider the loan amount to be related to the cash deposits and will not remove it from the ISEs. Moreover, the result should not be different where an actual expense can not be associated in any way with the cash deposits. We reject imputation of an adjustment because there is no real opportunity cost associated with cash deposits when the paying of such deposits is a precondition for doing business in the United States. As a result, we have not accepted NTN's reduction in ISEs based on actual borrowings to finance cash deposits nor will we accept such a reduction based on imputed borrowings. We consider all financial expenses the affiliated importer incurred with respect to sales of subject merchandise in the United States to be ISEs under section 772(d)(1)(D) of the Act.

Over time, the Department has reexamined its policy with respect to this difficult issue. Although in past reviews we have removed expenses for financing cash deposits, we have reexamined this issue and our current policy is to deny the adjustment. The Department has concluded that our new policy is reasonable and best reflects commercial reality with respect to affiliated-importer situations (*see 96/97 AFB Final* at 33348; *see also 95/96 TRB Final* at 2571).[2] In accordance with our current policy, for these final results we have continued to deny NTN's adjustment to U.S. ISEs for interest incurred when financing cash deposits.

Comment 5: NTN argues that the Department should have calculated constructed export price (CEP) profit on a level-of-trade (LOT)-specific basis. NTN claims that the Department noted that prices differed significantly based on the LOT at which merchandise was sold. NTN claims that selling expenses also differed by LOT and this had an effect on prices but that this difference does not account entirely for the different price levels. NTN further emphasizes that Section 772 (f)(2)(C) of the Act expresses a preference for the profit calculations to be performed as specifically as possible and on as narrow a basis as possible. Finally, NTN asserts that because the Department calculated constructed value (CV) profit on a LOT-specific basis and matched U.S. and home market sales by LOT, the calculation of CEP profit should also take LOT into account.

Timken argues that the Department rejected the identical argument by NTN in its final results of the sixth review of the AFBs case, stating that ''neither the statute nor the SAA require us to calculate CEP profit on a basis more specific than the subject merchandise as a whole. * * * [T]he statute and SAA, by referring to ''the'' profit, ''total actual profit'', and ''total expenses'' imply that we should prefer calculating a single profit figure'' (*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, 2125 (January 15, 1997) (*94/95 AFB Final*)). For these same reasons, Timken contends that the Department should again reject NTN's assertion that CEP profit should be calculated on a LOT-specific basis.

Department's Position: We agree with Timken. Neither the statute nor the SAA requires us to calculate CEP profit on a basis more specific than the subject merchandise as a whole. *See 94/95 AFB Final* at 2125; *see also 95/96 TRB Final* at 2570. Respondent's suggestion would not only add a layer of complexity to an already complicated exercise with no increase in accuracy, but a portion of the CEP profit calculation would be more susceptible to manipulation. As we stated in *94/95 AFB Final* at 2125: ''We need not undertake such a calculation (*see Daewoo Electronics* v. *International Union*, 6 F. 3d 1511, 1518–19 (CAFC 1993)). Finally, subdivision the CEP profit calculation would be more susceptible to manipulation. Congress has specifically warned us to be wary of such manipulation of the profit allocation (*see* S. Rep. 103–412, 103d Congress, 2d Sess at 66–67).'' Therefore, consistent with our recent treatment of this issue in the above-cited cases, for these final results we have not changed our CEP profit calculation.

Comment 6: NTN asserts that the Department should exclude export price (EP) sales from the calculation of the CEP profit adjustment and argues that Section 772(f) of the Act clearly states that the CEP profit adjustment is to be based on the expenses incurred in the United States as a percentage of total expenses. NTN contends that Section 772(d) of the Act contains no provision for the inclusion of EP expenses and that the canon of statutory construction, *expressio unius est exclusio alterius,* indicates that the absence of such a provision precludes its inclusion. *See* NTN case brief at 13. NTN further asserts that the SAA similarly states that ''the total expenses are all expenses incurred by or on behalf of the foreign producer and exporter and the affiliated seller in the United States with respect to the production and sale of . . . the subject merchandise sold in the United States and the foreign like product sold in the exporting country (if Commerce requested this information in order to determine the normal value and constructed export price).'' *Id.*, quoting SAA at 154. Similarly, NTN contends that sales revenue for EP sales also should be excluded from the calculation of CEP profit. NTN states that the definition of ''total actual profit'' for CEP in Section 772(f) of the Act clearly mandates that total profit be calculated using only CEP transactions. Therefore, NTN claims that the Department has calculated CEP profit in a manner contrary to that specified by the plain language of the statute.

Timken responds that the Department should continue to include EP sales in the calculation of CEP profit, as it did for the *95/96 TRB Final*. Timken asserts that this methodology corresponds with the Department's September 4, 1997 Policy Bulletin, which states that section 772(f)(2)(D) of the Act explicitly states that the calculation of total actual profit must include all revenues and expenses resulting from the respondent's EP, CEP, and home market sales. *See* Policy Bulletin 97.1, September 4, 1997.

Department's Position: We disagree with NTN. Policy Bulletin 97.1 regarding the calculation of CEP profit indicates that section 772(f)(2)(D) of the Act clearly states that the calculation of total actual profit is to include 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) of the Act. 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 sold in the United States (as well as in the home market). Thus, where the respondent makes both EP and CEP sales to the United States, sales of the subject merchandise would necessarily encompass all such transactions. Therefore, as in the *95/96 TRB Final,* because NTN had EP sales, we have included these sales in the calculation of CEP profit. *See also* Policy Bulletin 97.1, *op cit.*

Comment 7: Timken argues that because NTN has reported sale and payment dates for its CEP sales, the Department should calculate transaction-specific credit costs as it did in *95/96 TRB Final,* rather than accept NTN's customer-specific averages as reported in the current review. Timken asserts that NTN's customer-specific reporting methodology is distortive because it has the effect of understating its credit costs.

Citing *94/95 AFB Final* at 2101, NTN responds that Timken has provided no record basis for its assertion, and that the Department and CIT have both previously upheld its current methodology in past reviews.

Department's Position: We agree with petitioner. The data on the record for this review permit the calculation of transaction-specific credit costs. It bears noting that it was not necessary to make changes to our final margin program because we already recalculated NTN's

[2] Although the CIT recently upheld our determination to grant the same type of offset for purposes of the 94–95 TRB review (*see Timken 98–92*), it has not precluded the Department from adopting its current policy of denying the type of adjustment at issue. It bears noting that in *Timken 98–92,* it was emphasized to the court that the applicable Commerce policy at the time of the 94–95 TRB review was to allow the adjustment and that the new policy to deny the adjustment should not be retroactively applied to the 94–95 review. See *Id.* at 6–7. In the instant review, however, the current and reasonable policy is to deny the adjustment and retroactive application of policy changes is not, therefore, at issue.

reported U.S. credit expense for our preliminary results, as we did in *95/96 TRB Final. See* NTN Preliminary Margin Program, at lines 728–735.

Comment 8: Timken believes that NTN has improperly adjusted the ISEs of its U.S. subsidiary, NTN Bearing Company of America (NBCA). NTN's adjustment for a particular expense [3], Timken asserts, is inconsistent with its basic allocation approach and has the effect of diluting the expense ratio. Timken argues that the Department should accordingly deny this particular claimed adjustment to NTN's U.S. ISEs. Further, Timken claims that even if the adjustment in question is reasonable, the amount does not make sense because the ''adjusted'' amount represents a disproportional amount of the expense at issue, and the allocation results in an understatement of NBCA's ISEs.

NTN responds that neither of Timken's arguments is a valid basis for denying its adjustment to U.S. ISEs. NTN asserts that the adjustment in question to U.S. ISEs does not have the distortive effects on the calculation imagined by Timken. NTN claims that it is clear from both its February 17, 1998 questionnaire response and its May 19, 1998 supplemental response that the expense in question was allocated correctly. Also, NTN maintains that Timken misunderstands the nature of the expense. Finally, NTN claims that due to the nature of the expense, the difference in amounts associated with this particular expense is reasonable.

Department's Position: We disagree with petitioner. Because certain of NTN's U.S. expenses were incurred solely for non-scope merchandise, in order to ensure an accurate allocation of its U.S. expenses, NTN first removed all such expenses from the pool of U.S. ISEs. *See* exhibit C7, worksheet 3 of NTN's February 17, 1998 questionnaire response. The remaining U.S. ISEs which were incurred for either scope or non-scope merchandise, but which could not be specifically tied to either scope or non-scope products, were then allocated to scope and non-scope merchandise. In previous TRBs (and AFBs) administrative reviews, we examined and verified NTN's adjustment allocation methodology and found it to be reasonable. *See, e.g., Final Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan,* 58 FR 64720, 64726 (December 9, 1993) (*90/92 TRB Final*), and *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; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 63 FR 20585, 20595 (April 27, 1998) (*93/94 TRB Final*). Because NTN's approach for adjusting its U.S. ISEs remains unchanged for the current review, and there is no information on the record of this review which should call into question our practice of accepting NTN's approach, we have made no modifications for these final results.

Comment 9: Timken argues that the Department failed to adjust U.S. prices for reported export selling expenses even though both respondents reported information on these expenses. In addition, Timken claims that the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465, Title II, § 224, December 8, 1994) made no substantive changes in the statutory requirement that CEP be adjusted for ISEs. *See* Timken case brief at 1.

Citing section 772a(e)(2) of the Act (prior to the URAA amendment), Timken claims that since the Antidumping Act of 1921, Congress has specified that the U.S. prices of affiliated importers are to be adjusted for ''expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise'' and that the Department has implemented this provision in its regulation providing for price reduction for ''[e]xpenses generally incurred by or for the account of the exporter in selling the merchandise, or attributable under generally accepted accounting principles to the merchandise.'' *Id.* at 1 and 2, quoting 19 CFR 353.41(e)(2). In practice, Timken believes that these provisions direct the Department to adjust U.S. prices for expenses incurred in the home market that were attributable to export sales as well as ISEs incurred in the United States. Further, citing Sen. Rep. No. 412, 103d Cong., 2d Sess. 65 (1994), Timken claims that this was changed by the URAA to ''any selling expenses not deducted under subparagraph (A), (B), or (C) [of section 772a(d)(1) of the Act]'' in which Congress specified it intended ''that this category will, as under current practice, encompass those expenses that do not result from, or cannot be tied directly to, specific sales, but that may reasonably be attributed to such sales.'' *Id.* at 2.

Finally, Timken asserts that under section 772a(e) of the pre-URAA Act, expenses are only referred to as those ''incurred by or for the account of the exporter in the United States'', while under section 772a(d) of the new law this has been expanded to include adjustment for expenses ''incurred by or for the account of the *producer* or exporter, or the affiliated seller in the United States'' (emphasis supplied). *Id.* at 3, quoting the pre-URAA and post-URAA language of section 772a(d). Therefore, Timken believes that Congress has codified the Department's practice by expanding the adjustment to include expenses incurred by *producers* or exporters.

Both NTN and Koyo argue that the Department's treatment of export selling expenses in this review is consistent with its past practice in all post-URAA TRBs reviews (*i.e., 95/96 TRB Final* at 2575). At page 2 of its rebuttal brief, Koyo cites *Timken 98–92* at 11, in which the CIT upheld the Department's reliance on the language in the SAA that U.S. ISEs are those associated with economic activities occurring in the United States. Both respondents claim that the Department has acted in conformity both with the law and with its now-established policy of not deducting export selling expenses from U.S. price.

Further, Koyo claims that the only new argument offered by Timken is its reliance on the URAA's added word *producer* to section 772a(d) of the Act, expanding the reference to include expenses ''incurred by or for the account of the producer or exporter * * *''. *See* Koyo rebuttal brief at 2 and 3. Koyo alleges that this new argument fails for two reasons. First, Koyo states the Department has already defined the ''expenses'' at issue in section 772a(d) of the Act, as those ''associated with economic activity in the United States.'' Koyo also argues that the CIT has upheld this definition in *Timken 98–92,* and Koyo asserts that a limitation on the scope of the relevant expenses ''must be satisfied before it is necessary for the Department to consider the identity of the party—the producer or the exporter—that incurred the expenses.'' See *Koyo* rebuttal brief at 3. If the expenses at issue do not meet the geographic test, Koyo avers, the identity of the party incurring them is irrelevant. Second, Koyo clarifies that in the current case, they are both the producer and exporter. ''Consequently, the addition by the URAA of the word ''producer'' does not expand the

[3] The ''particular expense'' at issue involves discussion of proprietary information. A complete discussion of the expense is included in the proprietary version of our Final Analysis Memorandum for NTN, dated November 9, 1998.

coverage of the provision any further than it did prior to the URAA in these circumstances.'' *Id.*

Department's Position: We agree with respondents. As we stated 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; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825, 11834, (March 13, 1997), *95/96 TRB Final* at 2575, and *94/95 AFB Final* at 2124, we will deduct from CEP only those expenses associated with economic activities in the United States which occurred with respect to sales to the unaffiliated U.S. customer. We found no information on the record for this review period to indicate that the export selling expenses for the respondents that were incurred in their respective home markets were associated with activities occurring in the United States.

Also, it is clear from the SAA that under the new statute we should deduct from CEP only those expenses associated with economic activities in the United States. The SAA also indicates that ''constructed export price is now calculated to be, as closely as possible, a price corresponding to an export price between non-affiliated exporters and importers.'' SAA at 823.

Further, in *Timken 98–92,* the CIT ruled that ''Commerce's decision to limit U.S. ISEs to those expenses incurred in the United States is supported by substantial evidence and fully in accordance with law.'' *Timken 98–92* at 11. We note that the record in this case on this issue is identical to that in *Timken 98–92.* Koyo and NTN have clearly demonstrated that their export selling expenses were not associated with economic activity in the United States. Therefore, no additional adjustment to Koyo's or NTN's U.S. prices would be appropriate.

3. Cost of Production (COP) and Constructed Value (CV)

Comment 10: NTN claims that the Department's decision to use the higher of transfer price or actual cost for affiliated-party inputs in calculating COP and CV is distortive, and that this methodology has no basis in the antidumping law. NTN maintains that section 773(f)(2) of the Act addresses the circumstances under which the Department should disregard some transactions. NTN contends that such circumstances would be those where a transaction between related parties does not reflect ''the amount usually reflected in sales of merchandise under consideration in the market under consideration.'' NTN case brief at 20, quoting section 773(f)(2) of the Act. NTN declares that there is no evidence that its reported affiliated-party input data do not reflect the amount usually reflected in sales of this merchandise in the market under consideration. NTN also argues that no statutory language mandates the use of the higher of transfer price or actual cost for affiliated-party inputs in calculating COP and CV and, thus, it is unreasonable and contrary to law to follow this methodology. Therefore, NTN concludes that instead of using the higher of transfer price or actual cost, the Department should use NTN's affiliated-party input data as reported.

The petitioner contends that the Department's use of the higher of transfer price or actual cost to value affiliated-party inputs is in accordance with section 773(f)(3) of the Act, which provides that when major inputs are transferred at prices below-cost, the Department may calculate the value of the major input using cost of production. Timken states that NTN has asserted that no evidence exists to show that NTN's reported affiliated-party data do not reflect the amount usually reflected in sales of this merchandise in the market under consideration. However, Timken argues that by making this assertion, NTN ignores the commercial reality that below-cost sales are generally not at market prices, and below-cost home market sales are by statute ''out of the ordinary course of trade.'' Timken rebuttal brief at 12. Timken argues that since NTN reported below-cost transfer prices, the Department correctly substituted cost of production for related-party inputs instead of using NTN's affiliated-party input data as reported.

Department's Position: We disagree with NTN's contention that it is not appropriate for the Department to rely on section 773(f) (2) and (3) of the Act in this instance. We note that section 351.407 (a) and (b) of the Department's regulations sets forth certain rules that are common to the calculation of CV and COP. This section states that for the purpose of section 773(f)(3) of the Act the Department will determine the value of a major input purchased from an affiliated person based on the higher of: (1) the price paid by the exporter or producer to the affiliated person for the major input; (2) the amount usually reflected in sales of the major input in the market under consideration; or (3) the cost to the affiliated person of producing the major input. Furthermore, we have relied on this methodology in *Final Results of Antidumping Duty Administrative Review; Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada,* 62 FR 18448, 18464 (April 15, 1997), *94/95 AFB Final* at 2115, and *95/96 TRB Final* at 2573. In each of these determinations the Department concluded 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 party, the market price between unaffiliated persons involving the major input, or the affiliated supplier's cost of producing this input.

Accordingly, for the final results we have continued to rely on the higher of transfer price or actual cost for NTN's affiliated-party inputs when calculating COP and CV.

4. Miscellaneous Comments Related to Level of Trade, Arm's-Length Test, Sample Sales, and Model Matching

Level of Trade

As set forth in section 773(a)(1)(B) of the Act, to the extent practicable we have determined NV based on sales in the comparison market at the same LOT as the EP and CEP transactions. When we were unable to find comparison sales at the same LOT as the EP or CEP sales, we compared the U.S. sales to sales at a different LOT in the comparison market. We determined the LOT of EP sales on the basis of the starting prices of sales to the United States. We based the LOT of CEP sales on the price in the United States after making the CEP deductions under section 772(d) of the Act but before making the deductions under section 772(c) of the Act. Where home market prices served as the basis of NV, we determined the NV LOT based on starting prices in the NV market. Where NV was based on CV, we determined the NV LOT based on the LOT of the sales from which we derived SG&A and profit for CV. In order to determine the LOT of U.S. sales and comparison sales, we reviewed and compared distribution systems, including selling functions, classes of customer, and the extent and level of selling expenses for each claimed LOT. Customer categories such as distributor, original equipment manufacturer (OEM), or wholesaler are commonly used by respondents to describe LOTs but are insufficient to establish a LOT. Different LOTs necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the LOTs. Different LOTs are characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them. See *94/95 AFB Final* at 2105.

In accordance with section 773(a)(7)(A) of the Act, where we established that the comparison sales were made at a different LOT than the sales to the United States, we made a LOT adjustment if we were able to determine that the differences in LOTs affected price comparability. We determined the effect on price comparability by examining sales at different LOTs in the comparison market. Any price effect must be manifested in a pattern of consistent price differences between foreign market sales used for comparison and foreign market sales at the LOT of the export transaction. To quantify the price differences, we calculated the difference in the average of the net prices of the same models sold at different LOTs. We used the average difference in net prices to adjust NV when NV was based on a LOT different from that of the export sale and the price differential was due to differences in LOT. If there was a pattern of no price differences, the differences in LOTs did not have a price effect and, therefore, no adjustment was necessary.

Section 773(a)(7)(B) of the Act provides for an adjustment to NV when NV is based on a LOT different from that of the CEP if the NV level is more remote from the factory than the CEP and if we are unable to determine whether the difference in LOTs between the CEP and NV affects the comparability of their prices (*see, e.g., 96/97 AFB Final* at 33330). This latter situation can occur when there is no home market LOT equivalent to the U.S. LOT or where there is an equivalent home market level but the data are insufficient to support a conclusion on price effect. This adjustment, the CEP offset, is identified in section 773(a)(7)(B) of the Act and is the lower of the following:

- The ISEs on the home market sale, or
- The ISEs deducted from the starting price used to calculate CEP.

The CEP offset is not automatically granted each time we use CEP (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–3 (November 19, 1997)). The CEP offset is made only when the LOT of the home market sale is more advanced than the LOT of the CEP sale and there is not an appropriate basis for determining whether there is an effect on price comparability.

We determined that for Koyo there were two home market LOTs and one U.S. LOT (*i.e.*, the CEP LOT). Because neither of the home market LOTs was equivalent to the CEP LOT and because NV represented a price more remote from the factory than the CEP, we made a CEP offset adjustment to NV in our CEP comparisons for Koyo.

For NTN we found that there were three home market LOTs and two (one EP and one CEP) LOTs in the United States. Because there were no home market LOTs equivalent to NTN's CEP LOT, and because NV for NTN represented a price more remote from the factory than the CEP, we made a CEP offset adjustment to NV in our CEP comparisons. We also determined that NTN's EP LOT was equivalent to one of its LOTs in the home market. Because we determined that there was a pattern of consistent price differences due to differences in LOTs, we made a LOT adjustment to NV for NTN in our EP comparisons where the U.S. EP sale matched to a home market sale at a different LOT.

Comment 11: Timken states that the Department matched NTN's EP sales to one of the home market LOTs because it was determined that selling activities of each are virtually the same. In addition, Timken states, because the Department found a pattern of consistent price differences between NTN's different home market LOTs, the Department made a LOT adjustment when comparing EP sales with home market sales at a different LOT. However, Timken claims that there are additional selling activities associated with NTN's EP sales, which the Department did not consider in its LOT analysis. Timken argues that these additional selling activities are sufficient to place these EP sales at a different LOT than any of NTN's three home market LOTs and that as a result, there is no basis for the Department to quantify any LOT adjustment. Therefore, Timken contends that the Department should not make a LOT adjustment to NTN's EP sales.

NTN responds that the Department should continue to grant a LOT adjustment to NV when an EP sale matched to a home market sale at a different LOT. NTN maintains that Timken's allegation of differences in selling activities between EP sales and a home market LOT is invalid because the stated ''additional selling activities'' are not really selling activities. NTN argues that in keeping with *95/96 AFB Final* at 54060 (''NTN Japan provided adequate factual information to support its claim with regard to differences and similarities of its HM levels of trade and EP level of trade''), the Department should not deny NTN's LOT adjustment. In addition, NTN cites *Mitsubishi Heavy Indus.* v. *United States*, Slip Op. 98–82 (June 23, 1998) (*Mitsubishi Heavy Indus.*), in which the CIT examined the types of activities which are selling activities and those which would not qualify as selling activities. Because of the comparison that can be drawn between *Mitsubishi Heavy Indus.* and the present review, NTN asserts that the Department should not deny NTN a LOT adjustment to NV when an EP sale matched to a home market sale at a different LOT.

Department's Position: We disagree with Timken. As stated in *96/97 AFB Final* at 33331, differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in LOTs. While there are a few individual selling functions that vary, we determine that these functions, by themselves, do not offset the many similarities of the selling functions performed by the respondent at the EP and home market LOTs . Although we have determined that there is a qualitatively minimal difference in selling functions between one of the home market LOTs and the EP LOT, the two LOTs are similar enough to be considered the same LOT, such that that home market LOT can be used in determining whether there is a pattern of consistent price differences between that LOT and the LOT at which certain EP sales are made.

Comment 12: NTN contends that the Department should have relied on its LOT-based U.S. and home market selling expense data as reported, instead of reallocating these selling expenses without regard to LOT. NTN states that in the Department's *Analysis Memo for Preliminary Results of the 1996–97 Review—NTN Corporation*, dated July 2, 1998 (*Prelim Analysis Memo*), the Department indicated that it did not utilize NTN's LOT distinctions for most U.S. and certain home market selling expenses, and instead recalculated these expenses without regard to LOT. NTN claims that the Department disallowed NTN's allocations of certain home market expenses due to the complexity of NTN's original LOT-specific methodology. NTN asserts, however, that its methodology does not distort the dumping margin, whereas the Department's reallocation does. Further, NTN insists that the alleged complexity of its methodology is an insufficient reason to justify reallocating NTN's home market selling expenses. In the past, NTN maintains, the Department has found NTN's ''complex methodology'' to be reasonable; no evidence has been presented showing that NTN's methodology is now unreasonable.

NTN argues that in past reviews the Department accepted its methodology for reporting selling expenses. For instance, NTN asserts, in *Tapered Roller Bearings and Parts Thereof from Japan, etc.; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding*, 61 FR at 57629, 57636 (November 7, 1996) (*92/93 TRB Final*) the Department determined that NTN's LOT-based reporting was not acceptable based ''solely on our discovery of a discrepancy in NTN's reported total U.S. sales value for scope merchandise during the POR.'' NTN case brief at 6, quoting *92/93 TRB Final*. NTN holds that it is clear from the language of the determination that the only reason the Department rejected NTN's reported expenses was an alleged discrepancy in reported numbers. Therefore, NTN contends, its reporting methodology meets the Department's criteria and accounts for the consistent price differences between LOTs better than the reallocation of selling expenses does.

In addition, NTN states that the Department determined that different LOTs existed in the U.S. and Japanese markets for its sales (*see TRB Prelim* at 37347–8), and that the decision to allocate certain U.S. and home market expenses without regard to LOT voids the LOT determination made in the preliminary results, insofar as the effect that different LOTs have on price is lessened by this reallocation. Furthermore, NTN argues that the Department's mandate is to administer the antidumping laws as accurately as possible (see *Böwe-Passat* v. *United States*, 17 CIT 335, 340 (1993)). Because the Department's reallocation of these expenses without regard to LOT eliminates the effect of LOT on price, NTN asserts, the Department's decision to reallocate these expenses is a direct violation of this mandate. Therefore, NTN concludes, the Department should rely on NTN's LOT-specific expense data to calculate U.S. and home market selling expenses.

Timken argues that the record supports the Department's reallocation of NTN's indirect selling expense data without regard to LOTs. Timken states that the Department rejected NTN's allocation of U.S. selling expenses because there was no evidence to demonstrate that these expenses varied according to LOT. With regard to NTN's home market selling expenses, Timken claims that the Department correctly rejected NTN's data because of its ''complexity'', and that this is reasonable. Timken contends that the record fails to show that NTN's home market expenses were incurred differently based on LOT, and does not contain evidence that NTN's methodology reasonably allocates those expenses.

Timken states that although the *92/93 TRB Final* upheld NTN's position, the results from that review period are currently on remand for the issue at hand. Timken notes that in remanding those results, the CIT cited a third review of TRBs in which it did not support the proposition that NTN's expenses varied by LOT (*see Timken* v. *United States*, 989 F. Supp. 234, 249 (1997)).

Timken refers to the *95/96 TRB Final*, in which the Department reallocated NTN's home market and U.S. selling expense data without regard to LOT, rather than relying on NTN's data as reported. In that review Timken states that the record did not contain ''quantitative and narrative evidence'' demonstrating that sales at different LOTs incurred different amounts of expenses. Timken rebuttal brief at 4. Likewise, Timken argues that in the past four AFBs administrative reviews the Department also rejected NTN's allocation of U.S. and home market selling expense data by LOT. Therefore, Timken concludes that the Department should continue to reallocate NTN's home market and U.S. selling expense data without regard to LOT.

Department's Position: We agree with Timken. We have determined that, for a majority of the expenses in question, NTN's LOT-specific selling expense allocation methodology bears no relationship to the manner in which NTN actually incurred these selling expenses. In *Timken Co.* v. *United States,* 930 F. Supp. 621 (CIT 1996) (*Timken 1*), the CIT ordered the Department to accept NTN's LOT-specific allocations and per-unit LOT expense adjustment amounts only if NTN's expenses demonstrably varied according to LOT. *See Id.* at 628. By ordering us to ascertain whether these expenses actually varied according to LOT, the CIT, in essence, indicated that NTN's use of its LOT-specific per-unit expense adjustments did not necessarily mean that NTN incurred the expenses differently due to differences in LOTs. Rather, additional evidence must also exist which demonstrates that NTN actually sold differently to each LOT by performing different activities/functions or by performing the same activities/functions to a different degree when selling to each LOT. In accordance with this order, in our remand results pursuant to *Timken 1* we did not allow NTN's allocation of its expenses by LOT due to the lack of quantitative and narrative evidence on the record demonstrating that the expenses in question demonstrably varied according to LOT; in the instant review we applied the same standards articulated by the CIT in *Timken 1*. In other words, as in our *95/96 TRB Final*, we have examined the record and determined that in most instances no evidence exists demonstrating that NTN's home market and U.S. expenses allocated by LOT actually varied according to LOT.

However, for certain of NTN's U.S. packing material and packing labor expenses, NTN's response indicates that NTN incurred these expenses only when selling to one specific U.S. LOT. In addition, NTN's narrative explanation clearly indicates that certain of NTN's packing expenses individually differed by LOT. Because these expenses were unique to a single LOT, NTN (1) allocated each total expense amount solely to this LOT, (2) calculated a single allocation ratio for this LOT, and (3) applied this ratio only to U.S. sales at this LOT. NTN's response clearly indicates that these expenses demonstrably varied according to LOT (*see* NTN questionnaire response, February 17, 1998, at exhibit C–7). Therefore, for our preliminary results we applied our recalculated ratios for certain of NTN's U.S. packing and U.S. labor expenses only for sales to the one LOT for which these expenses were incurred.

In addition, after further review of the record, we have also determined that NTN's home market packing labor and packing material expenses demonstrably varied according to LOT. Section A and exhibit B–4 of NTN's response clearly demonstrate that different methods of packing are required depending upon LOT. As indicated above, NTN has allocated all of its home market expenses by LOT, but has not provided record evidence (except for home market packing) demonstrating that they were incurred differently by LOT. Therefore, for these final results we have accepted only NTN's allocation of home market packing expenses according to LOT.

Lastly, we note NTN's comment that the Department disallowed NTN's allocations of certain home market expenses solely due to the allegedly complex nature of NTN's LOT-specific methodology. It is not the Department's current practice to reject such allocations on the basis of complexity; however, we inadvertently indicated in our *Prelim Analysis Memo* at 7 that it is Department policy to do so. As stated above, we denied NTN's allocations because the record lacked quantitative and narrative evidence that the expenses in question varied demonstrably according to LOT (see *Prelim Analysis Memo* at 2), and not because the allocations themselves were too complex.

Comment 13: NTN contends that the Department should have made a LOT adjustment for CEP sales based on selling price differences by using the transaction to the first unaffiliated U.S. customer. With regards to its EP sales, NTN asserts that the Department matched home market sales at the same LOT, and, where no such match was possible, the Department made a LOT adjustment in accordance with the URAA. However, NTN states that the Department found no equivalent home market LOT for NTN's CEP sales because ''there were significant differences between the selling activities associated with the CEP sales and those associated with the home market sales at each of the home market LOTs.'' NTN case brief at 8, quoting *Prelim Analysis Memo* at 7. NTN claims that this method of determining LOTs is a violation of the URAA, and thus suggests that the Department use the transaction to the first unaffiliated U.S. customer to determine the LOT adjustment.

NTN cites *Borden Inc.* v. *United States,* 4 F. Supp. 2d 1221 (CIT 1998) (*Borden*), in which the CIT mandated that the Department first determine what selling activities are performed at demonstrably different LOTs, then analyze patterns of NV sales at the different LOTs. In keeping with *Borden,* NTN argues that the Department should make LOT adjustments for CEP sales based on selling price differences. NTN asserts that such an approach is not only consistent with the Department's model-match methodology, but evidence on the record demonstrates that NTN's performance of different selling activities at each LOT affected price comparability. Also, NTN claims that the Department's current methodology eliminates the possibility that CEP transactions can be granted a price-based LOT adjustment. NTN argues that it is unreasonable for the Department to refuse to make a price-based adjustment when there are significant differences in prices among home market LOTs, and U.S. sales are subsequently matched to home market sales at different LOTs.

Timken states that under section 773(a)(7)(A) of the Act, the statutory provision for LOT adjustments specifies that ''[t]he price [used to determine normal value] shall also be increased or decreased to make due allowance for any difference (or lack thereof) between the export price or constructed export price and the [normal value] price * * *''. Timken rebuttal brief at 5, quoting section 773(a)(7)(A) of the Act. Timken contends, therefore, that for CEP sales NTN failed to demonstrate that LOT differences between CEP and NV sales result in price differences between the two.

Timken cites the SAA, which states that the Department ''will require evidence from the foreign producers that functions by the sellers at the same level of trade in the U.S. and foreign markets are similar, and that different selling activities are actually performed at the allegedly different levels of trade.'' *See* SAA at 159. Petitioner asserts that NTN has not identified any home market LOTs that possess the same selling functions as those which support CEP sales. Therefore, Timken claims, there is no common ground on which to compare CEP and NV sales, and thus the Department should not grant NTN a price-based LOT adjustment to NV for comparisons to CEP sales.

Department's Position: We disagree with NTN. As stated in our *95/96 TRB Final* at 2578, our methodology does not preclude LOT adjustments to NV for CEP sales. Rather, we do not make a LOT adjustment where the facts of the case do not support such an adjustment. Based upon our examination of the information on the record, for this review we found that the respondent did not have a home market LOT equivalent to its CEP LOT. As a result, because we lacked the information necessary to determine whether there is a pattern of consistent price differences between the relevant LOTs, we did not make a LOT adjustment for NTN when we matched a CEP sale to a sale of the foreign like product at a different LOT.

Furthermore, section 772(d) of the Act indicates clearly that we are to base CEP on the U.S. resale price, as adjusted for U.S. selling expenses and profit. As such, the CEP reflects a price exclusive of all selling expenses and profit associated with economic activities occurring in the United States. *See* SAA at 823. As the term CEP makes clear, these adjustments are necessary in order to arrive at a ''constructed'' export price. The adjustments we make to the starting price, specifically those made pursuant to Section 772(d) of the Act (''Additional Adjustments to Constructed Export Price''), normally change the LOT. Accordingly, we must determine the LOT of CEP sales exclusive of the expenses (and associated selling functions) that we deduct pursuant to this section (*see, e.g., Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review,* 62 FR 18476, 18480 (April 15, 1997)). As stated earlier, because none of NTN's home market LOTs were equivalent to the LOT of its CEP sales, we were unable to make a LOT adjustment for such sales.

Arm's-Length Test

Comment 14: NTN asserts that the Department's 99.5 percent arm's-length test is not a reasonable basis for determining whether affiliated-party sales were at prices comparable to those to unaffiliated parties. NTN argues that in applying the arm's-length test the Department only considers the average percent difference in pricing between affiliated-and unaffiliated-party sales and ignores other factors which greatly influence price such as the terms and quantities of each affiliated-party sale. NTN further contends that the Department's 99.5 percent threshold is not really a ''test'', since it fails to provide an objective standard to determine whether affiliated-party sales are at arm's length. Instead, NTN claims, the test weighs sales against an average which does not reflect the full range of prices paid in the transactions examined. Therefore, NTN asserts, the use of the 99.5 percent figure as a baseline to decide if sales are at arm's length does not address the fact that some arm's-length sales fall outside this narrow range. NTN proposes that a figure such as 95 percent be used to reflect more adequately the range of arm's-length prices in these transactions.

Timken claims that in accordance with section 773(a)(1)(B) of the Act, the Department properly excluded those home market sales to affiliated parties which were not at arm's length. Timken argues that NTN, by proposing that other factors be used to determine whether home market sales to affiliates are at arm's length, recognizes that it is wholly within the Department's discretion to devise a methodology to select such sales. Additionally, Timken asserts that NTN has provided no evidence supporting its claim that the Department's 99.5 percent test was contrary to law or produced inaccurate results.

Timken also points out that one of the factors suggested by NTN for inclusion in the arm's-length test, terms of sale, was reportedly the same for all of NTN's home market sales, while NTN did not report terms of payment because so many different terms existed. Thus, Timken concludes, even if the

Department agreed with NTN, NTN's suggestion could not be adopted.

Department's Position: We disagree with NTN. Our 99.5 percent arm's-length test is a reasonable method for establishing a fair basis of comparison between affiliated- and unaffiliated-party sales. NTN asserts that additional factors, such as quantity and payment terms, should be taken into consideration when comparing affiliated- and unaffiliated-party sales, but fails to establish that the Department must abandon its existing test. NTN also argues that our use of the 99.5 percent threshold is distortive but provides no quantitative evidence demonstrating that a lowering of the threshold would yield more accurate results. Furthermore, the CIT has upheld the validity of our arm's-length test on numerous occasions. For example, in *Usinor Sacilor* v. *United States,* 872 F. Supp 1000, 1004 (CIT 1994), the CIT clearly indicated that it would not overturn the agency's arm's-length test unless it was shown to be unreasonable and stated that ''[g]iven the lack of evidence showing any distortion of price comparability, the court finds application of Commerce's arm's-length test reasonable.'' Likewise, in *Micron Technology Inc.* v. *United States,* 893 F. Supp. 21, 38 (CIT 1995), because the CIT found that the plaintiff failed to ''demonstrate that Commerce's customer-based arm's-length is unreasonable'' and failed to ''point to record evidence which tends to undermine Commerce's conclusion,'' the CIT sustained the 99.5 percent arm's-length test, given a lack of evidence showing a distortion of price comparability. Further, in *NTN Bearing Corp. of America, American NTN Bearing Manufacturing Corp. and NTN Corp.* v. *United States,* 905 F. Supp. 1083 (CIT 1995), NTN argued, as here, that there were numerous factors influencing the price of a related-party transaction and the Department cannot make a meaningful price comparison without examining them. The CIT disagreed with NTN and stated that the Department has broad discretion in devising an appropriate methodology to determine whether particular related-party prices are, in fact, comparable to unrelated-party prices. *Id.* at 1099.

NTN has not provided any information on the record to support its assertion that our arm's-length test is distortive or unreasonable. Therefore, because NTN has failed to demonstrate that the 99.5 percent threshold produces distortive results or that the Department's methodology is unreasonable, in accordance with the CIT decisions cited above and the *95/96 TRB Final,* we have not altered our 99.5 percent arm's-length test for these final results.

Sample Sales

On June 10, 1997, the Court of Appeals for the Federal Circuit (CAFC) held that the term ''sale'' entails both a transfer of ownership to an unrelated party and consideration. *NSK Ltd.* v. *United States,* 115 F.3d 965, 975 (Fed. Cir. 1997) (*NSK*). The CAFC determined that samples which NSK had given to potential customers at no charge and with no other obligation on the recipient's part lacked consideration. Moreover, the CAFC found that, since free samples did not constitute ''sales,'' they should not have been included in calculating U.S. price.

In light of the CAFC's opinion, we have revised our policy with respect to samples. The Department will now exclude from its dumping calculations sample transactions for which a respondent has established that there is either no transfer of ownership or no consideration.

This new policy does not mean that the Department automatically will exclude from its analysis any transaction to which a respondent applies the label ''sample.'' In fact, for these reviews we determined that there were instances where it is appropriate not to exclude such alleged samples from our dumping analysis. It is well-established that the burden of proof rests with the party making a claim and in possession of the needed information (*see, e.g., NTN Bearing Corporation of America* v. *United States,* 997 F.2d 1453, 1458–59 (CAFC 1993), (citing *Zenith Electronics Corp.* v. *United States,* 988 F.2d 1573, 1583 (CAFC 1993), and *Tianjin Machinery Import & Export Corp.* v. *United States,* 806 F. Supp. 1008, 1015 (CIT 1992)).

With respect to HM sales and our calculation of NV, in addition to excluding sample transactions which do not meet the definition of ''sales,'' the statute authorizes the Department to exclude sales designated as samples from our analysis, pursuant to section 773(a)(1) of the Act, when a respondent has provided evidence demonstrating that the sales were not made in the ordinary course of trade, as defined in section 771(15) of the Act.

Comment 15: NTN asserts that its home market sample sales should be excluded from the Department's margin calculations. NTN states that this is in accordance with section 773(a)(1)(B) of the Act and *NSK Ltd.* v. *United States,* 969 F. Supp. 34, 43 and 52 (CIT 1997) (*NSK1*), in which the CIT mandated that sample sales not be included in the home market database.

NTN also asserts that its U.S. sample sales should be excluded from the Department's analysis in accordance with the CAFC's decision in *NSK,* arguing that in that case the CAFC ordered that zero-priced sample sales should be excluded when calculating margins.

Timken responds that in order for the Department to exclude ''samples'' from a respondent's home market and U.S. databases, the respondent must provide ample evidence to support any claim for exclusion of those transactions, and also must bear the burden of establishing that home market sales are not in the ordinary course of trade. Timken cites *Nachi-Fujikoshi Corp* v. *United States,* 798 F. Supp. 716, 718 (CIT 1992) (*Nachi*), in which the CIT ruled that the plaintiff could not rely on a verification report where it failed to prove that alleged sample sales were outside the ordinary course of trade. In addition, Timken finds no evidence on the record which would support the exclusion of alleged sample sales. Timken argues that NTN has not demonstrated adequately that its home market sample sales are outside the ordinary course of trade and that such sales, therefore, do not warrant exclusion from the home market database.

Timken asserts that the CAFC in *NSK* did not establish a *per se* exclusion for so-called sample sales. Rather, Timken claims, the CAFC held that sales which lacked consideration did not constitute sales for purposes of the antidumping law. Timken notes that the Department's preliminary margin program already excludes zero-priced sales, *i.e.,* those lacking consideration, and claims that the *NSK* decision does not support the exclusion of sales NTN alleges are samples.

Department's Position: We disagree with NTN. We examined the record to determine whether NTN's U.S. samples lacked consideration and were unable to find any information whatsoever in either NTN's narrative or sales database regarding sample transactions. As noted above, the party in possession of the information has the burden of producing that information, particularly when seeking a favorable adjustment or exclusion. Because NTN did not provide any information in its response or elsewhere that would have aided us in determining whether NTN received anything of value from its U.S. customers for the transactions in question, we cannot conclude that NTN received no consideration for these alleged samples. While NTN's database does include sales which are zero-priced, we are unable to determine from the record if these transactions represent the sales which NTN apparently argues should be excluded from the U.S. database in accordance with the *NSK* decision. Furthermore, the mere fact that a sale has a reported unit price of zero does not establish that a transaction lacked exchange of consideration. The CAFC's *NSK* decision that certain transactions should be excluded hinged on two factors: (1) that the transaction at issue was zero-priced and (2) that the transaction lacked an exchange of consideration. As is evident in our September 15, 1997 redetermination pursuant to the CIT's *NSK1* decision, NSK in that case established that its zero-priced transactions were free samples or promotional expenses, and not sales. By contrast, in this review NTN has not provided any detailed information on the record demonstrating that its alleged zero-priced transactions were in fact samples and lacked an exchange of consideration. *See 96/97 TRB Final* at 33343.

We have also evaluated whether NTN's alleged home market sample sales qualify for exclusion from the home market database in light of the CAFC's *NSK* decision. As noted above, we exclude sample transactions from dumping calculations only if a respondent has demonstrated either that there is no transfer of ownership or no consideration. Because evidence on the record clearly indicates that NTN received consideration for all home market sales it claims are samples, none of its home market sample sales meet either criteria for exclusion established by *NSK. See* NTN questionnaire response at B–15.

Therefore, because NTN's alleged U.S. and home market sample sales do not qualify for exclusion under *NSK,* we have included these sales in our U.S. and home market databases for these final results.

Comment 16: NTN argues that sample sales and sales with abnormally high profits are outside the ordinary course of trade, and hence should not be included in the calculation of NV. NTN asserts that under section 773(a)(l)(B)(i) of the Act normal value must be based on home market sales made in the ''ordinary course of trade'', which is defined in section 771(15) of the Act as ''the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind.'' NTN argues that the Department's regulations indicate examples of sales outside the ordinary course of trade, including merchandise sold with abnormally high profits, and merchandise sold pursuant to unusual terms (*e.g.*, samples). NTN cites *Monsanto Co.* v. *United States,* 12 CIT 937, 940 (1988), which held that the ordinary course of trade provision ''prevents dumping margins from being based on sales which are not representative'' of those in the home market. NTN case brief at 22. In other words, NTN holds, the comparison between NV and U.S. sales is done on an ''apples to apples'' basis when NV is based solely on representative sales. *Id.*

NTN asserts that the Department should find its sales with abnormally high profits to be outside the ordinary course of trade and therefore exclude these sales from the calculation of NV. NTN proposes that sales with profits exceeding a certain level be considered to be outside the ordinary course of trade. NTN claims that if the Department compares home market sales with abnormally high profits to U.S. sales, an ''apples to apples'' comparison would not result. NTN also cites the CAFC's decision in *CEMEX. S.A.* v. *United States,* 133 F. 3d 897 (Fed. Cir. 1998) (*CEMEX*), in which the CAFC upheld the Department's finding that sales of certain types of cement were outside the ordinary course of trade due to significant differences in profit levels.

Similarly, NTN contends that because sample sales and sales with abnormally high profits are outside the ordinary course of trade, they should not be included in the calculation of CV profit. NTN asserts that under section 773(e)(2)(A) of the Act, CV must be calculated, in part, using ''amounts incurred for profits . . . in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country. . . .'' Because NTN's sample sales and sales with abnormally high profits are outside the ordinary course of trade, NTN claims, including sample sales or sales with abnormally high profits in the calculation of CV profit violates the statutory language and the Department's regulations. NTN maintains that the Department should accept NTN's reported figures to avoid the distortion that would occur from including sales outside the ordinary course of trade in the calculation of CV profit. NTN contends that just as sales outside the ordinary course of trade must not be included in the calculation of NV, neither should they be included in the calculation of CV profit.

Timken contends that the Department has appropriately retained NTN's alleged high-profit and sample sales in the database used to compute NV and CV profit. In keeping with *Nachi* (798 F. Supp. at 718), Timken argues that it is the respondent's burden to prove that sales are outside the ordinary course of trade. However, Timken claims that there is nothing in the record to show that any of NTN's alleged sample and high-profit sales are outside the ordinary course of trade, and thus the Department has properly included these sales in the calculation of both normal value and CV profit. Timken asserts that NTN's interpretation of *CEMEX* is incorrect, because while the CAFC did find that some sales were outside the ordinary course of trade due to significant differences in profit levels along with other factors, these profits were lower than average.

Department's Position: We agree with Timken. With regard to sample sales that NTN claims are outside the ordinary course of trade, our practice is to exclude home market sales transactions from our calculations when an interested party demonstrates that such sales were made outside the ordinary course of trade. Accordingly, we have examined the record with respect to NTN's alleged home market sample sales to determine if these sales qualify for such an exclusion. In its original questionnaire response NTN only states that ''samples are provided to customers for the purpose of allowing the customer to determine whether a particular product is suited to the customer's needs'' and that ''the purpose . . . would not be the same as those purchased in the normal course of trade.'' *See* NTN questionnaire response at B–14 and B–15. Furthermore, NTN did not provide additional information in its supplemental response clearly demonstrating that its alleged sample sales were outside the ordinary course of trade. *See* NTN's supplemental response dated May 19, 1998. However, the mere fact that a respondent identified sales as samples does not necessarily render such sales outside the ordinary course of trade (*see 94/95 AFB Final* at 2124 and *95/96 TRB Final* at 2582). For these reasons, we disagree with NTN that its home market sample sales should be excluded from our margin calculations.

Similarly, with regard to NTN's abnormally high-profit sales, the presence of profits higher than those of other sales does not necessarily place the sales outside the ordinary course of trade. In order to determine that a sale is outside the ordinary course of trade due to abnormally high profits, there must be unique and unusual characteristics related to the sales in question which make them unrepresentative of the home market. *See CEMEX* at 900. Furthermore, in the *CEMEX* case low profit was only one of five factors which, considered together, demonstrated that the home market sales in question were outside the ordinary course of trade. However, in the instant case NTN has provided no information other than the numerical profit amounts to support its contention that these home market sales had abnormally high profits. There is no evidence in this review that these profits were abnormal. The mere existence of high profits by itself is not evidence that these same profits were abnormally high, and is not sufficient to find sales to be outside the ordinary course of trade. For this reason, we disagree with NTN that its sales with alleged abnormally high profits should not be included in the calculation of NV and CV profit.

Model Matching

Comment 17: NTN argues that the Department should consider both the sum-of-the-deviations method and differences in cost when ranking non-identical home market TRBs for model-matching purposes, rather than the sum-of-the-deviations method exclusively. NTN contends that the exclusive use of the sum-of-the-deviations method to select model matches is distortive and fails to rank properly merchandise most similar to that sold in the United States. To illustrate its argument, NTN points to a hypothetical situation involving two potential home market matches for a U.S. TRB model: model A, which has a sum-of the-deviations total of 20 percent and a difference-in-merchandise (difmer), or cost deviation, total of 19.5 percent, and model B, which has a sum-of-the-deviations total of 20.1 percent but a cost deviation total of one percent. Using the Department's current matching methodology, NTN asserts, the U.S. model would be paired improperly with model A in the home market despite that fact that the difmer value for model B when compared to the U.S. TRB model is significantly lower.

Timken asserts that the Department's current model-matching methodology conforms to the statutory requirements for selecting identical and similar merchandise. Relying on *Koyo Seiko Co.* v. *United States,* 66 F.3d 1204, 1209 (Fed. Cir. 1995), Timken argues that the Department has been afforded broad discretion in implementing the requirement to select similar matches and contends that NTN has failed to demonstrate that the Department's model-matching methodology is in error.

Department's Position: We disagree with NTN. The Act provides general guidance in selecting the products sold in the foreign market to be compared to U.S. sales. Section 773(a)(1) states that the preferred basis for NV is the price at which the foreign like product is first sold for consumption in an exporting or third-country market. Foreign like product, in turn, is defined at section 771(16) of the Act as:

merchandise in the first of the following categories in respect of which a determination for the purposes of subtitle B of this title can be satisfactorily made.

(A) The subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise.

(B) Merchandise—

(i) produced in the same country and by the same person as the merchandise which is the subject of the investigation,

(ii) like that merchandise in component material or materials and in the purposes for which used, and

(iii) approximately equal in commercial value to that merchandise.

Pursuant to Section 771(16), the Department must first search for home market merchandise which is identical in physical characteristics to that sold in the United States. When products sold to the United States do not have identical matches in the foreign market, the statute directs us to use similar merchandise which meets the requirements set forth under 771(16)(B).

For purposes of the current and previous TRBs administrative reviews, when determining appropriate product comparisons for U.S. sales we first attempt to match U.S. TRB models to identical models sold in the home market. If an identical model is unavailable, we apply our ''sum-of-the-deviations'' methodology to determine those models most similar to the U.S. models, using five physical criteria of TRBs: inside diameter, outside diameter, width, load rating, and Y2 factor. Because each of these criteria is quantitatively measured, we derive the overall sum-of-the-deviations for all five characteristics and use this absolute value to rank models. *See, e.g., Prelim Analysis Memo* at 8 and *93/94 TRB Final* at 20589. In order to satisfy the statutory requirement set forth in section 771(16)(B)(iii) of the Act that similar merchandise be ''approximately equal in commercial value'', prior to assigning sum-of-the-deviations values for ranking purposes we eliminate as possible matches those models for which the variable cost of manufacturing (VCOM) differences exceed 20 percent of the total cost of manufacturing (TCOM) of the U.S. model.

NTN, however, argues that the exclusive use of the sum-of-the-deviations method to rank non-identical TRB models is distortive and suggests that the Department alter its model-matching methodology to incorporate cost variances (calculated as the absolute value of the difference between the U.S. and home market VCOM divided by the U.S. TCOM) between U.S. and home market models as an additional ranking factor. In other words, NTN suggests using the cost variances not only to determine commercial comparability for purposes of section 771(16)(B) of the Act, but also to select most similar home market TRB models.

The statute does not require the Department to follow NTN's suggested methodology. Furthermore, the CIT has explicitly recognized the Department's broad discretion to determine what constitutes similar merchandise for the purpose of determining NV. For example, in *Timken Co.* v. *United States,* 630 F. Supp. 1327, 1338 (CIT 1986), the CIT emphasized that it is the purview of the Department and not of interested parties to determine what methodology should be used. In *NTN Bearing Corp. of America, American NTN Bearing Mfg. Corp, and NTN Corp.* v. *United States,* 18 C.I.T. 555 (Slip Op. 94–96 at 10), the CIT held that the Department was not required to adopt a particular matching methodology advanced by NTN, noting again the latitude accorded the Department in the selection of a methodology to implement section 771(16) of the Act.

Section 771(16) directs us to select home market comparison merchandise which is, preferably, physically identical to merchandise sold in the United States. If identical comparison merchandise is unavailable, we may then select merchandise which is physically similar, after adjusting for any differences in the physical characteristics of the comparison merchandise (the so-called difmer adjustment). The statute is silent, however, as to the precise manner in which similar merchandise is to be identified. As indicated above, our TRBs product-comparison methodology conforms with the express language of section 771(16) of the Act; if the preferred (*i.e.,* identical) match is unavailable, our margin program then searches for commercially comparable merchandise which is physically the most similar to the U.S. merchandise as determined using the aforementioned five physical criteria of TRBs. While NTN suggests that cost deviation values be added as a matching criterion, we note that the selection of similar merchandise is based on a product's physical characteristics and not differences in cost. Furthermore, our matching methodology satisfies NTN's apparent concerns that dissimilar merchandise may be compared because it precludes the pairing of models whose cost deviation exceeds 20 percent and provides for a difmer adjustment to NV if non-identical TRB models are matched. *See* Final Margin Program for NTN, November 9, 1998, at lines 1088–1090.

NTN's argument fails to demonstrate that our model-match methodology is distortive, unreasonable, or is otherwise not in accordance with the statute. Moreover, the courts have upheld our use of this methodology. Therefore, for these final results we have not adopted NTN's suggestion for modifying our model-match methodology.

Comment 18: NTN argues that our preliminary results computer program incorrectly matches sales first by time of sale, then by LOT. Specifically, NTN contends that in any given month within the ''contemporaneity'' window[4], if the Department is unable to find a home market sale at the same LOT to compare to a U.S. sale in that particular month, the program incorrectly searches for a comparison home market sale at a different LOT in the same month. NTN asserts that the program should instead search for a home market comparison sale at the same LOT as the U.S. sale but in a different month within the contemporaneity window.

Petitioner responds that the sales match portion of the preliminary results program operates correctly in that it first exhausts all possible matches at the same LOT before looking for a match at a different LOT.

Department's Position: We agree with Timken. Our sales match programming contains a series of instructions which is designed to first search for a match at the same LOT before looking for a match at a different level. For each of the ten passes in our multi-level array sales match, with each ''pass'' representing the next-most-similar merchandise, the variable ''CAT'' is set to the LOT of the U.S. sale to be matched. Our program uses this index variable to search for corresponding same-LOT NVs (which have been organized according to LOT) within the contemporaneity window. If, after searching each of the six window months, a same-LOT match is not found, the program will begin searching for a match at a different LOT by setting the ''CAT'' variable to a different LOT than that of the U.S. sale, and only then begin searching at that different LOT in each of the window months.

While the ''IF'' statement at lines 1388–1389 of the computer program to which NTN refers appears to elevate time period over LOT in our matching hierarchy, the program is instead assigning a ''flag'' variable depending on which iteration of the loop is in progress (*i.e.*, the first loop searches for same-level matches, the second searches for matches at the next closest LOT, and so on). As Timken notes, our program correctly operates by exhausting all possible same-LOT matches within the contemporaneity window before searching for a different LOT match; therefore, we have made no changes for these final results.

Clerical Errors

While reviewing our final results program for NTN, we discovered that our program contained the following additional clerical errors: (1) when calculating CEP profit, we inadvertently divided expenses for EP sales by the exchange rate even though the expense values were already reported in yen; (2) we failed to deduct NTN's U.S. discounts from gross unit price; and (3) we did not include a particular category of affiliated customers for purposes of NTN's LOT test. Therefore, although no party to this proceeding commented on these issues, to ensure the calculation of an accurate margin, we have nevertheless corrected the errors for these final results.

Comment 19: Timken states that in order to obtain the higher of transfer price and actual cost to calculate COP and CV for NTN's affiliated-party inputs, the Department created a variable called ADDON, which subtracts transfer price from actual cost. When the result is positive (that is, actual cost is greater than transfer price), ADDON is added to the total cost of manufacturing, interest expense, and G&A to compute a cost variable called RCOP. However, before this calculation is done, ADDON is multiplied by a variable called RELPTY, which is the percentage of inputs for a given part number that have been supplied by affiliated suppliers. Since ADDON is an actual amount, there is no reason to multiply it by RELPTY, because this calculation incorrectly reduces the actual cost difference. Therefore, Timken contends that the Department should modify the program so that it does not reduce the ADDON value by RELPTY.

Department's Position: We agree with Timken and have corrected our computer program for these final results such that the difference between actual cost and transfer price (ADDON) is not multiplied by the percentage of inputs for a given part number that have been supplied by NTN's affiliated suppliers.

Final Results of Reviews

Based on our review of the comments, for these final results we have made changes in our preliminary margin calculation program for NTN. We determine that the following percentage weighted-average margins exist for the period October 1, 1996 through September 30, 1997:

Manufacturer/exporter	Margin (percent)
For the A–588–054 case:	
Koyo Seiko	7.62
For the A–588–604 case:	
NTN	19.78

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries each importer made during the POR. The Department will issue appropriate appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of TRBs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative reviews, as provided by section 751(a)(1) of the Act:

(1) The cash deposit rates for the reviewed companies will be those rates established in these final results of reviews;

(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 these reviews, a prior review, or the less-than-fair-value 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 or any previous reviews conducted by

[4] Defined as the month of the sale, plus the three months prior to and two months after that sale.

the Department, the cash deposit rate will be 18.07 percent for the A–588-054 case, and 36.52 percent for the A–588–604 case (*see 90/92 TRB Final*).

The cash deposit rate has been determined on the basis of the selling price to the first unaffiliated U.S. customer. For appraisement purposes, where information is available, the Department will use the entered value of the merchandise to determine the assessment rate.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: November 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–30740 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–815]

Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Stainless Steel Sheet and Strip in Coils from France

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

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Rosa Jeong, Marian Wells or Annika O'Hara, Office of Antidumping/Countervailing Duty Enforcement, Group I, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3853, 482–6309, or 482–3798, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers or exporters of stainless steel sheet and strip in coils from France. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

Petitioners

The petition in this investigation was filed by the Allegheny Ludlum Corporation, Armco Inc., Washington Steel Division of Bethlehem Steel Corporation, United Steel Workers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc. (collectively referred to hereinafter as the ''petitioners'').

Case History

Since the publication of the notice of initiation in the **Federal Register** (*see Notice of Initiation of Countervailing Duty Investigations: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea,* 63 FR 37539 (July 13, 1998) (*Initiation Notice*)), the following events have occurred:

On July 14, 1998, we issued countervailing duty questionnaires to the Government of France (GOF), the European Commission (EC), and the producers/exporters of the subject merchandise. On August 6, 1998, we postponed the preliminary determination of this investigation until November 9, 1998 (*see Notice of Postponement of Preliminary Determination for Countervailing Duty Investigations: Stainless Steel Sheet and Strip in Coils from France, Italy and the Republic of Korea,* 63 FR 43140 (August 12, 1998)).

On September 14, 1998, we received responses from the GOF, the EC, and Usinor (whose Ugine Division is the sole producer of the subject merchandise that exported to the United States during the period of investigation). On October 2, 1998, we issued supplemental questionnaires to the GOF, the EC, and Usinor. We received responses to the supplemental questionnaires from the EC on October 13, 1998 and from Usinor and the GOF on October 21, 1998.

On August 19, 1998, the petitioners requested that the Department investigate three programs which the Department did not include in its initiation. After a review of the petitioners' submissions, we determined that they did not allege the elements necessary for imposition of a countervailing duty with respect to these programs. Accordingly, we declined to include the three programs in our investigation. *See* Memorandum to Richard W. Moreland, Deputy Assistant Secretary for AD/CVD Enforcement, ''Petitioners'' Supplemental Allegations,'' dated October 27, 1998, on file in the Central Records Unit of the Department of Commerce.

Scope of Investigation

For purposes of these investigations, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Excluded from the scope of this petition are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, rectangular in shape, of a width of not more than 9.5 mm, and a thickness of not more than 6.35 mm), and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

The Department has determined that certain specialty stainless steel products are also excluded from the scope of these investigations. These excluded products are described below: Flapper valve steel is defined as stainless steel strip in coils with a chemical composition similar to that of AISI 420F grade steel and containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of 185 kgf/mm^2, plus or minus 10, yield strength of 150 kgf/mm^2, plus or minus 8, and hardness (Hv) of 540, plus or minus 30.

Also excluded is suspension foil, a specialty steel product used, *e.g.*, in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 μm, with a thickness tolerance of plus-or-minus 2.01 μm, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth, and must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of these investigations. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths of 1.016 to 228.6 mm, and a thickness between 0.0127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available, *e.g.*, under the trade name ''Arnokrome III.'' [1]

Electrical resistance alloy steel is also not included in the scope of these investigations. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available, *e.g.*, under the trade name ''Gilphy 36.'' [2]

Finally, certain stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives) is also excluded. This steel is similar to ASTM grade 440F, but containing higher levels of molybdenum. This steel contains, by weight, carbon of between 1.0 and 1.1 percent, sulphur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and cobalt. This steel is sold under, *e.g.*, the proprietary name GIN4Mo.[3]

All interested parties are advised that additional issues pertaining to the scope of these investigations are still pending. Furthermore, the exclusions outlined above are subject to further revision and refinement. The Department plans on notifying interested parties of its determinations on all scope issues in sufficient time for parties to comment before the final determination.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR Part 351 (1998).

Injury Test

Because France is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from France materially injure, or threaten material injury to, a U.S. industry. On August 9, 1998, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from France of the subject merchandise (*see Certain Stainless Steel Sheet and Strip From France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan, and the United Kingdom*, 63 FR 41864 (August 9, 1998)).

Alignment with Final Antidumping Duty Determination

On July 22, 1998, the petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigation. *See Initiation of Antidumping Investigations: Stainless Steel Sheet and Strip in Coils From France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom*, 63 FR 37521 (July 13, 1998). Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determinations in the antidumping investigations of stainless steel sheet and strip in coils.

Period of Investigation

The period for which we are measuring subsidies (the POI) is calendar year 1997.

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Gin4Mo'' is the proprietary grade of Hitachi Metals America, Ltd.

Company History

The GOF identified the Ugine Division of Usinor as the only producer of the subject merchandise that exported to the United States during the POI.

In the early 1980s, Ugine (then called Ugine Aciers) was one of several producers of stainless steel in France. In 1982, the French steel company Sacilor acquired a controlling interest in Ugine. In the following year, Sacilor bought a majority of the shares in another stainless steel producer, Forges de Gueugnon, which was merged with one part of Ugine and renamed Ugine-Gueugnon. During the same time, Usinor was a separate steel company with one division called Usinor Châtillon producing stainless steel. In 1987, the GOF placed Usinor and Sacilor in a holding company named Usinor Sacilor. At the same time, Ugine-Gueugnon and Usinor Châtillon were combined into one company called Ugine Aciers de Châtillon et Gueugnon (Ugine ACG).

In 1991, Ugine ACG merged with Sacilor and became Ugine **s.a.,** a subsidiary of the Usinor Sacilor holding company. In 1994, Ugine **s.a.** was partially privatized when Usinor Sacilor sold approximately 40 percent of its equity in the company to the general public. However, in 1995, Usinor Sacilor bought back the shares in Ugine **s.a.** and obtained a near 100 percent control of the company. In late 1995, Ugine **s.a.** was converted into a division of Usinor Sacilor and became ''the Ugine Division,'' producing stainless steel and alloys. Finally, in 1997, Usinor Sacilor was renamed Usinor.

The GOF was the majority owner of both Usinor and Sacilor until the mid-1980s. In 1986, the GOF emerged as the sole owner of both companies after a capital restructuring. In 1987, the GOF created the Usinor Sacilor holding company which continued to be wholly owned by the GOF until 1991 when Credit Lyonnais, a government-owned bank, bought 20 percent of the equity in the company.

In July 1995, the first partial privatization of Usinor Sacilor, combined with a capital increase, took place. The shares were sold through a public offering of shares which consisted of a French public offering, an international public offering, and an employee offering. In accordance with the French privatization law, a certain portion of the shares were also sold to a group of so-called ''stable shareholders,'' some of which were government-owned banks and other entities. After this privatization, the stable shareholders held approximately 15 percent of Usinor's total shares, 10 percent of which were held by government-owned or controlled entities. The GOF continued to own 9.8 percent of the shares directly. A second offering of shares to employees took place in June 1996.

In early 1997, the GOF transferred (without remuneration) a small part of its stake in Usinor to individual French shareholders and company employees who had held on to their shares for 18 months following the July 1995 privatization. In October 1997, the GOF sold most of its remaining shares on the market, leaving it with approximately one percent of the shares. These shares were to be given away for free in August 1998.

Change in Ownership

In the *General Issues Appendix* (*GIA*), attached to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria,* 58 FR 37217, 37226 (July 9, 1993), we applied a new methodology with respect to the treatment of subsidies received prior to the sale of the company (privatization) or the spinning-off of a productive unit.

Under this methodology, we estimate the portion of the purchase price attributable to prior subsidies. We compute this by first dividing the privatized company's subsidies by the company's net worth for each year during the period beginning with the earliest point at which nonrecurring subsidies would be attributable to the POI (*i.e.,* in this case, 1984 for Usinor) and ending one year prior to the privatization. We then take the simple average of the ratios. The simple average of these ratios of subsidies to net worth serves as a reasonable surrogate for the percent that subsidies constitute of the overall value of the company. Next, we multiply the average ratio by the purchase price to derive the portion of the purchase price attributable to repayment of prior subsidies. Finally, we reduce the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time of privatization. For further discussion of our privatization methodology, *see, e.g., Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination: Stainless Steel Plate in Coils From Italy,* 63 FR 47246 (September 4, 1998).

With respect to spin-offs, consistent with the Department's position regarding privatization, we analyze the spin-off of productive units to assess what portion of the sale price of the productive units can be attributable to the repayment of prior subsidies. To perform this calculation, we first determine the amount of the seller's subsidies that the spun-off productive unit could potentially take with it. To calculate this amount, we divide the value of the assets of the spun-off unit by the value of the assets of the company selling the unit. We then apply this ratio to the net present value of the seller's remaining subsidies. We next estimate the portion of the purchase price going towards repayment of prior subsidies in accordance with the privatization methodology outlined above.

In the current investigation, we are analyzing: (1) the privatization of Ugine in 1994 and the subsequent buy-back of Ugine's shares by Usinor (1995); (2) the 1994 sale of Centrale Siderurgique de Richemont (CSR); and (3) the privatization of Usinor in 1995, 1996 and 1997.

Subsidies Valuation Information

Benchmarks for Loans and Discount Rates

To calculate the countervailable benefit from loans and non-recurring grants in 1997, we used Usinor's company-specific cost of long-term, fixed rate loans as reported by Usinor. For other years, we used the rates for average yields on long-term private sector bonds in France as published by the OECD. For years in which Usinor was determined to be uncreditworthy, we added a risk premium to the benchmark interest rate in accordance with the methodology consistent with our practice in *Final Affirmative Countervailing Duty Determination: Certain Steel Products from France,* 58 FR 37304 (July 9, 1993) (*Certain Steel from France*).

Allocation Period

In the past, the Department has relied upon information from the U.S. Internal Revenue Service (IRS) for the industry-specific average useful life of assets in determining the allocation period for non-recurring subsidies. *See* the *GIA*. In *British Steel plc* v. *United States,* 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) held that the IRS information did not necessarily reflect a reasonable period based on the actual commercial and competitive benefit of the subsidies to the recipients. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for non-recurring subsidies for Usinor Sacilor based on the average useful life (AUL) of its non-renewable physical assets as 14 years. This remand determination was affirmed by the Court in *British Steel plc* v. *United States*, 929 F. Supp. 426 (CIT June 6, 1996) (*British Steel II*).

As discussed below, the current investigation includes untied, non-recurring subsidies that were found to be countervailable in *Certain Steel from France—i.e.*, PACS, FIS, and Shareholders' Advances. Because we have already assigned a company-specific allocation period of 14 years to those previously investigated subsidies, we preliminarily determine that it is more appropriate to continue to allocating those subsidies over 14 years.

In the concurrent investigations of stainless steel sheet and strip from Italy and Korea, we invited parties to comment on whether an alternative approach may be more appropriate. One option identified is to determine an individual AUL for each year in which a non-recurring subsidy is provided to a company, rather than to determine a company-specific AUL for non-recurring subsidies that could change with each investigation and result in different allocation periods for the same subsidy. We also welcome any additional comments on this issue not raised above.

This investigation includes no other non-recurring subsidies that have been preliminarily determined to be countervailable. Accordingly, we have not calculated a new company-specific allocation period for subsidies not previously investigated. If it becomes necessary for the purposes of the final determination, we will calculate a new company-specific allocation period for Usinor based on information provided in the current proceeding.

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Programs Preliminarily Determined To Be Countervailable GOF Programs

A. Loans with Special Characteristics (PACS)

A plan was agreed upon in 1978 to help the principal steel companies, Usinor, Sacilor, Chatillon-Neuves-Maisons, and their subsidiaries, restructure their massive debt. This plan entailed the creation of a steel amortization fund, called the Caisse d'Amortissement pour l'Acier (CAPA), for the purpose of ensuring repayment of funds borrowed by these companies prior to June 1, 1978. In accordance with the restructuring plan of 1978, bonds previously issued on behalf of the steel companies and pre-1978 loans from Credit National and Fonds de Developpement Economique et Social (FDES) were converted into ''loans with special characteristics,'' or PACS. As a result of this process, the steel companies were no longer liable for the loans and bonds, but did take on PACS obligations.

In 1978, Usinor and Sacilor converted 21.1 billion French francs (FF) of debt into PACS. From 1980 to 1981, Usinor and Sacilor issued FF8.1 billion of new PACS. PACS in the amount of FF13.8 billion, FF12.6 billion and FF2.8 billion were converted into common stock in 1981, 1986 and 1991, respectively.

In *Certain Steel from France* and *Final Affirmative Countervailing Duty Determinations: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from France*, 58 FR 6221 (January 27, 1993) (*Lead and Bismuth*), the Department determined that the conversion of PACS to common stock in 1981 and 1986 constituted equity infusions on terms inconsistent with commercial considerations because Usinor Sacilor was found to be unequityworthy during those years. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we continue to find that these equity infusions constitute countervailable subsidies within the meaning of section 771(5) of the Act. Using the allocation period of 14 years, the 1986 conversion of PACS continues to yield a countervailable benefit during our POI.

Consistent with our practice in *Certain Steel from France,* we have treated the 1986 equity infusion as a non-recurring grant received in the year PACS were converted to common stock. Because Usinor was uncreditworthy in the year of receipt, we used discount rates that include a risk premium to allocate the benefits over time. Additionally, we followed the methodology described in the ''Change in Ownership'' section above to determine the amount of each equity infusion appropriately allocated to Usinor after its privatization. We divided this amount by Usinor's total sales during the POI. Accordingly, we preliminarily determine the countervailable subsidy to be 0.63 percent *ad valorem*.

B. Shareholders' advances

The GOF provided Usinor and Sacilor grants in the form of shareholders' advances during the period 1982 to 1986. The purpose of these advances was to finance the revenue shortfall needs of Usinor and Sacilor while the GOF planned for the next major restructuring of the French steel industry. These shareholders' advances carried no interest and there was no precondition for receipt of these funds. These advances were converted to common stock in 1986.

In *Certain Steel from France* and *Lead and Bismuth*, the Department determined that the shareholders' advances constituted countervailable grants because no shares were received for them. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we continue to find that these grants constitute countervailable subsidies within the meaning of section 771(5) of the Act. Using the allocation period of 14 years, subsidies dating back to 1984 continue to provide countervailable benefits during the POI of this case.

Consistent with our practice in *Certain Steel from France*, we have treated these advances as non-recurring grants. Because Usinor was uncreditworthy in the years of receipt, we used a discount rate that includes a risk premium to allocate the benefits over time. Additionally, we followed the methodology described in the ''Change in Ownership'' section above to determine the amount of each grant appropriately allocated to Usinor after its privatization. We divided this amount by Usinor's total sales during the POI. Accordingly, we preliminarily determine the countervailable subsidy to be 0.50 percent *ad valorem*.

C. Steel Intervention Fund (FIS)

The 1981 Corrected Finance Law granted Usinor and Sacilor the authority to issue convertible bonds. In 1983, the Fonds d'Intervention Siderurgique (FIS), or steel intervention fund, was created to implement that authority. In 1983, 1984, and 1985, Usinor and Sacilor issued convertible bonds to the FIS, which in turn, with the GOF's guarantee, floated the bonds to the public and to institutional investors. These bonds were converted to common stock in 1986 and 1988.

In *Certain Steel from France* and *Lead and Bismuth*, the Department determined that the conversion of FIS bonds to common stock in 1986 and 1988 constituted equity infusions on terms inconsistent with commercial considerations because Usinor Sacilor was found to be unequityworthy during those years. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we continue to find that these equity infusions constitute countervailable subsidies within the meaning of section 771(5) of the Act. Using the allocation period of 14 years, the 1986 and 1988 conversions of FIS bonds yield a benefit during our POI.

We have treated the 1986 and 1988 equity infusions as non-recurring grants given in the years the FIS bonds were converted to common stock. Because Usinor was uncreditworthy in the years of receipt, we used discount rates that include a risk premium to allocate the benefits over time. Additionally, we followed the methodology described in the ''Change in Ownership'' section above to determine the amount of each equity infusion appropriately allocated to Usinor after its privatization. Dividing this amount by Usinor's total sales during the POI, we preliminarily determine the countervailable subsidy to be 1.60 percent *ad valorem*.

D. Investment/Operating subsidies

During the period 1991 to 1997, Usinor received investment and operating subsidies through a variety of government programs. The subsidies were provided by the following sources: 1) the European Coal and Steel Community (ECSC) for research and development; 2) health insurance offices for investments to reduce work-related illnesses and accidents, 3) water agencies for projects in the public interest, such as water protection, pollution control and water rehabilitation. The subsidies are classified as investment, equipment or operating subsidies depending on how the funds are used.

Pursuant to section 771(5)(D)(i) of the Act, we preliminarily determine that these grants provide a financial contribution in the form of a direct transfer of funds from the ECSC and the GOF to Usinor, providing benefit in the amount of the grants.

With the exception of ECSC grants, the GOF claims that these grants are not countervailable because they are not specific. Citing to the extreme burden of providing all pertinent details of each subsidy, however, the GOF has not provided any information to demonstrate that any of these grants are not specific. Therefore, as facts available, we preliminarily determine that these subsidies are specific under section 771(5A)(D) of the Act.

Because the investment/operating subsidies received during the period 1991–1997 are less than 0.5 percent of Usinor's sales during the respective years of receipt, we have expensed these grants in the years of receipt. To calculate the *ad valorem* rate of the subsidy, we divided the 1997 benefit by Usinor's total sales during the POI. Accordingly, we determine the countervailable subsidy to be 0.11 percent *ad valorem*.

E. Myosotis project

Since 1988, Usinor has been developing an innovative continuous thin-strip casting process called ''Myosotis,'' in a joint venture with the German steelmaker Thyssen. The Myosotis project is intended to eliminate the separate hot-rolling stage of Usinor's steelmaking process by transforming liquid metal directly into a coil between two to five millimeters' thick.

To assist this project, the GOF, through the Ministry of Industry and Regional Planning and L'Agence pour la Maîtrise de L'Energie (AFME), entered into three agreements with Usinor Sacilor (in 1989) and Ugine (in 1991 and 1995). The first agreement, dated December 27, 1989, covered a three-year period and established schedules for the initial and subsequent payments to Usinor. These payments were contingent upon the submission of progress reports including a statement of investment outlays. The final payment was contingent upon the submission of a final program report and a statement of total expenses. The three installments were paid in 1989, 1991, and 1993. The 1991 Agreement between Ugine and the AFME covered the cost of some equipment for the project. This agreement resulted in two disbursements to Ugine from the AFME in 1991 and 1992. The 1995 agreement with Ugine provided interest-free reimbursable advances for the final two-year stage of the project, with the goal of casting molten steel from ladles to produce thin strips. The first reimbursable advance was made in 1997. Repayment of one-third of the reimbursable advance is due July 31, 1999. The remaining two-thirds are due for repayment on July 31, 2001.

We preliminarily determine that the assistance under this program constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. They provide financial contributions in the form of a direct transfer of funds from the GOF to Usinor. Pursuant to section 771(5A)(D) of the Act, the reimbursable advance provides a benefit in the difference between the amount of the benchmark interest due and the zero interest paid by Usinor.

With respect to specificity, the GOF has claimed that this program is available to all industrial sectors in France. However, the GOF has not supported its claim with documentation demonstrating that the program was used by other industries. Accordingly, we preliminarily determine that this program is specific within the meaning of section 771(5A)(D) of the Act because the grants and the advance were provided exclusively to Usinor (and Thyssen).

We preliminarily determine the subsidies provided between 1989 and 1993 to be non-recurring grants based on the analysis set forth in the Allocation section of the *GIA*. Because the amounts received during these years were less than 0.5 percent of Usinor or Ugine's sales during their respective year of receipt, we expensed these grants in the years of receipt.

With respect to the reimbursable advance received in 1997, we are treating this advance as a long-term interest-free loan. Pursuant to the Department's general practice regarding fixed-rate, long-term loans, we have assumed that a payment on a comparable commercial loan taken out at the same time would not be due until 1998. Because there would be no effect on Usinor's cash flow during the POI (*i.e*, no payment would have been made on a benchmark loan during the POI), we preliminarily determine that there is no benefit attributable to the POI. *See GIA* at 37228–29.

Accordingly, we preliminarily determine the countervailable subsidy rate for this program to be 0.00 percent *ad valorem*.

The GOF and Usinor have claimed that this program constitutes a noncountervailable (*i.e.*, ''green-light'') research subsidy pursuant to section 771(5B)(B) of the Act. The GOF and Usinor note that in November 1996, the EC approved the Myosotis assistance under Article 2 of the State Aids Code, which permits certain research and development assistance provided it does not exceed 25 percent of the total cost of the project. The GOF and Usinor argue that the Department likewise should find this program not countervailable because the project meets the requirements for ''green-light'' treatment as established under section 771(5B)(B) of the Act.

We have not addressed this claim because the subsidy rate of 0.00 percent as calculated above for this program, even treated as countervailable, has no impact on the net countervailable subsidy rate of this investigation.

F. Related party grants

Usinor's financial statements identify ''grants from related parties'' in the years 1992–1995. Information provided by Usinor demonstrates that these grants do not constitute a separate program from the Myosotis program and investment/operating subsidies discussed above. Specifically, a yearly breakdown of these grants shows that the amount of each grant corresponds to the amounts provided under the Myosotis program or investment/operating subsidies. Therefore, we have determined that this program will not be investigated as a separate program. *See* ''Myosotis'' and ''Investment/Operating Subsidies'' sections of this notice.

G. Ugine 1991 Grant

Ugine's 1991 financial statements indicate that Ugine received FF 26,318 thousand in subsidies and also note that FF 16,295 thousand of ''share'' in subsidies were posted to income. Information provided by Usinor indicates that these amounts reflect the funds received under the Myosotis project as well as investment and operating subsidies. Specifically, a breakdown of these grants shows that the amount of each grant corresponds to the amounts provided under the Myosotis program or investment/operating subsidies. Because Myosotis and investment/operating subsidies are being investigated separately in this proceeding, we have determined that this program will not be investigated as a separate program. *See* ''Myosotis'' and ''Investment/Operating Subsidies'' sections of this notice.

EC Programs

European Social Fund. The European Social Fund (ESF), one of the Structural Funds operated by the EC, was established in 1957 to improve workers' employment opportunities and raise their living standards. The main purpose of the Fund is to render the employment of workers easier and to increase their geographical and occupational mobility within the European Union. It provides support for vocational training, employment, and self-employment.

The member states are responsible for identifying and implementing the individual projects that are selected to receive ESF financing. The member states must also contribute to the financing of the projects. In general, the maximum benefit provided by the ESF is 50 percent of the project's total cost for projects geared toward Objectives 2, 3, 4, and 5b (see below). For Objective 1 projects, the ESF contributes a maximum of 75 percent of the project's total cost.

Like the other EC Structural Funds, the ESF contributes to the attainment of the five different objectives identified in the EC's framework regulations for Structural Funds: Objective 1 is to promote development and structural adjustment in underdeveloped regions, Objective 2 addresses areas in industrial decline, Objective 3 relates to combating long-term unemployment and creating jobs for young people and people excluded from the labor market, Objective 4 focuses on the adaptation of workers to industrial changes and changes in production systems, and Objective 5 pertains to rural development. Recently, the EC added a sixth objective under which assistance is provided to sparsely populated areas in northern Europe.

Ugine s.a. received an ESF grant for worker readaptation training in 1995. In the same year, the company also received an approximately equivalent amount from the GOF as cofinancing for the project. In 1997, the Ugine Division of Usinor received an ESF grant for training workers in a new production process at its cold-rolling mill in Isbergues. No GOF cofinancing of this project was received during the POI.

The Department considers worker assistance programs to provide a countervailable benefit to a company when the company is relieved of a contractual or legal obligation it would otherwise have incurred. *See Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy,* 61 FR 30287, 30294 (June 14, 1996) (*Pasta From Italy*). Usinor has stated that the ESF grants did not relieve the company of any contractual or legal obligations. The GOF has not provided any information as to whether the grants relieved the company of any such obligations and we have no information about the exact purpose or use of the 1995 grant. However, as discussed further below, its small size resulted in the grant being expensed in the year of receipt. We have, therefore, decided not to seek further information about the exact purpose of this grant or whether it relieved Ugine of any legal or contractual obligations.

The 1997 grant was provided to train Ugine's workers in a new production process. Since companies normally incur the costs of training to enhance the job-related skills of their employees, we preliminarily determine that the 1997 ESF grant relieved Ugine of an obligation it would have otherwise incurred.

We preliminarily determine that the 1997 ESF grant is countervailable within the meaning of section 771(5) of the Act. The grant is a financial contribution as described in section 771(5)(D)(i) of the Act which provides a benefit to the recipient in the amount of the grant.

Consistent with prior cases, we have examined the specificity of the funding. Because the EC has not provided any information about the distribution of ESF grants, we are assuming for purposes of this preliminary determination, as facts available under section 776(b) of the Act, that the funds provided by the EC are specific.

The Department normally considers the benefits from worker training programs to be recurring. *See GIA* at 37255. However, consistent with the Department's past practice and our understanding that ESF grants relate to specific, individual projects which require separate government approval, we are treating the benefit as a non-recurring grant. *See Stainless Steel Wire Rod from Italy,* 63 FR 40474, 40488 (July 29, 1998) and *Pasta from Italy* at 30295. As stated above, the value of the 1995 ESF grant and the accompanying GOF contributions were less than 0.5 percent of Ugine's total sales in that year. Similarly, the 1997 ESF grant was less than 0.5 percent of Ugine's 1997 sales. Therefore, that grant was expensed in the year of receipt. Dividing the amount of the ESF grant by the Ugine Division's 1997 total sales, we preliminarily determine the countervailable subsidy to be 0.00 percent *ad valorem* for this program.

II. Programs Preliminarily Determined Not To Be Countervailable GOF Programs

A. Purchase of power plant

In 1994, Usinor sold the shares of Centrale Siderurgique de Richemont (CSR) to Electricite de France (EDF), a government-owned entity. CSR was set up to convert gas generated by steel plants in the Lorraine region into electricity for sale to l'Union Siderurgique de L'Energie (USE). USE, in turn, sold the electricity to steel producers in the region. At the time of the transaction, both CSR and USE were owned by Usinor and Usinor factories purchased their electricity from USE.

In addition to the physical assets of CSR (*i.e.*, land, buildings, plant and equipment), the 1994 transaction also provided EDF the exclusive right to supply electricity to USE for a 15-year period. Prior to the transaction, Usinor and EDF conducted independent valuations of the transaction based on detailed projections of future costs and revenues associated with the operation of CSR and sales of electricity to USE. The projected revenues were calculated using detailed estimates of yearly outputs, consumption and rates. Similarly, projected costs were based on estimated costs for purchasing gas, operating expenses, as well as costs for developing an electric power system. After negotiations, Usinor and EDF agreed on a purchase price of FF 1 billion, which represented a compromise between the independent valuations of the transaction by Usinor and EDF.

We examined whether Usinor received more than a reasonable market price from the EDF in this transaction. We preliminarily determine that although FF 1 billion represented a large gain over the book value of CSR's physical assets, the purchase price was based on a reasonable valuation of the future sales of electricity by EDF to Usinor. The valuation is supported by reasonable estimates of projected costs and revenues. There is no evidence to indicate that the transaction was anything other than an arm's length transaction for full market value. Accordingly, we preliminarily determine that this program does not constitute a countervailable subsidy within the meaning of section 771(5) of the Act.

B. Related party loans

Usinor's 1992 and 1993 financial statements identify ''interest free loans to related parties'' in the amounts of FF 622 million in 1993 and FF 455 million in 1992. According to Usinor, these loans consist of interest-free advances *by* Usinor and other Usinor Group entities to non-consolidated entities within the Usinor Group. Information provided by Usinor indicates that the funds for these loans were provided out of Usinor's self-generated cash flow. Because there is no financial contribution as defined under section 771(5)(D) of the Act, we preliminarily determine that these loans do not constitute a countervailable subsidy.

C. Work/training contracts

Employers who hire young people (16–25 years of age) through various government-administered work/training or apprenticeship contracts may receive grants and an exemption from social security contributions. The contracts also impose training requirements for those employees and establish minimum compensation set in proportion to the SMIC (the indexed minimum wage) according to the age of the young person and the duration of the contract. This program is administered by Delegation Generale a l'Emploi et a la Formation Professionnelle of Ministere de l'Emploi et de la Solidarite at the national level, and locally by Directions Departementales du Travail, de l'Emploi et de la Formation Professionnelle (DDTEFP) (Departmental Labor, Employment and Professional Training Head Offices). The purpose of this program is to encourage the permanent employment of young people.

Usinor has entered into two types of such contracts: (1) apprenticeship contracts and (2) contracts of specific duration (including qualification agreements and adaptation agreements). Any employer can hire an apprentice and enter into an apprenticeship contract providing training for the apprentice. Qualification and adaptation agreements require approval by the DDTEFP. Approval is dependent upon (1) adoption of an agreement with an educational institution or training entity; and (2) the company's approval of a standard agreement adopted by the GOF and an occupational organization. Usinor received lump-sum payments and exemptions from social security contributions as a result of these contracts.

We analyzed whether the benefits provided under this program are specific ''in law or fact'' within the meaning of section 771(5A) of the Act. We preliminarily determine that the program is not *de jure* specific because the receipt of the benefits, in law, is not contingent on export performance or on the use of domestically sourced goods over imported goods; nor are the benefits limited to an enterprise, industry or region.

Pursuant to section 771(5A)(D)(iii) of the Act, a subsidy is *de facto* specific if one or more of the following factors exists: (1) the number of enterprises, industries or groups thereof, which use a subsidy is limited; (2) there is predominant use of a subsidy by an enterprise, industry, or group; (3) there is disproportionate use of a subsidy by an enterprise, industry, or group; or (4) the manner in which the authority providing a subsidy has exercised discretion indicates that an enterprise or industry is favored over others. As explained in the Statement of Administrative Action (SAA) (H.R. Doc. No. 316, Vol. I, 103d Cong., 2d Session (1994) at 931), the fourth criterion normally serves to support the analysis of other *de facto* specificity criteria.

Assistance under this program was distributed to a wide variety of industries in the majority of the regions of France. Therefore, the program is not limited based on the number of users. The evidence also indicates that the steel industry did not receive a predominant or a disproportionate share of the total funding. Given our findings that the number of users is large and that there is no predominant or disproportionate use of the program by the steel industry, we do not reach the issue of whether administrators of the program exercised discretion in awarding benefits. Accordingly, we preliminarily determine that this program is not specific and has not conferred countervailable subsidies within the meaning of section 771(5) of the Act.

D. Electric arc furnaces

In 1996, the GOF agreed to provide assistance in the form of reimbursable advances to benefit Usinor's research and development efforts to improve and increase the efficiency of the melting process—the first stage in steel production. The first disbursement of funds occurred on July 17, 1998.

The Department deems benefits to have been received at the time that there is an effect on the recipient's cash flow. *See GIA* at 37228–29. Because Usinor did not receive any payments until 1998, there is no benefit during the POI of this investigation. On this basis, we preliminarily determine that this program did not provide any countervailable benefits within the meaning of section 771(5) of the Act.

III. Programs Preliminarily Determined To Be Not Used

Based on the information provided in the responses, we determine that Usinor did not apply for or receive benefits under the following programs during the POI:

GOF Programs

A. *Export Financing under Natexis Banque Programs*
B. *DATAR Regional Development Grants (PATs)*
C. *DATAR 50 Percent Taxing Scheme*
D. *DATAR Tax Exemption for Industrial Expansion*
E. *DATAR Tax Credit for Companies Located in Special Investment Zone*
F. *DATAR Tax Credits for Research*
G. *GOF Guarantees*
H. *Long-Term Loans from CFDI*

EC Programs

A. *Resider II Program*
B. *Youthstart*
C. *ECSC Article 54 Loans*
D. *ECSC Article 56(2)(b) Redeployment/ Readaptation Aid*

E. Grants from the European Regional Development Fund (ERDF)

IV. Programs Preliminarily Determined Not To Exist

Forgiveness of shareholders' loans

Usinor's 1994 and 1995 financial statements indicate that the balance in the account identified as ''loans granted by the shareholders'' or ''borrowings granted by the shareholders'' was reduced from FF 2.161 billion in 1993 to FF 1.92 billion in 1994 (*i.e.*, a reduction in the amount of FF 241 million). At the end of 1995, the balance in the same account was zero. The petitioners alleged that the reduction in the loan balance represented a debt forgiveness by the GOF in order to make the company more attractive to investors prior to its privatization.

Information provided by Usinor and the GOF indicates that there was no loan forgiveness. Rather, the decreases of the loan balances in the financial statements represent a combination of loan payments by the company and the elimination of any disclosure requirement in accordance with GAAP, due to a reduction in shareholdings. Specifically, the 1995 reduction reflects the elimination of disclosure requirements applicable to loans from Credit Lyonnais, as the result of the reduction in Credit Lyonnais' ownership interest in Usinor from 20 percent to less than 10 percent at the time of Usinor's privatization. There were no disclosed shareholder loans at the end of 1995 because there were no shareholders with an interest of 10 percent or greater. International accounting standards require disclosure of transactions between a business entity and owners of more than 10 percent of shares. For 1994, the reduction is accounted for by repayments of certain outstanding loans during that year as supported by repayment documentation. On this basis, we preliminarily determine that this program does not exist.

V. Programs for Which We Need More Information

Resider I

The EC's September 14, 1998 questionnaire response on Resider II included information about a predecessor program, Resider I, which was in effect between 1988 and 1992. The purpose of both Resider programs, which are financed by the EC's structural funds, is to diversify economic activities in steel-producing areas that are adversely affected by the restructuring of the steel industry.

In its September 15, 1998 response, Usinor stated that it had not applied for, used, or benefitted from subsidies under Resider II during the POI. As indicated above, we have, therefore, preliminarily determined that Resider II was not used during the POI. However, with respect to Resider I, we asked Usinor in our October 2, 1998 supplemental questionnaire if the company had received any form of aid under this program. In its October 22, 1998 supplemental response, the company stated that it had been unable to locate information to respond to this question but that it would try to do so for verification.

The EC's response indicated that both Resider I and II are administered by government agencies in the member states and that these agencies maintain files on the individual companies that receive benefits under these programs. Therefore, in our October 2 supplemental questionnaire to the GOF, we requested information regarding Usinor's use of the Resider programs. In its October 22, 1998 response, the GOF stated that it had been unable to obtain this information but that it would try to do so for verification.

Because we do not have sufficient information to make a preliminary determination with respect to Resider I, we have decided to seek more information on this program before our final determination.

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for Usinor, the sole manufacturer of the subject merchandise. We preliminarily determine that the total estimated net countervailable subsidy rate is 2.84 percent *ad valorem*. Because we only investigated one producer/exporter, Usinor's rate will also serve as the ''all others'' rate. Therefore, the ''all others'' rate is 2.84 percent ad valorem. In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of stainless steel sheet and strip in coils from France which are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary, Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of this preliminary determination, at the U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. An interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

In addition, six copies of the business proprietary version and six copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the publication of this notice. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 55 days from the publication of this notice. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: November 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–30736 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–835]

Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea

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

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Eva Temkin or Christopher Cassel, Office of CVD/AD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to certain producers and exporters of stainless steel sheet and strip in coils from the Republic of Korea. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

Petitioners

The petition in this investigation was filed by Allegheny Ludlum Corporation, Armco, Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corporation, United Steelworkers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc. (collectively referred to hereinafter as the ''petitioners'').

Case History

Since the publication of the notice of initiation in the **Federal Register** (*see Initiation of Countervailing Duty Investigations: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea,* 63 FR 37539 (July 13, 1998) (*Initiation Notice*)), the following events have occurred. On July 17, 1998, we issued countervailing duty questionnaires to the Government of Korea (GOK), and the producers/exporters of the subject merchandise. On August 6, 1998, we postponed the preliminary determination of this investigation until no later than November 9, 1998. (*see Notice of Postponement of Time Limit for Countervailing Duty Investigations: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea,* 63 FR 43140 (August 12, 1998)).

We received responses to our initial questionnaires from the GOK and three of the five producers of the subject merchandise, Pohang Iron & Steel Company, Ltd. (POSCO), Inchon Iron & Steel Co., Ltd. (Inchon), and Dai Yang Metal Co., Ltd. (Dai Yang), on September 10, 1998. Also on September 10, 1998, we received responses from seven trading companies that are involved in exporting the subject merchandise to the United States: POSCO Steel Service & Sales Company, Ltd. (POSTEEL), Hyosung Corporation (Hyosung), Samsun Corporation (Samsun), Samsung Corporation (Samsung), Hyundai Corporation (Hyundai), Daewoo Corporation (Daewoo), and Sunkyong Ltd. (Sunkyong). On October 5, 1998, we issued supplemental questionnaires to all of the responding parties. We received their supplemental responses on October 21, 1998.

Scope of Investigation

For purposes of these investigations, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Excluded from the scope of this petition are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, rectangular in shape, of a width of not more than 9.5 mm, and a thickness of not more than 6.35 mm), and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

The Department has determined that certain specialty stainless steel products are also excluded from the scope of these investigations. These excluded products are described below: Flapper valve steel is defined as stainless steel strip in coils with a chemical composition similar to that of AISI 420F grade steel and containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between

0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of 185 kgf/mm2, plus or minus 10, yield strength of 150 kgf/mm2, plus or minus 8, and hardness (Hv) of 540, plus or minus 30.

Also excluded is suspension foil, a specialty steel product used, *e.g.*, in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 μm, with a thickness tolerance of plus-or-minus 2.01 μm, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth, and must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of these investigations. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths of 1.016 to 228.6 mm, and a thickness between 0.0127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available, *e.g.*, under the trade name ''Arnokrome III.'' [1]

Electrical resistance alloy steel is also not included in the scope of these investigations. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available, *e.g.*, under the trade name ''Gilphy 36.'' [2]

Finally, certain stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives) is also excluded. This steel is similar to ASTM grade 440F, but containing higher levels of molybdenum. This steel contains, by weight, carbon of between 1.0 and 1.1 percent, sulphur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and cobalt. This steel is sold under, *e.g.* the proprietary name GIN4Mo.[3]

All interested parties are advised that additional issues pertaining to the scope of these investigations are still pending. Furthermore, the exclusions outlined above are subject to further revision and refinement. The Department plans on notifying interested parties of its determinations on all scope issues in sufficient time for parties to comment before the final determination.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR Part 351 (1998).

Injury Test

Because the Republic of Korea (Korea) is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry. On August 9, 1998, the ITC announced its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Korea of the subject merchandise (*see Certain Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan and the United Kingdom,* 63 FR 41864 (August 9, 1998)).

Alignment With Final Antidumping Duty Determination

On July 22, 1998, the petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigation. *See Initiation of Antidumping Investigations: Stainless Steel Sheet and Strip in Coils From France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom,* 63 FR 37521 (July 13, 1998). Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determinations in the antidumping investigations of stainless steel sheet and strip in coils.

Period of Investigation

The period of investigation for which we are measuring subsidies (the POI) is calendar year 1997.

Use of Facts Available

Both Sammi Steel Co., Ltd. (Sammi) and Taihan Electric Wire Co., Ltd. (Taihan), two producers of subject merchandise, failed to respond to the Department's questionnaire. Section 776(a)(2) of the Act requires the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. In such cases, the Department must use the facts otherwise available in reaching the applicable determination. Because Sammi and Taihan failed to submit the information that was specifically requested by the Department on two separate occasions, and because the GOK also failed to provide the information requested, we have based our preliminary determination for these companies on the facts available. In addition, the Department finds that by not providing the requested information, respondents have failed to cooperate to the best of their abilities.

In accordance with section 776(b) of the Act, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available when the party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such adverse inference may include reliance on information derived from (1) the petition; (2) a final determination in a countervailing duty or an antidumping investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (4) any other information placed on the record. *See* section 351.308(c) of the Department's regulations. In the absence of

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Gin4Mo'' is the proprietary grade of Hitachi Metals America, Ltd.

information from the GOK and the respondents, we consider the petition, as well as our findings from the *Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea,* 58 FR 37338 (July 9, 1993) (*Steel Products from Korea*), to be appropriate bases for a facts available countervailing duty rate calculation.

In *Steel Products from Korea,* we determined a country-wide *ad valorem* subsidy rate of 4.64 percent based on many of the same programs alleged in this case. Therefore, we are using the highest published *ad valorem* rate of 4.64 percent that was calculated in *Steel Products from Korea* as representative of the benefits from the industry-wide subsidies alleged in this petition, and received by the other respondents in this investigation. In addition, we are also applying a facts available rate to Sammi and Taihan for a subsidy program newly reviewed in this investigation, POSCO's two-tiered pricing structure to domestic customers. We found this program to be countervailable, and calculated company-specific program rates for Dai Yang and Inchon; as discussed below, we used Inchon's calculated rate for this program as adverse facts available for Sammi and Taihan. (A detailed discussion of this program can be found in the ''Programs Preliminarily Determined to be Countervailable'' section of this notice.)

Therefore, in Taihan's case, we used the 4.64 rate from *Steel Products from Korea* because the subsidy programs alleged in this investigation, with the exception of the one new allegation, are virtually identical to the programs for which the 4.64 rate in *Steel Products from Korea* was calculated. In addition, in accordance with section 776(b)(4) of the Act, for the two-tiered pricing program, we are applying the highest calculated company-specific rate for this program to Taihan as adverse facts available, 5.51 percent *ad valorem,* the company-specific program rate for Inchon. We added this 5.51 percent rate to the 4.64 percent rate (representing the program rates of the other subsidy allegations) to arrive at a total *ad valorem* rate of 10.15 percent as adverse facts available for Taihan.

In Sammi's case, in addition to applying the 4.64 rate from *Steel Products from Korea* for most of the programs covered in this investigation and the 5.51 rate for POSCO's two-tiered pricing structure, we calculated rates for three other programs that have not previously been investigated, and which were Sammi-specific subsidy allegations. These newly alleged programs are: (1) 1992 emergency loans to Sammi Steel; (2) the ''national subsidy'' provided to Sammi; and (3) POSCO's purchase of Sammi Specialty Steel for more than adequate remuneration. There programs are dealt with individually below in the ''Programs Preliminarily Determined to be Countervailable'' section of this notice. As provided for in the Act, we used the data in the petition as adverse facts available for the calculation of the program rates for the 1992 emergency loans to Sammi Steel and the ''national subsidy'' provided to Sammi. We used information provided in the petition and in POSCO's questionnaire responses (public version on file in the Department's Central Records Unit, Room B–099), for the calculation of the program rate for POSCO's purchase of Sammi Specialty Steel for more than adequate remuneration. We then added the rates for these three programs and the rate representing the subsidy conferred by POSCO's two-tiered pricing structure to the other programs' rate of 4.64 percent *ad valorem* calculated in *Steel Products from Korea,* which is representative of the benefits from the other industry-wide subsidies alleged in the petition and received by the other respondents. We thus arrived at a total *ad valorem* rate of 29.23 percent as adverse facts available for Sammi.

The Statement of Administrative Action accompanying the URAA clarifies that the information from the petition and prior segments of the proceeding is ''secondary information.'' *See* Statement of Administrative Action, accompanying H.R. 5110 (H.R. Doc. No. 103–316) (1994) (SAA), at 870. If the Department relies on secondary information as facts available, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate such information using independent sources reasonably at its disposal. The SAA further provides that to corroborate secondary information means simply that the Department will satisfy itself that the secondary information to be used has probative value. However, where corroboration is not practicable, the Department may use uncorroborated information.

With respect to the programs for which we did not receive information from cooperative respondents, the information was corroborated either through the exhibits attached to the petition or by reviewing determinations in other proceedings in which we found virtually identical programs in the same country to be countervailable. Specifically, with respect to Taihan, the programs alleged in the current investigation were virtually identical to those found to be countervailable in *Steel Products from Korea.* We were unable to corroborate the rate we used for Taihan, because the petition did not contain countervailing duty rate information for these programs. Therefore, it was not practicable to corroborate such a rate. However, we note that the SAA at 870 specifically states that where ''corroboration may not be practicable in a given circumstance,'' the Department may nevertheless apply an adverse inference. Further, in Sammi's case, (in addition to the programs from *Steel Products from Korea* discussed above), we corroborated the three newly-alleged programs with the information provided in the petition, *i.e.,* Sammi's financial statements for years 1993 through 1996, and numerous public press articles. Specifically, Sammi's financial statements show a line item entitled ''national subsidy.'' The financial statements further indicate that Sammi's debt burden was very high and that the company was not making interest payments that reflected the significant debt load. This demonstrates that the GOK may have entrusted or directed government and/or commercial banks to provide the type of emergency loan package to Sammi in 1992 that was alleged in the Petition. Moreover, news articles indicate that the GOK was trying to rescue Sammi, and that this effort included both the emergency loans in 1992 and POSCO's purchase of Sammi Specialty Steel for more than adequate remuneration.

Additionally, the Department initiated an investigation with respect to a fourth new allegation, ''Financial Assistance in Conjunction with the 1997 Sammi Steel Company Bankruptcy.'' *see Initiation Notice.* The petitioners allege that the GOK mitigated the effects of Sammi's bankruptcy with the use of countervailable subsidies. According to petitioners, when Sammi filed for receivership in March 1997, the GOK (1) provided grants and other rescue aid which was directed through a consortium of Sammi's rivals, and (2) rescheduled Sammi's debt through a combination of loan forgiveness and reduced interest rate loans.

We requested information concerning this program from the GOK and Sammi. While Sammi chose not to cooperate in this investigation, the GOK responded to the Department's questionnaires, stating that there was no consortium and that there were no grants. The GOK further stressed that Sammi's debt was addressed in the context of normal bankruptcy proceedings. Neither the information in the GOK's response nor that in the petition is complete enough to make a determination about this program. Because we have received no information from Sammi, we do not have sufficient evidence to stop investigating this program. We will continue to search for information that will enable us to make a facts available determination about this program in our final determination.

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: In *Steel Products from Korea,* we stated that the three-year corporate bond yield ''was the best indicator of a market rate in Korea.'' *See* 58 FR at 37346. Because the applicable facts of this investigation are virtually identical to those in *Steel Products from Korea,* in conformance with that prior decision, we have used the three-year corporate bond yield as our long-term benchmark. For variable rate loans for which the benefit is calculated on the interest payment during the POI, we have used as our benchmark the three year over-the-counter corporate bond rate, as reported by the GOK in its September 10, 1998, questionnaire response (public version on file in the Department's Central Records Unit, Room B–099). We have also used the three-year corporate bond yield to calculate the benefit from fixed rate loans provided under the Energy Savings Fund.

For years in which the companies under investigation have been deemed uncreditworthy, we calculated the discount rates according to the methodology described in the *General Issues Appendix,* which is appended to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria,* 58 FR 37225, 37227 (July 9, 1993) (*GIA*). Specifically, due to the necessary use of adverse facts available with regard to Sammi, we used the highest commercial bank loan interest rates available, and added a risk premium equal to 12 percent of the commercial lending rate, in accordance with the methodology outlined in the *GIA*.

Benchmarks for Short-Term Financing: For those programs that require the application of a short-term interest rate benchmark, we used as our benchmark the company-specific, weighted-average, short-term interest rates for won-denominated loans for the POI. The three responding companies provided to the Department their respective company-specific interest rate.

Allocation Period

In the past, the Department has relied upon information from the U.S. Internal Revenue Service (IRS) for the industry-specific average useful life of assets in determining the allocation period for non-recurring subsidies (IRS Tables). *See* the *GIA*. In *British Steel plc* v. *United States,* 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) held that the IRS information did not necessarily reflect a reasonable period based on the actual commercial and competitive benefit of the subsidies to the recipients. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for non-recurring subsidies based on the average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See British Steel plc* v. *United States,* 929 F. Supp. 426, 439 (CIT 1996) (*British Steel II*).

In recent countervailing duty investigations, it has been our practice to follow the Court's decision in *British Steel II,* and to calculate a company-specific allocation period for all countervailable non-recurring subsidies. In this investigation, the only responding company for which it was necessary to examine the company-specific AUL was POSCO, as neither Inchon nor Dai Yang received non-recurring grants. However, our analysis of the data submitted by POSCO regarding the AUL of its assets has revealed several problems.

First, POSCO included special accelerated depreciation expenses and a depreciation of salvage value in its calculated AUL. POSCO reported that the accelerated depreciation is permitted in accordance with Korean GAAP for plant and equipment which operate for a standard eight-hour work day, and for facilities and equipment which operate longer than a standard eight-hour day. However, since POSCO is a producer of steel products, it appears to be the company's normal course of business to operate its facilities longer than a standard eight-hour day. With respect to the depreciation of salvage values, POSCO stated that pursuant to changes in Korean tax law as of January 1, 1995, ''companies were permitted to fully depreciate the remaining 10 percent of the acquisition cost of depreciable assets acquired prior to January 1, 1995 that had not been fully depreciated as of December 31, 1993.'' *See* POSCO's September 10, 1998, questionnaire response at 8 (public version on file in the Cental Records Unit of the Department of Commerce, Room B–099). However, while POSCO stated that the depreciation of this salvage value is included in the amounts for regular depreciation for 1995 through 1997, we do not have sufficient information to determine how to treat this salvage value in calculating POSCO's AUL. Further, we note that POSCO's calculations of its AUL show an item for ''Revaluations,'' a term which is not explained in the response.

Based on the concerns outlined above, we preliminarily determine that POSCO's calculation of its company-specific AUL should not be used to determine the appropriate allocation period for non-recurring subsidies. Rather, for purposes of this preliminary determination, we are using 15 years as set out in the IRS Tables. We intend to request clarification and additional information concerning POSCO's AUL data during the course of this investigation.

While we have not used POSCO's company-specific AUL because of the concerns outlined above, even if we were to use the company-specific data submitted by POSCO, the facts of this case pose additional concerns and possible inconsistencies. In particular, this investigation covers countervailable non-recurring subsidies benefitting POSCO, *i.e.,* GOK infrastructure investments at Kwangyang Bay. These same non-recurring subsidies to the same company were previously found countervailable in *Certain Steel Products From Korea. See* 58 FR at 37346. In that investigation, the Department allocated the benefits from these GOK investments over 15 years based on information from the U.S. Internal Revenue Service (IRS) for the industry-specific average useful life of assets. Under current Department practice, previously allocated subsidies within the same proceeding are not given a new allocation period. Rather, it is our policy to retain the allocation period originally established for the subsidies in subsequent administrative reviews of the same preceding.

We note here that in the concurrent investigation of stainless steel sheet and strip in coils from France, the Department preliminarily determined that it is more appropriate to continue allocating non-recurring subsidies over the company-specific AUL of 14 years, which was calculated as a result of *British Steel II.* Although this was a company-specific AUL, it was the AUL applied in a prior investigation of the same subsidies to the same company that are currently being examined in the investigation of stainless steel sheet and strip in coils from France. The issue we are presented with is whether the allocation period, once established for a subsidy to a company, should change in different proceedings. If the allocation period did not change across proceedings, the same GOK infrastructure investments described above will be allocated over 15 years in both the current investigation and in the recently initiated administrative review of *Certain Steel From Korea*. That review covers calendar year 1997. However, if we were to adopt different allocation periods for different proceedings, the same subsidy to the same company would be allocated over different periods, since POSCO calculated an AUL of 9 years, assuming the calculation presented by and based on company-specific data was accepted by the Department. Thus, the same subsidy to the same company would have different allocation periods across separate proceedings: 15 years in Certain Steel and 9 years in this investigation.

We encourage parties to comment on this issue and whether an alternative approach may be more appropriate. One option may be to retain the allocation period of a subsidy previously investigated in a prior investigation, rather than assign a new company-specific allocation period based on company-specific AUL data. As described above, this would conform with our practice in administrative reviews of the same countervailing duty order. Alternatively, an additional option would be to determine an individual AUL for each year in which a non-recurring subsidy is provided to a company, rather than to determine a company-specific AUL for non-recurring subsidies that could change with each investigation and result in different allocation periods for the same subsidy, as detailed above. We also welcome any additional comments on this issue not raised above.

This investigation also includes non-recurring grants to Sammi that have not been previously investigated. However, because we have no information from Sammi, we are basing the countervailing duty rate for Sammi on the facts available. Thus, as facts available, we are using the 15 years as set out in the U.S. Internal Revenue Service's Class Life Asset Depreciation Range System (for a more detailed discussion see the *GIA*).

Treatment of Subsidies Received by Trading Companies: We required responses from the trading companies because the subject merchandise may be subsidized by means of subsidies provided to both the producer and the exporter of the subject merchandise. Subsidies conferred on the production and exportation of subject merchandise benefit the subject merchandise even if the merchandise is exported to the United States by an unaffiliated trading company rather than by the producer itself. Therefore, the Department calculates countervailable subsidy rates on the subject merchandise by cumulating subsidies provided to the producer with those provided to the exporter. During the POI, POSCO and Inchon exported subject merchandise to the United States through trading companies. We required that the trading companies provide responses to the Department with respect to the export subsidies under investigation. One of the trading companies, POSTEEL, is affiliated with POSCO within the meaning of section 771(33)(E) of the Act because POSCO owned 95.3 percent of POSTEEL's shares as of December 31, 1997. The other trading companies are not affiliated with POSCO. Additionally, according to its response, Inchon is affiliated with one of the trading companies, Hyundai. This reported affiliation is based upon cross-shareholdings and common board members within the Hyundai group. The trading company, Hyundai, did respond to the Department's questionnaire concerning subsidies that it had received during the POI. However, because the status of affiliation does not affect the calculated subsidy rate for Inchon for the purpose of including subsidies provided to trading companies in Inchon's rate, we have not made a determination of the affiliation of Inchon and Hyundai within the meaning of section 771(33)(E) of the Act.

Under section 351.107 of the Department's Regulations, when the subject merchandise is exported to the United States by a company that is not the producer of the merchandise, the Department may establish a "combination" rate for each combination of an exporter and supplying producer. However, as noted in the "Explanation of the Final Rules" (the Preamble), there may be situations in which it is not appropriate or practicable to establish combination rates when the subject merchandise is exported by a trading company. In such situations, the Department will make exceptions to its combination rate approach on a case-by-case basis. *See Antidumping Duties; Countervailing Duties; Final rule,* 62 FR 27296, 27303 (May 19, 1997).

In this investigation, we preliminarily determine that it is not appropriate to establish combination rates. This determination is based on two main facts: first, the majority of the subsidies conferred upon the subject merchandise were received by the producers; second, the difference in the levels of subsidies conferred upon individual trading companies with regard to the subject merchandise is insignificant. Combination rates would serve no practicable purpose because the calculated subsidy rate for a producer and a combination of any of the trading companies would effectively be the same rate. For these reasons we are not calculating combination rates in this investigation.

Instead, the rates that we have calculated for the producers of subject merchandise include the subsidies received by the trading companies. To reflect those subsidies that are received by the exporters of the subject merchandise in the calculated *ad valorem* subsidy rate, we used the following methodology. For each of the seven trading companies, we calculated the benefit attributable to the subject merchandise. We then factored that amount into the calculated subsidy rate for the relevant producer. In each case, we determined the benefit received by the trading companies for each export subsidy, and weighted the average of the benefit amounts by the relative share of each trading company's value of exports of the subject merchandise to the United States. These calculated *ad valorem* subsidies were then added to the subsidies calculated for the producers of subject merchandise. Thus, for each of the programs below, the listed ad valorem subsidy rate includes countervailable subsidies received by both the producing and trading companies.

Creditworthiness

As stated in our *Initiation Notice*, we initiated an investigation of Inchon's creditworthiness from 1991 through 1997, and of Sammi's creditworthiness from 1990 to 1997, to the extent that nonrecurring grants, long-term loans, or loan guarantees were provided in those years.

When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. If a company receives comparable long-term financing from commercial sources, that company will normally be considered creditworthy. In the absence of comparable commercial borrowing, the Department examines the following factors, among others, to determine whether or not a firm is creditworthy:

1. Current and past indicators of a firm's financial health calculated from that firm's financial statements and accounts.

2. The firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow.

3. Future financial prospects of the firm including market studies, economic forecasts, and projects or loan appraisals.

For a more detailed discussion of the Department's creditworthiness criteria, *see, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France,* 58 FR 37304 (July 9, 1993) (*Certain Steel from France);* and *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from the United Kingdom,* 58 FR 37393 (July 9, 1993).

Inchon

In accordance with the Department's past practice, the receipt by a firm of comparable long-term commercial loans, provided without a government guarantee constitutes dispositive evidence that the firm is creditworthy. *See, e.g., Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Laminated Hardwood Trailer Flooring from Canada,* 62 FR 5201 (February 4, 1997). During the years under investigation, Inchon received numerous loans from both government-owned and private banks. Because petitioners also alleged that Inchon received government-directed credit, we have also looked at Inchon's bond issuances as comparable commercial financing. Even if the existence of these loans does not, on its own, constitute dispositive evidence that the firm is creditworthy, it is evidence that Inchon was capable of managing its long-term debt obligations.

In addition, we considered Inchon's present and past financial health, as reflected in various financial indicators calculated from the firm's financial statements and accounts, in making our determination. To this end, we calculated Inchon's financial indicators for the years 1988 through 1996. In our examination of Inchon's relevant financial ratios, we did not find that the company would be unable to meet its debt obligations. Furthermore, Inchon's financial health remained relatively stable over the years examined, without the appearance of any significant deterioration.

Although a number of the financial indicators were found to be weak during certain years, the medium- and long-term indicators do not support a determination that Inchon was uncreditworthy in any of the years examined. Furthermore, while there is a possibility that Inchon's long-term commercial financing (*e.g.* bonds) may not be dispositive evidence of creditworthiness because of government direction of credit, it serves as further evidence that Inchon was capable of meeting its long-term debt obligations. Based on these observations, we preliminarily find that Inchon was creditworthy for the years under investigation. *See* Creditworthiness Memorandum, on file in the public file of the Central Records Unit of the Department of Commerce, Room B–099.

Sammi

Because Sammi and the GOK chose not to respond with regard to this allegation, we used the information and financial data provided in the petition as the facts available in accordance with section 776(b) of the Act. (For further discussion, see the ''Facts Available'' section of this notice.) Petitioners alleged that Sammi was uncreditworthy during the period of 1983 through 1997 (although we deemed it appropriate to investigate only the 1990 through 1997 time period). *See Initiation Notice.* To illustrate the deterioration of Sammi's financial health, petitioners provided press articles and debt and profit ratios for the years of 1990 to 1996 based on the company's financial data. *See* the June 10, 1998, Petition at Exhibit 11 and 13, and their June 24, 1998, submission at Attachment 3. Based on this information, it appears that the company was nearly insolvent, as Sammi had shown a profit only once since 1991 and lacked strong future prospects. We reviewed the financial data of Sammi that was provided in the petition. The data indicate that, during the years 1990 through 1997, Sammi was not in good financial condition. The company's current ratio, quick ratio, and times interest earned ratios were low, indicating that Sammi may have had difficulty servicing new debt. In addition, the company's profit margins were low or negative. Further, it appears from such documentation that Sammi was having increasing difficulty in meeting its financial obligations.

In many cases, the Department considers a company to be creditworthy if it is able to procure commercial loans. However, in this case, the company's ability to obtain commercial loans is unclear, as information provided by petitioners indicates that the GOK may have been directing commercial banks to provide emergency financing to Sammi in order to avoid the company's bankruptcy. Based on this information, we preliminarily determine that Sammi was uncreditworthy from 1990 through 1997.

I. Programs Preliminarily Determined To Be Countervailable

A. Direction of Credit

In the 1993 investigation of *Steel Products from Korea,* the Department determined (1) that the GOK influenced the practices of lending institutions in Korea; (2) that the GOK regulated long-term loans provided to the steel industry on a selective basis; and (3) that the selective provision of these regulated loans resulted in a countervailable benefit. Accordingly, all long-term loans received by the producers/exporters of the subject merchandise were treated as countervailable. The determination in that investigation covered all long-term loans bestowed through 1991. *See* 58 FR at 37339.

In this investigation, petitioners allege that the GOK continued to control the practices of lending institutions in Korea through the POI, and that the steel sector received a disproportionate share of low-cost, long-term credit, resulting in the conferral of countervailable benefits on the producers/exporters of the subject merchandise. Petitioners assert, therefore, that the Department should countervail all long-term loans received by the producers/exporters of the subject merchandise that were still outstanding during the POI.

1. The GOK's Credit Policies Through 1991. As noted above, we previously found significant GOK control over the practices of lending institutions in Korea through 1991, the period investigated in *Steel Products From Korea.* This finding of control was determined to be sufficient to constitute a government program and government action. *See* 58 FR at 37342. We also determined that (1) the Korean steel sector, as a result of the GOK's credit policies and control over the Korean financial sector, received a disproportionate share of regulated long-term loans, so that the program was, in fact, specific, and (2) that the interest rates on those loans were inconsistent with commercial considerations. *Id.* at 37343. Thus, we countervailed all long-term loans received by the steel sector from all lending sources.

In this investigation, we provided the GOK with the opportunity to present new factual information concerning the government's credit policies prior to 1992, which we would consider along with our finding in the prior investigation. The GOK has not provided new factual information that would lead us to change our determination in *Steel Products from Korea.* Therefore, we preliminarily determine that the provision of long-term loans in Korea through 1991 results in a financial contribution within the meaning of section 771(5)(D)(i) of the Act. This finding is in conformance with the SAA, which states that ''section 771(5)(B)(iii) encompasses indirect subsidy practices like those which Commerce has countervailed in the past, and that these types of indirect subsidies will continue to be countervailable.'' SAA at 925. In accordance with section 771(5)(E)(ii) of the Act, a benefit has been conferred to the recipient to the extent that the regulated loans are provided at interest rates less than the benchmark rates described under the ''Subsidies Valuation'' section, above.

We also preliminarily determine that all regulated long-term loans provided to the producers/exporters of the subject merchandise through 1991 were provided to a specific enterprise or industry, or group thereof, within the meaning of section 771(5A)(D)(iii)(III) of the Act. This finding is in conformance with our determination in *Steel Products from Korea. See* 58 FR at 37342.

POSCO, Inchon and Dai Yang all received long-term loans prior to 1992 that were still outstanding during the POI. These included loans with both fixed and variable interest rates for all three responding companies. To determine the benefits from the regulated loans with fixed interest rates, we applied the Department's standard long-term loan methodology and calculated the grant equivalent for the loans. For the variable-rate loans, we compared the amount of interest paid during the POI on the regulated loans to the amount of interest that would have been paid at the benchmark rate. We then summed the benefit amounts from all of the loans attributable to the POI and divided the total benefit by each company's total sales. On this basis, we determine the countervailable subsidy rates to be 0.15 percent *ad valorem* for POSCO, 0.04 percent *ad valorem* for Inchon, and 0.06 percent *ad valorem* for Dai Yang.

2. The GOK's Credit Policies From 1992 Through 1997. We have also examined the GOK's credit policies during the period 1992 through 1997. Because of the complexity of this issue and the conflicting information on the record, which we discuss below, we will continue to seek additional information on whether the GOK's practices during this period confer a countervailable subsidy. After we collect additional information and conduct verification, we will prepare an analysis memorandum addressing the countervailability of the GOK's credit policies during this period and provide all parties with an opportunity to comment on our analysis.

In its questionnaire responses, the GOK asserts that there was no government policy to direct long-term credit to the Korean steel industry during the period 1992 through 1997, and that it was not involved in the lending activities of Korean financial institutions. The GOK states that the lending decisions and loan distributions of financial institutions in Korea reflect commercial considerations. The GOK states that its role in the financial sector is limited to monetary and credit policies as well as bank supervision and examination.

Evidence submitted to the Department by the GOK indicates that some deregulatory measures affecting the Korean financial sector have been taken since 1991. These include a four-stage interest rate deregulation plan that, according to the GOK, virtually eliminated all government control over deposit and lending rates in Korean won. For example, rates on corporate bonds and all bank loans, other than those assisted by Bank of Korea (BOK) rediscounts, were deregulated by November 1993. Also, information submitted to the Department by the GOK indicates that there have been reforms to the process by which commercial bank presidents are selected. The reforms include a procedure, implemented in 1993, whereby bank chairmen are selected by committees consisting of shareholder representatives, corporate clients, and ex-bank presidents. In 1997, the GOK further amended the Banking Act to prescribe that a candidate for bank president, recommended by a candidate recommendation committee, must be elected by an affirmative vote of a two-thirds majority of the non-permanent directors of the bank.

However, other information in the record indicates that the GOK may still exert substantial influence over the lending decisions of financial institutions. For example, recent GOK policies appear to be aimed, in part, at promoting certain sectors of the economy, such as high technology and small and medium sized enterprises (SMEs). *See, e.g.,* ''KDB Financial Support for Korean Industries,'' from the Korea Development Bank appended to ''Memorandum From Case Analyst to File, Re: Articles on Korean Financial System'' (on file in the public file of the Central Records Unit of the Department of Commerce, Room B–099) (''Korean Financial System Memo''). Other official information on the record appears to suggest that the GOK may have continued the practice of directing credit after 1991. Independent commentators have also noted the GOK's continued involvement in the financial system. *See, e.g., Deep Pockets,* ''The Economist'' (May 3, 1997), appended to Korean Financial System Memo; *Financing Foreign Operations, South Korea,* The Economist Intelligence Unit, 1997, page 20 (1997), appended to Korean Financial System Memo; *The Korean Economy in 1997: Crisis and Response,* by Thomas Byrne, appended to Korean Financial System Memo.

As noted above, in light of this conflicting information, at verification and during the course of this proceeding, we will gather additional information in order to make a determination as to whether credit provided after 1991 is countervailable. During verification, we plan to meet with various individuals who are knowledgeable about the financial sector in Korea in order to gather information about the differences between the GOK's credit policies in the 1980s and the 1990s; the lending practices of government-owned banks and of commercial lending institutions; the role of securities (public and corporate bonds) in the financial system; and the impact of the GOK's financial liberalization on the lending practices of Korean banks after 1991.

B. Loans From the Energy Savings Fund

Established in accordance with Article 51 of the ''Rationalization of Energy Utilization Act'' (Energy Use Act), the Energy Saving Fund provides financing at below-market interest rates for investment by businesses in facilities that rationally and efficiently use energy. Overall responsibility for the program lies with the Ministry of Industry and Energy (MIE), but the operation and management of the program is entrusted to the Korea Energy Management Corporation (KEMC). While the Energy Use Act was repealed in 1995, the MIE, under the new ''Energy Use Rationalization Act,'' provides financing for this program from special government accounts.

Korean companies obtain financing under this program by submitting an application to the KEMC. If the KEMC is satisfied that the applicant's business plans are intended for the rationalization of energy use, it will then issue a recommendation, and forward the company's application to a bank. The KEMC will transfer funds to the bank, which will in turn provide the funds to the applicant. The interest rate charged under the Energy Saving Fund was set at 7.0 percent. POSCO and Inchon paid interest on Energy Saving Fund (ESF) loans during the POI, and the interest rates paid by the companies were less than the 7.0 percent rate prescribed by the program. POSCO received two ESF loans, both in 1994, and both at interest rates below 7.0 percent. Inchon also received two ESF loans, one before 1992 and one after 1992. The pre-1992 ESF loan was at a rate below the prescribed interest rate set by the program.

We preliminarily determine that the program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act and, in accordance with section 771(5)(E)(ii) of the Act, provides a benefit to the recipient based on the difference between the interest rate on the program loan and the benchmark rate described in the ''Subsidies Valuation'' section, above. We also preliminarily determine that the loans provided to POSCO and the pre-1992 loan made to Inchon were specific within the meaning of section 771(5A)(D)(iii)(IV) of the Act, because the interest rates charged to POSCO and Inchon were less than the program interest rate prescribed by the program's regulations. We note that the ESF loan received by Inchon before 1992 would also be found to be countervailable under our determination in the 1993 investigation of *Steel Products from Korea* that the GOK directed credit to the steel industry. *See also* the ''Direction of Credit'' section in this preliminary determination.

To calculate the benefit from the Energy Savings Loans, we employed the Department's standard long-term loan methodology, using as our benchmark the rate described in the ''Subsidies Valuation'' section of the notice, above. We divided the benefit attributable to the POI by each company's total sales during 1997. On this basis, we preliminarily determine the countervailable subsidy to be less than 0.005 percent *ad valorem* for POSCO and for Inchon.

We have not yet made a determination on whether the post-1992 ESF loan provided to Inchon is countervailable. According to the information provided by the GOK and Inchon, the interest rate on the post-1992 loan is in accordance with the prescribed rates under the ESF program. Thus, we must make a specificity determination on the ESF program under section 771(5A)(D) of the Act. The information on the record regarding the specificity of the ESF program is inconclusive. Therefore, we are seeking additional information on this program and will make our determination of the specificity of the program in our final determination. We will offer all interested parties an opportunity to comment on any additional factual information obtained concerning this program.

C. 1992 ''Emergency Loans'' to Sammi Steel

The petition alleges that in 1992 the GOK directed a package of 132 billion won in ''emergency loans'' to Sammi in order to save the company from bankruptcy. Because Sammi and the GOK chose not to respond with regard to this allegation, we used the information and data provided in the petition as adverse facts available, in accordance with section 776(b) of the Act. This information, in conjunction with our finding that Sammi was uncreditworthy during the year in question, indicates that Sammi was the recipient of a government-directed emergency loan package in 1992, and that this loan package provided a financial contribution in accordance with section 771(5)(D)(i) of the Act. In addition, because this emergency loan package was only provided to Sammi, we preliminary determine that the program is specific under section 771(5A)(D) of the Act.

Under section 771(5)(E)(ii) of the Act, the benefit from a countervailable loan is based upon the difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market. Because the loans in question are part of a government-directed emergency loan package to forestall Sammi's bankruptcy, it is reasonable to assume that the company would not have been able to actually obtain alternative financing absent the participation of the government. Therefore, for this preliminary determination, as facts available, we are treating these emergency loans of 132 billion won as interest-free loans which are rolled over from year to year. A review of Sammi's 1996 financial statements indicate that the company is paying little interest on outstanding debt, interest that may not have been sufficient to cover even its short-term debt. Thus, we are calculating the benefit from these interest-free loans using the Department's standard long-term variable rate loan methodology. To calculate the benefit from this program during the POI, we took the amount of the loans, 132 billion won, and calculated the amount of interest that would have been paid on that amount. As facts available, we have used as a benchmark interest rate the highest available commercial loan rate, plus a risk premium. For a more detailed discussion, *see* the ''Subsidies Valuation'' section of this notice. We divided the benefit attributable to the POI by Sammi's total sales during 1996. We used the sales figure reported in Sammi's 1996 financial statements as a proxy for the 1997 sales because we do not have any information of the value of Sammi's sales for the POI. On this basis, we preliminarily determine the countervailable subsidy conferred to be 3.18 percent ad valorem.

Petitioners have argued that under the application of adverse facts available, with no other information on the record, the emergency loans received by Sammi should be treated as grants. However, for the purposes of this preliminary determination, it is appropriate to treat this emergency loan package as loans. When this program was initially alleged, it was alleged that the GOK had provided a large amount of money to Sammi in the form of loans. *See* the June 10, 1998, Petition at page 56 (public version on file in the public file of the Central Records Unit of the Department of Commerce, Room B–099). Moreover, the information provided in the petition which was the basis for the Department's initiation of an investigation into this program, describes this program as a loan package. *See* the June 10, 1998 Petition at Exhibit 8 (public version on file in the public file of the Central Records Unit of the Department of Commerce, Room B–099).

D. ''National Subsidy'' to Sammi

The petitioners allege that in 1993 Sammi received a ''national subsidy'' in the amount of 39 million won. They provide the company's 1993 financial statement, which has an entry for the alleged subsidy, although the nature of the subsidy is not explained. Neither Sammi nor the GOK submitted any information to the record explaining this subsidy. Therefore, in accordance with 776(b) of the Act, we used the information provided in the petition. We find this program to be countervailable because this subsidy was given only to Sammi, and thus, it is specific under section 771(5A)(D) of the Act, and a financial contribution was provided to Sammi under section 771(5)(D)(ii) of the Act.

Because no other information was provided, we are treating this ''national subsidy'' as a grant bestowed upon

Sammi. In order to calculate the rate for this program, we employed the Department's grant methodology. *See GIA*, 58 FR at 37225–31. However, because the total amount of the national subsidy is less than 0.50 percent of Sammi's 1993 sales, we have expensed the grant in the year of receipt. Thus, there is no benefit under this program during the POI.

E. Purchase of Sammi Specialty Steel Division for More than Adequate Remuneration

In February 1997, POSCO purchased the specialty steel bar and pipe division of Sammi for 719.4 billion won. This division became POSCO's Changwon facility. Petitioners alleged that POSCO was directed by the government to purchase the Sammi Specialty Steel Division as a matter of national interest as opposed to one of economic merit. Petitioners alleged that the GOK used its ownership in POSCO as a vehicle for the subsidization of Sammi. Thus, petitioners allege that POSCO's purchase of the Sammi Specialty Steel Division was for more than adequate remuneration.

As noted in the ''Use of Facts Available'' section of this notice, Sammi refused to respond to the Department's questionnaires. POSCO has provided certain documents relevant to this purchase, but Sammi's refusal to respond to our questionnaires means that significant portions of information required by the Department to analyze this program have not been provided. Thus, in making this preliminary determination, we have relied on both information provided by POSCO and information provided in the petition with respect to this allegation. In accordance with section 776(b) of the Act, the Department may use an inference that is adverse to the interest of a party when selecting from facts otherwise available when the party has failed to cooperate with a request for information. As discussed in the ''Use of Facts Available'' section, we determined that Sammi has failed to cooperate by not answering the Department's questionnaire.

Based on the information on the record, we preliminarily determine that the actions of POSCO should be considered as an action of the GOK because POSCO is a government-controlled company. During the POI, the GOK was the largest shareholder of POSCO. We also note that POSCO is one of three companies designated as a ''Public Company'' by the GOK. One of the other ''Public Companies'' is the state-run utility company, KEPCO. This determination that POSCO should be treated as a government-owned provider of a good or service is consistent with other cases involving the provision of a good or service by government-owned companies. *See, e.g., Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela*, 62 FR 55014 (October 22, 1997).

Over the course of this investigation, we have reviewed numerous documents that relate to this purchase, including the valuation studies and the purchase contract between POSCO and Sammi. The amount paid by POSCO was significantly higher than the value defined by POSCO's own interim valuation report. Ostensibly, Sammi used the proceeds from the sale to pay debts owed by its other divisions. It appears as though the purchase price agreed upon by POSCO and Sammi included money both for the assets that POSCO was purchasing and for the repayment of debt associated with these assets. *See* POSCO's October 21, 1998, supplemental questionnaire response at Exhibit F–12, public version on file in the public file of the Central Records Unit of the Department of Commerce, Room B–099.

According to section 771(5)(E) of the Act, the adequacy of remuneration with respect to a government's provision of a good or service shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review. Because no information was provided by Sammi with respect to this program, as facts available the adequacy of remuneration was based on a comparison of the value and profitability of Sammi's bar and pipe division, as described in POSCO's valuation report, with the actual purchase price. On this basis, the Department preliminarily determines that POSCO made this purchase for more than adequate remuneration, thereby conferring a benefit under section 771(5)(E)(iv) of the Act. In accordance with section 771(5A)(D)(i) of the Act, we find that this program is specific to Sammi.

To calculate a countervailing duty rate for this purchase, we treated the excessive remuneration, *i.e.*, the amount paid for Sammi by POSCO in excess of POSCO's own valuation, as a non-recurring grant and allocated it over the average useful life of assets in the industry. For a discussion of the AUL, see the ''Subsidies Valuation'' section of this notice. Based on this methodology, we calculated a countervailable subsidy of 15.90 percent *ad valorem* for Sammi for this program during the POI.

F. Kwangyang Bay

Petitioners requested that the Department investigate whether the GOK's infrastructure development at Kwangyang Bay continues to provide a countervailable subsidy to POSCO's steel production. The Department previously determined that the Korean government's infrastructure development at Kwangyang Bay constituted a specific countervailable subsidy to POSCO, because POSCO was found to be the predominant user of the infrastructure. *See Steel Products from Korea*, 58 FR at 37346–47. Because POSCO still produces steel products at Kwangyang Bay, we requested information on this program to determine whether the GOK has made additional investments since 1991, at Kwangyang Bay.

1. GOK Infrastructure Investments at Kwangyang Bay Pre-1992. In *Steel Products from Korea*, the Department investigated the GOK's infrastructure investments at Kwangyang Bay over the period 1983–1991. During this period of time, the GOK's investments at Kwangyang Bay included: construction of an industrial waterway, construction of a railroad station, construction of a road to Kwangyang Bay, dredging of the harbor, and construction of three finished goods berths. We determined that the GOK's provision of infrastructure to POSCO at Kwangyang Bay was countervailable because we found POSCO to be the predominant user of the GOK's investments. The Department has consistently held that a countervailable subsidy exists when benefits under a program are provided, or are required to be provided, in law or in fact, to a specific enterprise or industry or group of enterprises or industries. *See Steel Products from Korea*, 58 FR at 37346.

No new factual information or evidence of changed circumstances has been provided to the Department with respect to the GOK's infrastructure investments at Kwangyang Bay over the period 1983–1991. Therefore, to determine the benefit from the GOK's investments to POSCO during the POI, we relied on the calculations performed in the 1993 investigation of *Steel Products from Korea*, which were placed on the record of this investigation by POSCO. In measuring the benefit from this program in the 1993 investigation, the Department treated the GOK's costs of constructing the infrastructure at Kwangyang Bay as untied, non-recurring grants in each year in which the costs were incurred. The Department used as its discount rate the three-year corporate bond rate on the secondary market, which was the average cost of long-term fixed rate debt in Korea at that time.

We applied the Department's standard grant methodology and then allocated the GOK's infrastructure investments over a 15-year time period as described in the ''Allocation'' section of the notice, above. We used as our discount rate the three-year corporate bond rate on the secondary market used in *Steel Products from Korea.* We then summed the benefits received by POSCO during 1997, from each of the GOK's yearly investments over the period 1983–1991. We then divided the total benefit attributable to the POI by POSCO's total sales for 1997. On this basis, we preliminarily determine a countervailable subsidy of 0.29 percent *ad valorem* for the POI for POSCO.

2. GOK Infrastructure Investments at Kwangyang Bay Post-1991. The GOK has made the following additional infrastructure investments at Kwangyang Bay since 1991: construction of a road from Kwangyang to Jinwol, construction of a container terminal, and construction of the Jooam Dam. The GOK states that pursuant to Article 29 of the Industrial Sites and Development Act, it is the national and local governments' responsibility to provide basic infrastructure facilities throughout the country, and the nature of the infrastructure depends on the specific needs of each area and/or the types of industries located in a particular area. Depending upon the type of infrastructure built, the GOK provides services to companies through the use of the infrastructure facilities and charges fees for these services based on published tariff rates applicable to all users.

With respect to the GOK's post-1991 infrastructure investments at Kwangyang Bay, the GOK argues that the construction of the infrastructure was not for the benefit of POSCO. The GOK reports that the purpose of developing the Jooam Dam, which was fully constructed in 1993, was to meet the rising demand for water by area businesses and households. The supply capacity of the Sueochon dam, which was constructed prior to 1991, could not meet the area's water needs and therefore a second dam at Kwangyang Bay was built. The GOK further reports that the construction of the Jooam Dam did not benefit POSCO because POSCO receives all of its water supply from the Sueochon Dam. In *Steel Products from Korea,* we determined that POSCO was the predominant user of the Sueochon Dam, and on this basis treated the government's full investment costs for constructing that dam as countervailable subsidies benefitting POSCO.

The GOK developed the container terminal according to the Kwangyang Container Terminal Development Plan. The purpose of the container terminal was to provide another major southern port with a container terminal in order to relieve congestion at Pusan, and to encourage the further commercial development of the region. The GOK states that, given the nature of the merchandise imported, produced, and exported by POSCO at Kwangyang Bay, this container terminal cannot be used by POSCO's operations. According to the responses from the GOK and POSCO, neither steel products nor steel inputs are shipped through the container terminal at Kwangyang Bay, nor, given the nature of those products, would they be shipped through the container terminal.

The road from Kwangyang to Jinwol was constructed in 1993. The road between the two cities is a by-pass route constructed to relieve a transportation bottleneck in the area. The GOK states that this is a general service, public access road available for, and used by, all residents and businesses in the area of Kwangyang Bay. According to the GOK response, the reason for building the public highway was not to serve POSCO, but to provide general infrastructure to the area as part of the GOK's continuing development of the country.

Based on the information on the record regarding the GOK's infrastructure investments at Kwangyang Bay since 1991, we preliminarily determine that these investments are not providing countervailable benefits to POSCO. However, we will further investigate the GOK's infrastructure investments at verification to ascertain whether or not, in fact, the facilities were built for POSCO's benefit.

G. Port Facility Fees

The GOK reports in its September 10, 1998, questionnaire response that, since 1991, POSCO has built new port facilities at Kwangyang Bay, at the company's own expense. However, since titles to port facilities must be transferred to the GOK in accordance with Article 17–1 of the Harbor Act, POSCO had to revert these facilities to the GOK. In return, POSCO has the right to use the port facilities free of charge, and can charge other users a usage fee until the company recovers all of its investment costs.

In the 1993 investigation of *Steel Products from Korea,* the Department found that POSCO, which built port berths at Kwangyang Bay, but, by law, had to deed them to the GOK, was exempt from paying fees for use of the berths. POSCO was the only company entitled to use the berths at the port facility free of charge. The Department determined that because this privilege was limited to POSCO, and because the privilege relieved POSCO of costs it would otherwise have had to pay, POSCO's free use of the berths at Kwangyang Bay constituted a countervailable benefit. The Department stated that each exemption from payment of the fees, or ''reimbursement'' to POSCO, creates a countervailable benefit because the GOK is relieving POSCO of an expense the company would have otherwise incurred. *See Steel Products from Korea,* 58 FR at 37347–348.

With respect to the present investigation, because POSCO remains exempt from paying port facility fees which it otherwise would have to pay, and therefore the government is not collecting revenue that it is otherwise due, we preliminarily determine that POSCO's free use of the port facilities provides a financial contribution to the company within the meaning of section 771(5)(D)(ii) of the Act. We also preliminarily find that the exemption from paying port facility charges is a specific subsidy under section 771(5A)(D)(iii)(IV) of the Act, because POSCO was the only company exempt from paying port facility fees during the POI.

Because the exemption of the port facility fees are not ''exceptional'' benefits and are received automatically on a regular and predictable basis without further government approval, we preliminarily determine that this fee exemption provides a recurring benefit to POSCO. Therefore, we have expensed the benefit from this program in the year of receipt. *See GIA,* 58 FR at 37226. To measure the benefit which POSCO received during the POI for the free use of the facilities, we calculated the amount of the fees which POSCO would have had to pay for the use of the facilities during the POI. We then divided this benefit amount by POSCO's total sales for the POI. On this basis, we preliminarily determine that POSCO received a countervailable subsidy of 0.03 percent *ad valorem* during the POI.

H. Export Industry Facility Loans

In *Steel Products from Korea,* 58 FR at 37328, the Department determined that export industry facility loans (EIFLs) are contingent upon export, and are therefore export subsidies to the extent that they are provided at preferential rates. In this investigation, we provided the GOK with the opportunity to present new factual information concerning these EIFLs, which we would consider along with our finding in the prior investigation. The GOK has not provided new factual information that would lead us to change our determination in *Steel Products from Korea.* Therefore, we continue to find that EIFLs are provided on the basis of export performance and are export subsidies under section 771(5A)(B) of the Act. We also preliminarily determine that the provision of loans under this program results in a financial contribution within the meaning of section 771(5)(D)(i) of the Act. In accordance with section 771(5)(E)(ii) of the Act, a benefit has been conferred to the recipient to the extent that the EIFLs are provided at interest rates less than the benchmark rates described under the ''Subsidies Valuation'' section, above.

Dai Yang was the only respondent with outstanding loans under this program during the POI. To calculate the benefit conferred by this program, we compared the actual interest paid on the loan with the amount of interest that would have been paid at the applicable benchmark interest rate. When the interest that would have been paid at the benchmark rate exceeds the interest that was paid at the program interest rate, the difference between those amounts is the benefit. We divided the benefits derived from the loans by total export sales. On this basis, we preliminarily determine that Dai Yang received from this program during the POI a countervailable subsidy of 0.04 percent *ad valorem*.

I. Short-Term Export Financing

The Department determined that the GOK's short-term export financing program was countervailable in *Steel Products from Korea,* 58 FR at 37350. Petitioners allege that this program may also have benefitted the producers and/ or exporters of the subject merchandise. In this investigation, the GOK reports that the BOK, under the ''Detailed Rules of Trade Financing Related to the Aggregate Ceiling Loans'' (Detailed Rules), provides discounts on foreign trade bills to commercial banks, which, in turn, extend short-term loans to exporters. Under the aggregate credit ceiling system established in 1994, the BOK allocates a credit ceiling every month to each commercial bank, including branches of Korean and foreign banks. This ceiling is based on each bank's loan performance, *i.e.,* each bank's discounting of commercial loans, foreign trade financing, and loans for the production of parts and material. These banks then provide loans to exporters using the funds received from the BOK and funds generated from their own sources to discount trade bills.

There are two types of trade financing: production financing and raw material financing. A bank provides production financing when a company needs funds for the production of export merchandise or the production of raw materials used in the production of exported merchandise. A bank extends raw material financing to exporters which require financing for the importation or local purchase of raw materials used in the production of exported merchandise.

During the POI, POSCO and Dai Yang both received export financing. These two companies report that they entered into credit ceiling loan agreements with commercial banks in accordance with Articles 12 and 13 of the Detailed Rules to receive production financing. The loan agreements outlined the maximum amount of credit which POSCO and Dai Yang were eligible to receive, the periods covered by the loan agreements, the applicable interest rates, and the penalty interest rates.

When the exporting company purchases raw materials from a supplier on a letter of credit basis, the supplier presents the letter of credit to the exporter's bank for payment. The bank, in turn, pays the purchase price to the supplier and debits the trade loan against the exporter's line of credit. The exporter pays the full amount of each trade loan after about 90 days, which is the average period from production to sales. Interest is paid by the exporter against each trade loan at the time the loans are received. Both Dai Yang and POSCO reported that they paid all of their export financing during the POI in a timely manner and incurred no overdue interest penalties.

In accordance with section 771(5A)(B) of the Act, we preliminary determine that this program constitutes an export subsidy because receipt of the financing is contingent upon export performance. A financial contribution is provided to Dai Yang and POSCO under this program within the meaning of section 771(5)(D)(i) of the Act. In order to determine whether this export financing program confers a countervailable benefit to Dai Yang and POSCO, we compared the interest rate the companies paid on the export financing received under this program during the POI with the interest rate they would have paid on a comparable short-term commercial loan. See discussion above in the ''Subsidies Valuation Information'' section with respect to short-term loan benchmark interest rates.

Because loans under this program are discounted (*i.e.,* interest is paid up-front at the time the loans are received), the effective rates paid by POSCO and Dai Yang on their export financing are discounted rates. Therefore, it was necessary to derive from company-specific weighted-average interest rates for short-term won-denominated commercial loans, a discounted benchmark interest rate. We compared this discounted benchmark interest rate to the discounted interest rates charged on the export financing and found that the program interest rates were lower than the benchmark rates. Therefore, in accordance with section 771(5)(E)(ii) of the Act, we preliminarily determine that this program confers countervailable benefits because the interest rates charged on the loans were less than what POSCO would have had to pay on a comparable short-term commercial loan.

To calculate the benefit conferred by this program, we compared the actual interest paid on the loans with the amount of interest that would have been paid at the applicable discounted benchmark interest rates. When the interest that would have been paid at the benchmark rate exceeded the interest that was paid at the program interest rate, the difference between those amounts is the benefit. Because neither POSCO nor Dai Yang was able to segregate their production financing applicable to only subject merchandise exported to the United States, we divided the benefits derived from the loans by total exports. On this basis, we preliminarily determine that POSCO received from this program during the POI a countervailable subsidy of less than 0.005 percent *ad valorem*, and that Dai Yang received a countervailable subsidy of 0.04 percent *ad valorem* during the POI.

J. Reserve for Export Loss '' Article 16 of the TERCL

Under Article 16 of the Tax Exemption and Reduction Control Act (TERCL), a domestic person engaged in a foreign-currency earning business can establish a reserve amounting to the lesser of one percent of foreign exchange earnings or 50 percent of net income for the respective tax year. Losses accruing from the cancellation of an export contract, or from the execution of a disadvantageous export contract, may be offset by returning an equivalent amount from the reserve fund to the income account. Any amount that is not used to offset a loss must be returned to the income account and taxed over a three-year period, after a one-year grace period. All of the money in the reserve is eventually reported as income and subject to corporate tax either when it is used to offset export losses or when the grace period expires and the funds are returned to taxable income. The deferral of taxes owed amounts to an interest-free loan in the amount of the company's tax savings. This program is only available to exporters. During the POI, Dai Yang, Inchon, Samsun, Samsung, Sunkyong, and Daewoo used this program. Although POSCO did not use this program during the POI, its exports of the subject merchandise were shipped through trading companies which did use this program during the POI (Samsun, Samsung, Sunkyong, and Daewoo). Neither Inchon nor Dai Yang shipped through any trading companies that received benefits from this program, although both Inchon and Dai Yang received benefits as exporters.

We preliminarily determine that the Reserve for Export Loss program constitutes an export subsidy under section 771(5A)(B) of the Act because the use of the program is contingent upon export performance. We also preliminarily determine that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan.

To determine the benefits conferred by this program, we calculated the tax savings by multiplying the balance amounts of the reserves as of December 31, 1996, by the corporate tax rate for 1996. We treated the tax savings on these funds as short-term interest-free loans. Accordingly, to determine the benefits, the amounts of tax savings were multiplied by the companies' weighted-average interest rates for short-term won-denominated commercial loans for the POI, described in the "Subsidies Valuation Information" section, above. Using the methodology for calculating subsidies received by trading companies, which also is detailed in the "Subsidies Valuation Information" section of this notice, we preliminarily determine a countervailable subsidy of less than 0.005 percent *ad valorem* attributable to POSCO, a subsidy of 0.15 percent *ad valorem* for Inchon, and a countervailable subsidy of 0.01 percent *ad valorem* attributable to Dai Yang.

K. Reserve for Overseas Market Development—Article 17 of the TERCL

Article 17 of the TERCL operates in a manner similar to Article 16, discussed above. This provision allows a domestic person engaged in a foreign trade business to establish a reserve fund equal to one percent of its foreign exchange earnings from its export business for the respective tax year. Expenses incurred in developing overseas markets may be offset by returning from the reserve, to the income account, an amount equivalent to the expense. Any part of the fund that is not placed in the income account for the purpose of offsetting overseas market development expenses must be returned to the income account over a three-year period, after a one-year grace period. As is the case with the Reserve for Export Loss, the balance of this reserve fund is not subject to corporate income tax during the grace period. However, all of the money in the reserve is eventually reported as income and subject to corporate tax either when it offsets export losses or when the grace period expires. The deferral of taxes owed amounts to an interest-free loan equal to the company's tax savings. This program is only available to exporters. The following exporters of the subject merchandise received benefits under this program during the POI: Dai Yang, Hyosung, Hyundai, POSTEEL, Samsun, Samsung, and Sunkyong, and Daewoo. Although Inchon and POSCO did not use this program during the POI, these companies' exports of the subject merchandise were shipped through trading companies which did use this program during the POI: Inchon shipped through Hyundai, and POSCO shipped through Hyosung, POSTEEL, Samsun, Samsung, and Sunkyong, and Daewoo. Dai Yang did not ship through trading companies during the POI.

We preliminarily determine that the Reserve for Overseas Market Development program constitutes an export subsidy under section 771(5A)(B) of the Act because the use of the program is contingent upon export performance. We also preliminarily determine that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan.

To determine the benefits conferred by this program during the POI, we employed the same methodology used for determining the benefit from the Reserve for Export Loss program. We used as our benchmark interest rate, each company's respective weighted-average interest rate for short-term won-denominated commercial loans for the POI, described in the "Subsidies Valuation Information" section above. Using the methodology for calculating subsidies received by trading companies, which also is detailed in the "Subsidies Valuation Information" section of this notice, we preliminarily calculate a countervailable subsidy of 0.01 percent *ad valorem* for this program during the POI for POSCO, 0.01 percent *ad valorem* for Inchon, and 0.01 percent *ad valorem* for Dai Yang.

L. Investment Tax Credits

Under the TERCL, companies in Korea are allowed to claim investment tax credits for various kinds of investments. If the tax credits cannot all be used at the time they are claimed, the company is authorized to carry them forward for use in later tax years. During the POI, the respondents used various investment tax credits received under the TERCL to reduce their net tax liability. In *Steel Products from Korea,* we found that investment tax credits were not countervailable (*see* 58 FR at 37351); however, there were changes in the statute effective in 1995 which have caused us to revisit the countervailability of the investment tax credits.

POSCO claimed or used the following tax credits in its fiscal year 1996 income tax return which was filed during the POI: (1) tax credits for investments in facilities for research and experimental use and investments in facilities for vocational training or assets for business to commercialize new technology under Article 10; (2) tax credits for vocational training under Article 18; (3) tax credits for investment in productivity improvement facilities under Article 25; (4) tax credits for investment in specific facilities under Article 26; (5) tax credits for temporary investment under Article 27; and (6) tax credits for specific investments under Article 71 of TERCL. Inchon claimed or used: (1) tax credits for investments in technology and human resources under Article 9; and (2) tax credits for investment in productivity improvement facilities under Article 25. Dai Yang also claimed or used tax credits under Articles 9 and 25.

For these specific tax credits, a company normally calculates its authorized tax credit based upon three or five percent of its investment, *i.e.,* the company receives either a three or five percent tax credit. However, if a company makes the investment in domestically-produced facilities under these Articles, it receives a 10 percent tax credit. Under section 771(5A)(C) of the Act, which became effective on January 1, 1995, a program that is contingent upon the use of domestic goods over imported goods is specific, within the meaning of the Act. Because Korean companies receive a higher tax credit for investments made in domestically-produced facilities, we preliminarily determine that investment tax credits received under Articles 10, 18, 25, 26, 27, and 71 constitute import substitution subsidies under section 771(5A)(C) of the Act. In addition, because the GOK foregoes collecting tax revenue otherwise due under this program, we also preliminarily determine that a financial contribution is provided under section 771(5)(D)(ii) of the Act. Therefore, we preliminarily determine this program to be countervailable.

To calculate the benefit from this tax credit program, we examined the amount of tax credit the companies deducted from their taxes payable for the 1996 fiscal year. In its fiscal year 1996 income tax return filed during the POI, POSCO deducted from its taxes payable, credits earned in the years 1992 through 1995, which were carried forward and used in the POI in addition to POSCO's 1996 deduction. We first determined the amount of the tax credits claimed which were based upon the investment in domestically-produced facilities. We then calculated the additional amount of tax credits received by the company because it earned tax credits of 10 percent on investments in domestically-produced facilities rather than the regular three or five percent tax credit. Next, we calculated the amount of the tax savings earned through the use of these tax credits during the POI and divided that amount by POSCO's total sales for the POI. Neither Inchon nor Dai Yang carried forward any tax credits from previous years. Therefore, to calculate their rates we calculated the additional amount of the tax savings earned on investments in domestically-produced facilities and divided that amount by each company's total sales for the POI. On this basis, we preliminarily determine a countervailable subsidy of 0.27 percent *ad valorem* to POSCO, 0.06 percent *ad valorem* to Inchon, and 0.41 percent *ad valorem* to Dai Yang from this program during the POI.

M. Electricity Discounts Under the Requested Load Adjustment Program

Petitioners alleged that the respondents are being charged utility rates at less than adequate remuneration and, hence, the production of the subject merchandise is receiving countervailable benefits from this subsidy. Petitioners alleged that the respondents are receiving these countervailable benefits in the form of utility rate discounts.

The GOK reports that during the POI the government-owned KEPCO provided the respondents with three types of discounts under its tariff schedule. These three discounts were based on the following rate adjustment programs in KEPCO's tariff schedule: (1) Power Factor Adjustment; (2) Summer Vacation and Repair Adjustment; and (3) Requested Load Adjustment. (See the discussion below in ''Programs Preliminarily Determined To Be Not Countervailable'' with respect to the Power Factor Adjustment and Summer Vacation and Repair Adjustment discount programs.)

With respect to the Requested Load Adjustment (RLA) program, the GOK introduced this discount in 1990, to address emergencies in KEPCO's ability to supply electricity. Under this program, customers with a contract demand of 5,000 KW or more, who can curtail their maximum demand by 20 percent or suppress their maximum demand by 3,000 KW or more, are eligible to enter into a RLA contract with KEPCO. Customers who choose to participate in this program must reduce their load upon KEPCO's request, or pay a surcharge to KEPCO.

Customers can apply for this program between May 1 and May 15 of each year. If KEPCO finds the application in order, KEPCO and the customer enter into a contract with respect to the RLA discount. The RLA discount is provided based upon a contract for two months, normally July and August. Under this program, a basic discount of 440 won per KW is granted between July 1 and August 31, regardless of whether KEPCO makes a request for a customer to reduce its load. During the POI, KEPCO granted 44 companies RLA discounts even though KEPCO did not need to request these companies to reduce their respective loads. The GOK reports that because KEPCO increased its capacity to supply electricity in 1997, it reduced the number of companies with which it maintained RLA contracts in 1997. In 1996, KEPCO entered into RLA contracts with 232 companies.

We analyzed whether this electricity discount program is specific in law (*de jure* specificity), or in fact (*de facto* specificity), within the meaning of sections 771(5A)(D)(i) and (iii) of the Act. First, we examined the eligibility criteria contained in the law. The Regulation on Electricity Supply and KEPCO's Rate Regulations for Electric Service identified companies within a broad range of industries as being eligible to participate in the electricity discount programs. The RLA discount program is available to a wide variety of companies across all industries, provided that they have the required contract demand and can reduce their maximum demand by a certain percentage. We preliminarily find that the RLA electricity program is not *de jure* specific under section 771(5A)(D)(i) of the Act because the regulation does not explicitly limit eligibility of the program.

We next examined data on the distribution of assistance under the RLA to determine whether the electricity discount program meets the criteria for *de facto* specificity under section 771(5A)(D)(iii) of the Act. We found that discounts provided under the RLA were distributed to a limited number of customers, *i.e.*, a total of 44 customers during the POI. Given the data with respect to the small number of companies which received RLA electricity discounts during the POI, we preliminarily determine that the RLA program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

Because the electricity discounts are not ''exceptional'' benefits and are received automatically on a regular and predictable basis without further government approval, we preliminarily determine that these discounts provide a recurring benefit to POSCO and Inchon; Dai Yang did not receive benefits under this program. We have expensed the benefit from this program in the year of receipt. *See GIA*, 58 FR at 37226. To measure the benefit from this program, we summed the electricity discounts which POSCO and Inchon received from KEPCO under the RLA program during the POI. We then divided that amount by each company's total sales value for 1997. On this basis, we preliminarily determine that POSCO and Inchon each received a countervailable subsidy of less than 0.005 percent *ad valorem* from this discount program during the POI.

Given the information the GOK provided on the record regarding KEPCO's increased capacity to supply electricity and the resulting decrease in KEPCO's need to enter into a large number of RLA contracts during the POI, we will further investigate the *de facto* specificity of this discount program at verification. It is the GOK's responsibility to demonstrate to the Department the basis on which KEPCO chose the 44 customers with which it entered into the RLA contracts during the POI.

N. Loans From the National Agricultural Cooperation Federation

According to Dai Yang's September 10, 1998, questionnaire response, the company received a loan administered by the National Agricultural Cooperation Federation (NACF). The loan was given at an interest rate which is below the benchmark interest rate described in the ''Subsidies Valuation'' section of the notice, above. Moreover, under the terms of this loan, the regional government (that of Ansan City) paid a portion of the interest. Although Dai Yang claims that this program is only available to small- and medium-sized enterprises, the loan approval criteria indicates otherwise. Applications for these loans are evaluated on a point system. The applicant receives 5 out of a possible 100 ''points'' if it is a ''promising small & medium size business.'' However, the most heavily weighed factor in the approval of a loan application is the applicant's ''ratio of exports sales to total sales.'' With the exception of the evaluation item ''enterprise ability,'' which is weighted at 15 points, the export sales factor accounts for twice as many points as any other ranking factor. Under section 771(5A)(B) of the Act, an export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions. After examination of this program, we preliminary determine this program to be a *de facto* export subsidy pursuant to section 771(5A)(B) of the Act. In addition, by paying a portion of the interest on the loan, the actions of the Ansan City government confer a benefit in accordance with section 771(5)(E)(ii) of the Act. Therefore, we preliminarily determine this program to be countervailable.

We preliminarily determine that this loan should be treated as a short-term loan because it is rolled over annually with a revised interest rate. To calculate the benefit conferred under this program, we employed the Department's short-term loan methodology, using as our benchmark the rate described in the ''Subsidies Valuation'' section of the notice, above. We divided the benefit calculated in the POI by Dai Yang's total sales during 1997. On this basis, we preliminarily determine the countervailable subsidy attributable to Dai Yang during the POI to be 0.01 percent *ad valorem*.

O. POSCO's Two-Tiered Pricing Structure to Domestic Customers

In our supplemental questionnaire, we requested information from POSCO and the other respondents regarding an allegation that the GOK mandates that POSCO subsidize local manufacturers by selling them steel at 30 percent below the international market price. In response to this allegation, POSCO stated that no such program exists. However, in its response, POSCO provided information regarding its pricing structure in the domestic and export markets.

POSCO maintains three different pricing systems which serve different markets: domestic prices in Korean won for products that will be consumed in Korea, direct export prices in U.S. dollars or Japanese yen, and local export prices in U.S. dollars. According to POSCO's response, local export prices are provided to those domestic customers who purchase steel for further processing into products that are exported.

POSCO is the only Korean producer of hot-rolled stainless steel coil, which is the main input in the subject merchandise. During the POI, POSCO sold hot-rolled stainless steel coil to domestic producers of subject merchandise, including Dai Yang and Inchon, which used this input to produce exports of the subject merchandise. However, a portion of the domestic demand for this product is met through imports, primarily from Japan. According to its response, POSCO determines its domestic prices for hot-rolled stainless steel coil with reference to the price of imports. Since imports are subject to import duties, POSCO sets its domestic price in Korean won to compete with the duty-inclusive import price. However, for domestic customers, such as Dai Yang and Inchon, purchasing hot-rolled stainless steel coil to be manufactured for export, POSCO sets the local export price at slightly below the duty-exclusive import price because such imports are eligible for duty drawback.

As noted earlier, POSCO is a government-controlled company. POSCO sets different prices for the identical product for domestic purchasers based upon that purchaser's anticipated export performance. Domestic purchasers which use the raw material to produce a product for export are charged a lower price than those domestic purchasers which do not export. Therefore, this pricing scheme is an export subsidy under section 771(5A)(B) of the Act. A financial contribution is also provided under this program under section 771(5)(D)(iii) of the Act.

Under section 771(5)(E)(iv) of the Act, a benefit from the provision of a good or a service is provided when the good is provided for less than adequate remuneration. The adequacy of remuneration is determined in relation to prevailing market conditions for the good being purchased in the country which is subject to the investigation. Prevailing market conditions include price, quantity, availability, marketability, transportation, and other conditions of purchase or sale.

In their supplemental questionnaire responses, Dai Yang and Inchon provided their delivered prices of hot-rolled stainless steel coil used to produce the subject merchandise during the POI. These data included delivered prices of the input sourced from both POSCO and foreign suppliers. To determine the benefit under this program, we compared the prices charged by POSCO for the input to the prices charged by the foreign suppliers. We then divided the amount of the price savings by the value of exports of the subject merchandise during the POI. For the purposes of this preliminary determination, we consider it appropriate to calculate the benefit in this way because POSCO sets its prices to domestic purchasers based upon import prices. Thus, the use of Dai Yang's and Inchon's input prices provide a reasonable basis for determining the difference in POSCO's prices to domestic consumers for domestic consumption and POSCO's prices to domestic producers for export consumption. On this basis, we preliminarily determine that Dai Yang received no benefit from this program, and that Inchon received a countervailable subsidy of 5.51 percent *ad valorem* from this program during the POI.

II. Program Preliminarily Determined To Be Not Countervailable

Electricity Discounts Under Power Factor Adjustment and Summer Vacation and Repair Adjustment Programs

As noted above, the GOK reported that KEPCO provided the respondents with three types of discounts under its tariff schedule during the POI. These three discounts were based on the following rate adjustment programs in KEPCO's tariff schedule: (1) Power Factor Adjustment; (2) Summer Vacation and Repair Adjustment; and (3) Requested Load Adjustment. (See the separate discussion above in regard to the countervailability of the Requested Load Adjustment program.)

With respect to the Power Factor Adjustment (PFA) program, the GOK reports that the goal of the PFA is to improve the energy efficiency of KEPCO's customers which, in turn, provides savings to KEPCO in supplying electricity to its entire customer base. Customers who achieve a higher efficiency than the performance standard (*i.e.*, 90 percent) receive a discount on their base demand charge. Therefore, any customer who installs a proper facility to measure its power factor and achieves a power factor greater than 90 percent receives a discount on its demand charge.

The GOK states that the PFA is not a special program, but a normal factor used in the calculation of a customer's electricity charge which was introduced in 1989. The PFA is available to all general, educational, industrial, agricultural, midnight power, and temporary customers who meet the eligibility criteria. The eligibility criteria are that a customer must: (1) have a contract demand of 6 KW or more, (2) have a power factor that exceeds the 90 percent standard power factor, and (3) have proper facilities to measure its power factor. If these criteria are met, a customer always receives a PFA discount on its monthly electricity invoice. According to the response of the GOK, there are no limitations on the types of customers or industries which can receive the PFA discounts from KEPCO. During the POI there were over 600,000 recipients of the PFA discounts.

With the aim of curtailing KEPCO's summer load by encouraging customer vacations or the repair of their facilities during the summer months, the GOK introduced the Summer Vacation and Repair Adjustment (VRA) in 1985. Under this program, a discount of 550 won per KW is given to customers, if they curtail their maximum demand by more than 50 percent, or 3,000 KW, through a load adjustment or maintenance shutdown of their production facilities during the summer months. Eligible customers apply for a VRA discount during the period June 1 to June 15 of each year. If KEPCO finds the application in order, KEPCO and the customer prepare a contract with respect to the discount.

The GOK states that this discount program is available to all industrial and commercial customers with a contract demand of 500 KW or more. The GOK states that the VRA is one of several programs that KEPCO operates as part of its broad long-term strategy of demand-side management which includes curtailing peak demand, and is the most effective of these programs. The GOK submitted information demonstrating that hundreds of KEPCO customers, from a wide and diverse range of industries, received VRA discounts during the POI.

We analyzed whether these two electricity discount programs are specific in law (*de jure* specificity), or in fact (*de facto* specificity), within the meaning of sections 771(5A)(D)(i) and (iii) of the Act. First, we examined the eligibility criteria contained in the law. The Regulation on Electricity Supply and KEPCO's Rate Regulations for Electric Service identified companies within a broad range of industries as eligible to participate in the electricity discount programs. With respect to the PFA, all general, educational, industrial, agricultural, midnight power, and temporary customers who have the necessary contract demand are eligible to participate in the discount program. Likewise, the VRA discount program is available to a wide variety of companies across all industries, provided that they have the required contract demand and can reduce their maximum demand by a certain percentage. Therefore, we preliminarily determine that the electricity programs are not *de jure* specific under section 771(5A)(D)(i) of the Act.

We then examined data on the distribution of assistance under these programs to determine whether the electricity discount programs meet the criteria for *de facto* specificity under section 771(5A)(D)(iii) of the Act. We found that discounts provided under the PFA and VRA were distributed to a large number of firms in a wide variety of industries. Given the data with respect to the large number of companies and industries which received electricity discounts under these programs during the POI, we preliminarily determine that the PFA and VRA programs are not *de facto* specific under section 771(5A)(D)(iii) of the Act. Therefore, we preliminarily determine that the PFA and VRA discount programs are not countervailable.

III. Programs Preliminarily Determined To Be Not Used

Based on the information provided in the questionnaire response, we preliminarily determine that the companies under investigation either did not apply for or did not receive benefits under the following programs during the POI:

A. Excessive Duty Drawback

Petitioners alleged that under the Korean Customs Act, Korean exporters may have been receiving an excessive abatement, exemption, or refund of import duties payable on raw materials used in the production of exported goods. The Department has found that the drawback on imported raw materials is countervailable when the raw materials are not physically incorporated into the exported item, and therefore, the amount of duty drawback is excessive. In *Steel Products from Korea,* we determined that certain Korean steel producers received excessive duty drawback because they received duty drawback at a rate that exceeded the rate at which imported inputs were actually used. *See* 58 FR at 37349.

The GOK reports that under Article 3 of *The Act on Special Cases concerning the Refundment of Customs Duties, etc. Levied on Raw Materials for Export,* the refund of duties only applies to imported raw materials that are consumed, *i.e.*, physically incorporated, into the finished merchandise. Items used to produce a product, but which do not become physically incorporated into the final product, do not qualify for duty drawback. POSCO is one of the producer/exporters of the subject merchandise to receive duty drawback for inputs consumed in the production of the subject merchandise which was subsequently exported during the POI. The raw materials imported by POSCO to produce the subject merchandise that were eligible for duty drawback are nickel, chrome, and stainless steel scrap. During the POI, Inchon and Dai Yang received duty drawback on imports of hot-rolled stainless steel coils which were consumed in the production of the subject merchandise.

The GOK states that in order to determine the appropriate amount of duty drawback a producer/exporter is eligible to receive, the National Technology Institute (NTI) routinely conducts surveys of producers of exported products to obtain their raw material input usage rate for manufacturing one unit of output. In determining an input usage rate for a raw material, the NTI factors recoverable scrap into the calculation. In addition, the loss rate for each imported input is reflected in the input usage rate. The GOK states that the factoring of reusable scrap into usage rates is done routinely for all products under Korea's duty drawback regime. The NTI maintains a materials list for each product, and only materials and sub-materials that are physically incorporated into the final product are eligible for duty drawback. The NTI then compiles this information into a standard usage rate table which is used to calculate a producer/exporter's duty drawback eligibility. The GOK explains that because POSCO is the primary producer of subject merchandise, the NTI's most recently completed survey (from 1993), consisted of requesting information from POSCO.

The GOK states that there is no difference in the companies' rates of import duty paid and their rates of drawback received. The rates of import duty are based on the imported materials and the rates of drawback depend on the exported merchandise and the usage rate of the imported materials. POSCO, Inchon, and Dai Yang pay import duties based on the rates applicable to the prices of the imported raw material. They then receive duty drawback based on the amount of that material consumed in the production of the finished product according to the standard input usage rate. Accordingly, the rates at which POSCO, Inchon, and Dai Yang receive duty drawback are the amounts of import duty paid on the amount of input consumed in producing the finished product.

In the current investigation, the GOK and the companies report that POSCO, Inchon, and Dai Yang have not received duty drawback on imported raw materials that were not consumed in the production of exported merchandise. They also state that the applicable duty drawback rates are calculated in a manner which accounts for recoverable scrap. Based on the duty drawback studies provided in the response, the GOK has factored recoverable scrap into the calculation of input usage rates. In *Steel Products from Korea,* we found that when recoverable scrap is factored into the usage rate, the relevant loss and waste rates are not excessive. Based on these factors, we preliminarily determine that POSCO, Inchon, and Dai Yang have not received excessive duty drawback.

B. Tax Incentives for Highly-Advanced Technology Businesses under the Foreign Investment and Foreign Capital Inducement Act.

C. Reserve for Investment under Article 43–5 of TERCL.

D. Export Insurance Rates Provided by the Korean Export Insurance Corporation. 1E. Special Depreciation of Assets on Foreign Exchange Earnings.

IV. Programs Preliminarily Determined Not To Exist

Based on information provided by the GOK, we preliminarily determine that the following program does not exist:

Unlimited Deduction of Overseas Entertainment Expenses

In *Steel Products from Korea*, 58 FR at 37348–49, the Department determined that this program conferred benefits which constituted countervailable subsidies because the entertainment expense deductions were unlimited only for export business activities. In the present investigation, the GOK reported that Article 18–2(5) of the Corporate Tax Law, which provided that Korean exporters could deduct overseas entertainment expenses without any limits, was repealed by the revisions to the law dated December 29, 1995. According to the GOK, beginning with the 1996 fiscal year, a company's domestic and overseas entertainment expenses are deducted within the same aggregate sum limits as set by the GOK. As a result of the revision to the law, overseas entertainment expenses are now treated in the same fashion as domestic expenses in calculating a company's income tax. Therefore, we determine that this program is no longer in existence.

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated individual rates for each of the companies under investigation.

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of stainless steel sheet and strip from the Republic of Korea, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated below. Since the estimated preliminary net countervailing duty rates for POSCO and Dai Yang are *de minimis*, these two companies will be excluded from the suspension of liquidation. This suspension will remain in effect until further notice.

In accordance with section 705(5)(A)(ii) of the Act, the all others rate is the rate calculated for Inchon. We preliminarily determine that the total estimated net countervailable subsidy rates for POSCO and Dai Yang are 0.75 percent *ad valorem* and 0.58 percent *ad valorem*, respectively, which is *de minimis*. Therefore, we preliminarily determine that no countervailable subsidies are being provided to POSCO or Dai Yang for their production or exportation of stainless steel sheet and strip in coils.

COMPANY AD VALOREM RATE

[In Percent]

Producer/Exporter	Net subsidy rate
POSCO	0.75
Inchon	5.77
Dai Yang	0.58
Sammi	29.23
Taihan	10.15
All Others Rate	5.77

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary, Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of this preliminary determination, at the U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, D.C. 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. An interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

In addition, six copies of the business proprietary version and six copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the publication of this notice. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 55 days from the publication of this notice.

Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: November 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–30737 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–825]

Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Sheet and Strip in Coils from Italy

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

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Craig W. Matney, Gregory W. Campbell, or Alysia Wilson, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1778, 482–2239, or 482–0108, respectively.

Preliminary Determination: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of stainless steel sheet and strip in coils from Italy.

Petitioners

The petition in this investigation was filed by the Allegheny Ludlum Corporation, Armco Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corporation, United Steel Workers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc. (collectively referred to hereinafter as the ''petitioners'').

Case History

Since the publication of the notice of initiation in the **Federal Register** (*see Notice of Initiation of Countervailing Duty Investigations: Certain Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea*, 63 FR 37539 (July 13, 1998) (*Initiation Notice*)), the following events have occurred. On July 13, 1998, we issued questionnaires to the Government of Italy (GOI), the European Commission (EC), Acciai Speciali Terni S.p.A. (AST), and Arinox S.r.l. (Arinox). On August 6, 1998, we postponed the preliminary determination of this investigation until November 9, 1998 (*see Notice of Postponement of Time Limit for Countervailing Duty Investigations: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea*, 63 FR 43140 (August 12, 1998)).

We received responses to our initial questionnaires from the GOI, the EC, AST, and Arinox between July 29 and September 14. Between September 21 and October 16, 1998, we issued supplemental questionnaires to the GOI, the EC, AST, and Arinox. We received responses to these supplemental questionnaires between October 9 and October 22, 1998.

Scope of Investigation

For purposes of these investigations, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Excluded from the scope of this petition are the following: (1)Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4)flat wire (i.e., cold-rolled sections, rectangular in shape, of a width of not more than 9.5 mm, and a thickness of not more than 6.35 mm), and (5)razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

The Department has determined that certain specialty stainless steel products are also excluded from the scope of these investigations. These excluded products are described below: Flapper valve steel is defined as stainless steel strip in coils with a chemical composition similar to that of AISI 420F grade steel and containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of 185 kgf/mm2, plus or minus 10, yield strength of 150 kgf/mm2, plus or minus 8, and hardness (Hv) of 540, plus or minus 30.

Also excluded is suspension foil, a specialty steel product used, e.g., in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 μm, with a thickness tolerance of plus-or-minus 2.01 μm, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth, and must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of these investigations. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths of 1.016 to 228.6 mm, and a thickness between 0.0127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available, e.g., under the trade name ''Arnokrome III,'' [1]

Electrical resistance alloy steel is also not included in the scope of these investigations. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available, e.g., under the trade name ''Gilphy 36.'' [2]

Finally, certain stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives) is also excluded. This steel is similar to ASTM grade 440F, but containing higher levels of molybdenum. This steel contains, by weight, carbon of between 1.0 and 1.1 percent, sulphur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and cobalt. This steel is sold under, e.g. the proprietary name GIN4Mo.[3]

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Gin4Mo'' is the proprietary grade of Hitachi Metals America, Ltd.

All interested parties are advised that additional issues pertaining to the scope of these investigations are still pending. Furthermore, the exclusions outlined above are subject to further revision and refinement. The Department plans on notifying interested parties of its determinations on all scope issues in sufficient time for parties to comment before the final determination.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations codified at 19 CFR Part 351 (1998).

Injury Test

Because Italy is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Italy materially injure, or threaten material injury to, a U.S. industry. On August 9, 1998, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Italy of the subject merchandise (*see Certain Stainless Steel Sheet and Strip From France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan, and the United Kingdom*, 63 FR 41864 (August 9, 1998)).

Alignment With Final Antidumping Determination

On July 22, 1998, the petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigation. *See Initiation of Antidumping Investigations: Stainless Steel Sheet and Strip in Coils From France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom*, 63 FR 37521 (July 13, 1998). Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determinations in the antidumping investigations of stainless steel sheet and strip in coils.

Period of Investigation

The period of investigation for which we are measuring subsidies (the POI) is calendar year 1997.

Company History of AST

Prior to 1987, Terni, S.p.A, (Terni), a main operating company of Finsider, was the sole producer of stainless steel sheet and strip in coils (sheet and strip) in Italy. Finsider was a holding company that controlled all state-owned steel companies in Italy. Finsider, in turn, was wholly-owned by a government holding company, Istituto per la Ricostruzione Industriale (IRI). As part of a restructuring in 1987, Terni transferred its assets to a new company, Terni Acciai Speciali (TAS).

In 1988, another restructuring took place in which Finsider and its main operating companies (TAS, Italsider, and Nuova Deltasider) entered into liquidation and a new company, ILVA S.p.A. was formed. ILVA S.p.A. took over some of the assets and liabilities of the liquidating companies. With respect to TAS, part of its liabilities and the majority of its viable assets, including all the assets associated with the production of sheet and strip, were transferred to ILVA S.p.A. on January 1, 1989. ILVA S.p.A. became operational on the same day. Part of TAS's remaining assets and liabilities were transferred to ILVA S.p.A. on April 1, 1990. After that date, TAS no longer had any manufacturing activities. Only certain non-operating assets remained in TAS.

From 1989 to 1994, ILVA S.p.A. consisted of several operating divisions. The Specialty Steels Division, located in Terni, produced subject merchandise. ILVA S.p.A. was also the majority owner of a large number of separately incorporated subsidiaries. The subsidiaries produced various types of steel products and also included service centers, trading companies, and an electric power company, among others. ILVA S.p.A. together with its subsidiaries constituted the ILVA Group (ILVA). ILVA was wholly-owned by IRI. All subsidies received prior to 1994 were received by ILVA or its predecessors.

In October 1993, ILVA entered into liquidation and became known as ILVA Residua. On December 31, 1993, two of ILVA's divisions were removed and separately incorporated: AST and ILVA Laminati Piani (ILP). ILVA's Specialty Steels Division was transferred to AST while its carbon steel flat products operations were placed in ILP. The remainder of ILVA's assets and liabilities, along with much of the redundant workforce, were left in ILVA Residua.

In December 1994, AST was sold to KAI Italia S.r.L. (KAI), a privately-held holding company jointly owned by German steelmaker Hoesch-Krupp (50 percent) and a consortium of private Italian companies called FAR Acciai (50 percent). Between 1995 and the POI, there were several restructurings/ changes in ownership of AST and its parent companies. As a result, at the end of the POI, AST was owned 75 percent by Krupp Thyssen Stainless GmbH and 25 percent by Fintad Securities S.A.

Change in Ownership

In the *General Issues Appendix* (*GIA*), attached to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria,* 58 FR 37217, 37226 (July 9, 1993), we applied a new methodology with respect to the treatment of subsidies received prior to the sale of the company (privatization) or the spinning-off of a productive unit.

Under this methodology, we estimate the portion of the purchase price attributable to prior subsidies. We compute this by first dividing the privatized company's subsidies by the company's net worth for each year during the period beginning with the earliest point at which nonrecurring subsidies would be attributable to the POI and ending one year prior to the privatization. We then take the simple average of the ratios. The simple average of these ratios of subsidies to net worth serves as a reasonable surrogate for the percent that subsidies constitute of the overall value of the company. Next, we multiply the average ratio by the purchase price to derive the portion of the purchase price attributable to repayment of prior subsidies. Finally, we reduce the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time of privatization. For further discussion of our privatization methodology, *see, e.g., Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Plate in Coils from Italy,* 63 FR 47246 (September 4, 1998) (*Italian Plate*).

With respect to spin-offs, consistent with the Department's position regarding privatization, we analyze the spin-off of productive units to assess what portion of the sale price of the productive units can be attributable to the repayment of prior subsidies. To perform this calculation, we first determine the amount of the seller's subsidies that the spun-off productive unit could potentially take with it. To calculate this amount, we divide the value of the assets of the spun-off unit by the value of the assets of the company selling the unit. We then apply this ratio to the net present value of the seller's remaining subsidies. We next estimate the portion of the purchase price going towards repayment of prior subsidies in accordance with the privatization methodology outlined above.

AST, the GOI and the EC have all expressed the opinion that the sale of AST to a private consortium in an arm's length transaction extinguished all prior subsidies. An analogous argument was rejected in the *GIA*. There is no basis for distinguishing the sale of AST from other sales that we have analyzed under the *GIA* methodology. *See, e.g., Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Trinidad and Tobago,* 62 FR 55003 (October 22, 1997) (*Wire Rod from Trinidad and Tobago); Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Canada,* 62 FR 54972 (October 22, 1997); and *Final Affirmative Countervailing Duty Determination: Stainless Steel Wire Rod from Italy,* 63 FR 40474 (July 29, 1998) (*Wire Rod from Italy*). Therefore, we have applied the methodology set forth in the *GIA* for the 1994 privatization. After the 1994 privatization of AST, there were numerous changes in the ownership structure of the parent companies of AST. AST provided information for only one of these changes. We have preliminarily applied the methodology to that transaction, and we are evaluating whether it is appropriate to apply the change in ownership methodology to the other post-privatization transactions. We request interested parties to comment on this issue.

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: Consistent with the Department's finding in *Wire Rod from Italy,* 63 FR at 40476–77, we have based our long-term benchmarks and discount rates on the Italian Bankers' Association (ABI) rate. Because the ABI rate represents a long-term interest rate provided to a bank's most preferred customers with established low-risk credit histories, commercial banks typically add a spread ranging from 0.55 percent to 4 percent onto the rate for other customers depending on their financial health.

In years in which AST or its predecessor companies were creditworthy, we added the average of that spread onto the ABI rate to calculate a nominal benchmark rate. In years in which AST or its predecessor companies were uncreditworthy (*see Creditworthiness* section below), we calculated the discount rates in accordance with our methodology for constructing a long-term interest rate benchmark for uncreditworthy companies. Specifically, we added to the ABI rate a spread of 4 percent in order to reflect the highest commercial interest rate available to companies in Italy. We added to this rate a risk premium equal to 12 percent of the ABI, as described in section 355.44(b)(6)(iv) of the Department's 1989 Proposed Regulations, which remain a statement of the Department's practice (*see Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comment*, 54 FR 23366, 23374 (May 31, 1989) (*1989 Proposed Regulations*).

Additionally, information on the record of this case indicates that published ABI rates do not include amounts for fees, commissions and other borrowing expenses. Since such expenses raise the effective interest rate that a company would experience and it is the Department's practice to use effective interest rates, where possible, we are including an amount for these expenses in the calculation of our effective benchmark rates. While we do not have information on the expenses that would be applied to long-term commercial loans, information on the record shows that borrowing expenses on overdraft loans range from 6 to 11 percent of interest charged. For purposes of this preliminary determination, we are assuming that the level of borrowing expenses on overdraft loans approximates the level on long-term commercial loans. Accordingly, we are increasing the nominal benchmark rate by 8.5 percent, representing the average reported level of borrowing expenses, to arrive at an effective benchmark rate.

Allocation Period: In the past, the Department has relied upon information from the U.S. Internal Revenue Service (IRS) for the industry-specific average useful life of assets in determining the allocation period for non-recurring subsidies. *See* the *GIA*. In *British Steel plc* v. *United States,* 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) held that the IRS information did not necessarily reflect a reasonable period based on the actual commercial and competitive benefit of the subsidies to the recipients. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for non-recurring subsidies based on the average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See British Steel plc* v. *United States,* 929 F. Supp. 426, 439 (CIT 1996) (*British Steel II*).

In recent countervailing duty investigations, it has been our practice to follow the Court's decision in *British Steel II,* and to calculate a company-specific allocation period for all countervailable non-recurring subsidies. In this investigation, we examined the company-specific AUL for both AST and Arinox because both received non-recurring subsidies. In the case of Arinox, we preliminarily determine a company specific AUL of their non-renewable physical assets of 12 years.

However, our analysis of the data submitted by AST regarding the AUL of its assets has revealed several problems. It appears that the methodology used to value AST's assets during and subsequent to AST's privatization may be distorting the company-specific AUL calculation. Moreover, it appears that AST has not included all of its non-renewable physical assets in the AUL figure it reported. Furthermore, the methodology used to value ILVA's assets is unclear and may be distortional.

Based on the concerns outlined above, we preliminarily determine that AST's calculation of its company-specific AUL should not be used to determine the appropriate allocation period for non-recurring subsidies. Rather, for purposes of this preliminary determination we are using the 15 years as set out in the IRS Tables. We intend to request clarification and additional information concerning AST's AUL data in the course of this investigation.

While we have not used AST's company-specific AUL because of the concerns outlined above, even if we were to use the company-specific data submitted by AST, the facts of this case pose additional concerns and possible inconsistencies. In particular, this investigation covers countervailable non-recurring subsidies benefitting AST that were found to be countervailable in *Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy,* 59 FR 18357 (April 18, 1994), (*Electrical Steel from Italy*), *i.e.,* equity infusions, equity infusions to Terni and ILVA, benefits from the 1988–90 restructuring (called debt forgiveness: Finsider-to-ILVA restructuring in *Initiation Notice*), debt forgiveness: ILVA-to-AST (included under this debt forgiveness are the following programs from the *Initiation Notice:* working capital grants to ILVA, 1994 debt payment assistance by IRI, and ILVA restructuring and liquidation grant), Law 675/77, and ECSC Article 54 Loans. *See* 63 FR at 37543. In *Electrical Steel From Italy,* the Department allocated these subsidies over 15 years based on information from the U.S. Internal Revenue Service (IRS) for the industry-specific average useful life of assets. Under current Department practice, previously allocated subsidies within the same proceeding are not given a new allocation period. Rather, it is our policy to retain the allocation period originally established for the subsidies in subsequent administrative reviews of the same preceding.

We note here that in the concurrent investigation of stainless steel sheet and strip in coils from France, the Department preliminarily determined that it is more appropriate to continue allocating non-recurring subsidies over the company-specific AUL of 14 years, which was calculated as a result of *British Steel II.* Although this was a company-specific AUL, it was the AUL applied in a prior investigation of the same subsidies to the same company that are currently being examined in the investigation of stainless steel sheet and strip in coils from France. The issue we are presented with is whether the allocation period, once established for a subsidy to a company, should change in different proceedings. If the allocation period did not change across proceedings, the same subsidies described above would be allocated over 15 years in both the current investigation and under the countervailing duty order on *Electrical Steel From Italy*. However, if we were to adopt different allocation periods for different proceedings, the same subsidy to the same company would be allocated over different periods, since AST has calculated an AUL of 9 years, assuming the calculation presented by and based on company-specific data was accepted by the Department. Thus, the same subsidy to the same company would have different allocation periods across separate proceedings: 15 years in *Electrical Steel From Italy* and 9 years in this investigation.

We encourage parties to comment on this issue and whether an alternative approach may be more appropriate. One option may be to retain the allocation period of a subsidy previously investigated in a prior investigation, rather than assign a new company-specific allocation period based on company-specific AUL data. As described above, this would conform with our practice in administrative reviews of the same countervailing duty order. Alternatively, an additional option would be to determine an individual AUL for each year in which a non-recurring subsidy is provided to a company, rather than to determine a company-specific AUL for non-recurring subsidies that could change with each investigation and result in different allocation periods for the same subsidy, as detailed above. We also welcome any additional comments on this issue not raised above.

Equityworthiness

In analyzing whether a company is equityworthy, the Department considers whether that company could have attracted investment capital from a reasonable private investor in the year of the government equity infusion, based on information available at that time. *See GIA,* 58 FR at 37244. Our review of the record has not led us to change our finding in *Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy*, 59 FR 18357 (April 18, 1994), (*Electrical Steel from Italy*), in which we found AST's predecessors unequityworthy from 1984 through 1988, and from 1991 through 1992.

In measuring the benefit from a government equity infusion into an unequityworthy company, the Department compares the price paid by the government for the equity to a market benchmark, if such a benchmark exists. In this case, a market benchmark does not exist, so we used the methodology described in the *GIA*, 58 FR at 37239. *See, also, Wire Rod from Trinidad and Tobago*, 62 FR at 55004. Following this methodology, equity infusions made on terms inconsistent with the usual practice of a private investor are treated as grants. Use of this methodology is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year. This determination is based on the information available in that year.

Creditworthiness

When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France,* 58 FR 37304 (July 9, 1993) (*Certain Steel from France*); *Final*

Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela, 62 FR 55014 (Oct. 21, 1997).

Terni, TAS and ILVA were found to be uncreditworthy from 1983 through 1993 in *Electrical Steel from Italy* at 18358 and *Wire Rod from Italy* at 40477. No new information has been presented in this investigation that would lead us to reconsider these findings. Therefore, consistent with our past practice, we continue to find Terni, TAS and ILVA uncreditworthy from 1985 through 1993. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil*, 58 FR 37295, 37297 (July 9, 1993). There was no allegation by petitioners that Arinox was uncreditworthy. Therefore, we did not analyze its creditworthiness. In accordance with section 355.44(b)(6)(i) of the Department's *1989 Proposed Regulations*, 54 FR at 23380, we did not analyze AST's creditworthiness in 1994 through 1997 because AST did not negotiate the terms of loans with the GOI or EC during these years.

I. Programs Preliminarily Determined To Be Countervailable

GOI Programs

A. Equity Infusions to Terni and ILVA

The GOI, through IRI, provided new equity capital to Terni or ILVA in every year from 1984 through 1992, except in 1989 and 1990. We preliminarily determine that these equity infusions constitute countervailable subsidies within the meaning of section 771(5) of the Act. These equity infusions provided a financial contribution, as described in section 771(5)(D)(i) of the Act, and were not consistent with the usual investment practices of private investors (*see Equityworthiness* section above). Because these equity infusions were limited to Finsider and its operating companies and ILVA, we preliminarily determine that they are specific within the meaning of section 771(5A)(D) of the Act.

AST did not report, in its response to our questionnaires, the 1988 equity infusion provided to ILVA. We have public information from *Electrical Steel from Italy* on the existence and amount of this infusion and are including it in our calculations for the preliminary determination.

We have treated these equity infusions as non-recurring grants given in the year the infusion was received because each required a separate authorization. Because Terni and ILVA were uncreditworthy in the years of receipt, we used discount rates that include a risk premium to allocate the benefits over time. Additionally, we followed the methodology described in the *Change in Ownership* section above to determine the amount of each equity infusion appropriately allocated to AST after its privatization. We divided this amount by AST's total sales during the POI. Accordingly, we preliminarily determine the countervailable subsidy to be 0.12 percent *ad valorem* for AST.

B. Benefits from the 1988–90 Restructuring of Finsider (called Debt Forgiveness: Finsider-to-ILVA Restructuring in Initiation Notice)

As discussed above in the *Company History of AST* section of this notice, the GOI liquidated Finsider and its main operating companies in 1988 and assembled the group's most productive assets into a new operating company, ILVA S.p.A. In 1990, additional assets and liabilities of TAS, Italsider and Finsider went to ILVA.

Not all of TAS's liabilities were transferred to ILVA S.p.A.; rather, many remained with TAS and had to be repaid, assumed or forgiven. In 1989, Finsider forgave 99,886 million lire of debt owed to it by TAS. Even with this debt forgiveness, a substantial amount of liabilities left over from the 1990 transfer of assets and liabilities to ILVA S.p.A. remained with TAS. In addition, losses associated with the transfer of assets to ILVA S.p.A. were left behind in TAS. These losses occurred because the value of the transferred assets had to be written down. As TAS gave up assets whose book value was higher than their appraised value, it was forced to absorb the losses. These losses were generated during two transfers as reflected in: (1) an extraordinary loss in TAS's 1988 Annual Report and (2) a reserve against anticipated losses posted in 1989 with respect to the 1990 transfer.

Consistent with our treatment of the 1988–90 restructuring in *Electrical Steel from Italy,* 59 FR at 18359, we preliminarily determine that the debt and loss coverage provided to ILVA constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. The debt and loss coverage provided a financial contribution as described in section 771(5)(D)(i) of the Act. Because this debt and loss coverage was limited to TAS, AST's predecessor, we preliminarily determine that it is specific within the meaning of section 771(5A)(D) of the Act.

In calculating the benefit from this program, we followed our methodology in *Electrical Steel from Italy,* except for the correction of a calculation error which had the effect of double-counting the write-down from the first transfer of assets in 1988 by including it in the calculations of losses generated upon the second transfer of assets in 1990. We have treated Finsider's 1989 forgiveness of TAS' debt and the loss resulting from the 1989 write-down as grants received in 1989. The second asset write down and the debt outstanding after the 1990 transfer were treated as grants received in 1990. We treated these as non-recurring grants because they were a one-time, extraordinary event. Because ILVA was uncreditworthy in these years, we used discount rates that include a risk premium to allocate the benefits over time. Finally, we followed the methodology described in the *Change in Ownership* section above to determine the amount of each benefit appropriately allocated to AST after its privatization and subsequent changes in ownership. We divided this amount by AST's total sales during the POI. Accordingly, we preliminarily determine the countervailable subsidy to be 1.52 percent *ad valorem* for AST.

C. Debt Forgiveness: ILVA-to-AST (Included Are The Following Programs From the Initiation Notice: Working Capital Grants to ILVA, 1994 Debt Payment Assistance by IRI, and ILVA Restructuring and Liquidation Grant)

As of December 31, 1993, the majority of ILVA's viable manufacturing activities had been separately incorporated into either AST or ILP; ILVA Residua was primarily a shell company with liabilities far exceeding assets. In contrast, AST and ILP, now ready for privatization, had operating assets and relatively modest debt loads.

The liabilities remaining with ILVA Residua after the privatization of AST and ILP had to be repaid, assumed, or forgiven. AST has stated that IRI, in accordance with Italian Civil Code, bears responsibility for all liabilities remaining in ILVA Residua. Furthermore, information submitted by AST indicates that the EC has approved IRI's plan to cover ILVA Residua's remaining liabilities when its final liquidation occurs.

Although this debt has yet to be eliminated completely by any specific act of the GOI or its holding company IRI, we preliminarily determine that AST (and consequently the subject merchandise) received a countervailable subsidy in 1993 when the bulk of ILVA's debt was placed in ILVA Residua, rather than being placed also with AST and ILP.

The placing of this debt with ILVA Residua was equivalent to debt forgiveness for AST. In accordance with our past practice, debt forgiveness is treated as a grant which constitutes a financial contribution under section

771(5)(D)(ii) and provides a benefit in the amount of the debt forgiveness. Because the debt forgiveness was received only by privatized ILVA operations, we preliminarily determine that it is specific under section 771(5A)(D) of the Act.

As noted above, certain operating assets (*e.g.*, pipe and tube operations) and non-operating assets (*e.g.*, cash, bank deposits) remained in ILVA Residua. Some of these assets have been privatized or otherwise used to fund repayment of the liabilities remaining in ILVA Residua. The EC, in its monitoring of the ILVA liquidation, has accounted for the fact that certain assets have been privatized or otherwise used to fund repayment of ILVA Residua's liabilities. The Department has followed similar methodology. We have also subtracted the amount of debt (*i.e.*, 253 billion lire) that was tied to Cogne Acciai Speciali (CAS), an ILVA subsidiary privatized in 1994, which was left behind in ILVA Residua. This amount was countervailed in *Wire Rod from Italy* (*see* 63 FR at 40478). We have attributed ILVA Residua's remaining residual indebtedness as of the end of 1997 to AST based on the proportion of assets assigned to AST to the total viable assets assigned to AST, ILP, and other ILVA operations which were privatized, as appropriate, and considered this amount as debt forgiveness. For the final determination, we intend to examine further the liquidation of ILVA Residua's assets as well as any liquidation costs that might not have been accounted for in the EC monitoring process.

We treated the debt forgiveness to AST as a non-recurring grant because it was a one-time, extraordinary event. The discount rate we used in our grant formula included a risk premium based on our determination that ILVA was uncreditworthy in 1993. (For purposes of the final determination we will examine the issue of whether it is more appropriate to analyze the creditworthiness of AST rather than ILVA in 1993.) We followed the methodology described in the *Change in Ownership* section above to determine the amount appropriately allocated to AST after its privatization and subsequent changes in ownership. We divided this amount by AST's total sales during the POI. Accordingly, we determine the estimated net subsidy to be 3.47 percent *ad valorem* for AST.

D. Law 796/76: Exchange Rate Guarantees

Law 796/76 established a program to minimize the risk of exchange rate fluctuations on foreign currency loans. All firms that had contracted foreign currency loans from the European Coal and Steel Community (ECSC) or the Council of Europe Resettlement Fund (CER) could apply to the Ministry of the Treasury (MOT) to obtain an exchange rate guarantee. The MOT, through the Ufficio Italiano di Cambi (UIC), calculated loan payments based on the lira-foreign currency exchange rate in effect at the time the loan was approved. The program established a floor and ceiling for exchange rate fluctuations, limiting the maximum fluctuation a borrower would face to two percent. If the lira depreciated against the foreign currency, AST was still able to purchase foreign currency at the established ceiling rate, and the UIC would absorb a loss in the amount of the difference between the ceiling rate and the actual rate. If the lira appreciated against the foreign currency, the UIC would realize a gain in the amount of the difference between the floor rate and the actual rate.

This program was terminated effective July 10, 1992, by Decree Law 333/92. However, the exchange rate guarantees continue on any loans outstanding after that date. AST had two outstanding ECSC loans during the POI that benefitted from these guarantees. Arinox did not receive foreign exchange rate guarantees under this program.

We preliminarily determine that this program constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. This program provides a financial contribution, as described in section 771(5)(D)(i) of the Act, to the extent that the lira depreciates against the foreign currency beyond the two percent band. When this occurs, the borrower receives a benefit in the amount of the difference between the two percent floor and the actual exchange rate.

The GOI did not provide information regarding the types of the enterprises that have used this program. However, we have previously found the steel industry to be a dominant user of the exchange rate guarantees provided under Law 796/76. Therefore, we preliminarily determine that the program is specific under section 771(5A)(D) of the Act. *See Final Affirmative Countervailing Duty Determination: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Italy*, 60 FR 31996 (June 19, 1995).

Once a loan is approved for exchange rate guarantees, access to foreign exchange at the established rate is automatic and occurs at regular intervals throughout the life of the loan. Therefore, we have treated benefits under this program as recurring grants. The benefit was calculated as the difference between the total payment due (*i.e.*, the sum of interest, principal, and any guarantee fees paid by AST) in foreign currency converted at the current exchange rate minus the total payment due in foreign currency at the established (ceiling) rate. We divided this amount by AST's total sales during the POI. Accordingly, we determine the countervailable subsidy to AST for this program to be 0.86 percent *ad valorem*.

E. Law 675/77

Law 675/77 was designed to provide GOI assistance in the restructuring and reconversion of Italian industries. There are six types of assistance available under this law: (1) grants to pay interest on bank loans; (2) mortgage loans provided by the Ministry of Industry (MOI) at subsidized interest rates; (3) grants to pay interest on loans financed by IRI bond issues; (4) capital grants for the South; (5) VAT reductions on capital good purchases for companies in the South; and (6) personnel retraining grants. During the POI, AST had two outstanding loans financed by IRI bond issues for which it received interest contributions from the GOI. Arinox did not receive assistance under this program.

Under Law 675/77, IRI issued bonds to finance restructuring measures of companies within the IRI group. The proceeds from the sale of the bonds were then re-lent to IRI companies. During the POI, AST had two outstanding loans financed by IRI bond issues for which the effective interest rate was reduced by interest contributions made by the GOI. In addition to interest contributions on these variable rate long-term loans, the GOI also made other financial contributions relating to ''expenses'' associated with the loans.

We preliminarily determine that these loans constitute a countervailable subsidy within the meaning of section 771(5) of the Act. These loans provided a financial contribution as described in section 771(5)(D)(i) of the Act.

With regard to specificity, a number of different industrial sectors have received benefits under Law 675/77. However, in *Electrical Steel from Italy*, the Department determined that assistance under this law was specific because the steel industry was a dominant user of the program (the steel industry received 34 percent of the benefits). *See Electrical Steel from Italy*, 59 FR at 18361. In the instant proceeding, the GOI submitted additional information regarding the distribution of benefits under this program. While it is unclear whether this information reflects the distribution of benefits at the time the subsidies in question were given, the new information is nevertheless consistent with our previous finding of specificity. Therefore, we preliminarily find the program to be specific.

To measure the benefit from these loans, we compared the benchmark interest rate to the amounts paid by AST on these loans during the POI. We divided the resulting difference by AST's total sales during the POI. Accordingly, we determine the estimated net subsidy from this program to be 0.04 percent *ad valorem* for AST.

F. Law 488/92

Law 488/92 provides grants for industrial projects in depressed regions of Italy. The subsidy amount is based on the location of the investment and the size of the enterprise. The funds used to pay benefits under this program are derived in part from the GOI and in part from the Structural Funds of the EU. To be eligible for benefits under this program, the enterprise must be located in one of the regions in Italy identified in EU Objectives 1, 2 or 5b. Arinox received assistance under this program because it is located in an economically depressed region, AST did not.

We preliminarily determine that this program constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. This program provides a financial contribution, as described in section 771(5)(D)(i) of the Act. Because assistance is limited to enterprises located in certain regions, we preliminarily determine that the program is specific under section 771(5A)(D) of the Act.

Under this program Arinox received one grant, disbursed in two tranches during the POI. We have treated benefits under this program as non-recurring because each grant requires separate government approval. The benefit to Arinox was calculated as the sum of the two tranches provided. Because this sum is greater than 0.5 percent of Arinox's sales, we allocated the benefit over Arinox's AUL. We divided the benefit allocated to the POI by Arinox's total sales during the POI. Accordingly, we determine the countervailable subsidy to Arinox for this program to be 0.12 percent *ad valorem*.

EC Programs

A. ECSC Article 54 Loans

Article 54 of the 1951 ECSC Treaty established a program to provide industrial investment loans directly to the iron and steel industries to finance modernization and the purchase of new equipment. Eligible companies apply directly to the EU for up to 50 percent of the cost of an industrial investment project. The Article 54 loan program is financed by loans taken out by the European Union, which are then refinanced at slightly higher interest rates than those at which the EU obtained them. AST had two long-term, fixed-rate loans outstanding during the POI under this program. Arinox did not receive loans under this program.

We preliminarily determine that these loans constitute a countervailable subsidy within the meaning of section 771(5) of the Act. This program provides a financial contribution, as described in section 771(5)(D)(i) of the Act. The Department has found Article 54 loans to be specific in several proceedings, including *Electrical Steel from Italy*, 59 FR at 18362, and *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy*, 58 FR 37327, 37335 (July 9, 1993), because loans under this program are provided only to iron and steel companies. The EU has also indicated on the record of this investigation that Article 54 loans are for steel undertakings. Therefore, we preliminarily determine that this program is specific.

AST had two long-term, fixed-rate loans outstanding during the POI, each one denominated in a foreign currency. Consistent with *Electrical Steel from Italy*, 59 FR at 18362, we have used the lira-denominated interest rate discussed in the *Subsidies Valuation Information* section of this notice as our benchmark interest rate. The interest rate charged on one of AST's two ECSC loans was lowered part way through the life of the loan. Therefore, for the purpose of calculating the benefit, we have treated this loan as if it were contracted on the date of this rate adjustment. We used the outstanding principal as of that date as the new principal amount, to which the new, lower interest rate applied. As our interest rate benchmark, we used the long-term, lira-based rate in effect on the date of the downward rate adjustment.

To calculate the benefit under this program, we employed the Department's standard long-term loan methodology. We calculated the grant equivalent and allocated it over the life of each loan. We followed the methodology described in the *Change in Ownership* section above to determine the amount appropriately allocated to AST after its privatization and subsequent changes in ownership. We divided this benefit by AST's total sales during the POI. Accordingly, we determine the countervailable subsidy to AST for these two loans together to be 0.06 percent *ad valorem*.

B. European Social Fund

The European Social Fund (ESF), one of the Structural Funds operated by the EU, was established to improve workers' opportunities through training and to raise their standards of living throughout the Community by increasing their employability. Like other EU Structural Funds, there are five different Objectives (sub-programs) identified under ESF: Objective 1 covers projects located in underdeveloped regions, Objective 2 addresses areas in industrial decline, Objective 3 relates to the employment of persons under 25, Objective 4 funds training for employees in companies undergoing restructuring, and Objective 5 pertains to agricultural areas.

During the POI, AST received ESF assistance under Objectives 2 and 4, and Arinox received assistance under Objective 2. In the case of AST, the Objective 2 funding was to retrain production, mechanical, electrical maintenance, and technical workers, and the Objective 4 funding was to train AST's workers to increase their productivity. Arinox stated that the grants it received were for worker training.

The Department considers worker training programs to provide a countervailable benefit to a company when the company is relieved of an obligation it would have otherwise incurred. *See Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') From Italy*, 61 FR 30287, 30294 (June 14, 1996) (*Pasta From Italy*). Since companies normally incur the costs of training to enhance the job-related skills of their own employees, we preliminarily determine that this ESF funding relieves AST and Arinox of obligations they would have otherwise incurred.

Therefore, we preliminarily determine that the ESF grants received by AST and Arinox are countervailable within the meaning of section 771(5) of the Act. The ESF grants are a financial contribution as described in section 771(5)(D)(i) of the Act which provide a benefit to the recipient in the amount of the grant.

Consistent with prior cases, we have examined the specificity of the funding under each Objective separately. *See Wire Rod from Italy*, 63 FR at 40487. In this case, the Objective 2 grants received by AST and Arinox were funded by the EU, the GOI, and the regional government of Umbria acting through the provincial government of Terni for AST and the regional government of

Liguria for Arinox. In *Pasta From Italy,* 61 FR at 30291, the Department determined that Objective 2 funds provided by the EU and the GOI were regionally specific because they were limited to areas within Italy which are in industrial decline. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. Regarding funding provided by the regional governments, neither government provided information on the distribution of its grants under Objective 2. Therefore, since these governments failed to cooperate to the best of their ability by not supplying the requested information on the distribution of grants under Objective 2, we are assuming for purposes of this preliminary determination, as adverse facts available under section 776(b) of the Act, that the funds provided by the provincial governments of Terni and Liguria are also specific.

In the case of Objective 4 funding, the Department has determined in past cases that the EU portion is *de jure* specific because its availability is limited on a regional basis within the EU. The GOI funding was also determined to be *de jure* specific because eligibility is limited to the center and north of Italy (non-Objective 1 regions). *See Wire Rod from Italy,* 63 FR at 40487. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

The Department normally considers the benefits from worker training programs to be recurring. *See GIA,* 58 FR at 37255. However, consistent with the Department's determination in *Wire Rod from Italy,* 63 FR at 40488, that these grants relate to specific, individual projects, we have treated these grants as non-recurring grants because each required separate government approval. Because the amount of funding for each of AST's projects was less than 0.5 percent of AST's sales in the year of receipt, we have expensed these grants received in the year of receipt. Two of AST's grants were received during the POI. For these grants, we divided this benefit by AST's total sales during the POI and calculated a benefit of 0.01 percent *ad valorem* for ESF Objective 2 funds and 0.03 percent *ad valorem* for ESF Objective 4 funds.

Arinox received ESF Objective 2 grants in 1991 and 1992. Because the amount of funding for each of Arinox's projects project was more than 0.5 percent of Arinox's sales in the year of receipt, we have allocated these grants over its AUL. In allocating Arinox's benefits, we used the appropriate discount rate which corresponded to the year in which the funds were approved by the GOI. Accordingly, we determine the countervailable subsidy under the ESF Objective 2 program for Arinox to be 0.34 percent *ad valorem*.

II. Programs Preliminarily Determined to be Not Countervailable

A. AST Participation in the THERMIE Program

The EU provided funds to AST for the development of a demonstration project (pilot plant) through an EU program promoting research and development in the field of non-nuclear energy (THERMIE). The objective of the THERMIE program is to encourage the development of efficient, cleaner, and safer technologies for energy production and use. The THERMIE program is part of a larger program categorized under the EU's Fourth Framework Programme which covers activities in research and technological development from 1994–1998. Arinox did not receive funds from this program.

The objective of AST's demonstration plant is to reduce energy consumption in the production of stainless steel by eliminating some of the traditional production steps through the adoption of ''strip casting'' technology. In *Italian Plate,* as well as in the instant proceeding, the EU has requested noncountervailable (green light) treatment for this project as a research and development subsidy under section 771(5B)(B)(ii)(II) of the Act.

In *Italian Plate,* 63 FR at 47252, the Department preliminarily determined that the THERMIE program did not merit green light treatment because it did not meet the statutory requirement that ''the instruments, equipment, land or buildings be used exclusively and permanently (except when disposed on a commercial basis) for the research activity'' (*see* section 771(5B)(B)(i) of the Act). No new information has been submitted on the record in the instant proceeding to warrant a reconsideration of this finding.

However, in *Italian Plate,* we did not have sufficient information to determine if the technology and the demonstration plant provided a benefit to subject merchandise. Furthermore, we did not have information on the distribution of project funds by industry or by company for the year in which AST's project was approved.

In the instant proceeding, it is clear that the project does have applications to the subject merchandise. Also, in this proceeding, the EU has submitted information on the distribution of assistance under the THERMIE program for 1995 and 1996. Based on the information on the record, there is no indication that this program is *de jure* specific. Additionally, based on an examination of the distribution information, it appears that the program benefitted a large number of users in different industries, and that neither AST nor the steel industry received a disproportionate share of the benefits (*see* Memorandum to Susan Kuhbach from Case Analysts, dated November 9, 1998.) Therefore, we preliminarily determine that the THERMIE program is not specific within the meaning of section 771(5A)(D) of the Act and, consequently, not countervailable.

III. Programs for Which We Need More Information

GOI Programs

A. Law 10/91

In its October 9 response, AST stated that it received a grant under Law 10/91 in a year prior to the POI.

Law 10/91 is designed to provide grants to fund energy conservation projects. Companies seeking assistance under this program can apply under Article 8, 10, 11, 12, 13, or 14 of the Law. According to the GOI, aid under articles 8, 10, and 13 is limited to the autonomous regions and the provinces of Trento and Bolzano, while aid under articles 11, 12, and 14 is available throughout Italy. AST received its grant under article 12.

In its October 23 response, the GOI provided a description and certain usage information regarding this program. Because we did not seek additional clarifying information on specificity prior to our preliminary determination, we intend to do so prior to our final determination. After we collect additional information and conduct verification, we will prepare an analysis memorandum addressing the countervailability of this program, and provide all parties an opportunity to comment on our analysis. However, we note that even if this program were found to be specific, the grant received by AST was less than 0.5 percent of AST's sales in the year of receipt. Therefore, the benefit would be expensed in the year of receipt and no benefit would be allocated to the POI.

IV. Programs Preliminarily Determined To Be Not Used

A. Pre-Privatization Employment Benefits (Law 451/94)

Law 451/94 authorized early retirement packages for Italian steel workers from 1994–1996. The program, as described by the GOI, was designed to comply with the EC's reorganization of the iron and steel industry, specifically in regards to reducing productive capacity. The law entitled men of at least 50 years of age and women of 47 years of age with at least 15 years of pension contributions to retire early. AST and Arinox employees made use of this program during the three years of the program.

In *Wire Rod from Italy*, we determined that Italian companies such as AST and Arinox could not simply lay off workers, but instead would be required to provide early retirement assistance to them. Hence, we reviewed other GOI programs that would be widely used by Italian companies in order to determine what obligations AST and Arinox would have to their workers who retired early in the absence of Law 451. In *Wire Rod from Italy*, we determined that the *Cassa Integrazione Guadagni* (CIG)-Extraordinary program provided the best benchmark for Law 451. Like Law 451, CIG-Extraordinary addresses workers whose companies are restructuring, reorganizing, and/or downsizing.

New information submitted on the record in the instant proceeding indicates that a different program, ''CIG-Mobility,'' provides a more appropriate benchmark to Law 451. Like CIG-Extraordinary, CIG-Mobility was not developed for particular Italian industries and is used by a wide variety of them. However, whereas CIG-Extraordinary addresses temporary layoffs, CIG-Mobility is designed to address assistance to workers who are being permanently laid off. Because Law 451 also addresses an employees' permanent separation from the company, we preliminarily determine that CIG-Mobility is a more appropriate benchmark to determine what costs AST and Arinox would have incurred in laying off employees had they not been able to take advantage of Law 451.

Under CIG-Mobility, a company must make a final payment to the employee upon the employees' departure from the company. Since employees at AST and Arinox were eligible to use Law 451 from 1994–1996 only, the companies would have incurred the payments to the employees under the benchmark program prior to the POI. Because it is the Department's practice to treat early retirement benefits as recurring grants which are expensed in the year of receipt, the companies did not incur costs under the benchmark program during the POI. *See GIA*, 58 FR at 37226. Therefore, Law 451 does not provide a financial contribution during the POI which relieves AST and Arinox of costs that they otherwise would incur if they participated in more broadly used early retirement programs.

B. Benefits from the 1982 Transfer of Lovere and Trieste to Terni (called Benefits Associated With the 1988–90 Restructuring in the *Initiation Notice*)

C. Decree Law 120/89: Recovery Plan for the Steel Industry

D. Law 181/89: Worker Adjustment and Redevelopment Assistance

E. Law 345/92: Benefits for Early Retirement

F. Law 706/85: Grants for Capacity Reduction

G. Law 46/82: Assistance for Capacity Reduction

H. Loan to KAI for Purchase of AST

I. Debt Forgiveness: 1981 Restructuring Plan

J. Law 675/77: Mortgage Loans, Personnel Retraining Aid and VAT Reductions

K. Law 193/84: Interest Payments, Closure Assistance and Early Retirement Benefits

L. Law 394/81: Export Marketing Grants and Loans

M. Law 341/95 and Circolare 50175/95

N. Law 227/77: Export Financing and Remission of Taxes

EC Programs

A. ECSC Article 56 Conversion Loans, Interest Rebates and Redeployment Aid

B. European Regional Development Fund

C. Resider II Program and Successors

D. 1993 EU Funds

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for each company investigated. Because the rate for Arinox is *de minimis*, and the Department does not include *de minimis* rates in the calculation of the all-others rate, AST's rate also will serve as the all-others rate. We preliminarily determine that the total estimated net countervailable subsidy rate is 6.11 percent *ad valorem* for AST and 0.46 percent *ad valorem* for Arinox.

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of stainless steel sheet and strip from Italy, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts listed above. Since the estimated preliminary net countervailing duty rate for Arinox is *de minimis*, it will be excluded from the suspension of liquidation. The suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of this preliminary determination, at the U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. An interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

In addition, six copies of the business proprietary version and six copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the publication of this notice. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 55 days from the publication of this notice. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: November 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–30738 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 87–13A04.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted originally to The Association for Manufacturing Technology (''AMT'') on May 19, 1987. Notice of issuance of the Certificate was published in the **Federal Register** on May 22, 1987 (52 FR 19371).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, 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. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1998).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate:

Export Trade Certificate of Review No. 87–00004, was issued to The Association for Manufacturing Technology on May 19, 1987 (52 FR 19371, May 22, 1987) and previously amended on December 11, 1987 (52 FR 48454, December 22, 1987); January 3, 1989 (54 FR 837, January 10, 1989); April 20, 1989 (54 FR 19427, May 5, 1989); May 31, 1989 (54 FR 24931, June 12, 1989); May 29, 1990 (55 FR 23576, June 11, 1990); June 7, 1991 (56 FR 28140, June 19, 1991); November 27, 1991 (56 FR 63932, December 6, 1991); July 20, 1992 (57 FR 33319, July 28, 1992); May 10, 1994 (59 FR 25614, May 17, 1994); December 1, 1995 (61 FR 13152, March 26, 1996); October 11, 1996 (61 FR 55616, October 28, 1996; and May 6, 1998 (63 FR 31738, June 10, 1998).

AMT's Export Trade Certificate of Review has been amended to:

1. Add the following companies as new ''Members'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 C.F.R. 325.2(1)): DT Industries, Inc., Springfield, MO; Motoman, Inc., West Carrollton, OH; and Precision Industrial Automation, Inc., Cincinnati, OH;

2. Delete Banner Welder, Inc.; Crouch Machinery, Inc.; Danly-Komatsu, L.P.; and J. M. Montgomery Manufacturing, Inc. as ''Members'' of the Certificate; and

3. Change the listing of the company name for the current ''Members'' cited in this paragraph to the new listing cited in parenthesis as follows: M T R Ravensburg, Inc. (Machine Tool Research, Inc.) and Buffalo Forge Company (Buffalo Machine Tools of Niagara, Inc.).

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: November 10, 1998.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 98–30630 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership National Advisory Board; Notice of Renewal

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR Part 101–6, and after consultation with GSA, the Secretary of Commerce has determine that the renewal of the Manufacturing Extension Partnership National Advisory Board is in the public interest in connection with the performance of the duties imposed on the Department by law.

The Committee was first established in October 1996 to advise MEP regarding their programs, plans, and policies. In renewing the Board, the Secretary has established it for an additional two years. During the next two years, the Board plans to study the variety of business models that the centers have adopted to deliver services within their local markets; look at the program evaluation metrics and its effect on center operations and impact; and address ways that the Board can raise awareness of MEP and build stronger relationships with programs that have complimentary missions.

The Board will consist of nine members to be appointed by the Director of the National Institute of Standards and Technology to assure a balanced membership that will represent the views and needs of customers, providers, and others involved in industrial extension throughout the United States.

The Board will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Copies of the Board's revised charter will be filed with the appropriate committees of the Congress and with the Library of Congress.

Inquiries or comments may be directed to Linda Acierto, Assistant to the Director for Policy, Manufacturing Extension Partnership, National Institute of Standards and Technology, Gaithersburg, Maryland, 20899; telephone: 301–975–5020.

Dated: November 12, 1998.

Robert E. Hebner,

Acting Deputy Director, NIST.

[FR Doc. 98–30742 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110998E]

Endangered Species; Permits

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

ACTION: Receipt of applications for scientific research and research/enhancement permits (1179, 1185, 1186); Issuance of scientific research permits (1162, 1167).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received permit applications from Natural Resource Scientists, Inc.,(NRSI) in Red Bluff, CA (1185) and Idaho Department of Fish and Game (IDFG) at Boise, ID (1179, 1186); NMFS has issued permits to Salmon Protection and Watershed Network (SPAWN) (1162) and Peter B. Moyle (1167).

DATES: Written comments or requests for a public hearing on any of the applications must be received on or before December 17, 1998.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permits 1162, 1167, and 1185: Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707–575–6066).

For permits 1179 and 1186: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permits 1162, 1167, and 1185: Tom Hablett, Protected Resources Division, (707–575–6066).

For permits 1179 and 1186: Robert Koch, Portland, OR (503–230–5424).

SUPPLEMENTARY INFORMATION:

Authority

Permits are requested under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

Those individuals requesting a hearing on these requests for permits should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the below application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Issuance of permits, as required by the ESA, is based on a finding that such permits: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Permits are issued in accordance with and are subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

Species Covered in This Notice

The following species are covered in this notice: Chinook salmon (*Oncorhynchus tshawytscha*), Coho salmon (*O. kisutch*), and Steelhead trout (*O. mykiss*).

To date, protective regulations for threatened California Central Valley (CCVa) steelhead under section 4(d) of the ESA have not been promulgated by NMFS. This notice of receipt of applications requesting takes of this species is issued as a precaution in the event that NMFS issues protective regulations that prohibit takes of threatened CCVa steelhead. The initiation of a 30-day public comment period on these applications, including their proposed takes of threatened CCVa steelhead, does not presuppose the contents of the eventual protective regulations.

New Applications Received

IDFG requests two 5-year permits (1179, 1186) that would authorize an annual direct take of adult and juvenile, threatened, naturally produced and artificially propagated, Snake River spring/summer (SnRS/S) chinook salmon associated with a hatchery supplementation program at the Pahsimeroi River in ID (1186), and at the headwaters of the Salmon River (Sawtooth Hatchery), East Fork Salmon River, and South Fork Salmon River in ID (1179). Permit 1186 would replace permit 922 which expires on December 31, 1998. Permit 1179 would replace permits 919, 920, and 921 which expire on December 31, 1998. The enhancement of ESA-listed SnRS/S chinook salmon stocks is expected by increasing the genetic integrity of the species and by providing egg-to-adult survival improvement through hatchery rearing as compared to natural incubation and rearing. IDFG proposes to retain a percentage of the ESA-listed adult salmon that return to the respective watersheds each year for broodstock and to release all of the ESA-listed adult salmon not retained for broodstock to spawn naturally. ESA-listed adult salmon retained for broodstock are proposed to be transported to a hatchery and spawned. The resulting progeny are proposed to be reared in the hatcheries, tagged with internal identifiers, and released in the respective streams of origin when ready to outmigrate to the ocean. Annual incidental takes of ESA-listed species associated with adult and juvenile fish releases are also requested.

NRSI (1185) requests a 5-year permit for takes of adult and juvenile, threatened, CCVa steelhead associated with fish population studies on the Mokelumne and Merced Rivers within the Evolutionarily Significant Unit (ESU). Steelhead studies conducted by NRSI consist of three assessment tasks for which ESA-listed fish are proposed to be taken: (1) Presence/absence, (2) population estimates, and (3) migratory trends. ESA-listed fish will be observed or captured, anesthetized, handled (weighed and measured), allowed to recover from the anesthetic, and released. Indirect mortalities associated with the research are also requested.

Permits Issued

Notice was published on July 14, 1998 (63 FR 37851), that an application had been filed by SPAWN for a scientific research permit. Permit 1162 was issued to SPAWN on October 28, 1996, and authorizes takes of juvenile, threatened, central California coast (CCC) coho salmon associated with fish population and habitat studies on San Geronimo Creek and its tributaries within the ESU. ESA-listed fish may be captured, handled and released. Permit 1162 expires on June 30, 2003.

Notice was published on July 14, 1998 (63 FR 37851), that an application had been filed by Peter B. Moyle for a scientific research permit. Permit 1167 was issued to Peter B. Moyle on October 28, 1998, and authorizes takes of juvenile, threatened, CCC coho salmon associated with fish population and habitat studies throughout the ESU. ESA-listed fish may be observed. Permit 1167 expires on June 30, 2003.

Dated: November 9, 1998.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–30618 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 103098B]

Magnuson-Stevens Act Provisions; Atlantic Shark Fisheries; Exempted Fishing Permits (EFPs)

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

ACTION: Application for EFP; request for comments.

SUMMARY: NMFS announces the receipt of an application for an EFP. If granted, this EFP would authorize, over a period of 1 year, collections of a limited number of sharks from the large coastal, pelagic, and small coastal groups from Federal waters in the Atlantic Ocean for the purpose of shark identification training.

DATES: Written comments on the applications must be received on or before December 2, 1998.

ADDRESSES: Send comments to Rebecca Lent, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. The application and copies of the regulations under which exempted fishing permits are subject may also be requested from this address.

FOR FURTHER INFORMATION CONTACT: Margo Schulze, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: This EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and regulations at 50 CFR 600 concerning scientific research activity, exempted fishing, and exempted educational activity.

Special Agent Paul Raymond intends to conduct a series of shark species identification courses for NMFS enforcement, United States Coast Guard, and Florida Marine Patrol personnel. In order to obtain specimens for this ‘‘hands-on’’ training, Special Agent Raymond has requested that Mr. Eric Sanders, a former commercial fisherman, be authorized to collect a maximum of 234 sharks (i.e., two individuals per the 39 federally-managed species for three training sessions for a total of 234 fish) by bottom longline. Fishing will occur in the Atlantic Ocean off east central Florida. Issuance of an EFP is necessary because possession of five large coastal shark species is prohibited and because the commercial fishery for large coastal sharks is closed for extended periods.

The proposed collections involve activities otherwise prohibited by regulations implementing the Fishery Management Plan for Sharks of the Atlantic Ocean. The applicant requests authorization to fish for and to possess large coastal sharks outside the Federal commercial seasons and to fish for and to possess prohibited species.

NMFS finds that this application warrants further consideration because Atlantic sharks are extremely difficult to identify by species once the carcasses have been commercially dressed and the primary diagnostic characteristics (head, fins, and tail) have been removed. Therefore, thorough ‘‘hands-on’’ training of Federal and state personnel that will be enforcing Atlantic shark regulations is extremely critical to the effectiveness of the regulations. A final decision on issuance of EFPs will depend on the submission of all required information, NMFS’ review of public comments received on the applications, conclusions of any environmental analyses conducted pursuant to the National Environmental Policy Act, and on any consultations with any appropriate Regional Fishery Management Councils, states, or Federal agencies.

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

Dated: November 6, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–30617 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101498A]

Marine Mammals; File No. 881–1443

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the Alaska SeaLife Center, Box 1329, Seward, AK 99664 (907/224–2600) has been issued an amendment to scientific research Permit No. 881–1443.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On August 6, 1998, notice was published in the **Federal Register** (63 FR 42010) that an amendment of Permit No. 881–1443, issued March 23, 1998 (63 FR 14905), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 881–1443 authorizes the Alaska SeaLife Center to (1) import from Canada, three juvenile Steller sea lions (*Eumetopias jubatus*) and two juvenile harbor seals (*Phoca vitulina*); (2) obtain six additional harbor seals from U.S. facilities; and (3) conduct research activities on these animals over a five-year period. These studies may assess nutritional physiology, metabolic development, and clinical health under captive conditions.

This amendment now authorizes the Holder to: (1) collect whiskers or toenails from each harbor seal for background concentrations of stable isotopes of carbon and nitrogen; (2) feed the harbor seals fish, or inject them with solution containing stable isotopes of carbon and nitrogen; and (3) collect serial biopsies of blubber and muscle to assess lipid profiles.

Dated: November 5, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–30705 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

November 10, 1998

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 62564, published on November 24, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 10, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on November 17, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
341	2,010,672 dozen.
352/652	11,379,895 dozen.
363	28,961,581 numbers.
369–S [2]	1,905,819 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–30686 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Fiji

November 10, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 338/339/638/639 is being increased for carryforward. The sublimit for Categories 338–S/339–S/638–S/639–S, which is currently filled, remains unchanged.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 61296, published on November 17, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 10, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 12, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Fiji and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on November 17, 1998, you are directed to increase the limit for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/339/638/639	1,420,716 dozen of which not more than 1,072,170 dozen shall be in Categories 338–S/339–S/638–S/639–S [2].

[1] The limit has not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–30685 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

November 10, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 63524, published on December 1, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 10, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 25, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on November 17, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
237	280,910 dozen.
239pt. [2]	1,412,946 kilograms.
334/634	298,915 dozen.
335/635	442,159 dozen.
336/636	520,251 dozen.
338	5,675,721 dozen.
339	1,507,559 dozen.
340/640	681,170 dozen.
341/641	278,715 dozen
342/642	137,267 dozen.
347/348	1,006,622 dozen.
351/651	341,101 dozen.
352/652	882,365 dozen.
359–C/659–C [3]	1,534,958 kilograms.
363	46,750,187 numbers.
369–F/369–P [4]	2,501,057 kilograms.
369–S [5]	755,390 kilograms.
638/639	242,511 dozen.
647/648	722,377 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 369–F: only HTS number 6302.91.0045; Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[5] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–30684 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 63 FR 59549.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Thursday, November 19, 1998.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has cancelled the meeting to discuss Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 418–5100.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 98–30829 Filed 11–13–98; 2:17 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 63 FR 59549.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:30 a.m., Thursday, November 19, 1998.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has cancelled the meeting to discuss Enforcement Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 418–5100.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 98–30830 Filed 11–13–98; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Adverse Registration Actions by the National Futures Association With Respect to Agricultural Trade Option Merchants and Their Associated Persons and Applicants for Registration in Either Category

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and Order.

SUMMARY: The Commodity Futures Trading Commission (Commission) is authorizing the National Futures Association (NFA) to deny, condition, suspend, modify, restrict or revoke the registration of any agricultural trade option merchant (ATOM) or any associated person (AP) of an ATOM or to deny or condition an application for registration in either category. In addition, the Commission is authorizing NFA to perform record custodianship functions with respect to such adverse registration actions. The Commission has previously authorized NFA to perform various functions with respect to processing registration records for ATOMs and their APs, and applicants therefore, including granting such registrations where appropriate and serving as the official custodian of those Commission records. 63 FR 18821 (April 16, 1998). This Order does not authorize NFA to accept or act upon requests for exemption or to render "no-

action'' opinions with respect to applicable registration requirements. This Order generally will confirm NFA's authority regarding the ATOM and ATOM AP registration categories to the authority delegated by the Commission to NFA concerning the other categories of registration under the Commodity Exchange Act (Act).[1]

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Kimberly A. Browning, Attorney/Advisor, Division of Economic Analysis, or Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5000, or electronically at [kbrowning@cftc.gov] or [lpatent@cftc.gov].

SUPPLEMENTARY INFORMATION:

Introduction

On April 16, 1998, the Commission published interim final rules in the **Federal Register** authorizing NFA to perform registration processing functions with respect to ATOMs and their APs.[2] These functions include: (1) processing and, where appropriate, granting applications for registration for ATOMs and their APs; and (2) establishing and maintaining systems of records regarding ATOMs and their APs and serving as the official custodian of those Commission records.[3] By the Order below, issued on this date, the Commission is authorizing NFA to assume the performance of additional registration functions on behalf of the Commission, specifically, to deny, condition, suspend, modify, restrict or revoke the registration of any ATOM or any ATOM AP or to deny or condition an application for registration in either category. In addition, the Commission is authorizing NFA to perform record custodianship functions with respect to such adverse registration actions.

Further, this Order does not authorize NFA to accept or act upon requests for exemption or to render ''no-action'' opinions with respect to applicable registration requirements. This Order will conform NFA's authority concerning the ATOM and ATOM AP registration categories to the authority delegated by the Commission to NFA concerning the other categories of registration under the Act.[4]

The Commission further notes that, in enacting Section 227 of the Futures Trading Practices Act of 1992, Congress added Section 8a(11) to the Act, 7 U.S.C. 12a(11) (Supp. IV 1992), which provided rulemaking authority for the Commission to modify or suspend the registration of any person charged with a felony if the Commission determines that continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission. The Commission adopted Rule 3.56 to implement this authority. The Commission expects that NFA will promptly notify the Commission when NFA becomes aware that any registrant has been charged with a felony.[5]

United States of America Before the Commodity Futures Trading Commission Order Authorizing the Performance of Registration Functions

I. Authority and Background

Section 8a(10) of the Act (7 U.S.C. 12a(10) (1994)) provides that the Commission may authorize any person to perform any portion of the registration functions under the Act, notwithstanding any other provision of law, in accordance with rules adopted by such person and submitted to the Commission for approval or, if applicable, for review pursuant to Section 17(j) of the Act and subject to the provision of the Act applicable to registrations granted by the Commission. Section 17(o)(2) of the Act provides that the Commission may authorize any registered futures association, in this case NFA, in performing Commission registration functions, to deny, condition, suspend, restrict or revoke any registration, subject to Commission review.[6]

NFA submitted under cover of a letter dated August 27, 1998, amendments to its rules to govern adverse actions against ATOMs, ATOM APs and applicants for registration in either category. These amendments reflect actions taken by NFA's Board of Directors at a meeting on August 20, 1998. NFA's rule amendments establish procedures for conducting adverse registration actions with respect to the ATOM and ATOM AP registration categories. In particular, NFA will conduct a fitness review of each ATOM and ATOM AP registration applicant. In appropriate circumstances, NFA will institute adverse registration actions against ATOMs, their APs or applicants for registration in either category based on the statutory disqualifications provided under Sections 8a(2) and 8a(3) of the Act. NFA also will review the financial statements submitted by prospective ATOMs with their registration applications to determine whether such statements demonstrate compliance with the $50,000 minimum net worth requirement provided under Commission Rule 3.13(d)(i). In those instances where the listed financial data fail to satisfy this requirement, NFA will institute adverse registration actions.

Upon consideration, the Commission has determined to authorize NFA, effective, November 17, 1998, to deny, condition, suspend, modify, restrict or revoke the registration of any ATOM, any ATOM AP or an applicant for registration in either category in accordance with the standards established by the Act and rules promulgated thereunder. In addition, the Commission is authorizing NFA to perform record custodianship functions with respect to such adverse registration actions. Separately, by letter dated September 10, 1998, the Commission's Division of Trading and Markets permitted amendments to NFA bylaws and NFA Registration Rules 201 and 501(a) to become effective without Commission approval in order to implement these grants of authority.

By prior orders, the Commission has authorized NFA to maintain various other Commission registration records and certified NFA as the official custodian of such records for this

---

[1] 7 U.S.C. 1 *et seq.* (1994).

Although ''agricultural trade option merchant'' and ''associated person of an agricultural trade option merchant'' are not registration categories defined by the Act, they are, nevertheless, registration categories ''under the Act'' by virtue of the Commission's promulgation of rules creating these registration categories under Section 4c(b) of the Act (its plenary authority over the regulation of options) and under Section 8a(5) of the Act (its general rulemaking authority). 62 FR 18821, 18825, n. 20.

[2] 63 FR 18821. These interim final rules became effective on June 15, 1998. *Id.*

[3] Under cover of a letter dated June 18, 1998, NFA submitted to the Commission amendments to its bylaws and rules to govern these two registration processing functions.

[4] The Commission has previously authorized NFA to perform registration processing functions, and to take adverse registration actions, with respect to futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, leverage transactions merchants, associated persons of any of the foregoing entities, floor brokers and floor traders, as well as applicants for registration in any of the aforementioned categories. *See* 49 FR 15940 (April 13, 1983); 49 FR 35158 (August 3, 1983); 48 FR 51809 (November 14, 1983); 48 FR 8226 (March 5, 1984); 49 FR 39593 (October 9, 1984); 50 FR 34885 (August 28, 1985); 54 FR 19594 (May 8, 1989); 54 FR 41133 (October 5, 1989); 59 FR 38957 (August 1, 1994); and 62 FR 36050 (July 3, 1997).

[5] In this regard, the Commission notes that ATOMs and their APs, as well as applicants for registration in either category, are required to supplement their respective registration applications to include any changes to the information provided thereon and report such changes to the NFA. *See* Commission Rule 3.13(e)(4).

[6] 7 U.S.C. 21(o)(2) (1994).

agency.[7] The Commission has now determined, in accordance with its authority under Section 8a(10) of the Act, to authorize NFA to maintain, and to serve as official custodian of, the Commission's registration records with respect to adverse actions against ATOMs, their APs and applicants for registration in either category from this time forward. This determination is based upon NFA's representations regarding the implementation of rules and procedures for maintaining and safeguarding all such records.

In maintaining the Commission's registration records pursuant to this Order, NFA shall be subject to all other requirements and obligations imposed upon it by the Commission in existing or future orders or regulations. In this regard, NFA shall also implement such additional procedures (or modify existing procedures) as are necessary and acceptable to the Commission to ensure the security and integrity of the ATOM, ATOM AP or applicant records in NFA's custody; to facilitate prompt access to those records by the Commission and its staff, particularly as described in other Commission orders or rules; to facilitate disclosure of public or nonpublic information in those records when permitted by Commission orders or rules and to keep logs as required by the Commission concerning disclosure of nonpublic information; and otherwise to safeguard the confidentiality of the records.

II. Conclusion and Order

The Commission has determined, in accordance with the provisions of Section 8a(10) of the Act, to authorize NFA, effective November 17, 1998, to perform the following registration functions:

(1) To deny, condition, suspend, modify, restrict or revoke registration under the Commodity Exchange Act as an agricultural trade option merchant, an associated person of an agricultural trade option merchant or an applicant for registration in either category; and

(2) To establish and to maintain a system of records regarding such adverse actions involving agricultural trade option merchants, associated persons of agricultural trade option merchants and applicants for registration in either category and to serve as the official custodian of those Commission records. NFA shall perform these functions in accordance with the standards established by the Act and the regulations promulgated thereunder.

These determinations are based upon the Congressional intent expressed in Sections 8a(10) and 17(o) of the Act that the Commission be allowed to authorize NFA to perform any portion of the Commission's registration responsibilities under the Act for purposes of carrying out these responsibilities in the most efficient and cost-effective manner and upon NFA's representations concerning standards and procedures to be followed in administering these functions.

This Order does not, however, authorize NFA to accept or act upon requests for exemption from registration or to render ''no-action'' opinions or interpretations with respect to applicable registration requirements.

Nothing in this Order or in Section 8a(10) or 17 of the Act shall affect the Commission's authority to review the granting of a registration application by NFA in the performance of Commission registration functions or to review any adverse registration action taken by NFA. See also Sections 17(o) (3) and (4) of the Act, 7 U.S.C. 21(o) (3) and (4) (1994), and 17 CFR Part 171.

Issued in Washington, DC on November 10, 1998 by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 98–30647 Filed 11–16–98; 8:45 am]

BILLING CODE 6351–01–M

[7] 49 FR 39593 (October 9, 1984); 50 FR 34885 (August 28, 1985); 51 FR 25929 (July 7, 1986); 54 FR 19594 (May 8, 1989); 54 FR 41133 (October 5, 1989); 58 FR 19657 (April 15, 1993); and 59 FR 38957 (August 1, 1994).

DEPARTMENT OF DEFENSE

Ballistic Missile Defense Organization; Preparation of the National Missile Defense Deployment Environmental Impact Statement

AGENCY: Ballistic Missile Defense Organization, DOD.

ACTION: Notice of intent.

SUMMARY: This notifies the public that the Ballistic Missile Defense Organization (BMDO) intends to prepare an Environmental Impact Statement (EIS) for a potential National Missile Defense (NMD) deployment, should the U.S. Government make such a decision. In 1996, at the direction of the Secretary of Defense, NMD was designated a Major Defense Acquisition Program. Concurrently, BMDO was tasked with developing an NMD system that could be deployed within three years. This three-year development period is to culminate in the year 2000. In the year 2000, a Department of Defense (DoD) Deployment Readiness Review will be held to review the technical readiness of NMD elements. Thereafter, the United States government will determine whether the threat, developed capability, and other pertinent factors justify deploying an operational NMD system by the year 2003. BMDO is preparing an EIS to evaluate the potential environmental impacts of deployment of an NMD system.

Because the three-year development period is combined with an additional three-year deployment option, the total effort is referred to as the NMD ''3+3'' program. Should the deployment option not be exercised in the year 2000, improvements in NMD system element technology would continue, while an ability to deploy a system within three years of a decision would be maintained.

The EIS is intended to support BMDO's planning for a potential deployment of an NMD system. The decision to be made is whether to deploy such a system. This decision will be based on an analysis of the potential limited strategic ballistic missile threat to the United States from a rogue nation, technical readiness of the NMD system for deployment, and other factors including potential environmental impacts. If the decision is to deploy, then sites would be selected from the range of locations studied in the EIS. The EIS will provide the U.S. Government with the information necessary to properly account for the environmental impacts of this decision.

The NMD system would be a fixed, land-based, non-nuclear, hit-to-kill missile defense system with land and space-based sensor support capable of responding to a limited strategic ballistic missile threat to the United States by a rogue nation. The NMD system would consist of five elements: Ground-based Interceptors (GBIs); Battle Management Command, Control, and Communications, which includes the Battle Management Command and Control (BMC2), communication lines, and the In-Flight Interceptor Communications System (IFICS) as subelements; X-Band Radar (XBR); Upgraded Early Warning Radar (UEWR); and Defense Support Program (DSP) satellites/Space-Based Infrared System (SBIRS) satellites. All elements of the NMD system would work together to protect the 50 United States against a limited strategic ballistic missile attack by a rogue nation.

Proposed Action and Alternatives

The alternatives to be considered in this EIS are the No-Action Alternative and the Proposed Action. A No-Action Alternative would be a DoD recommendation not to deploy an NMD system but to continue NMD system development to improve NMD system capabilities. With the Proposed Action Alternative, NMD elements and element locations would be selected from the range of locations studied in the EIS. The potential NMD element deployment locations would made maximum use of existing DoD land. The following paragraphs detail potential regions and locations that the U.S. Government would consider as possible sites for each element.

Under the current Proposed Action an initial GBI missile field of 20 missiles could be located at one of the following locations: Clear Air Station (AS), Alaska; Eielson AFB, Alaska; Fort Greely, Alaska; Yukon Maneuver Area (Fort Wainwright), Alaska; Grand Forks Air Force Base (AFB), North Dakota; or Stanley R. Mickelsen Safeguard Complex (SRMSC) Missile Site Radar Site, North Dakota (the SRMSC is centered around the town of Langdon). Wherever the GBIs may be deployed, they would not be fired from their deployment site except in the Nation's defense.

A BMC2 site could be located at one of the following locations: Clear AS, Alaska; Eielson AFB, Alaska; Fort Greely, Alaska; Yukon Maneuver Area (Fort Wainwright), Alaska; Cavalier AS, North Dakota; Grand Forks AFB, North Dakota; or SRMSC Missile Site Radar Site, North Dakota. Also, additional BMC2 facilities would be retrofitted into the existing United States Space Command communication and control facilities at Colorado Springs and other DoD command centers in the United States.

Approximately 14 IFICS could be located at geographically separated locations in the general vicinity of other NMD elements and in the New England states. Identification of potential locations for IFICS is still in progress and will be based on operational requirements. When possible, the IFICS would be located on or near existing DOD installations. Locations tentatively identified to date include: Clear AS, Alaska; Eareckson AS (Shemya Island), Alaska; Eielson AFB, Alaska; Fort Greely, Alaska; Yukon Maneuver Area (Fort Wainwright), Alaska; Grand Forks AFB, North Dakota; Minot AFB, North Dakota, Missile Alert Facility ECHO (near the town of Hampden), North Dakota; SRMSC Missile Site Radar Site, North Dakota; and the Western Aleutians. Studies for potential locations for IFICS sites are still in their early stages. As the studies progress the North Dakota and Alaska locations listed above may be refined and potential locations identified in the New England states. This updated information will be announced in the **Federal Register** and additional scoping will be conducted to obtain public input regarding the potential environmental effects of deploying an IFICS at those locations.

One XBR would be deployed and the following locations are under consideration: Eareckson AS (Shemya Island), Alaska; Cavalier AS, North Dakota; SRMSC Missile Site Radar Site, North Dakota; SRMSC Remote Sprint Launch Site 1, North Dakota; SRMSC Remote Sprint Launch Site 2, North Dakota; and SRMSC Remote Sprint Launch Site 4, North Dakota.

Any deployment may require elements of the system to utilize existing fiber-optic lines, power lines, and other utilities. Some existing lines used to support the deployed system may require modifications. Deployment of elements to some locations may require the acquisition of new rights-of-way and installation of new utility and fiber optic cable. Potential new fiber optic cable locations include North Dakota and Alaska and an oceanic fiber optic cable along the Aleutian Islands from Seward or Whittier, Alaska, to Eareckson AS (Shemya Island), Alaska.

Scoping Process

This EIS will assess environmental issues associated with deployment alternatives. Scoping will be conducted to identify environmental concerns and issues to be addressed in the EIS. Public scoping meetings will be held as part of the process. The schedule for the scoping meetings is as follows: (1) 1 December from 5–8 p.m. at the Cavalier County Courthouse Meeting Room, 901 3rd Street, Langdon, North Dakota; (2) 2 December from 5–8 p.m. at the Grand Forks Civic Auditorium, 615 1st Avenue, North, Grand Forks, North Dakota; (3) 7 December from 5–8 p.m. at the Carlson Community Activity Center, 2010 2nd Avenue, Fairbanks, Alaska; (4) 8 December from 5–8 p.m. at Anderson School, Main Street, Anderson, Alaska; (5) 9 December from 5–8 p.m. at the Delta Junction Community Center, 2288 Deborah Street, Delta Junction, Alaska; (6) 10 December from 5–8 p.m. at Loussac Library, 3600 Denali Street, Anchorage, Alaska; and (7) 16 December from 3–8 p.m. at the Days Inn, 2000 Jefferson Davis Highway, Arlington, Virginia.

Public input and comments are solicited concerning the deployment alternatives and environmental issues related to the proposed NMD deployment program. To ensure the program office will have sufficient time to fully consider public input on issues, written comments should be mailed to ensure receipt no later than January 15, 1999.

Comments concerning the EIS should be addressed to: SMDC–EN–V (Julia Hudson), U.S. Army Space and Missile Defense Command, 106 Wynn Drive, Huntsville, AL 35805, telephone (256) 955–4822.

Dated: November 10, 1998.

L.M. Byrum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30627 Filed 11–16–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Department of Defense Acquisition University.

ACTION: Board of Visitors Meeting.

SUMMARY: The next meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held at the Packard Conference Center, Building 184, Ft. Belvoir, Virginia on Tuesday, December 1, 1998 from 0900 until 1600. The purpose of this meeting is to report back to the BoV on continuing items of interest. The agenda will also include further discussion and an update on efforts directed toward consolidation of the DAU structure into a unified educational institute.

The meeting is open to the public, however, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Mr. John Michel at 703–845–6756.

Dated: November 10, 1998.

L.M. Bynum,

Alternate OSD Federal Liaison Officer, Department of Defense.

[FR Doc. 98–30623 Filed 11–16–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby

given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: December 1998 (800am to 1600pm).

ADDRESSES: The Defense Intelligence Agency, 7400 Defense Pentagon, Washington, DC 20301–7400.

FOR FURTHER INFORMATION CONTACT: Maj. Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC, 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: November 10, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30621 Filed 11–16–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows.

DATES: November 13, 1998 (9:00 a.m. to 8:00 p.m.).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj. Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: November 10, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30622 Filed 11–16–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Space Superiority

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Space Superiority met in closed session on November 4–5, 1998 at the NRO, Westfield Complex, Chantilly, VA. Due to an administrative oversight, this meeting was not previously announced.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review and compile recommendations on how best to respond to the evolving space environment in a manner which would preserve U.S. leadership, superiority and dominance in national security space capabilities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: November 10, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30624 Filed 11–16–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Space Superiority

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Space Superiority will meet in closed session on December 18, 1998 at the NRO, Westfield Complex, Chantilly, VA.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review and compile recommendations on how best to respond to the evolving space environment in a manner which would preserve U.S. leadership, superiority and dominance in national security space capabilities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: November 10, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30625 Filed 11–16–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Investment Strategy for the DARPA

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Investment Strategy for the DARPA will meet in closed session on November 11, December 9–11, 1998, and January 13–14, 1999 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, the meeting to be held on November 11, 1998, is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine DARPA's Investment Strategy, focusing particularly on an assessment of

DARPA's mix of near, mid, and far term technologies.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: November 10, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30626 Filed 11–16–98; 8:45 am]

BILLING CODE 5000–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Deadline for Submission of Donation Application for the Battleship Ex-NEW JERSEY (BB 62)

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of the deadline of May 17, 1999 for submission of a donation application for the Battleship ex-NEW JERSEY (BB 62), located at the Naval Inactive Ship Maintenance Facility, Bremerton, WA. ,A donation is anticipated pursuant to under the authority of 10 U.S.C. Section 7306. Eligible recipients include: (1) Any State, Commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof; (2) the District of Columbia; or (3) any not-for-profit or nonprofit entity. Transfer of a vessel under this law shall be made at no cost to the United States. Government. The transferee will be required to maintain the vessel in a condition satisfactory to the Secretary of the Navy as a static museum/memorial. Prospective transferees must submit a comprehensive, detailed application addressing their plans for managing the significant financial, technical, and environmental and curatorial responsibilities that accompany ships donated under this program. In accordance with Section 1012 of Public Law 105–261, a condition of the transfer of the Battleship ex-NEW JERSEY is that the transferee locate the vessel in the State of New Jersey.

DATES: Application deadline is May 17, 1999.

ADDRESSES: Applications should be sent to Program Executive Office for Expeditionary Warfare (PEO EXW), PMS334, Navy Donation Program Office, Naval Sea Systems Command, 2531 Jefferson Davis Highway, Arlington, VA 22242–5160.

FOR FURTHER INFORMATION CONTACT: Ms. Gloria Carvalho, Program Executive Office for Expeditionary Warfare (PEO EXW), PMS334, Navy Donation Program Office, Naval Sea Systems Command, 2531 Jefferson Davis Highway, Arlington, VA 22242–5160, telephone number (703) 602–5450.

(Authority: 10 U.S.C. 7306.)

Dated: November 5, 1998.

Ralph Corey,

Commander, Judge Advocate General's Corps, Federal Register Liaison Officer.

[FR Doc. 98–30714 Filed 11–16–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–473–000]

California Independent System Operator Corporation; Notice of Filing November 10, 1998.

Take notice that on October 28, 1998, the California Independent System Operator Corporation filed a request to extend for six months the current grid management charge formula and assessment provisions which are part of the settlement offer filed on April 7, 1998, and accepted by the Commission on June 1, 1998, in ER98–211–000, *et al.*

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 and protests should be filed on or before November 20, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30668 Filed 11–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–414–001]

Florida Gas Transmission Company; Notice of Compliance Filing

November 10, 1998.

Take notice that on November 5, 1998, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, effective October 23, 1998, the following tariff sheets:

Substitute Fourth Revised Sheet No. 174A
Substitute Original Sheet No. 174B

FGT states that on September 23, 1998, FGT proposed revisions to the provisions currently contained in Section 9 of the General Terms & Conditions (GT&C) of FGT's Tariff regarding electronic communications of certain transactional and non-transactional data. Specifically, FGT proposed that the electronic communication provisions that are transactional in nature and related to capacity release be included in the capacity relinquishment provisions of Section 18 of the GT&C of FGT's Tariff in a new Section 18.L, ''Capacity Release—Transactional Electronic Communications.'' Subsequently, on October 23, 1998, the Commission issued an order accepting FGT's filing subject to FGT's ''removing any language providing for the reimbursement of subscription and licensing charges incurred for the TECM.''

FGT states that in the instant filing, FGT is complying with the Commission order by removing language providing for such subscription and licensing charges.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30638 Filed 11–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–53–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

November 10, 1998.

Take notice that on November 4, 1998, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP99–53–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon delivery lateral facilities located in Polk County, Texas, under Koch Gateway's blanket certificate issued in Docket No. CP82–430, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway proposes to abandon by removal two 2-inch taps and a dual 2-inch meter station, and abandon in place approximately 6,100 feet of 2-inch pipeline delivery lateral (Index 59–7) all located in Polk County, Texas. Koch Gateway states that these facilities formerly served Corrigan City Gate and Champion International Paper Company on behalf of Entex Inc. (Entex), the local distribution company. Koch Gateway states that this delivery lateral and associated facilities are inactive and obsolete since it placed into service newer facilities to serve Entex at this point. Koch Gateway states that the abandonment of the obsolete facilities will have no impact on current services provided to Entex.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30635 Filed 11–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–203–000]

Northern Natural Gas Company; Notice of Informal Settlement Conference

November 10, 1998.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10:00 a.m. on Thursday, November 19, 1998 and continuing on Friday, November 20, 1998, if necessary, at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Sandra J. Delude at (202) 208–0583, Bob Keegan at (202) 208–0158, or Edith A. Gilmore at (202) 208–2158.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30642 Filed 11–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Riverside Canal Power Company; Notice of Filing

[Docket No. ER98–4302–001]

November 10, 1998.

Take notice that on October 28, 1998, Riverside Canal Power Company, pursuant to the Commission's October 16, 1998 order, filed its compliance filing in the above-captioned docket.

Riverside Canal Power Company has served this compliance filing upon all parties on the service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before November 18, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30667 Filed 11–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–28–001]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 10, 1998.

Take notice that on November 5, 1998 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 which tariff sheets are enumerated in Appendix A attached to the filing. The tariff sheets are proposed to be effective November 1, 1998.

On October 1, 1998, Transco filed in the referenced docket to eliminate its Transportation By Others (TBO) surcharge effective November 1, 1998. On October 30, 1998 the Commission issued a letter order (October 30 Order), which accepted Transco's revised tariff sheets effective November 1, 1998 and directed Transco to file revised tariff sheets within 15 days of the October 30 Order to remove the TBO tracking provisions from its tariff. The purpose of the instant filing is to comply with the October 30 Order by eliminating Section 44 of the General Terms and Conditions of Transco's FERC Gas Tariff. Transco is also filing to remove a reference to the TBO surcharge in Section 33 of the General Terms and Conditions.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30640 Filed 11–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–139–000]

KN Interstate Gas Transmission Co.; Notice of Tariff Filing

November 10, 1998.

Take notice that on November 5, 1998, KN Interstate Gas Transmission Co. (KNI) tendered for filing to become a part of KNI's FERC Gas Tariff, the following revised tariff sheets to be effective December 5, 1998:

Third Revised Volume No. 1–A

Second Revised Sheet No. 0
First Revised Sheet No. 13
Second Revised Sheet No. 16
First Revised Sheet No. 18
First Revised Sheet No. 34
First Revised Sheet No. 42
Third Revised Sheet No. 43
First Revised Sheet No. 45
Second Revised Sheet No. 60
First Revised Sheet No. 70
First Revised Sheet No. 71
Second Revised Sheet No. 73
Second Revised Sheet No. 75
Second Revised Sheet No. 90
First Revised Sheet No. 100
First Revised Sheet No. 123

Third Revised Volume No. 1–B

First Revised Sheet No. 0
First Revised Sheet No. 3
Fourth Revised Sheet No. 6
Second Revised Sheet No. 7
Second Revised Sheet No. 8
Third Revised Sheet No. 9
First Revised Sheet No. 10
Second Revised Sheet No. 31
First Revised Sheet No. 32
Second Revised Sheet No. 35
Third Revised Sheet No. 36
Second Revised Sheet No. 42
Third Revised Sheet No. 43
First Revised Sheet No. 47
First Revised Sheet No. 48A
Second Revised Sheet No. 51
Second Revised Sheet No. 52
First Revised Sheet No. 53
Second Revised Sheet No. 54
Second Revised Sheet No. 55
Third Revised Sheet No. 73
First Revised Sheet No. 75
First Revised Sheet No. 76
First Revised Sheet No. 83

KNI states that it is making this housekeeping filing as an effort to clarify and correct various sections of KNI's FERC Tariff.

KNI states that copies of the filing were served upon all affected firm customers of KNI and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30641 Filed 11–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–152–019, et al.]

North American Energy Conservation, Inc., et al.; Electric Rate and Corporate Regulation Filings

November 9, 1998.

Take notice that the following filings have been made with the Commission:

1. North American Energy Conservation, Inc. et al.

[Docket Nos. ER94–152–019 et al.]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On October 29, 1998, North American Energy Conservation, Inc. filed certain information as required by the Commission's February 4, 1995 order in Docket Nos. ER94–152–000 and EL94–9–000.

On October 29, 1998, C.C. Pace Energy Services filed certain information as required by the Commission's order issued July 25, 1994, in Docket No. ER94–1181–014.

On October 29, 1998, Sonat Power Marketing, Inc. filed certain information as required by the Commission's order issued August 18, 1995 in Docket No. ER95–1050–015.

On October 29, 1998, PG&E Energy Services, Inc., Energy Trading Corporation filed certain information as required by the Commission's order issued October 20, 1995, in Docket No. ER95–1614–016.

On October 29, 1998, Coral Power L.L.C. filed certain information as required by the Commission's order issued December 6, 1995, in Docket No. ER96–25–013.

On October 29, 1998, Dartmouth Power Associates Limited Partnership filed certain information as required by the Commission's order issued January 19, 1996, in Docket No. ER96–149–003.

2. PanEnergy Lake Charles Generation, Inc. et al.

[Docket Nos. ER96–1335–012 et al.]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On October 29, 1998, PanEnergy Lake Charles Generation, Inc. filed certain information as required by the Commission's order issued May 17, 1996, in Docket No. ER96–1335–000.

On October 29, 1998, Sonat Power Marketing filed certain information as required by the Commission's order issued August 18, 1995 in Docket No. ER95–1050–000 and the Commission's order issued August 12, 1996, in Docket No. ER96–2343–000.

On October 29, 1998, AYP Energy, Inc. filed certain information as required by the Commission's order issued October 8, 1996, in Docket No. ER96–2673–008.

On October 29, 1998, Exact Power Company, Inc. filed certain information as required by the Commission's order issued January 14, 1997, in Docket No. ER97–382–000.

On October 29, 1998, Engage Energy, US, L.P. filed certain information as required by the Commission's order issued December 30, 1996, in Docket No. ER97–654–000.

On October 29, 1998, NP Energy, Inc. filed certain information as required by the Commission's order issued February 24, 1997, in Docket No. ER97–1315–000.

3. NICOR Energy Management Services Company et al.

[Docket No. ER97–1816–005 et al.]

Take notice that the following information filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On October 29, 1998, NICOR Energy Management Services Company filed certain information as required by the Commission's April 8, 1997, order in Docket No. ER97–1816–004.

On October 29, 1998, Columbia Energy filed certain information as required by the Commission's September 3, 1997, order in Docket No. ER94–968–000.

On October 29, 1998, DTE Energy Trading, Inc. filed certain information as required by the Commission's order issued September 24, 1997, in Docket No. ER97–3834–000.

On October 29, 1998, Infinite Energy filed certain information as required by the Commission's order issued October 2, 1998, in Docket No. ER97–3923–000.

On October 29, 1998, British Columbia Power Exchange Corporation filed certain information as required by the Commission's order issued September 2, 4 1997, in Docket No. ER97–4024–000.

On October 29, 1998, Bridgeport Energy, L.L.C. filed certain information as required by the Commission's order issued June 24, 1998, in Docket No. ER98–2783–000.

4. Washington Water Power et al.

[Docket No. ER99–358–000 et al.]

Take notice that the following information filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On October 29, 1998, Washington Water Power filed certain information as required by the Commission's November 29, 1996, order in Docket No. ER98–2157–000.

On October 29, 1998, American Electric Power filed certain information as required by the Commission's October 31, 1997, order in Docket No. ER97–4143–000.

On October 29, 1998, Consolidated Edison Company of New York filed certain information as required by the Commission's March 14, 1997 in Docket No. ER97–707–000, *et al*.

On October 29, 1998, Oklahoma Gas and Electric Company filed certain information as required by the Commission's order issued December 18, 1997, in Docket No. ER98–511–000.

On October 29, 1998, PECO Energy Company filed certain information as required by the Commission's order issued February 14, 1997, in Docket No. ER97–316–000.

On October 29, 1998, PP&L, Inc. filed certain information as required by the Commission's order issued July 17, 1997, in Docket No. ER97–3055–000.

On October 29, 1998, Southern Company Services, Inc. filed certain information as required by the Commission's order issued April 30, 1996, in Docket No. ER96–780–000.

On October 29, 1998, Virginia Electric and Power Company filed certain information as required by the Commission's order issued August 13, 1996, in Docket No. ER98–3771–000.

On October 29, 1997, Western Resources filed certain information as required by the Commission's order issued May 1, 1998, in Docket No. ER98–2157–000.

5. PJM Interconnection, L.L.C.

[Docket No. ER99–371–000]

Take notice that on November 4, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing an amended notice of termination of four service agreements for Network Integration Transmission Service under the PJM Open Access Transmission Tariff. These agreements were necessary to accommodate the Pennsylvania Retail Competition Pilot program under which service will end in January 1999.

Copies of this filing were served upon the parties to the service agreements, and the Pennsylvania Public Utility Commission.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power Corporation et al

[Docket No. ER99–420–000 et al]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On October 30, 1998, Florida Power Corporation filed certain information as required by the Commission's June 26, 1997 order in Docket No. ER97–2846–000 and the Commission's April 14, 1998 order in Docket No. ER98–2182–000.

On October 30, 1998, Entergy Services, Inc. filed certain information as required by the Commission's December 17, 1997 order in Docket No. ER96–2709–000.

On October 30, 1998, Western Power Services, Inc. filed certain information as required by the Commission's May 16, 1995 order in Docket No. ER95–748–000.

On October 30, 1998, Sandia Energy Resources Company filed certain information as required by the Commission's September 26, 1996 order in Docket No. ER96–2538–000.

On October 30, 1998, Duke Energy Marketing Corp. filed certain information as required by the Commission's December 14, 1995 order in Docket No. ER96–109–000.

On October 30, 1998, NorAm Energy Services, Inc. filed certain information as required by the Commission's July 24, 1994 order in Docket No. ER94–1247–000.

On October 30, 1998, Oklahoma Gas and Electric Co. filed certain information as required by the Commission's December 18, 1997 order in Docket No. ER98–511–000.

On October 30, 1998, Central and South West Services, Inc. filed certain information as required by the Commission's January 2, 1998 order in Docket No. ER98–542–000.

On October 30, 1998, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (Cinergy Operating Companies) filed certain information as required by the Commission's November 15, 1996 order in Docket No. ER96–2504–000.

On October 30, 1998, New England Power Company filed certain information as required by the Commission's February 25, 1998 order in Docket Nos. EC98–1–000 and ER98–6–000.

On October 30, 1998, Oklahoma Gas and Electric Co. filed certain information as required by the Commission's December 18, 1997 order in Docket No. ER98–511–000.

On October 30, 1998, Portland General Electric Company filed certain information as required by the Commission's September 22, 1998 order in Docket No. ER98–3671–000.

7. UtiliCorp United Inc.

[Docket No. ER99–468–000]

Take notice that on November 3, 1998, UtiliCorp United Inc. (UtiliCorp), tendered for filing service agreements with Constellation Power Source, Inc., for service under its Short-Term Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER99–469–000]

Take notice that on November 3, 1998, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), tendered for filing an executed Service Agreement between GPU Energy and PP&L, Inc. (PP&L), dated November 2, 1998. This Service Agreement specifies that PP&L has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, First Revised Volume No. 5. The Sales Tariff allows GPU Energy and PP&L to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 2, 1998, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–471–000]

Take notice that on November 3, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to TransCanada Power Marketing, Ltd., (TC).

Con Edison states that a copy of this filing has been served by mail upon the TC.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Services, Inc.

[Docket No. ER99–484–000]

Take notice that on November 3, 1998, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc. (EGS), Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing a Letter Agreement between Entergy Services, Inc., and Cajun Electric Power Cooperative, Inc., for the installation of a new delivery point off of EGS's 69 KV Line No. 206.

Entergy Services requests that the Letter Agreement be made effective April 17, 1998.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER99–486–000]

Take notice that on November 3, 1998, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc. (EGS), Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing a Letter Agreement between Entergy Services, Inc., and Cajun Electric Power Cooperative, Inc., for the installation of a new delivery point off of EGS's 69 KV Line No. 230, servicing Warren Petroleum.

Entergy Services requests that the Letter Agreement be made effective April 17, 1998.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER99–487–000]

Take notice that on November 3, 1998, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing four Letter Agreements between Entergy Services, Inc., and Sam Rayburn G&T Electric Cooperative, Inc., for construction to the Peachcreek, Hightower Onalaska and Bold Springs delivery points.

Entergy Services requests that the Letter Agreements be made effective as of October 13, 1998. In seeking an October 13, 1998, effective date, Entergy Services requests waiver of the Commission's sixty-day notice requirement.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Ocean State Power and Ocean State Power II

[Docket No. ER99–491–000]

Take notice that on November 3, 1998, Ocean State Power (OSP) and Ocean State Power II (OSP II) (collectively, Ocean State), tendered for filing the following supplements (the Supplements) to their rate schedules with the Federal Energy Regulatory Commission (FERC or the Commission) for OSP I Supplement No. 19 to Rate Schedule FERC No. 3, Supplement No. 21 to Rate Schedule FERC No. 4, OSP II Supplement No. 21 to Rate Schedule FERC No. 7, Supplement No. 22 to Rate Schedule FERC No. 8.

Copies of the Supplements have been served upon Ocean State's power purchasers, the Massachusetts Department of Public Utilities, and the Rhode Island Public Utilities Commission.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Carolina Power & Light Company

[Docket No. ER99–492–000]

Take notice that on November 3, 1998, Carolina Power & Light Company (CP&L), tendered for filing the following agreements intended to supersede in its entirety the Power Coordination Agreement (PCA), as amended, between CP&L and the North Carolina Electric Membership Corporation (NCEMC), Power Supply Agreement, Network Operating Agreement and Network Service Agreement.

CP&L has requested an effective date of January 1, 1999.

CP&L states that copies of the filing have been served on NCEMC as well as the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. PacifiCorp

[Docket No. ER99–493–000]

Take notice that on November 3, 1998, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, an umbrella Service Agreement with Arizona Public Service Company under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 12.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER99–494–000]

Take notice that on November 4, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with Strategic Energy, Inc., under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of November 4, 1998, the date of filing the Service Agreement.

Copies of the filing were served upon Strategic Energy, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Virginia Electric and Power Company

[Docket No. ER99–495–000]

Take notice that on November 4, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Strategic Energy, Inc., under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of November 4, 1998, the date of filing the Service Agreement.

Copies of the filing were served upon Strategic Energy, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Virginia Electric and Power Company

[Docket No. ER99–496–000]

Take notice that on November 4, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and Cinergy Capital and Trading, Inc., under the FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000. Under the tendered Service Agreement, Virginia Power will provide services to Cinergy Capital and Trading, Inc., under the terms and conditions of the Tariff.

Virginia Power requests an effective date of November 4, 1998.

Copies of the filing were served upon Cinergy Capital and Trading, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. New Century Services, Inc.

[Docket No. ER99–497–000]

Take notice that on November 4, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and UtiliCorp United, Inc.

The Companies request that the Agreement be made effective on October 19, 1998.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. New Century Services, Inc.

[Docket No. ER99–498–000]

Take notice that on November 4, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and UtiliCorp United, Inc.

The Companies request that the Agreement be made effective on October 19, 1998.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. New Century Services, Inc.

[Docket No. ER99–499–000]

Take notice that on November 4, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and El Paso Power Services Company.

The Companies request that the Agreement be made effective on October 30, 1998.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. New Century Services, Inc.

[Docket No. ER99–500–000]

Take notice that on November 4, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and El Paso Power Services Company.

The Companies request that the Agreement be made effective on October 30, 1998.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Southwestern Public Service Company

[Docket No. ER99–501–000]

Take notice that on November 24, 1998, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), tendered for filing an executed umbrella service agreement under Southwestern's market-based sales tariff with Texas-New Mexico Power Company. This umbrella service agreement provides for Southwestern's sale and Texas-New Mexico Power Company's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Southwestern Public Service Company

[Docket No. ER99–502–000]

Take notice that on November 4, 1998, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), tendered for filing an executed umbrella service agreement under Southwestern's market-based sales tariff with ONEOK Power Marketing Company (ONEOK). This umbrella service agreement provides for Southwestern's sale and ONEOK's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. PP&L, Inc.

[Docket No. ER99–503–000]

Take notice that on November 4, 1998, PP&L, Inc. (PP&L), tendered for filing a Service Agreement dated October 26, 1998, with Rainbow Energy Marketing Corporation (REMC) under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Volume No. 5. The Service Agreement adds REMC as an eligible customer under the Tariff.

PP&L requests an effective date of November 4, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to REMC and to the Pennsylvania Public Utility Commission.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Lakeside Energy Services, LLC

[Docket No. ER99–505–000]

Take notice that on November 4, 1998, Lakeside Energy Services, LLC (Lakeside), petitions the Commission for acceptance of Lakeside Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Lakeside intends to engage in wholesale electric power and energy purchases and sales as a marketer. Lakeside currently has no affiliates and is not in the business of generating or transmitting electric power.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Ohio Edison Company

[Docket No. ER99–507–000]

Take notice that on November 4, 1998, Ohio Edison Company tendered for filing revisions to Appendices A and B of Service Agreements with American Municipal Power-Ohio, Inc., under FERC Electric Tariff, Second Revised Volume No. 2. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Arizona Public Service Company

[Docket No. ER99–508–000]

Take notice that on November 4, 1998, Arizona Public Service Company (APS), tendered for filing Umbrella Service Agreement to provide Firm Point-to-Point Transmission Service to PacifiCorp under APS'' Open Access Transmission Tariff.

A copy of this filing has been served on PacifiCorp and the Arizona Corporation Commission.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Northeast Utilities Service Company

[Docket No. ER99–509–000]

Take notice that on November 4, 1998, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Western Massachusetts 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 Burlington Electric Department (BED).

NUSCO states that a copy of this filing has been mailed to BED.

NUSCO requests that the rate schedule change become effective on December 1, 1998.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. PP&L, Inc.

[Docket No. ER99–510–000]

Take notice that on November 4, 1998, PP&L, Inc. (PP&L), filed a Service Agreement dated October 27, 1998 with Cinergy Capital & Trading, Inc. (Cinergy), under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Volume No. 5. The Service Agreement adds Cinergy as an eligible customer under the Tariff.

PP&L requests an effective date of November 4, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Cinergy and to the Pennsylvania Public Utility Commission.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. PacifiCorp

[Docket No. ER99–511–000]

Take notice that on November 4, 1998, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Mutual Netting/Closeout Agreements between PacifiCorp and Idaho Power Company and MIECO, Inc.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Carolina Power & Light Company

[Docket No. ER99–513–000]

Take notice that on November 4, 1998, Carolina Power & Light Company (CP&L), tendered for filing executed Service Agreements with Baltimore Gas & Electric Company, Energy Transfer Group, L.L.C., and Williams Energy Services Company under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. These Service Agreements supersede the un-executed Agreements originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. Joe Bob Perkins, David G. Tees, Hugh Rice Kelly, Marc Kilbridge, Richard B. Dauphin, and Linda Geiger

[Docket Nos. ID–3184–002, ID–3186–002, ID–3187–002, ID–3188–002, ID–3189–002 and ID–3190–002]

Take notice that on November 2, 1998, the following officers and a Director of El Dorado Energy, LLC, tendered for filing with the Federal Energy Regulatory Commission (Commission) abbreviated applications pursuant to Section 305(b) of the Federal Power Act and the Commission's Order in El Dorado Energy, LLC, 85 FERC ¶ 61,006 (1998), to hold jurisdictional interlocks:

Joe Bob Perkins
David G. Tees
Hugh Rice Kelly
Marc Kilbridge
Richard B. Dauphin
Linda Geiger

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. Frederick P. Stratton, Jr.

[Docket No. ID–3255–000]

Take notice that on November 2, 1998, Frederick P. Stratton, Jr., filed with the Federal Energy Regulatory Commission, an application for authority to hold the following interlocking positions under Section 305(b) of the Federal Power Act:

Director, Wisconsin Electric Power Company
Director, BANK ONE CORPORATION
Director, The First National Bank of Chicago

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. Richard C. Green, Jr.

[Docket No. ID–3256–000]

Take notice that on November 2, 1998, Richard C. Green, Jr. (Applicant), tendered for filing with the Federal Energy Regulatory Commission, an Application for Authority to Hold Interlocking Positions under Section 305(b) of the Federal Power Act as follows:

Director, Chairman, and Chief Executive Officer, UtiliCorp United, Inc.
Director BHA Group Holdings Inc.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–30643 Filed 11–16–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission

November 10, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Minor License.

b. *Project No.:* P–696–010.

c. *Date filed:* October 27, 1998.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* American Fork Hydroelectric Project.

f. *Location:* On American Fork Creek, near the City of American Fork, Utah County, Utah, about 3 miles east of Highland, Utah. The project affects about 28.8 acres of federal lands within the Uinta National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Michael B. Burke, Projects Manager, PacifiCorp, 825 NE Multnomah, Suite 1500, Portland, Oregon 97232, (503) 813–6656.

i. *FERC Contact:* Gaylord W. Hoisington (202) 219–2756.

j. *Comment Date:* 60 days from the filing date in paragraph c.

k. *Brief Description of the Project:* The existing project consists of: (1) A 29-foot 9-inch wide and 4.5-foot-high reinforced concrete diversion dam; (2) a 6-foot-wide 6-foot-long intake; (3) a 6-foot-long 6-foot-wide manually operated sluice gate; (4) a 2-foot-long 2-foot-wide manually operated upstream sluice gate; (5) a 28-inch-diameter welded steel pipe flowline approximately 1,666-foot-long which transitions into a 33-inch-diameter riveted steel penstock 253-foot-long that transitions into a 20-inch-diameter riveted steel penstock 61-foot-long; (6) an approximately 2,700-square-foot brick powerhouse; (7) one turbine generator unit with a rated capacity of 1,050 kilowatts; and (8) other appurtenances.

l. With this notice, we are initiating consultation with the *Utah State Historic Preservation Officer (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Under Section 4.32(b)(7) of the Commission's regulations (18 CFR 4.32(b)(7)), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the date the application is filed, and must serve a copy of the request on the applicant.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30636 Filed 11–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for New License

November 10, 1998.

a. *Type of filing:* Notice of Intent To File Application for New License.

b. *Project No.:* 6418.

c. *Date filed:* November 2, 1998.

d. *Submitted By:* Judith A. Burford, current licensee.

e. *Name of Project:* A.J. Allen Power Plant.

f. *Location:* On East Brush Creek, a tributary of the Eagle River, in Eagle County, Colorado. The project occupies 1.008 acres of land within the White River National Forest.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Expiration date of original licenses:* July 31, 2003.

i. The project consists of: (1) an 8-inch-diameter 970-foot-long steel pipeline; (2) a rock pile diversion structure; (3) an 8-inch-diameter PVC intake line; (4) a gate valve just upstream of the turbine; (5) a 9-foot by 11-foot concrete and wood powerhouse containing a Pelton impulse turbine having a rated capacity of 27 horsepower (20 kilowatts) and a belt driven 8-kW alternator; (6) a 115-volt 112-foot-long transmission line; and (7) other appurtenances.

j. Pursuant to 18 CFR 16.7, information on the project is available at: Ms. Jean A. Johnson, P.O. Box 610, Eagle, CO 81631, Phone: (970) 328–6867.

k. *FERC contact:* Héctor M. Pérez (202) 219–2843.

l. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2001.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30637 Filed 11–16–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6190–2]

Science Advisory Board; Notification of Public Meeting

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the Science Advisory Board's (SAB) Environmental Engineering Committee, will meet Tuesday through Thursday, December 1–3, 1998 in Room 3709 of the Mall at the U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The meeting will begin at 8:30 am on December 1st and adjourn no later than 3:00 pm on December 3rd. All times noted are Eastern Time. This meeting is open to the public. Due to limited space, seating at meetings will be on a first-come basis. For further information concerning this meeting, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office.

No reviews are being conducted at this meeting. The EEC will consider two draft subcommittee reports for approval. These are the Quality Management Subcommittee's draft report on the implementation of the Agency's quality program and the draft report of the Retrospective Subcommittee on attributes of successful SAB advice. (Copies of these drafts will be available from Ms. Mary Winston, address below.)

The EEC will consider four commentaries currently in preparation to determine whether they should be forwarded to the Executive Committee for consideration or ended. The commentaries address measures of technology performance, environmental impacts of natural hazards, waste reuse, and the toxicity characteristic leaching procedures. (Copies of these drafts will be available at the meeting. Contact Ms. Mary Winston, address below, for advanced copies, if available.) EEC members will brief the committee on the progress of proposed commentaries on sources of PM 2.5 and barriers to Pollution Prevention. Members will also have the opportunity to identify other topics for potential commentaries.

The EEC has received written requests for three reviews; Agency staff will provide preliminary briefings on these requests which will enable the EEC to refine the charge and determine the expertise needed for the subsequent reviews. Two requests are from the Office of Research and Development—Wet Weather Pollution Research and Research on the Natural Attenuation of Contaminants in Ground Water, Soils and Sediments to Support Decisions on Site Remediation and Restoration. The Office of Emergency and Remedial Response is seeking EEC input on whether average or ''Not to Exceed'' concentrations are most appropriate for the development of cleanup goals at waste sites. (Copies of the requests can be obtained from Ms. Mary Winston, address below. Copies of any hand-outs distributed at the meeting in the course of these briefings will be available subsequently through Ms.Winston.)

Agency staff will brief the EEC on topics of mutual interest including brown fields, environmental justice, industrial ecology, and sediments. The EEC will select FY99 activities, then attend to the practicalities of scheduling and completing the work. (Copies of any hand-outs distributed at the meeting in the course of these briefings will be available subsequently through Ms. Mary Winston, address below.)

Members of the public desiring additional information about the meeting should contact Kathleen White Conway, Designated Federal Officer, Environmental Engineering Committee, Science Advisory Board (1400), Room 3702L, U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone/voice mail at (202) 260–2558; fax at (202) 260–7118; or via E-mail at conway.kathleen@epa.gov. A copy of the draft Agenda is available from Ms. Mary Winston at (202) 260–2554; fax at (202) 260–7118; or via E-Mail at winston.mary@epa.gov.

Members of the public who wish to make a brief oral presentation to the Committee must contact Ms. Conway in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Wednesday, November 25, 1998 in order to be included on the Agenda. Public comments will be limited to ten minutes per speaker or organization. The request should identify the name of the individual making the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or of the presentation itself.

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.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (http://www.epa.gov/sab) and in The Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 260–4126 or via fax at (202) 260–1889. Individuals requiring special accommodation at SAB meetings, including wheelchair access, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: November 12, 1998.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 98–30827 Filed 11–16–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00255; FRL–6045–2]

Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic Pollutants; Notice of Availability and Solicitation of Public Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and solicitation of public comments.

SUMMARY: EPA is making available for public review and comment the draft Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic (PBT) Pollutants. This document outlines the Agency's comprehensive approach to identify and take action to reduce releases of and exposures to PBT pollutants. Also available for public review and comment in connection with this document is the draft EPA Action Plan for Mercury. Interested parties may request copies of these documents as set forth in the ''ADDRESSES'' unit of this notice.

DATES: Comments must be received by February 16, 1999.

ADDRESSES: Each comment must bear the docket control number OPPTS–00255. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epa.gov. Follow the instructions under Unit IV. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

To obtain copies of the draft Multimedia Strategy for Priority PBT Pollutants and the draft EPA Action Plan for Mercury contact: Pollution Prevention Information Clearinghouse (7409), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone number: 202–260–1023, facsimile number: 202–260–0178, e-mail: PPIC@epa.gov.

FOR FURTHER INFORMATION CONTACT: Sam K. Sasnett, Pollution Prevention Division (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone number: 202–260–8020, e-mail: sasnett.sam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

A. Internet

Electronic copies of the draft Multimedia Strategy for Priority PBT Pollutants and the draft EPA Action Plan for Mercury are available from the EPA Home Page at the **Federal Register** - Environmental Documents entry for these documents under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/). Copies are also available electronically from the EPA Home Page (http://www.epa.gov/pbt/) under ''Strategy.''

B. Fax-on-Demand

For Fax-on-Demand, use a faxphone to call 202–401–0527 and select item 4045 for a copy of the draft Multimedia Strategy for Priority PBT Pollutants and item 4046 for the draft EPA Action Plan for Mercury.

II. Background

This **Federal Register** notice announces the availability of and requests comment on the draft Multimedia Strategy for Priority PBT Pollutants and the draft EPA Action Plan for Mercury.

EPA has developed this draft national strategy to overcome the remaining challenges in addressing priority PBT pollutants. These pollutants pose risks because they are toxic, persist in ecosystems, and accumulate in fish and other animals further up the food chain. Consumption of fish is a significant exposure pathway for humans. These pollutants travel long distances, transfer rather easily among air, water, and land and linger for generations, making EPA's traditional single-statute approaches less than the full solution to reducing risks from PBTs. The fetus and young child may be at particular risk for developmental effects.

This strategy fortifies and builds on existing EPA commitments related to priority PBTs, such as the 1997 Canada-U.S. Binational Toxics Strategy (BNS), the North American Agreement on Environmental Cooperation, and the recently released Clean Water Action Plan. EPA is forging a new approach to reduce risks from and exposures to priority PBT pollutants through increased coordination among EPA national and regional programs. This approach also requires the significant involvement of stakeholders, including international, state, local, and tribal organizations, the regulated community, environmental groups, and private citizens.

A primary function of the strategy is to establish and implement national action plans on priority PBT pollutants. The PBT strategy targets for immediate focus the 12 PBT substances included in the Canada-U.S. Binational Toxics Strategy Level 1 list. As they are developed, these national action plans will be appended to the strategy. In this manner the strategy will continue to be a living document. One such draft action on mercury is also being made available for review and public comment at this time. It illustrates an action plan that is national and even international in scope and describes the kinds of actions EPA may take to reduce risks posed by other priority PBT pollutants. Each substance or group of substances will present its own set of action opportunities.

EPA's strategy realizes that the 12 Binational Toxics Strategy Level 1 substances are not the only PBTs we need to be concerned about. The strategy calls for developing a process to select additional pollutants of concern. Once these pollutants are selected, action plans will be developed to address environmental and human health problems associated with them. Other activities include preventing the introduction of new PBTs into commerce, identifying research needs for priority PBTs, and measuring the results of PBT reduction activities, preferably in terms of environmental and human health impacts.

III. Comments

EPA is requesting comment on the overall approach of the strategy and its proposed individual components, including the development and implementation of national action plans, the 12 initial pollutants for which EPA intends to develop such plans, the process for selection of additional PBT substances for national action plans, approaches for the prevention of the introduction (and reintroduction) of new PBT substances, and means of measuring progress in the reduction of PBTs in the environment. EPA is particularly interested in whether the strategy clearly articulates its goals and is comprehensive enough, whether there are major activities or approaches not articulated, and whether the directions outlined in the strategy are appropriate.

EPA also is requesting comment on the Mercury Action Plan. EPA is interested in comments on its overall approach to reducing exposure to mercury. EPA also invites comments on the applicability of the approach outlined for mercury to other PBT pollutants and the usefulness of the Mercury Action Plan as a model for other action plans that may be developed under the PBT Initiative.

IV. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket control number OPPTS–00255 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS–00255. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection.

Dated: November 9, 1998.

Lynn R. Goldman,

Assistant Administrator for Prevention Pesticides and Toxic Substances.

[FR Doc. 98–30719 Filed 11–16–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

Sunshine Act Meeting; Open Commission Meeting—Thursday, November 19, 1998

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, November 19, 1998, which is scheduled to commence at 9:30 a.m. in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No.	Bureau	Subject
1	Mass Media	Title: Fees for Ancillary or Supplementary Use of Digital Television Spectrum Pursuant to Section 336(e)(1) of the Telecommunications Act of 1996 (MM Docket No. 97–247). Summary: The Commission will consider establishing a program for assessing and collecting fees for the provision of ancillary or supplementary services by commercial digital television (''DTV'') licensees.
2	Mass Media	Titile: Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Licensees. Summary: The Commission will consider whether to impose limits on remunerative activities undertaken by noncommercial television licensees on their DTV capacity.
3	Mass Media	Title: Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of (MM Docket No. 96–16)—EEO Streamlining Proceeding. Summary: The Commission will consider and invite comments regarding proposed broadcast and cable equal employment rules and policies to be consistent with the D.C. Circuit's decision in the Lutheran Church.
4	Common Carrier	Title: Changes to the Board of Directors of the National Exchange Carrier Association, Inc. (CC Docket No. 97–21) and Federal-State Joint Board on Universal Service (CC Docket No. 96–45). Summary: The Commission will consider action concerning a revised organizational structure for administering the universal service support mechanisms and other related issues.
5	International	Title: Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992; and Direct Broadcast Satellite Public Interest Obligations (MM Docket No. 93–25). Summary: The Commission will consider implementing Section 335 of the Communications Act regarding public interest requirements for Direct Broadcast Satellite Systems.
6	Wireless Telecommunications	Title: 1998 Biennial Regulatory Review—Spectrum Aggregation Limits for Wireless Telecommunications Carriers; Cellular Telecommunications Industry Association's Petition for Forbearance from the 45 MHz CMRS Spectrum Cap; Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap (WT Docket No. 96–59); and Implementation of Sections 3(n) and 332 of the Communications Act and Regulatory Treatment of Mobile Services (GN Docket No. 93–252). Summary: The Commission will evaluate the Commercial Mobile Radio Service (CMRS) spectrum cap, 47 C.F.R. Section 20.6, as part of the biennial regulatory review, and consider a petition for forbearance from the 45 MHz CMRS spectrum cap filed by the Cellular Telecommunications Industry Association.
7	Office of Engineering and Technology	Title: Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service (ET Docket No. 95–18). Summary: The Commission will consider petitions for reconsideration or clarification of the allocation of the 1990–2025/2165–2200 MHz bands to the mobile-satellite service and further proposals concerning the Broadcast Auxiliary Service allocation in the 2 GHz band, and the reallocation of the 2110–2150 MHz band pursuant to the Balanced Budget Act of 1997.
8	Office of Engineering and Technology; International and Wireless Telecommunications.	Title: Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku Band Frequency Range (RM–9147) and Amendment of the Commissions Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates (RM–92–45).

Item No.	Bureau	Subject
		Summary: The Commission will consider a petition for rule-making that proposes that NGSO FSS operations be permitted in the 10.7–12.7 GHz, 12.75–13.25 GHz, 13.75–145 GHz, and 17.3–17.8 GHz segments of the Ku-band and a petition for rulemaking that proposes that terrestrial use of the 12.2–12.7 GHz band be permitted for the retransmission of local television and provision of one-way data services by DBS providers.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its—inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Dated: November 12, 1998.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–30872 Filed 11–13–98; 2:58 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–2103]

1999 Maximum Reimbursement Fee for Amateur Operator License Examinations

October 28, 1998.

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This Public Notice announces that, effective January 1, 1999, the maximum allowable reimbursement fee for an amateur operator license examination will be $6.49. This amount is based on a 1.5% increase in the Department of Labor Consumer Price Index between September, 1997, and September, 1998.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Washington, D.C. 20554, (202) 418–0690.

DATES: January 1, 1999.

SUPPLEMENTARY INFORMATION: Effective January 1, 1999, the maximum allowable reimbursement fee for an amateur operator license examination will be $6.49. This amount is based upon a 1.5% increase in the Department of Labor Consumer Price Index between September, 1997, and September, 1998.[1]

Volunteer examiners (VEs) and volunteer-examiner coordinators (VECs) may charge examinees for out-of-pocket expenses incurred in preparing, processing, administering, or coordinating examinations for amateur operator licenses. The amount of any such reimbursement fee from any one examinee for any one examination session, regardless of the number of elements administered, must not exceed the maximum allowable fee. Where the VEs and the VEC both desire reimbursement, they jointly decide upon a fair distribution of the fee.

This announcement is made pursuant to § 97.527 of the Commission's Rules, 47 CFR 97.527.

Federal Communications Commission.

D'wana R. Terry,

Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 98–30744 Filed 11–16–98; 8:45 am]

BILLING CODE 6712–01–P

[1] Consumer Price Index Detailed Report, U.S. Department of Labor, Bureau of Labor Statistics (September 1998).

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1258–DR]

Kansas; Amendment No. 1 to the Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1258–DR), dated November 5, 1998 and related determinations.

EFFECTIVE DATE: November 9, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 5, 1998:

Chase, Coffey, Franklin, Harvey, Lyon, Neosho, Sumner and Wilson Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–30711 Filed 11–16–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1253–DR]

Missouri; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–1253–DR), dated October 14, 1998, and related determinations.

EFFECTIVE DATE: October 29, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 14, 1998:

Platte and Ray Counties for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–30708 Filed 11–16–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1253–DR]

Missouri; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–1253–DR), dated October 14, 1998, and related determinations.

EFFECTIVE DATE: November 3, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 14, 1998:

Barton, Chariton, and Linn Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–30709 Filed 11–16–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3128–EM]

New Mexico; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of New Mexico (FEMA–3128–EM), dated July 2, 1998, and related determinations.

EFFECTIVE DATE: October 15, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 15, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–30712 Filed 11–16–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1257–DR]

Texas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1257–DR), dated October 21, 1998, and related determinations.

EFFECTIVE DATE: November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas, is hereby amended to include Categories C through G under the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 21, 1998:

Austin, Bastrop, Bexar, Burleson, Caldwell, Calhoun, Colorado, Comal, DeWitt, Fayette, Goliad, Gonzales, Guadalupe, Hays, Jackson, Karnes, Montgomery, Refugio, Victoria, Waller, Wharton, and Wilson Counties for Categories C through G under the Public Assistance Program (already designated for Categories A and B under the Public Assistance Program and Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–30710 Filed 11–16–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: FEMA announces the following open meeting.

NAME: Federal Interagency Committee on Emergency Medical Services (FICEMS).

DATE OF MEETING: December 3, 1998.

PLACE: Room N–309, Building N, National Emergency Training Center (NETC), 16825 South Seton Avenue in Emmitsburg, Maryland 21727.

TIME: 10:00 a.m.

PROPOSED AGENDA: Review and submission for approval of previous FICEMS Committee Meeting Minutes; Ambulance Design Subcommittee and Technology Subcommittee Reports; presentation of member agency reports; reports of other Interested parties.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public with limited seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact William Troup, United States Fire Administration, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, (301) 447–1231, on or before Monday, November 30, 1998.

Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved at the next FICEMS Committee Meeting on March 4, 1999.

Dated: November 2, 1998.

Carrye B. Brown,

U.S. Fire Administrator.

[FR Doc. 98–30706 Filed 11–16–98; 8:45 am]

BILLING CODE 6718–08–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 202–011432–007.

Title: Pacific Latin American Agreement.

Parties: Sea-Land Service, Inc., A.P. Moller-Maersk Line.

Synopsis: The proposed amendment deletes the West Coast of South America from the geographic scope of the Agreement and makes appropriate changes to other Agreement provisions to reflect this deletion. The parties have requested a shortened review period.

Agreement No.: 203–011638.

Title: Sea Girt Chassis Cooperative, L.L.C. Limited Liability Company Operating Agreement.

Parties: Atlantic Container Lines, China Ocean Shipping Company, Mediterranean Shipping Company, Polish Ocean Lines, Company Maritime d'Affretement.

Synopsis: Under the proposed agreement, the parties will establish, operate, utilize, and administer a chassis pool at the Sea Girt Marine Terminal in the Port of Baltimore. The initial term of the agreement is one year with unlimited automatic renewals.

By Order of the Federal Maritime Commission.

Dated: November 10, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–30633 Filed 11–16–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Reissuance of License

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License No. 2233: Pronto Cargo Corporation, 7330 N.W. 66th Street, Miami, FL 33166; date reissued, October 14, 1998.

Bryant L. VanBrakle,

Bureau of Tariffs, Certification and Licensing.

[FR Doc. 98–30677 Filed 11–16–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License Number: 4394.
Name: CAP Worldwide, Inc.
Address: 3126 Airfreight Road, Bldg. 2, Suite 200, P.O. Box 60583, Houston, TX 77205.
Date Revoked: October 19, 1998.
Reason: Surrendered license voluntarily.

License Number: 4353.
Name: Cargo Maritime Services, Inc.
Address: 9345 N.E. 6th Avenue, Suite 401, Miami Shores, FL 33138.
Date Revoked: September 24, 1998.
Reason: Failed to maintain a valid surety bond.

License Number: 2856.
Name: Cimpex Inc.
Address: 7032 N.W. 50th Street, Miami, FL 33166.
Date Revoked: October 15, 1998.
Reason: Failed to maintain a valid surety bond.

License Number: 2936.
Name: Contrak Forwarding Company.
Address: 219 East 44th Street, 6th Floor, New York, NY 10017.
Date Revoked: October 21, 1998.
Reason: Failed to maintain a valid surety bond.

License Number: 4222.
Name: D.L. International Forwarders, Inc.
Address: 8550 West Flagler Street, Suite 111, Miami, FL 33144.
Date Revoked: September 23, 1998.
Reason: Failed to maintain a valid surety bond.

License Number: 4148.
Name: Fleura Meler d/b/a/ US Western Forwarders.
Address: 19528 Ventura Blvd., #380, Tarzana, CA 91356.
Date Revoked: October 22, 1998.
Reason: Failed to maintain a valid surety bond.

License Number: 2680.
Name: Fuentes International, Inc.
Address: 5321 S.W. 1st Street, Miami, FL 33134.
Date Revoked: October 18, 1998.
Reason: Failed to maintain a valid surety bond.

License Number: 2392.
Name: Gerald R. Boudreaux.

Address: 3445 N. Causeway Blvd., Suite 603, Metairie, LA 70002.
Date Revoked: September 30, 1998.
Reason: Surrendered license voluntarily.
License Number: 4010.
Name: Megatrans International, Inc.
Address: 5113 West Rio Vista Avenue, Tampa, FL 33634–5323.
Date Revoked: October 8, 1998.
Reason: Failed to maintain a valid surety bond.
License Number: 3544.
Name: Myung Ku Moon d/b/a/ Trade Trans Line.
Address: 26521 Hawkhurst Drive, Rancho Palos Verdes, CA 90275.
Date Revoked: October 25, 1998.
Reason: Failed to maintain a valid surety bond.
License Number: 2938.
Name: Rosa N. Aviles d/b/a/ RNA Shipping Co.
Address: 1695 Lee Road, C–101, Winter Park 32789.
Date Revoked: September 30, 1998.
Reason: Surrendered license voluntarily.
License Number: 1816.
Name: Sequoia Forwarders Company.
Address: 2348 W. Witendale, Suite G, Visalia, CA 93278.
Date Revoked: September 23, 1998.
Reason: Failed to maintain a valid surety bond.
License Number: 4414.
Name: Transglobal Solutions.
Address: 1808 Arlington Avenue, Torrance, CA 90501.
Date Revoked: October 9, 1998.
Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 98–30678 Filed 11–16–98; 8:45 am]

BILLING CODE 6730–01–M

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. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 30, 1998.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Michael Barrington; Daniel E. Berce; Marvin Blum; Daniel J. Craine; Joseph B. Craine; Patrick D. Craine; Charles Cummins; Richard Davidovich; Jack Fikes; Walker Friedman; Robert L. Ginsburg; Clarke Johnson; Kenneth Jones; Holt Hickman; J. Michael Holt; William Landreth; G. Malcolm Louden; Bill Marshall; Timothy J. McKibben; Jack Miller; Terry R. Montesi; Clifton Morris; Breck Ray; Debbie Reynolds; William E. Rosenthal; Robert W. Semple; Scott Sherman; Edward L. Smith; J. Scott Tindall; Duer Wagner, Jr.; and D. Field Yow, Jr., all of Fort Worth, Texas; and Bryan Chandler; Gregory G. Kuelbs; John A. Kuelbs, all of Southlake, Texas; Dean O. Cochran, Denton, Texas; Douglas K. Higgins, Arlington, Texas; Polley P. Holley, Edina, Minnesota; and Charles O. Semple, Midland, Texas; all to acquire voting shares of Worth Bancorporation, Inc., Fort Worth, Texas, and thereby indirectly acquire voting shares of Lake Worth National Bank, Fort Worth, Texas.

Board of Governors of the Federal Reserve System, November 10, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30644 Filed 11–16–98; 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. The application also will 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 December 10, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. NBC Capital Corporation, Starkville, Mississippi; to merge with First National Corporation of West Point, West Point, Mississippi, and thereby indirectly acquire National Bank of the South, Tuscaloosa, Alabama, and The First National Bank of West Point, West Point, Mississippi.

In connection with this application, Applicant also has applied to acquire First National Finance Company, West Point, Mississippi, and thereby engage in making, acquiring, or servicing loans or other extensions of credit, pursuant to § 225.28(b)(1) of Regulation Y.

2. Simmons First National Corporation, Pine Bluff, Arkansas; to merge with Lincoln Bankshares, Inc., Lincoln, Arkansas, and thereby indirectly acquire Bank of Lincoln, Lincoln, Arkansas.

Board of Governors of the Federal Reserve System, November 10, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30645 Filed 11–16–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 11:00 a.m., Monday, November 23, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 13, 1998

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30874 Filed 11–13–98; 3:10 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98P–0880]

Iceberg Water Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Iceberg Industries Corp. to market test a product designated as ''Borealis Iceberg Water'' that deviates from the U.S. standard of identity for bottled water. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility, in support of a petition to amend the standard of identity for bottled water.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 16, 1999.

FOR FURTHER INFORMATION CONTACT: Loretta A. Carey, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity issued under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Iceberg Industries Corp., 447 Kenmount Rd., Box 13518, St. John's Newfoundland, Canada A1B 4B7.

The permit covers limited interstate marketing tests of products identified as ''borealis iceberg water'' that deviates from the U.S. standard of identity for bottled water (21 CFR 165.110) in that the source of the water is an iceberg. The test product meets all the requirements of the standard with the exception of the source definition. Because test preferences vary by area, along with social and environmental differences, the purpose of this permit is to test the product throughout the United States.

Under this temporary permit, the bottled water will be test marketed as ''Borealis Iceberg Water.''

This permit provides for the temporary marketing of 75,000 cases of the 24 x 350 milliliters and another 75,000 cases of the 12 x 1 liters (L), giving 150,000 cases in total. The total fluid weight of the test product will be 403,694 gallons or 1,530,000 L. The test product will be manufactured at Enterprise Atlantic Limited Water Bottling Plant, Daniel's Point, Trepassy, Newfoundland, Canada A0A 4B0. The product will be distributed throughout the United States.

The information panel of the labels will bear nutrition labeling in accordance with 21 CFR 101.9. Each of the ingredients used in the food must be declared on the labels as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 16, 1999.

Dated: November 5, 1998.

Elizabeth Campbell,

Acting Director, Office of Food Labeling, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–30607 Filed 11–16–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0946]

Expansion of Medical Device Industry Initiatives

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) initiated a pilot program in 1996 involving the medical device industry. This pilot program, which was formally adopted in 1997, was shown to optimize resource utilization, enhance FDA/industry communication, and provide firms prompt closure to corrected inspection observations and nonviolative inspections. This program includes eligibility criteria and procedures for preannounced inspections, the annotation of items on form FDA–483–List of Observations (FDA–483) with promised or completed corrections, and postinspection notification to establishments regarding their compliance status.

DATES: The pilot program is effective January 1, 1999. Written comments should be submitted by January 4, 1999.

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

FOR FURTHER INFORMATION CONTACT: Denise D. Dion, Office of Regulatory Affairs (HFC–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5645, FAX 301–443–6919.

SUPPLEMENTARY INFORMATION: During the FDA/medical device industry grassroots forums in 1995, several issues were discussed concerning FDA's interaction with the medical device industry. A decision was made to consider action on three of the issues discussed. These included instituting: (1) Preannounced inspections, (2) listing promised or completed corrective actions on FDA–483 items, and (3) postinspection notification to establishments regarding their compliance status.

After considering these issues, the agency decided to initiate a pilot program involving the medical device industry in fiscal year (FY) 1996. The pilot program occurred during the 1996 calendar year and was then formally evaluated. The pilot program included criteria and procedures for preannounced inspections, the annotation of FDA–483 items with promised or completed corrections, and postinspection correspondence.

The program was restricted to inspections of medical device manufacturers that manufactured only medical device products, and it did not include manufacturers of products that cross different program areas like devices/drugs/biologics.

Although the pilot program did not include those inspections performed under State contract for FDA, the contracts were modified after permanent adoption of the Medical Device Initiatives.

Implementation of the program was not shown to decrease the level of necessary enforcement. Previous FDA experience had indicated that the overall out-of-compliance rate for preannounced foreign inspections was comparable to, or even greater than, the overall out-of-compliance rate for domestic inspections where preannouncements generally were not made.

Preannounced inspections were offered to those medical device firms that met the criteria for inclusion in the pilot program. FDA–483 annotations and the postinspection notification were done for all medical device inspections. The annotations and the notifications were independent of whether the inspection was preannounced.

The purpose of the pilot program was to optimize resource utilization, enhance FDA/industry communication, and provide firms prompt closure to corrected inspection observations and nonviolative inspections, and inspections in which voluntary action only is indicated.

There were 1,034 domestic medical device inspections (excluding bioresearch monitoring inspections) conducted during the pilot program. FDA received 432 completed industry feedback questionnaires and summary questionnaire data from FDA investigators for all 1,034.

The investigators' questionnaire data showed that 844 (or 81 percent) of the inspections were preannounced (the others were either not eligible for preannouncement or were begun prior to April 3, 1996, the start of the pilot program). Of those that were preannounced, 69 percent had inspection time savings due to preannouncement. Investigators reported that 83 percent of those preannounced inspections were facilitated by the preannouncement for the following reasons: Inspections had quicker startups; inspections had records more readily available; and inspections had personnel more readily available.

Investigators reported that 443 FDA–483's, Inspection Observations, were issued during this pilot program. The investigators reported that during 83 percent of the inspections, they were notified by the firm of corrections made during the inspection. Investigators reported that during 78 percent of the inspections, the time spent to annotate the FDA–483's was worthwhile.

Of the 1,034 inspections conducted under this pilot program, 893 (or 89 percent) of the inspections were classified ''no action indicated'' (NAI) or ''voluntary action indicated'' (VAI). Seven-hundred sixty-nine (or 86 percent of the 893 NAI/VAI inspections) postinspection letters were issued by the end of the pilot program period, December 31, 1997. Due to a time lag between conclusion of the inspection and issuance of the letters, additional letters were sent but not reported as part of the pilot evaluation.

The industry's questionnaire data indicated that in 90 percent of the inspections that were preannounced, the preannouncements were helpful to the firms in preparing for the inspection. Industry responded that during 93 percent of the inspections, the firm's personnel were notified during the inspection of noncompliances found by the inspection team and that in 86 percent of the inspections, the firms notified the FDA inspection team of corrective actions. In 78 percent of the inspections, the FDA inspection team was able to verify that corrective actions had been made.

The industry respondents reported that 95 percent of them felt that the FDA–483 annotations were appropriate and 94 percent felt that they were helpful. Ninety-five percent of the respondents found the postinspection letters helpful and 95 percent of the respondents felt the pilot program helped to increase the spirit of cooperation between their establishment and FDA.

Twenty-one of the investigator responses stated that the preannouncements compromised the inspection process. Further evaluation of these 21 responses revealed that 19 of the respondents had misunderstood and thus inaccurately answered this question. The remaining two have been evaluated and FDA has concluded that the problems described by these investigators do not warrant discontinuing the program. Because of the positive findings of the evaluation, the program was formally adopted as the Medical Device Initiatives program in FY 1997. The elements of the Medical Device Industry Initiatives Program are described in Attachment A of a new inspection guide entitled ''Guide to Inspections of Medical Device Manufacturers,'' dated December 1997 and posted to FDA's World Wide Website at ''www.fda.gov/ora''.

With some industry-specific caveats, FDA is prepared to begin another yearlong pilot program of the initiatives to provide similar coverage to the other program areas, including drugs (both human and animal) and biologics. Only FDA–483 annotation and postinspection notification will be piloted in the foods program area. Upon completion of the pilot program, FDA will perform an evaluation to evaluate the effectiveness in optimizing resources, enhancing FDA/industry communication, and providing firms prompt closure to corrected inspection observations and nonviolative inspections, or inspections in which voluntary action only is indicated. In addition, the impact on violative situations will be evaluated.

The elements of the agency initiatives are as follows:

I. Preannounced Inspections

A. Basic Premises

1. Preannouncement of inspections is intended to be applied only to those drug, medical device and biologics, except for blood and plasma collection and processing firms, that meet the criteria for consideration. Preannouncement of inspections is not applicable for manufacturers of or other operators dealing in only food, blood or plasma product commodities.

2. The eligibility of an individual firm for preannounced inspection is at the discretion of the inspecting office using clearly described criteria. (See section I.B of this document.)

3. The implementation of this preannounced inspection program is intended to be flexible, based on appropriate considerations of the agency and the firm.

4. The preannouncement should generally be no less than 5 calendar days in advance of the inspection. Should a postponement be necessary, the decision as to the time of rescheduling rests with the investigator/team, but the new inspection date should not be later than 5 calendar days from the originally set date. Inspections may be conducted sooner than 5 calendar days if requested by the firm and if this date is acceptable to the investigator/team.

5. To participate in the preannouncement portion of the program, firms are expected to meet the commitment to have appropriate records and personnel available during the inspection.

6. Preannounced inspections will not limit an investigator's authority to conduct the inspection. Inspections will be as in depth as necessary.

B. Criteria for Consideration

The criteria to be used by the inspecting office to determine whether it is appropriate to preannounce a planned inspection will include:

1. Type of Inspection:

a. Premarket inspections (PMA, NDA, prelicense, etc.),

b. Foreign inspections,

c. Bioresearch monitoring inspections,

d. Quality system (QS) or good manufacturing practice (GMP) inspections:

Biennial routine inspections,

Initial inspections of newly registered establishments,

Initial inspections of new facilities, and

Initial inspections under new management and/or ownership.

e. Non-QS/GMP inspections other than:

Government Wide Quality Assurance (GWQAP) inspections with short deadlines,

Immediate and urgent responses to complaints,

Immediate and urgent followup to information from any source, and

Immediate hazard to health recall followup inspections.

f. Recall followup inspections at manufacturers/initial importers/U.S. designated agent.

2. Eligibility Criteria:

a. GMP inspections of firms with nonviolative histories (inspections classified as no action indicated (NAI) or voluntary action indicated (VAI)). For VAI, adequate corrections of conditions observed and listed on FDA–483 during the previous inspection were verified and did not lead to any further agency action.

b. To remain eligible for preannounced inspections, firms must have a history of having individuals and/or documents identified in previous preannounced inspections reasonably available at the time of inspection.

C. Procedures

1. The investigator or coordination group designated to conduct the inspection will contact or, if unavailable at the time of call, leave word for the most responsible individual at the facility.

2. Changes in dates should be kept to a minimum. If a change is made, a new date should be provided as soon as possible that will facilitate the inspection and accommodate the investigator's schedule.

3. Preannouncements are normally limited to the investigator (or lead investigator or coordinating group for a team inspection) informing the firm of an upcoming inspection. Usually it will be appropriate to inform the firm as to the purpose, estimated duration, and the number of agency personnel expected to take part in the inspection. The products or processes to be covered should also be described if this will facilitate and be consistent with the objectives of the inspection.

4. When known, specific records/personnel will be requested at the time the inspection is scheduled.

II. FDA–483 Annotations

A. Basic Premise

1. For inspections in all program areas, the investigator will annotate the FDA–483 at the time of issuance to acknowledge an establishment's promised or completed corrective action. The firm should review the annotations on this issued FDA–483 to ensure that there are no misunderstandings about promised corrective actions.

2. A reportable item will not be deleted from the FDA–483 because the establishment has promised or completed a corrective action. The investigator will continue to have the latitude to delete the observation if the establishment's response to the observation clearly shows that the observation is in error or to clarify the observation based on additional information provided.

3. FDA investigators will continue to report only significant observations on the FDA–483 and to discuss these and other less significant observations with the establishment's management.

B. Procedures

1. Investigators and analysts will discuss all observations with the management of the establishment as they are observed, or on a daily basis, to minimize surprises, errors, and misunderstandings when the FDA–483 is issued. This discussion will include those observations that may be written on the FDA–483 and oral observations. Industry should use this opportunity to ask questions about the observations, request clarification, and inform the inspection team what corrections have been or will be made as soon as possible during the inspection. Investigators are encouraged to verify the establishment's completed corrective actions as long as the verification does not unreasonably extend the duration of the inspection.

2. Where practical, FDA–483 observations should include the number of records of a given type examined, for example, ''Two out of 50 records examined were * * *.''

3. If the establishment has promised and/or completed a corrective action to an FDA–483 observation prior to the completion of the inspection, all copies of the FDA–483 should be annotated (either following each observation or at the end of the FDA–483) with one or more of the following comments, as appropriate:

Item # ______ reported corrected but not verified.

Item # ______ corrected and verified.

Correction of items______, ______ and promised by 00/00/98.

No comment at this time.

4. If an observation made during a prior inspection is noted as not being corrected or is a reoccurring observation, it is appropriate to note this on the FDA–483.

5. All corrective action taken by the establishment and verified by FDA should be discussed in detail in the establishment inspection report and reported using the Compliance Achievement Reporting Systems (CARS).

III. Postinspection Notification

A. Basic Premise

1. FDA will issue postinspection notification to establishments regarding their compliance status for all inspections except foreign drug establishments. Foreign drug establishments have traditionally and will continue to receive correspondence from FDA upon evaluation and closure of each inspection.

2. The two new categories under which firms will receive postinspection notification are:

a. NAI situations where no FDA–483 was issued or only limited, less significant deficiencies were reported.

b. VAI situations where an FDA–483 was issued but all profile classes were found acceptable. In this circumstance, no further action is contemplated based on the inspection.

3. The postinspection notification letters that are issued under this pilot program will be mailed under the signature of the district director, in that district in which the establishment is located, or the Director of the Center of Compliance, as appropriate.

4. For those inspections where further action is being considered, FDA's existing modes of notification will continue to be used.

Dated: November 5, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–30608 Filed 11–16–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0335]

Agency Information Collection Activities; Announcement of OMB Approval; Good Laboratory Practices (GLP) Regulations for Nonclinical Laboratory Studies

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled '' Good Laboratory Practices (GLP) Regulations for Nonclinical Laboratory Studies'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 25, 1998 (63 FR 51357), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0119. The approval expires on October 31, 2001.

Dated: November 4, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30609 Filed 11–16–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0373]

Agency Information Collection Activities; Announcement of OMB Approval; FDA Recall Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled '' FDA Recall Regulations'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 14, 1998 (63 FR 49130), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0249. The approval expires on October 31, 2001.

Dated: November 3, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30610 Filed 11–16–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Form #HCFA–R–0264–a,b,c,d,e]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services (DHHS), is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR, part 1320 and is essential to the mission of the Agency. The Agency cannot reasonably comply with the normal clearance procedures because of a statutory deadline imposed by section 4319 of the Balanced Budget Act of 1997. Without this information, HCFA would not be able to properly implement all of the requirements set forth in the statute prior to the statute's sunset provision, causing a statutorily ordered deadline to be missed. Also, an unanticipated event has occurred, which may contribute to the missing of the statutory deadline. In particular, HCFA inadvertently referenced the incorrect statutory section in the location of the previous notice justifying the need for emergency clearance, published in the **Federal Register** on October 16, 1998, at 63 FR 55631. While the correct section of statute mandating the collection was denoted elsewhere in the notice, a commentor pointed out that the statutory citation specifically justifying the need for emergency clearance was incorrect. Therefore, HCFA is correcting its oversight by republishing its request for OMB review and approval of this collection. Lastly, emergency clearance is requested because public harm will likely result if the normal clearance procedures are followed. Studies by the Government Accounting Office and the Office of the Inspector General have found that Medicare payments for items of durable medical equipment are far greater than prices paid by other insurers and are sometimes greater than prices available to the general public at retail outlets. And, the payments provided under Medicare fee schedules often represent unreasonably high markups from actual prices paid by suppliers. The use of the standard OMB approval process will cause the nonfulfillment the statutory requirements set forth in section 4319 of the Balanced Budget Act of 1997 that seek to address these issues, resulting in public harm by allowing the unnecessary loss of public Medicare trust fund dollars.

HCFA is requesting OMB review and approval of this collection within six working days, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individual designated below within five working days.

During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: New collection;

Title of Information Collection: Collection of DMEPOS Supplier Data in Support of the Medicare DMEPOS Competitive Bidding Demonstration using form (HCFA–R–0264) and Supporting Statute Section 4319 of the Balanced Budget Act of 1997;

Form No.: HCFA–R–0264;

Use: Section 4319 of the Balanced Budget Act (BBA) mandates HCFA to implement demonstration projects under which competitive acquisition areas are established for contract award purposes for the furnishing of Part B items and services, except for physician's services. The first of these demonstration projects implements competitive bidding of categories of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). Under the law, suppliers can receive payments from Medicare for items and services covered by the demonstration only if their bids are competitive in terms of quality and price. Each demonstration project may be conducted in up to three metropolitan areas for a three year period. Authority for the demonstration expires on December 31, 2002. The schedule for the demonstration anticipates about a six month period required between mailing the bidding forms to potential bidders and the start of payments for DMEPOS under the demonstration. HCFA intends to operate the demonstration in two rounds, the first of two years, and the second of one year. HCFA has announced that it intends to operate its first demonstration in Polk County, Florida, which is the Lakeland-Winter Haven Metropolitan Area.

There are five forms that are required for the demonstration. The first, HCFA–R–0264A, will be filled out by suppliers to describe the attributes of their organization, including quality of services and financial data. Form HCFA–R–0264B will be filled out by suppliers for each of the categories of DMEPOS for which they bid, and includes information about their supply of that category of equipment or supplies, and the prices that they bid for each item in that category. Form HCFA–R–0264C will be used by site inspectors who gather information at the facilities of bidders. Form HCFA–R–0264D is used to gather data by telephone from referral sources of business for the bidding suppliers, and form HCFA–R–0264E is used to gather data by telephone from banks and other financial institutions for financial and business references.

The competitive bidding demonstration for DMEPOS has the following objectives:

- Test the policies and implementation methods of competitive bidding to determine whether or not it should be expanded as a Medicare Program.
- Reduce the price that Medicare pays for medical equipment and supplies.
- Limit beneficiary out-of-pocket expenditures for copayments.
- Improve beneficiary access to high quality medical equipment and supplies.
- Prevent business transactions with suppliers who engage in fraudulent practices.

HCFA plans to mail the bidding package, including the referenced forms A and B, to potential bidders at the first demonstration sites in Polk County, Florida on November 16, 1998, and to request bidder submissions by December 16, 1998. The remaining forms C, D and E will be used for inspections and reference checking in the three months following the bid submissions. These forms will be used by HCFA or its agents to gather information regarding bidders who have made financially attractive bids and are being evaluated for quality, financial stability, and other attributes for consideration as demonstration suppliers.

Frequency: Two times at each demonstration site;

Affected Public: Business or other for-profit, and not-for-profit institutions;

Number of Respondents: 2,040;

Total Annual Responses: 2,040;

Total Annual Hours: 25,260

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, OR E-mail your request, including your address, phone number, and HCFA form number(s) referenced above, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designee referenced below, within five working days:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room: N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, Fax Number: (410) 786–0262, Attn: John Burke

or

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: November 10, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–30661 Filed 11–16–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of December, 1998.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: December 2, 1998; 9 a.m.–5 p.m.

Place: Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

The full Commission will meet on Wednesday, December 2, from 9 a.m. to 5 p.m. Agenda items will include, but not be limited to: a report on the Anthrax Vaccine Expert Committee, a presentation on options for coverage of the Hepatitis A vaccine, an update on the Vaccine Safety Action Plan, reports from the Department of Justice, the National Vaccine Program Office, and routine program reports.

Public comment will be permitted before lunch and at the end of the Commission meeting on December 2. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Melissa Palmer, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6593. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may sign up in Conference Rooms G and H on December 2. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Ms. Melissa Palmer at the address mentioned above.

Agenda items are subject to change as priorities dictate.

Dated: November 10, 1998.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 98–30676 Filed 11–16–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Establishment

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the Director, National Institutes of Health (NIH), announces the establishment of the Director's Council of Public Representatives (Committee).

This Committee will advise the Director, NIH on issues and concerns that are important to the broad development of NIH programmatic and research priorities. The Committee will also assist the NIH in enhancing the participation of the public in NIH activities that have an impact on the public, in increasing public understanding of the NIH and its programs, and in bringing important matters of public interest forward for discussion in public settings.

Unless renewed by appropriate action prior to its expiration, the charter for the Director's Council of Public Representatives will expire two years from the date of establishment.

Dated: November 9, 1998.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 98–30695 Filed 11–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel In Vivo Efficacy in Disease-Related Models.

Date: December 4, 1998.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Executive Plaza North, Conference Room C, 6130 Executive Boulevard, Rockville, MD 20852.

Contact Person: Lalita D. Palekar, PHD, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN–622B, Rockville, MD 20892–7405, 301/496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 9, 1998.

Anna Snouffer,

Committee Management Office, NIH.

[FR Doc. 98–30699 Filed 11–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board Cancer Institute Special Emphasis Panel, NCI Special Emphasis Panel for Review of 2 R5 Applications/Education Grant, Teleconference Meeting.

Date: December 1, 1998.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Cancer Institute, 6130 Executive Blvd., Room 611–A, Rockville, MD 20892.

Contact Person: Mary Bell, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, Rockville, MD 20892, 301/496–7978.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93,393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 9, 1998.

Anna Snouffer,

Committee Management Office, NIH

[FR Doc. 98–30701 Filed 11–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Eye Institute.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL EYE INSTITUTE, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Eye Institute.

Date: December 7–8, 1998.

Open: December 7, 1998, 9:00 a.m. to 10:00 a.m.

Agenda: Opening remarks by the Director, Intramural Research Program, on matters concerning the intramural program of the NEI.

Place: National Institutes of Health, 9000 Rockville Pike, Building 10, Room 10B16, Bethesda, MD 20892.

Closed: December 7, 1998, 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 9000 Rockville Pike, Building 10, Room 10B16, Bethesda, MD 20892.

Closed: December 8, 1998, 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 9000 Rockville Pike, Building 10, Room 10B16, Bethesda, MD 20892.

Contact Person: Robert B. Nussenblatt, MD, Director, Intramural Research Program, National Eye Institute, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, 301–496–3123.

(Catalogue of Federal Domestic Assistance Program No. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: November 9, 1998.

Anna Snouffer,

Program Analyst, NIH CMO.

[FR Doc. 98–30698 Filed 11–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Novel Strategies for Modulating Antigen-Specific T Cells.

Date: December 2, 1998.

Time: 11:00 am to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: Solar Building, Room 4C–05, 6003 Executive Boulevard, Rockville, MD 20852–7610, (Telephone Conference Call).

Contact Person: Allen C. Stoolmiller, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C05, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–496–7966.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 9, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 98–30696 Filed 11–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Crystallographic Synchrotron Beamlines.

Date: December 9, 1998.

Time: 9:00 am to 4:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Bruce K. Wetzel, Scientific Review Administrator, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS–19, Bethesda, MD 20892, (301) 594–3907.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 9, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 98–30702 Filed 11–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 13, 1998, 4:00 PM to November 13, 1998, 5:00 PM, ANA Hotel, 2401 M Street, NW, Washington, DC, 20037 which was published in the **Federal Register** on November 4, 1998, 63FR213.

The meeting will be held at the Washington Monarch Hotel. The times and dates will remain the same. The meeting is closed to the public.

Dated: November 9, 1998.

Anna Snouffer,

Program Analyst, NIH CMO.

[FR Doc. 98–30697 Filed 11–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 12, 1998, 8:00 a.m. to November 13, 1998, 3:00 p.m., ANA Hotel, 2401 M Street, NW, Washington, DC 20037 which was published in the **Federal Register** on November 4, 1998, 63 FR 213.

The meeting will be held at the Washington Monarch Hotel. The times and dates remain the same. The meeting is closed to the public.

Dated: November 9, 1998.

Anna Snouffer,

Program Analyst, NIH CMO.

[FR Doc. 98–30700 Filed 11–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Managers Forum

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (1988) and 41 CFR 101–6.1015(b). The Department of the Interior hereby gives notice of a public meeting of the Alaska Land Managers Forum to be held on Wednesday, December 2, 1998, beginning at 9:15 a.m. It will take place in Room 220 of the South Kaloa Building, 1689 C Street, Anchorage, Alaska. This meeting will be held to receive and discuss work group reports on recreation and tourism, and announce winners of the 1998 awards program. The agenda will also include several briefing items.

FOR FURTHER INFORMATION CONTACT: Ronald B. McCoy at (907) 271–5485 or Sally Rue at (907) 465–4084.

Ronald B. McCoy,

Office of the Secretary, Department of the Interior.

[FR Doc. 98–30715 Filed 11–16–98; 8:45 am]

BILLING CODE 4310–RP–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. 003483–6

Applicant: Biological Resources Division, Pacific Island Ecosystems Research Center, Hawaii National Park, Hawaii.

The applicant requests a permit to take (capture, harass, band, mark, radio-tag, collect blood, fecal samples, and feathers, hold, transport, release, and recapture,) the palila (*Loxioides bailleui*), Hawaii ’akepa (*Loxops coccineus coccineus*), akiapola’au (*Hemignathus munroi*), Hawaii creeper (*Oreomystis mana*), large Kauai solitaire (=kama’o) (*Myadestes myadestinus*), small Kauai solitaire (=*puaiohi*) (*Myadestes palmeri*), Kauai ’o’o or ’o’o’a’a (*Moho braccatus*), Kauai ’akialoa (*Hemignathus procerus*), Kauai nukupu’u (*Hemignathus lucidus hanapepe*), Molokai creeper (=*kakawahie*) (*Paroreomyza flammea*), Oahu creeper (=*alauwahio*) (*Paroreomyza maculata*), Molokai thrush (=oloma’o) (*Myadestes lanaiensis rutha*), ’o’u (*Psittirostra psittacea*), crested honeycreeper (=*’akohekohe*) (*Palmeria dolei*), Maui ’akepa (*Loxops coccineus ochraceus*), Maui parrotbill (*Pseudonestor xanthophrys*), po’ouli (*Melamprosops phaeosoma*), Maui nukupu’u (*Hemignathus lucidus affinis*), Hawaiian dark-rumped petrel (=*’ua’u*) (*Pterodroma phaeopygia sandwichensis*), Hawaiian hawk (=’io) (*Buteo solitarius*), and nightingale reed-warbler (*Acrocephalus luscinia*), and take (capture, band, weigh, collect blood, fecal samples, and feathers, attach radio transmitters, release, recapture) the Laysan duck (*Anas laysanensis*) for ecological and demographic studies on the Islands of Hawaii, Kauai, Oahu, Maui, Molokai, Lanai, Saipan, Commonwealth of the Northern Mariana Islands, and Laysan for the purpose of enhancing their survival. Notwithstanding the collection of blood from Laysan ducks, the applicant has previously conducted all of the above activities under subpermit BRDHFS–5.

Permit No. 003249–0

Applicant: William E. Stewart, La Mesa, California.

The applicant requests a permit to take (harass) the California least tern (*Sterna antillarum browni*) in conjunction with predator control activities in San Diego County, California, for the purpose of enhancing its survival.

Permit No. 769304

Applicant: Jeffrey Halstead, Bighorn Institute, Palm Desert, California.

The applicant requests an amendment to his permit to take (capture, mark, collect biological data) the Fresno kangaroo rat (*Dipodomys nitratoides exiles*) in Madera and Kings counties, California, in conjunction with scientific research and surveys, for the purpose of enhancing its survival.

Permit No. 804864

Applicant: Kent R. Beaman, Beaman Biological Consulting, Loma Linda, California.

The applicant requests a permit renewal/amendment to take (presence/absence survey) the California gnatcatcher (*Polioptila californica*) and the Quino checkerspot butterfly (*Euphydryas editha quino*) throughout Riverside, Orange, San Diego, and Los Angeles counties for the purpose of enhancing their survival.

Permit No. 744878–5

Applicant: Institute For Wildlife Studies, Arcata, California.

The applicant requests a permit amendment to take (harass by handling, measuring, and banding) the San Clemente loggerhead shrike (*Lanius ludovicanus mearnsi*) throughout its range on San Clemente Island, California, for the purpose of enhancing its survival.

Permit No: 780566

Applicant: Ruben S. Ramirez, Jr., Diamond Bar, California.

The applicant requests a permit renewal to take (capture by pitfall trap, and attach radio telemetry) the arroyo southwestern toad (*Buffo microscaphus californicus*) throughout its range for the purpose of enhancing its survival.

Permit No. 807078–3

Applicant: Point Reyes Bird Observatory, Stinson Beach, California.

The applicant requests a permit amendment to take (band and monitor) the San Clemente loggerhead shrike (*Lanius ludovicianus mearnsi*) on San Clemente Island, California, for the purpose of enhancing the survival of the species.

Permit No. 796012

Applicant: Debra Crowe, CH2MHILL, Sacramento, California.

The applicant requests a permit renewal/amendment to take (collect) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) and Riverside fairy shrimp (*Streptocephalus wootonii*) within vernal pools in the Central Valley/Foothills of California, for the purpose of enhancing their survival.

Permit No. 821229

Applicant: David Crawford, Impact Sciences, Inc., Agoura Hills, California.

The applicant requests a permit amendment to take (presence/absence survey) the Delhi Sands flower-loving fly (*Raphionmidas terminatus abdominalis*) in San Bernardino and Riverside counties, California, for the purpose of enhancing its survival.

Permit No. 789253

Applicant: Brian D. Foster, Coronado, California.

The applicant requests permit renewal and amendment to take (mark nests) the California least tern (*Sterna antillarum* (=*albifrons browni*) and western snowy plover (*Charadrius alexandrinus nivosus*) within the State of California, for the purpose of enhancing their survival.

Permit No. 800930

Applicant: Viviane Marquez, Marquez and Associates Biological Consultants, Chula Vista, California.

The applicant requests a permit renewal to take (presence/absence survey) the southwestern willow flycatcher (*Empidonax traillil extimus*) in San Diego, Riverside, Orange, and Imperial counties, California, for the purpose of enhancing its survival.

DATES: Written comments on these permit applications must be received on or before December 17, 1998.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Recovery, Planning and Permits, Ecological Services, Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications 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 within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated November 6, 1998.

Thomas Dwyer,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–30660 Filed 11–16–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Atlantic Coastal Fisheries Cooperative Management Act; Meeting Notice

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: National Marine Fishery Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) will hold a joint meeting to discuss coordination of activities that support Atlantic States Marine Fisheries Commission coastal fisheries management plans under the Atlantic Coastal Fisheries Cooperative Management Act and the Atlantic Striped Bass Conservation Act. The meeting is open to the public.

DATES: The meeting will convene on December 10, 1998 at 1 p.m. and will adjourn at approximately 4:30 p.m.

ADDRESSES: U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., Arlington, VA. 22203.

FOR FURTHER INFORMATION CONTACT: Morgan McCosh, Fisheries Program—Division of Fish and Wildlife Management Assistance, USFWS 4401 N. Fairfax Dr., Arlington, VA, 22203. Telephone: (703) 358–1718.

SUPPLEMENTARY INFORMATION: NMFS–USFWS hold semi-annual coordination meetings established under a Memorandum of Understanding to develop and implement a program to support interstate fishery management efforts associated with the Atlantic Coastal Fisheries Cooperative Management Act (Pub. L. 103–206). The main agenda items for this meeting are discussion of the 1997–1998 Workplan; an update on implementation of the Atlantic Coast Cooperative Statistics Program; status of cooperative coastal/citizen tagging efforts; distribution of FY 1999 Atlantic Coastal Act funds; Socio-economic study and other reports; and ASMFC Fishery Management Plan work for 1999.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Morgan McCosh (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meeting date.

Dated: November 12, 1998.

Rowan Gould,

Acting-AD-Fisheries, Fish and Wildlife Service.

[FR Doc. 98–30732 Filed 11–16–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use and Distribution of the Red Lake Band of Chippewa Indians of the Red Lake Reservation in Minnesota Indian Judgment Funds in Docket Nos. 189–A and 189–B Before the United States Court of Federal Claims

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the plan for the use and distribution of judgment funds awarded to the Red Lake Band of Chippewa Indians in Docket Nos. 189-A and 189-B is effective as of July 28, 1998.

FOR FURTHER INFORMATION CONTACT: Daisy West, Bureau of Indian Affairs, Division of Tribal Government Services, MS–4631–MIB, 1849 C Street, NW, Washington, D.C. 20240. Telephone number: (202) 208–2475.

SUPPLEMENTARY INFORMATION: The Act of October 19, 1973, as amended (25 U.S.C. 1401 *et seq.*), requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on September 27, 1997, in satisfaction of the award granted to the Red Lake Band of Chippewa Indians before the United States Court of Federal Claims in Docket Nos. 189–A and 189–B. The plan for the use and distribution of the funds was submitted to Congress on May 1, 1998, by letters dated April 28, 1998. The receipt of the letters by the Senate and the House of Representatives was recorded in the Congressional Record published on May 5, 1998. The plan became effective on July 28, 1998, since a joint resolution disapproving it was not enacted. The plan reads as follows:

Plan—For the Use and Distribution of Red Lake Band of Chippewa Judgment Funds in Docket 189–A and 189–B in the United States Court of Claims

The funds appropriated on September 27, 1997, in satisfaction of an award granted to the Red Lake Band of Chippewa Indians of the Red Lake Reservation in Minnesota in Docket 189–A and 189–B before the United States Court of Claims, including all interest and investment income accrued, less attorney fees and litigation expenses (including interest for amounts advanced or borrowed by the Red Lake Band), shall be distributed as herein provided.

A. Per Capita Distribution

Eighty percent of the Red Lake Band of Chippewa Indians share of the funds remaining after expenses in this award shall be distributed in the form of per capita payments (in sums as equal as possible) to all persons who were born on or prior to and living on January 27, 1998, and who are enrolled members of the Red Lake Band of Chippewa Indians.

The per capita shares of living competent adults shall be paid directly to them, with the exception that the per capita shares of nursing home residents and incarcerated persons shall be paid into Individual Indian Money accounts for withdrawal upon application. The per capita shares of deceased individual beneficiaries shall be determined in accordance with 43 CFR, Subpart D. Per capita shares of legal incompetents and minors shall be handled as provided in

25 U.S.C. 1403(b)(3), except that by Order of the Red Lake Tribal Court, minors' funds may be withdrawn for damages, reparations or restitutions to victims of crime.

B. Programming

Twenty (20) percent of the funds remaining after expenses shall be invested by the Secretary to be used by the Red Lake Band of Chippewa Indians on a budgetary basis on programs which may include but are not limited to: tribal administration and operations, economic development, community development, tribal education programs and land acquisition.

C. General Provisions

The Secretary, in arranging for per capita payments to be made, shall withhold sufficient shares for individuals whose eligibility may be in question. Those shares shall be held in a separate interest bearing account pending determination of enrollment appeals. Funds not used to pay shares and pro rata interest to successful applicants shall be available for use in the programming aspect of the plan.

None of the funds distributed per capita or made available under this plan for programming shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act, or except for per capita shares in excess of $2,000 any Federal or federally assisted programs.

This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Dated: November 6, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–30632 Filed 11–16–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Construction of Replacement Education Facilities

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Revised Instructions and Ranking Criteria.

SUMMARY: The Bureau of Indian Affairs (BIA) is announcing its intention to revise the instructions governing the priority ranking process for construction of replacement education facilities and the criteria used in ranking applications. The revised process will not provide for new school starts nor grade level expansions, but will include application ranking criteria for facilities master plans, which can affect application point values and ranking order. The revised procedures will provide more continuity, objectivity and accountability in the priority ranking for construction of replacement education facilities; address the handling of emergency needs; and accommodate federal/tribal financial partnerships for education facilities construction projects. (Catalog of Federal Domestic Assistance Program Number: 15.062 ''Replacement and Repair of Indian Schools.'')

DATES: Comments on the proposed revisions must be received on or before December 1, 1998.

ADDRESSES: Direct written comments on the proposed revisions to Dr. Kenneth G. Ross, Special Assistant to the Director, Office of Indian Education Programs, 201 Third St., NW, Suite 510, Albuquerque, New Mexico 87102.

Copies of the proposed revised instructions and ranking criteria are available upon request from the BIA Office of Indian Education Programs at 1849 C Street NW, MS–3512 MIB, Washington, DC 20240 or at 201 Third St., NW, Suite 510, Albuquerque, New Mexico 87102.

The proposed revisions are also available from BIA Area and Education line offices and from the BIA Facilities Management and Construction Center, 201 Third St. NW, Suite 500, Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth G. Ross, Special Assistant to the Director, Office of Indian Education Programs, 201 Third St. NW, Suite 510, Albuquerque, New Mexico 87102, (505) 766–3850.

SUPPLEMENTARY INFORMATION: This Notice is published under authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs in the Departmental Manual at 209 DM 8. 25 U.S.C. 2005(c) directs the BIA to publish, in the **Federal Register**, the system used to determine priorities for school construction projects and to submit a current priority ranking for school construction projects at the time any budget request is presented to Congress. The Conference Report for the FY1992 Interior and Related Agencies Appropriation Act, House Report No. 256, 102d Cong., 1st Sess. 46 (1991), indicated that Congress desired the Department to continue efforts to revise the priority ranking process for new school construction. The Conference Report stated that emphasis should be given to tribal consultation and to improving the objectivity of the ranking process, to providing continuity to the priority ranking list, and to providing procedures for handling emergency needs. The BIA plans to hold tribal consultation hearings on the proposed revisions. Tribes with schools under their jurisdiction and BIA-funded school boards shall receive advance, written notice of the consultation hearing schedule.

Dated: November 6, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–30651 Filed 11–16–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–055–98–7122–00–8829]

Nevada Temporary Closure of Certain Public Lands Managed by the Bureau of Land management, Las Vegas Field Office

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Temporary Closure of Selected Public Lands in Clark County, Nevada, during the Operation of the 1998 BEST in the DESERT TERRIBLE's TOWN ''250'' off road desert race.

SUMMARY: The Field Office Manager of the Las Vegas Field Office announces the temporary closure of selected public lands under its administration.

This action is being taken to help ensure public safety, prevent unnecessary environmental degradation during the official permitted running of the 1998 BEST in the DESERT TERRIBLE'S TOWN ''250'' and to comply with provisions of the U.S. Fish and Wildlife Service's Biological Opinion for Speed Based Off-Highway Vehicle Events (1–5–95–F–237).

DATES: From 6:00 a.m. December 4, 1998, through 6:00 p.m. December 6, 1998, Pacific Standard Time.

Closure Area: As described below, an area within T. 12 S. to T. 21 S.R. 46 E. to R. 55 E.

1. The closure is from the California, Nevada border on the west side, Nevada test site boundary on the east. Town of Beatty on the north, Clark County Line on the south.

Exceptions to the closure are: State Route 160; US 95.

2. The entire area encompassed by the designated course and all areas outside the designated course as listed in the legal description above are closed to all vehicles except Law Enforcement, Emergency Vehicles, and Official Race Vehicles. Access routes leading to the courses are closed to vehicles.

3. No vehicle stopping or parking.

4. Spectators are required to remain within designated spectator area only.

5. The following regulations will be in effect for the duration of the closure, unless otherwise authorized no person shall:

a. Camp in any area outside of the designated spectator areas.

b. Enter any portion of the race course or any wash located within the race course.

c. Spectate or otherwise be located outside of the designated spectator area.

d. Cut or collect firewood of any kind, including dead and down wood or other vegetative material.

e. Possess and or consume any alcoholic beverage unless the person has reached the age of 21 years.

f. Discharge, or use firearms, other weapons or fireworks.

g. Park, stop, or stand any vehicle outside of the designated spectator areas.

h. Operate any vehicle including an off-highway vehicle (OHV), which is legally registered for street and highway operation, including operation of such a vehicle in spectator viewing areas, along the race course, and in designated pit areas.

i. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or feature. Vehicles so parked are subject to citation, removal and impoundment at owners expense.

j. Take a vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier or device.

k. Fail to keep their site free of trash and litter during the period of occupancy, or fail to remove all personal equipment, trash, and litter upon departure.

l. Violate quiet hours by causing an unreasonable noise as determined by the authorized officer between the hours of 10:00 p.m. and 6:00 a.m. Pacific Standard Time.

m. Allow any pet or other animal in their care to be unrestrained at any time.

n. Fail to follow orders or directions of an authorized officer.

o. Obstruct, resist, or attempt to elude a Law enforcement Officer or fail to follow their orders or direction.

The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the State of Nevada or Clark County. Vehicles under permit for operation by event participants must follow the race permit stipulations.

Operators of permitted vehicles shall maintain a maximum speed limit of 35 mph on all BLM roads and ways. Authority for closure of public lands is found in 43 CFR part 8340, subpart 8341; 43 CFR part 8360, subpart 8364.1 and 43 CFR part 8372. Persons who violate this closure order are subject to fines and or arrest as prescribed by law.

FOR FURTHER INFORMATION CONTACT: Dave Wolf Recreation Manager or Ron Crayton or Ken Burger BLM Rangers, BLM Las Vegas Field Office 4765 Vegas Dr. Las Vegas, Nevada 89108, (702) 647–5000.

Dated: November 5, 1998.

Michael F. Dwyer,

Las Vegas Field Office Manager.

[FR Doc. 98–30634 Filed 11–16–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Lumber River 2 (a)(ii) Wild and Scenic River Eligibility Report, Environmental Assessment, and Finding of No significant Impact, Lumber River, North Carolina

AGENCY: National Park Service, DOI.

ACTION: Publication of final report and recommendation.

SUMMARY: The National Park Service is publishing the final study report recommending designation of 81 miles of the Lumber River, North Carolina, as a state and locally-managed component of the National Wild and Scenic Rivers System.

ADDRESSES: Copies of the final report are available from: Mary Rountree, National Park Service, 100 Alabama Street, NW, Atlanta, Georgia, 30303, telephone (404) 562–3175.

FOR FURTHER INFORMATION CONTACT: Mary Rountree or Wallace Brittain, National Park Service, 100 Alabama Street, NW, Atlanta, Georgia, 30303, telephone (404) 562–3175.

SUPPLEMENTARY INFORMATION: On April 15, 1996, North Carolina Governor James Hunt petitioned Interior Secretary, Bruce Babbitt to include 115 miles of the Lumber River (from State Route 1412/1203 to the North Carolina and South Carolina border) in the National Wild and Scenic Rivers System). Under Section 2(a)(ii) of the National Wild and Scenic Rivers Act (Pub. L. 90–542, as amended), the Secretary has the authority to add a river to the national system at the request of a state, provided the following conditions have been met: the river possesses values of regional or national significance and is free-flowing; the river has been designated as a state wild and scenic river; and the state has an adequate program to manage the river and permanently protect the river's outstanding resources.

The National Park Service found that two reaches of the river, totaling 81 miles, met all requirements for wild and scenic river designation. The upper reach extends from State Route 1412/1203 to the Scotland and Robeson County lines, at the end of Maxton Airport Swamp (22 miles) and the lower reach begins at Back Swamp and runs through the city of Lumberton and the town of Fair Bluff, to the North Carolina and South Carolina border (59 miles). The National Park Service found that the remaining reach of the river (34 miles, from the Scotland and Robeson County to Back Swamp) does not have adequate state or local mechanism that ensure future protection of the river's outstanding resources in accordance with the Wild and Scenic Rivers Act.

The National Park Service classified segments of the 115-mile river nomination as wild, scenic, or recreational, in accordance with Section 2(b) of the Wild and Scenic Rivers Act. The river segment from State Route 1412/1203 to the Scotland and Robeson County lines was classified as scenic. The segment (not recommended for designation) from the Scotland and Robeson County lines to Back Swamp was classified as scenic. The segment encompassing the city of Lumberton and the city's Extraterritorial Jurisdiction (from Back Swamp to Jacob Swamp Canal) was classified as recreational. The segment from Jacob Swamp Canal to the upstream town limits of the town of Fair Bluff was classified as scenic. The segment from the downstream town limits of Fair Bluff to the North Carolina and South Carolina border was classified as recreational.

The National Park Service found that designation of the Lumber river as a component of the National Wild and Scenic Rivers System would not significantly impact the quality of the natural and human environment and that an environmental assessment fulfills the requirements of the national Environmental Policy Act.

Dated: October 26, 1998.

Suzette Kimball,

Associate Regional Director, Natural Resource Stewardship & Science.

[FR Doc. 98–30650 Filed 11–16–98; 8:45 am]

BILLING CODE 4310–70–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 November 7, 1998. Pursuant to § 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, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by December 2, 1998.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Cleburne County

Titan II ICBM Launch Complex 373–3 Site (Cold War Resources Associated with the 308th Strategic Missile Wing in Arkansas MPS), S of AR 16;3.3 mi. E of jct. with AR 25, Heber Springs vicinity, 98001436

Faulkner County

Titan II ICBM Launch Complex 374–5 Site (Cold War Resources Associated with the 308th Strategic Missile Wing in Arkansas MPS), E of US 65; 0.4 mi. N of jct. with E. Cadron Ridge Rd., Springhill vicinity, 98001433

Titan II ICBM Launch Complex 374–1 Site (Cold War Resources Associated with the 308th Strategic Missile Wing in Arkansas MPS), SE of jct. of AR 36 and AR 310, Mount Vernon vicinity, 98001435

Titan II ICBM Launch Complex 374–6 Site (Cold War Resources Associated with the 308th Strategic Missile Wing in Arkansas MPS), O.3 mi. N of Republican Rd., 0.8 mi. E of US 65, Republican vicinity, 98001437

Pulaski County

Mims—Breedlove—Priest—Weatherton House, 2108 Beechwood Ave., Little Rock, 98001432

Van Buren County

Titan II ICBM Launch Complex 374–7 Site (Cold War Resources Associated with the 308th Strategic Missile Wing in Arkansas MPS), W. of US 65; 1.7 mi. N of jct. with AR 124, Southside vicinity, 98001434

CONNECTICUT

Fairfield County

Benedict House and Shop, 57 Rockwell Rd., Ridgefield, 98001440

Hartford County

Naubuc Avenue—Broad Street Historic District, Roughly along Broad St. and Naubuc Ave., East Hartford, 98001439

New London County

Lester, Timothy, Farmstead, Jct. of Crary, Browning and Terry Rds., Griswold, 98001441

LOUISIANA

Washington Parish

Warren House, 29296 LA 25 N, Franklinton vicinity, 98001442

MASSACHUSETTS

Middlesex County

Belmont Railroad Station, 1 Common St., Belmont, 98001443

MINNESOTA

Pope County

Lakeside Pavilion, S. Lakeshore Dr. and First Ave. SW, Glenwood, 98001444

NEW YORK

Dutchess County

Poughkeepsie Savings Bank (Poughkeepsie MRA), 21 Market St., Poughkeepsie, 98001445

TENNESSEE

Anderson County

Ritz Theatre and Hoskins Rexall Drug Store No. 2, 111–121 N. Main St., Clinton, 98001446

UTAH

Summit County

House at 60 Sampson Ave. (Mining Boom Era Houses TR), 60 Sampson Ave., Park City, 98001449

Utah County

American Fork Historic District, Roughly along 100 S, from 300 W to 200 E, American Fork, 98001447

Eddington, Dr. Elmo and Rhea, House (Lehi, Utah MPS), 617 North 100 East, Eehi, 98001459

Gardner, James H. and Rhoda H., House (Lehi, Utah MPS), 187 East 300 North, Lehi, 98001454

Goodwin, Samuel I. and Olena J., House (Lehi, Utah MPS), 80 West 400 North, Lehi, 98001453

Knudsen, Christian and Sarah, House (Lehi, Utah MPS), 123 S, Center St., Lehi, 98001458

Lehi Main Street Historic District (Lehi, Utah MPS), Roughly along Main St., between 200 West and Center Sts., and 51 N. Center St., Lehi, 98001450

Lehi North Branch Meetinghouse (Lehi, Utah MPS), 1190 North 500 West, Lehi, 98001455

Lehi Ward Tithing Barn—Centennial Hall (Lehi, Utah MPS), 651 North 200 East, (rear), Lehi, 98001456

People's Co-op Buildin (Lehi, Utah MPS), 151 E. State St., Lehi, 98001457

Smith, John Y. and Emerette C., House (Lehi, Utah MPS), 518 North 100 East, Lehi, 98001452

Webb, Thomas and Mary, House (Lehi, Utah MPS), 388 North 200 East, Lehi, 98001451

Washington County

Graff, George and Bertha, House (Santa Clara, Utah MPS), 2865 Santa Clara Dr., Santa Clara, 98001461

Hafen, Hans George, House (Santa Clara, Utah MPS), 3003 Santa Clara Dr., Santa Clara, 98001462

Reber, Frederick and Anna Maria, House (Santa Clara, Utah MPS), 2988–2990 Santa Clara Dr., Santa Clara, 98001448

Santa Clara Tithing Company (Santa Clara, Utah MPS), 3105 Santa Clara Dr., Santa Clara, 98001460

WEST VIRGINIA

Gilmer County

Gilmer County Poor Farm Infirmary, Off Sycamore Rd. on Recreation Center Rd., Glenville, 98001465

Glenville Truss Bridge, Conrad Court, over Little Kanawha R., Glenville, 98001477

Ruddell General Store, 6 Court St., Glenville, 98001469

Stouts Mill Bridge, Duskcamp Rd., over Little Kanawha R., Stouts Mill, 98001476

Whiting House, 301 E. Main St., Glenville, 98001480

Hardy County

Stump Family Farm, WV 7, Southfork of the Potomac R., Moorefield vicinity, 98001471

Jefferson County

Rellim Farm, Leetown Rd., S of WV 9, Kearneysville, 98001467

Marshall County

Cameron Downtown, Roughly Bounded by Church St., Waynesburg Ave., Main St., and Park St., Cameron, 98001473

Monongalia County

Morgantown Wharf and Warehouse Historic District, Roughly along Monongahela R. from Warren St. to Walnut St., Morgantown, 98001466

Monroe County

Nickell Homestead and Mill, McClung Rd., Ronceverte vicinity, 98001472

Morgan County

Ambrose Chapel, Winchester Grade Rd., Stotlers Crossroads vicinity, 98001470

Nicholas County

Halstead, Capt. John, Farm, Whitewater Rd., Cty Rd. 9, Kesslers Cross Lanes vicinity, 98001475

Lockwood Historic District, Roughly along WV 39, Lockwood, 98001468

Mason—Drennen House, Jct. of WV 39 and WV 129, Drennen vicinity, 98001474

Randolph County

Baldwin—Chandlee Supply Cmpany—Valley Supply Company, Jct. of 11th and Railroad Sts., Elkins, 98001478

Irons, Dr. John C., House, 116 Second St., Elkins, 98001479

WISCONSIN

Shawano County

Laney School, N1675 Laney Rd., Maple Grove, 98001463

Vernon County

Tollackson Mound Group (Boundary Increase), Address Restricted, Harmony vicinity, 98001464

[FR Doc. 98–30679 Filed 11–16–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Nebraska in the Possession of the University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Nebraska in the possession of the University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE.

A detailed assessment of the human remains was made by University of Nebraska professional staff in consultation with representatives of Ponca Tribe of Nebraska and the Ponca Tribe of Oklahoma.

In 1941, human remains representing six individuals were recovered from site 25CD7 during excavations at the Wynot Ossuary, Cedar County, NE conducted by R.B. Cuming during excavations conducted by the WPA. No known individuals were identified. The 16 associated funerary objects include an iron knife blade fragment, glass beads, and leather fragments.

Based on the presence of green and red staining and preservation of the bone, these burials have been determined to date to the historic period. Based on the location and types of associated funerary objects present, these individuals have been determined to be Native American. Because historic Ponca burials are present in adjacent Knox County, NE, these human remains have also been attributed to the Ponca.

At an unknown date, human remains representing one individual was removed from a locality known as ''Devil's Nest'' (Site 25KX0), Knox County, NE by person(s) unknown and presented to the University of Nebraska. No known individual was identified. No associated funerary objects are present.

Based on copper staining on the bones, anterior wear, and femoral abduction suggesting horseback riding, this individual has been determined to be Native American from the historic period. Based on the presence of historic Ponca cemeteries in Knox County, NE, this individual is being affiliated with the Ponca.

Based on the above mentioned information, officials of the University of Nebraska have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of seven individuals of Native American ancestry. Officials of the University of Nebraska have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 16 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Nebraska have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Ponca Tribe of Nebraska and the Ponca Tribe of Oklahoma.

This notice has been sent to officials of the Ponca Tribe of Nebraska and the Ponca Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Priscilla Grew, University of Nebraska, 302 Canfield Administration Building, Lincoln, NE 68588-0433; telephone: (402) 472-3123, before December 17, 1998. Repatriation of the human remains and associated funerary objects to the Ponca Tribe of Nebraska and the Ponca Tribe of Oklahoma may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: November 5, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–30680 Filed 11–16–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Oregon State Museum of Anthropology, University of Oregon, Eugene, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Oregon State Museum of Anthropology, University of Oregon, Eugene, OR.

A detailed assessment of the human remains was made by Oregon State Museum of Anthropology (OSMA) professional staff in consultation with representatives of the Confederated Tribes of the Umatilla Reservation.

In 1957 or earlier, human remains representing two individuals were removed from the area of Upper Birch Creek or Pierson Creek in Umatilla County, OR and donated to OSMA by a donor whose name is withheld at the request of OSMA. No known individuals were identified. No associated funerary objects are present.

In 1972, human remains representing five individuals were recovered from an eroding area of the west bank of the Snake River at Farewell Bend, Malheur County by officers from the Malheur County Sheriff's Office and transferred to the OSMA. No known individuals were identified. The one associated funerary object is a basalt flake.

Based on skeletal morphology and archeological context, the individuals from the two sites above have been identified as Native American. Historical documents, ethnographic sources, and oral history indicate that Cayuse people have occupied this north-eastern area of Oregon surrounding these two sites since precontact times. The Cayuse are one of the Confederated Tribes of the Umatilla Reservation.

In 1965, human remains representing two individuals were recovered from site 35UM35, within the town of Umatilla, OR during legally authorized excavations conducted by University of Oregon archeologists. No known individuals were identified. The approximately five associated funerary objects include one pounder, a piece of quartzite, bones of a gray fox, fragments of mussel shell, and unworked flakes.

In 1985, human remains representing one individual were recovered along the Pendleton-John Day Highway on the north bank of Granite Creek, Umatilla County, OR by an Oregon Department of Transportation construction crew. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology and archeological context, the individuals from the two sites above have been identified as Native American. Historical documents, ethnographic sources, and oral history indicate that Umatilla people have occupied this north-eastern area of Oregon surrounding these two sites since precontact times. The Umatilla are one of the Confederated Tribes of the Umatilla Reservation.

Based on the above mentioned information, officials of the Oregon State Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of ten individuals of Native American ancestry. Officials of the Oregon State Museum of Anthropology have also determined that, pursuant to 43 CFR 10.2 (d)(2), the three objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Oregon State Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Confederated Tribes of the Umatilla Reservation.

This notice has been sent to officials of the Confederated Tribes of the Umatilla Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact C. Melvin Aikens, Oregon State Museum of Anthropology, 1224 University of Oregon, Eugene, OR 97403-1224; telephone: (541) 346-5115, before December 17, 1998. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Umatilla Reservation may begin after that date if no additional claimants come forward.

Dated: November 4, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–30681 Filed 11–16–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item from the Island of O'ahu, HI in the Possession of the Milwaukee Public Museum, Milwaukee, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Milwaukee Public Museum, Milwaukee, WI which meets the definition of ''unassociated funerary object'' under Section 2 of the Act.

The cultural item is a round basalt game stone known as an *ulumaika*.

Prior to 1913, Mr. M.B. Wengler excavated the *ulumaika* from a grave in the suburbs of Honolulu on the Island of O'ahu, HI. Also prior to 1913, Mr. Wengler sold or traded this *ulumaika* to Mr. William H. Ellsworth of Milwaukee, WI. In 1913, Mr. Ellsworth donated this *ulumaika* to the Milwaukee Public Museum.

Based on known Native Hawaiian tradition and practices, this cultural item is consistent with Native Hawaiian funerary objects. Collections documentation and consultation evidence presented by Hui Malama I Na Kupuna O Hawai'i Nei support the conclusion that this cultural item was placed with human remains.

Officials of the Milwaukee Public Museum have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), this cultural item is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Milwaukee Public Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between this item and Hui Malama I Na Kupuna O Hawai'i Nei.

This notice has been sent to officials of the Hui Malama I Na Kupuna O Hawai'i Nei and the Office of Hawaiian Affairs. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Ann McMullen, Ph.D., Curator of North American Ethnology, Milwaukee Public Museum, 800 West Wells Street, Milwaukee, WI 53233; telephone: (414) 278-2786; fax: (414) 278-6100 before December 17, 1998. Repatriation of this object to Hui Malama I Na Kupuna O Hawai'i Nei may begin after that date if no additional claimants come forward.

Dated: November 5, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–30682 Filed 11–16–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 30, 1998, and published in the **Federal Register** on July 9, 1998, (63 FR 37139), Research Biochemicals, Inc., which has changed its name to Sigma Aldrich Research Biochemicals, Inc., One Three Strathmore Road, Attn: Richard A. Milius, PhD, Natick, Massachusetts 01760, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
4–Bromo–2, 5–dimethoxyamphetamine (7391)	I
4–Bromo–2, 5–dimethoxyphenethylamine (7392)	I
2, 5–Dimethoxyamphetamine (7396)	I
3, 4–Methylenedioxyamphetamine (7400)	I
N–Hydroxy–3, 4–methylenedioxyamphetamine (7402)	I
3, 4–Methylenedioxy–N–ethylamphetamine (7404)	I
3, 4–Methylenedioxymethamphetamine (7405)	I
1–[1–(2–Thienyl) cyclohexyl]piperidine (7470)	I
Heroin (9200)	I
Amphetamine (1100)	II
Phencyclidine (7471)	II
Benzoylecgonine (9180)	II

The firm plans to manufacture the listed controlled substances for laboratory reference standards and neurochemicals.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Research Biochemicals, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Research Biochemicals, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 19, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–30631 Filed 11–16–98; 8:45 am]

BILLING CODE 4410–09–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Cost Accounting Standards Board; Notice of Open Public Meeting

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Notice.

SUMMARY: The Cost Accounting Standards Board (CASB) hereby extends an invitation for interested parties to attend an open meeting with the Board and its staff on Tuesday, December 1 and Wednesday, December 2, 1998. Currently, the Board anticipates holding the December 1 meeting from 8:30 a.m. until 12:30 p.m., and the December 2 meeting from 1–5 p.m. These meetings will be held in room 2010 of the New Executive Office Building, 725 17th Street, NW, Washington, DC. During these meetings, the Board would like to hear the views of interested parties concerning various topics on the Board's current agenda of issues meriting regulatory consideration. In addition, the Board welcomes the views of interested parties concerning topics they believe the Board should undertake in light of recent changes in the cost-based Federal contracting/accounting environment (including the impact of acquisition reform).

DATES: The meetings will be held on December 1, 1998, from 8:30 a.m. to 12:30 p.m. and on December 2, 1998, from 1 p.m. to 5 p.m. Due to time and seating considerations, individuals desiring to attend these meetings, or to make a presentation before the Board, must notify the CASB staff, in writing, no later than November 23, 1998.

ADDRESSES: The meetings will be held in room 2010, New Executive Office Building, 725 17th Street, NW., Washington, DC. Requests to attend these meetings must be in writing, and must be addressed to Ms. Barbara Diering, Special Assistant, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW, room 9001, Washington, DC 20503. Attn: CASB Docket No. 98–01.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Diering, Special Assistant, Cost Accounting Standards Board (telephone 202–395–3256).

SUPPLEMENTARY INFORMATION: The Cost Accounting Standards Board will hold open public meetings on Tuesday, December 1, and Wednesday, December 2, 1998. The purpose of these public meetings will be to hear the views of interested persons concerning various topics on the Board's current agenda of regulatory issues, as well as to consider the views of interested persons concerning the Board's potential future agenda in light of recent changes in the cost-based Federal contracting/accounting environment.

To gain admittance, individuals desiring to attend these meetings must notify the Board's staff, in writing, at the above listed address, by the deadline noted. If an individual desires to make a presentation to the Board at either of these sessions, he or she is required to submit a brief outline of the presentation when making the request. In addition, a full written statement must be submitted one week prior to these meetings. In lieu of making an oral presentation, individuals may submit a written statement for the record.

To obtain entrance to the New Executive Office building, all potential attendees must include in their request: (1) Their full name; (2) organizational affiliation (if any); (3) date of birth; (4) social security number; and, (5) country of citizenship. Also, due to time and potential space limitations in the meeting room, the Board will notify individuals of their attendance and/or speaking status (date and time) prior to the meeting. Time allocations for oral presentations will depend on the number of individuals who desire to appear before the Board.

AGENDA: The Board, in particular, solicits presentations on the following:

I. *Comments on topics where new promulgations are currently under consideration by the Board.*

1. Accounting for the cost of post-retirement benefit plans other than pension plans sponsored by Government contractors.
2. Cost accounting practice changes.
   (a) The definition of what constitutes a change to a cost accounting practice.
   (b) The Board's consistency requirements.
   (c) The Board's contract price and cost adjustment requirements for resolving the cost impact of a voluntary change to a cost accounting practice (cost impact process).
   (d) Circumstances where an exemption from the Board's contract price and cost adjustment requirements for existing CAS-covered contracts or subcontracts might be appropriate.
3. Accounting for the cost of employee stock option plans under government contracts.
4. Accounting for the cost of internally developed and used computer software.
5. Allocation of selling and marketing costs.

II. Suggested additional changes to existing Standards or regulations not listed above (e.g., CAS contract applicability thresholds; funding criteria for validation of contractor long-term liabilities; etc.).

III. Suggestions for broader guidelines that the Board might follow in the future in selecting its agenda items in light of changes in the Federal cost-based contracting/accounting environment (e.g., the impact of acquisition reform).

Also, within given time constraints, the Board will be pleased to hear comments on any other matter that may be of interest to affected parties.

Richard C. Loeb,

Executive Secretary, Cost Accounting Standards Board.

[FR Doc. 98–30619 Filed 11–16–98; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 9:00 a.m., Thursday, November 19, 1998.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Five (5) Personnel Actions. Closed pursuant to exemptions (2) and (6).
2. Administrative Action under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).
3. Administrative Action under Section 109 of the Federal Credit Union Act. Closed pursuant to exemption (8).

RECESS: 10:00 a.m.

TIME AND DATE: 10:30 a.m., Thursday, November 19, 1998.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Requests from Two (2) Federal Credit Unions to Convert to Community Charters.
2. Request from a Corporate Federal Credit Union for a National Field of Membership (FOM) Amendment.
3. NCUA's 1999/2000 Operating Budget.
4. Proposed Rule: Amendments to Part 712, NCUA's Rules and Regulations, Credit Union Service Organizations (CUSOs).
5. Interim Final Rule: Amendments to Part 708a, NCUA's Rules and Regulations, Mergers/Conversions of Federally-Insured Credit Unions to Non-Credit Union Status.
6. Proposed Operating Fee Scale.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–30772 Filed 11–12–98; 5:00 pm]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Theater Section A (Education & Access category) to the National Council on the Arts will be held on December 7–10, 1998. The panel will meet from 9:30 a.m. to 7:00 p.m. on December 7th and 8th, from 9:30 a.m. to 6:30 p.m. on December 9th, and from 9:30 a.m. to 3:30 p.m. on December 10th in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506. A portion of this meeting, from 1:30 p.m. to 3:30 p.m. on December 10th, will be open to the public for a policy discussion on field issues and needs, Leadership Initiatives, Millennium projects, and guidelines.

The remaining portions of this meeting, meet from 9:30 a.m. to 7:00 p.m. on December 7th and 8th, from 9:30 a.m. to 6:30 p.m. on December 9th, and from 9:00 a.m. to 1:30 p.m. on December 10th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: November 10, 1998.

Kathy Plowitz-Worden,

Panel Operations, National Endowment for the Arts.

[FR Doc. 98–30734 Filed 11–16–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Theater Section B (Education & Access and Heritage & Preservation categories) to the National Council on the Arts will be held on December 10–11, 1998. The panel will meet from 3:30 p.m. to 5:30 p.m. on December 10th and from 9:30 a.m. to 2:30 p.m. on December 11th in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5691.

Dated: November 10, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 98–30735 Filed 11–16–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Leadership Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Leadership Panel, Folk & Traditional Arts Section (Folk Arts Infrastructure Initiative category) to the National Council on the Arts will be held on December 3–4, 1998. The panel will meet from 9:00 a.m. to 5:30 p.m. on December 3rd, and from 9:00 a.m. to 3:00 p.m. on December 4th, in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506. A portion of this meeting, from 12:45 p.m. to 1:45 p.m. on December 4th, will be open to the public for a policy discussion.

The remaining portions of this meeting, meeting from 9:00 a.m. to 5:30 p.m. on December 3rd and from 9:00 a.m. to 12:45 p.m. and 1:45 p.m. to 3:00 p.m. on December 4th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5691.

Dated: November 10, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–30733 Filed 11–16–98; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of November 16, 23, 30, and December 7, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 16

Tuesday, November 17

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of November 23—Tentative

Tuesday, November 24

10:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of November 30—Tentative

Monday, November 30

2:00 p.m.
Meeting on DC Cook (Public Meeting) (Contact) John Stang, 301–415–1345)
3:30 p.m.
Affirmation Session (Public Meeting) (if needed)

Week of December 7—Tentative

Tuesday, December 8

9:00 a.m.
Briefing on EDO Program (Public Meeting) (Contact: Irene Little, 301–415–7380)
11:00 a.m.
Affirmation Session (Public Meeting) (if needed)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meeting 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.

* * * * *

Dated: November 13, 1998.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 98–30853 Filed 11–13–98; 2:57 pm]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

The White House

Washington

October 22, 1998.

Dear Mr. President: In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report two deferrals of budgetary resources, totaling $167.6 million.

The deferrals affect programs of the Department of State and International Security Assistance.

Sincerely,
William J. Clinton.

The Honorable Albert Gore
President of the Senate
Washington, D.C. 20515

The White House

Washington

October 22, 1998.

Dear Mr. Speaker: In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report two deferrals of budgetary resources, totaling $167.6 million.

The deferrals affect programs of the Department of State and International Security Assistance.

Sincerely,
William J. Clinton.

The Honorable Newt Gingrich
Speaker of the House of Representatives
Washington, D.C. 20510

Deferral No. D99–1

Deferral of Budget Authority

Report Pursuant to Section 1013 of P.L. 93–344

Agency: Department of State.
Bureau: Other.
Account: United States Emergency Refugee and Migration Assistance Fund [1] (11X0400).
New budget authority:—
Other budgetary resources: $82,857,659
Total budgetary resources: 82,857,659
Amount deferred for entire year: $82,857,659

Justification: This deferral withholds funds available for emergency refugee and migration assistance for which no determination has been made by the President to provide assistance as required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Section 501(a) of the Foreign Relations Authorization Act of 1976 (Public Law 94–141) and section 414(b)(1) of the Refugee Act of 1980 (Public Law 96–212) amended section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for emergency refugee and migration assistance to the Secretary of State, but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

[1] This account was the subject of a similar deferral in FY 1998 (D98–7).

Estimated programmatic effect: None.

Deferral No. D99–2

Deferral of Budget Authority

Report Pursuant to Section 1013 of P.L. 93–344

Agency: International Assistance Programs.

Bureau: International Security Assistance.

Account: Economic support fund [2] (72X1037, 728/91037)[3]

New budget authority:—

Other budgetary resources: $262,603,378

Total budgetary resources: 262,603,378

Amount deferred for entire year: $84,777,327

Justification: This deferral withholds funds available for international assistance pending the development of country-specific plans that assure that aid is provided in an efficient manner. Funds also are reserved for unanticipated program needs. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

The President is authorized by the Foreign Assistance Act of 1961, as amended, to furnish assistance to countries and organizations, on such terms and conditions as he may determine, in order to promote economic or political stability. Section 531(b) of the Act makes the Secretary of State, in cooperation with the Administrator of the Agency for International Development, responsible for policy decisions and justifications for economic support programs, including whether there will be an economic support program for a country and the amount of the program for each country. This deferral of funds for the Economic Support Fund has no effect on the availability of funds for the International Fund for Ireland.

Estimated programmatic effect: None.

[FR Doc. 98–30620 Filed 11–16–98; 8:45 am]

BILLING CODE 3110–01–P

[2] This account was the subject of a similar deferral in FY 1998 (D98–1).

[3] The amounts deferred by account are:

72X1037	$30,771,075
728/91037	54,006,252

POSTAL RATE COMMISSION

Tour of Advo, Inc.

AGENCY: Postal Rate Commission.

ACTION: Notice of Commission Visit.

SUMMARY: Members of the Postal Rate Commission, accompanied by members of the Commission's Advisory and Consumer Advocate staffs will tour the Columbia, MD facility of Advo Inc. on Tuesday, November 17, 1998, beginning at 9:15 am. Following the tour, the group will meet with executives of Advo and businesses that utilize saturation mail to learn about industry trends.

DATES: The visit is scheduled for November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268–0001, (202) 789–6820.

Dated: November 12, 1998.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 98–30754 Filed 11–16–98; 8:45 am]

BILLING CODE 7715–01–M

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 will hold the following meeting during the week of November 16, 1998.

A closed meeting will be held on Thursday, November 19, 1998, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be 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 scheduled for Thursday, November 19, 1998, at 11:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

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.

November 12, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–30795 Filed 11–13–98; 11:36 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40653; File No. SR–NASD–98–82]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Increase in Advertising Fee Rates

November 10, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and rule 19b–4 thereunder,[2] notice is hereby given that on November 2, 1998, NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. NASD Regulation has designated this proposal as establishing or changing a fee under Section 19(b)(3)(A)(ii), which renders the proposal effective upon receipt of this filing by the Commission. The NASD, however, will make the filing effective on January 1, 1999. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Section 13 of Schedule A of the NASD By-Laws to increase the review charge for advertisements, sales literature, and other such material filed or submitted. Set forth below is the text of the proposed rule change. Proposed new language is italicized and proposed deletions are in brackets.

* * * * *

Schedule A to the NASD By-Laws

Section 13—[Service] *Review* Charge for Advertisement, Sales Literature, and Other Such Material Filed or Submitted

There shall be a [service] *review* charge for each and every item of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

advertisement, sales literature, and other such material, whether in printed, video, electronic or other form, filed with or submitted to the Association, except for items that are filed or submitted in response to a written request from the Association's Advertising Regulation Department issued pursuant to the spot check procedures set forth in the Association's Rules as follows: (1) for printed material reviewed, [$50.00] *$75.00,* plus $10.00 for each page reviewed in excess of 10 pages; and (2) for video or audio media, [$50.00] *$75.00,* plus $10.00 per minute for each minute of tape reviewed in excess of 10 minutes.

Where a member requests expedited review of material submitted to the Advertising Regulation department there shall be a [service] *review* charge of $500.00 per item plus $25 for each page reviewed in excess of 10 pages. Expedited review shall be completed within three business days, not including the date the item is received by the Advertising Regulation Department, unless a shorter or longer period is agreed to by the Advertising Regulation Department. The Advertising Regulation Department may, in its sole discretion, refuse requests for expedited review.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Advertising/Investment Companies Regulation Department evaluates member firms' advertisements and sales literature for compliance with applicable rules of the NASD, SEC, Municipal Securities Rulemaking Board and Securities Investor Protection Corporation. These public communications include print, television and radio advertisements, or electronic communications such as Web sites. They also include brochures, form letters, mailers and telemarketing scripts. The rules address investor protection concerns and require all communications to be accurate and to provide a sound basis for making an investment decision. The rules prohibit the use of exaggerated or misleading statements.

The Department operates three principal programs: filings, investigations and spot checks. The filings program is by far the largest in terms of communications reviewed and resources used. Approximately 1,450 member firms submitted sales material last year, either voluntarily or pursuant to a rule requirement. The Department also investigates misleading communications and provides expertise to Enforcement and the District Offices concerning the complex provisions of the SEC and NASD advertising rules. Finally, the Department conducts targeted spot checks of member communications that may not be subject to the filing requirements, but which must comply with the applicable rules.

The Department needs additional resources to enhance its operations and provide timely, high quality reviews. Significant increases in filing volume and workload have hampered the Department's operations. For example, between 1994 and 1997, the number of communications reviewed in the filings and spot check programs increased 43%, from 42,681 to 61,096. The Department expects filing volume to continue to increase in subsequent years.

NASD Regulation therefore intends to dedicate additional staff and resources to the Department, as well as to the other departments whose programs are related to the regulation of member communications with the public. The Cost of the additional staff and resources will be covered from the increase in advertising fee rates.

Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) [3] of the Act, which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges. NASD Regulation believes that the proposed rule change reasonably provides for an increase in the regular filing fees for advertising to help defray the costs associated with the significant increase in advertising activities and possible advertising rule violations.

[3] 15 U.S.C. 78o–3.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSAD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness on the Proposed Rule Change And Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [4] and subparagraph (e) of Rule 19b–4 thereunder in that it constitutes a due, fee or other charge. However, the NASD has determined to implement the rule change on January 1, 1999. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of Act.[5]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] In reviewing this proposal, the Commission considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

SR–NASD–98–82 and should be submitted by December 8, 1998.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30717 Filed 11–16–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40657; File No. SR–NSCC–98–06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Modifying the Automated Customer Account Transfer Service

November 10, 1998.

On June 5, 1998, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–NSCC–98–06) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') and on June 17, 1998, amended the proposed rule change.[1] Notice of the proposal was published in the **Federal Register** on October 5, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

NSCC's automated customer account transfer service (''ACATS'') enables members of NSCC to effect automated transfers of customer accounts among NSCC members.[3] The proposed rule change expands the types of eligible ACATS participants and the kinds of accounts that may be transferred. Additionally, it permits NSCC to transmit date to clearing agencies in order to expand the automated settlement capabilities of ACATS.[4]

A. Users

Currently, only NSCC members, primarily broker-dealers, may participate in ACATS. The proposed rule change permits a qualified securities depository (''QSD'') to also effect customer account transfers through ACATS on behalf of its participants.[5] Thus the proposed rule change permits ACATS transfers between two participants of a QSD and between a QSD participant and an NSCC member.

B. Transfers

The proposed rule change sets forth three categories of ACATS transfers: (1) Receiving members[6] initiated full account transfers; (2) delivering member[7] initiated partial account transfers; and (3) receiving member initiated partial account transfers. Categories one and two, while previously available are modified by the proposal. Category three is a new addition to ACATS.

1. Receiving Member Initiated Full Account Transfers

Under the revised ACATS, a receiving member is required to submit transfer information to NSCC in automated format. The ''transfer initiation request'' paper form is no longer accepted by NSCC.[8]

Currently, once a delivering member rejects a receiving member's transfer request, the receiving member is required to reinitiate the ACATS process. The rule filing provides that in response to certain enumerated categories of delivering member rejections, the receiving member may make corrections to its customer account transfer request. This allows a receiving member to adjust its customer account transfer request by submitting corrections to NSCC within one business day after notification of a delivering member's rejection. A delivering member must then either reject the adjusted transfer request by submitting a new rejection to NSCC or submit to NSCC detailed customer account asset data. If the delivering member fails to respond to the adjusted transfer request within the time frame established by NSCC, NSCC will delete the request from ACATS and will notify the receiving and delivering members.

To the extent that a receiving member determines that any information as reported on the tranfer initiation request is inaccurate, the rule filing provides that the receiving member may cause an adjustment to be made by submitting corrected data to NSCC. Similarly, if a delivering member determines that the account number of its customer as reported on the transfer initiation request is inaccurate, it may cause that adjustment to be made by submitting corrected data to NSCC.

Under the revisions, upon submission of customer account asset data, the delivering member is required to specify the quantity of mutual fund services eligible book share mutual fund assets (''mutual fund assets'') to be processed, if any, and to indicate whether the transfer is a full or a partial transfer. A full transfer will cause all mutual fund assets, whether greater or lesser than the quantity specified, to be transferred. A partial transfer will cause only the quantity specified or, if the account has less than such amount, such lesser amount to be transferred. Since the actual quantity registered on the records of the mutual fund may be adjusted between the time of the transfer request submission and settlement of the ACATS transfer (due for example to reinvested dividends or capital gains), this modification provides ACATS participants with a means to transfer the quantity of assets available on settlement date (*i.e.*, a full transfer). In addition, the rule filing states that if the transfer is not confirmed or rejected by the mutual fund processor or fund member within the time frame established by NSCC, it will be deleted from the Fund/Serv system[9] by NSCC. As a result, such transfer requests will no longer pend in NSCC's systems for an indefinite period of time.

The proposed rule change permits a receiving member to accelerate the transfer of a customer account by

---

[6] 17 CFR 200–30–3(a)(2).

[1] 15 U.S.C. 78s (b)(1).

[2] Securities Exchange Act Release No. 40487 (September 28, 1998), 63 FR 53479.

[3] ACATS complements New York Stock Exchange (''NYSE'') and National Association of Securities Dealers (''NASD'') rules that require NYSE and NASD members to use automated clearing agency customer account transfer services and to effect customer account transfers within specified time frames. For a description of ACATS as it was before the revisions approved by this order, refer to Securities Exchange Act Release No. 22481 (September 30, 1985), 50 FR 41274 (SR–NSCC–85–07); Securities Exchange Act Release No. 34879 (October 21, 1994), 59 FR 54229 (SR–NSCC–94–13); and NSCC Rule 50.

[4] NSCC stated that another reason for the redesign is to make the ACATS system Year 2000 compliant.

[5] QSD is a defined term in NSCC's Rule 1 as a registered clearing agency, pursuant to section 3(a)(23) of the Act, that has entered into an agreement with NSCC pursuant to which it will act as a securities depository for NSCC and will effect book-entry transfers of securities for NSCC with respect to NSCC's continuous net settlement system. The Depository Trust Company is the only registered clearing agency that has entered into such an agreement with NSCC.

[6] The proposed rule change defines the receiving member as a NSCC member or QSD to who a customer's full account is to be transferred.

[7] The proposed rule change defines the delivering member as the NSCC member or QSD which currently has the account.

[8] A receiving member will be able to continue to utilize the facilities of NSCC to submit physical documentation that a delivering member may need in order to act upon the receiving member's request.

[9] For a complete description of NSCC's Fund/SERV system refer to Securities Exchange Act Release No. 31937 (March 1, 1993), 58 FR 12609 (File No. SR–NSCC–92–14) (order approving proposed rule change regarding Fund/SERV system).

accepting the report detailing the customer account asset data on the business day it receives the report from NSCC. However, under these new circumstances, if a delivering member submits a timely adjustment to an account for which an accelerated acceptance has been received by NSCC, it will cause such accelerated acceptance to be void.

To the extent an ACATS transfer is between two NSCC members, the proposed rule change differentiates between the processing of continuous net settlement (''CNS'') eligible and non-CNS eligible items that are otherwise eligible at The Depository Trust Company (''DTC''). The rule filing does not change the processing of CNS eligible items. The proposed rule change provides that NSCC will produce ACATS instruction files for all non-CNS eligible items that are otherwise eligible at DTC. The instruction files will be similar to DTC deliver orders (*i.e.*, naming the receiving and delivering participants, the quantity of the securities to be delivered, and the value for such delivery). Any such deliveries are subject to the rules of DTC. If a delivering member does not want instruction files to be submitted to DTC, it may request at the time the account asset details are submitted or pursuant to a standing instruction filed with NSCC that separate receive and deliver instructions be produced. In such instance, it is up to the delivering member to initiate the delivery of the asset.

Under the proposed rule change, foreign currency assets may be transferred from a delivering member to a receiving member. ACATS will produce receive and deliver instructions but will not specify a value for such assets.

To the extent that either a receiving member or a delivering member (or both) is a participant of a QSD, such transfer will be processed as ACATS transfers with NSCC members as both the receiving member and the delivering member with the exceptions specified below:

i. For all DTC eligible assets, other than United States dollar cash balances (''cash''), assets covered by a standing instruction filed by a delivering member with NSCC, and assets for which a receive/deliver instruction request was received from a delivering member at the time asset details were submitted, NSCC will issue an instruction file to DTC specifying the quantity of each asset to be delivered with a deliver value of zero.

ii. For all non-DTC eligible assets (other than assets available at other registered clearing agencies and cash), assets covered by standing instruction filed by a delivering member with NSCC and asset for which a receive/deliver instruction request was received from a delivering member at the time asset details were submitted, NSCC will produce receive and deliver instructions naming the receiving member and the delivering member. All such receive and deliver instructions will specify no value. Unlike a transfer between NSCC members, NSCC will not debit and credit the value of assets being transferred between participants of a QSD or between a participant of a QSD and a member of NSCC.[10]

iii. If the account has a cash balance, NSCC will issue an instruction to DTC indicating the participants to be debited and credited and the corresponding amount.

2. Delivering Member Initiated Partial Account Transfers

The proposed rule change permits a delivering member to initiate some types of partial account transfers. In addition to the transfer of residual credit positions, delivering members are able to: Deliver a partial account (in the form of cash or securities); initiate the delivery of a position which was purchased by the delivering member for the benefit of a customer's account and which the customer wants custodied at the receiving member; obtain the return of cash previously paid with respect to fail positions for which delivery is unable to be completed;[11] and obtain the return of cash or securities mistakenly delivered through ACATS other than mutual fund assets and positions eligible for processing at The Options Clearing Corporation (''OCC''), the Government Securities Clearing Corporation (''GSCC''), or the Participants Trust Company (''PTC'').[12]

A delivering member may initiate a transfer by submitting to NSCC those transfer details that are required by NSCC. NSCC will reject the transfer if the details contain an edit or format error. NSCC will notify the delivering member if a transfer is rejected in which case the delivering member must reinitiate the transfer as if it had never been previously submitted.

A receiving member may reject the transfer by submitting information on the same day as the transfer request is received. No action will be required by the receiving member if it determines to accept the transfer. A receiving member may not submit corrections, and a delivering member may not make adjustments to such transfer request.

Settlement date is one business day following the day NSCC receives the transfer request unless the request includes option assets which are eligible for processing at OCC in which case the settlement date for all assets shall be two business days following the day NSCC receives the transfer request.

3. Receiving Member Initiated Partial Account Transfers

Under the proposed rule change, a receiving member may submit a request to initiate the transfer of a partial customer account. The request will be delivered by NSCC to the delivering member on the same day that it is received by NSCC. Each day NSCC will produce a report that indicates all of the requests received by NSCC that day. A delivering member may respond to a receiving member's request for a partial account transfer at any time by the delivering member initiating a partial account transfer as described in the delivering member initiated transfer section above. No action is required by the delivering member if it determines not to respond to a request, and no transfer will occur.

C. Agreement With DTC

NSCC is entering into an agreement with DTC to permit DTC to obtain access to ACATS on behalf of its participants.[13] NSCC's agreement with DTC will permit ACATS to be used for the transfer of accounts between two DTC participants or between a DTC participant and an NSCC member.

D. Linkage Agreements

NSCC currently has an agreement in place with OCC regarding the transfer of options positions within customer accounts being transferred pursuant to ACATS. The agreement provides that NSCC may send instructions to OCC for the delivery and receipt of options positions on behalf of ACATS participants that are members of NSCC as well as of OCC.

In order to broaden the types of assets which can be transferred through

---

[10] Under the current ACATS rule, the delivering firm is debited the current market value of the assets and the member receiving firm is credited the current market value of the assets. The member delivering firm recovers its money by making delivery of the assets. Under the proposed rule change, whenever a QSD participates in the ACATS process, the assets will be delivered on a no value basis.

[11] This service may only be initiated to the extent that the fail is between two NSCC members.

[12] This service may only be initiated to the extent that the delivery is between two NSCC members.

[13] This agreement will be similar to the current agreement between NSCC and DTC regarding DTC's access to NSCC's mutual funds services.

ACATS based on instructions from NSCC, the proposed rule change permits NSCC to establish links with other registered clearing agencies (''RCA''), such as DTC, PTC, and GSCC. Once an agreement has been reached with the applicable RCA, to the extent a transfer involves an asset position eligible for delivery at such RCA and both the receiving member and delivering member have an account there, NSCC will issue instructions to the applicable RCA indicating the delivering or receiving participant and the quantity of assets to be delivered and received. The instructions will not specify a value unless the transfer is between two members of NSCC and the assets to be transferred are government securities (where a nominal value shall be specified) [14] or mortgage-backed securities. If the assets are mortgage-backed securities, on settlement date NSCC will debit the deliverer the value and credit the receiver the value of the assets.

E. Indemnification Provision

The proposed rule change includes indemnification provisions similar to those currently in use by users of ACATS. While the revised rule includes such provisions, it does not preclude participants from entering into separate indemnification arrangements which are broader than those contained in the rule.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(F).[15] Section 17A(b)(3)(A)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that NSCC's rule change meets this standard because the changes to ACATS such as the ability to electronically transfer accounts not only to and from broker-dealers but not to and from banks and other financial institutions, the ability to do partial transfers, the ability to make certain corrections to instructions, and the ability to electronically transfer U.S. government and mortgage-backed securities, should provide a more efficient method for the transfer of customer assets and should encourage use by more financial institutions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of sections 17A(b)(3) (A) and (F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–98–06) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30716 Filed 11–16–98; 8:45 am]

BILLING CODE 8010–01–M

[14] On June 17, 1998, NSCC amended the proposed rule change (File No. NSCC–98–06) to include the transfer of government securities where a nominal value is specified.

[15] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3146]

State of Kansas

As a result of the President's major disaster declaration on November 5, 1998, and an amendment thereto on November 9, 1998, I find that Butler, Chase, Coffey, Cowley, Franklin, Harvey, Lyon, Neosho, Sedgwick, Sumner, and Wilson counties in the State of Kansas constitute a disaster area due to damages caused by severe storms and flooding which occurred beginning October 30, 1998 and continuing. Applications for loans for physical damages may be filed until the close of business on January 4, 1999, and for loans for economic injury until the close of business on August 5, 1999 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Allen, Anderson, Bourbon, Chautauqua, Crawford, Douglas, Elk, Greenwood, Harper, Kingman, Johnson, Labette, Linn, Marion, McPherson, Miami, Montgomery, Morris, Osage, Reno, Wabaunsee, and Woodson in the State of Kansas; and Grant, Kay, and Osage in the State of Oklahoma may be filed until the specified date at the above location.

The interest rates are:

	Percent
Physical Damage:	
Homeowners with credit available elsewhere	6.750
Homeowners without credit available elsewhere	3.375
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 314611 and for economic injury the numbers are 9A5100 for Kansas and 9A5200 for Oklahoma.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 10, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–30662 Filed 11–16–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3145]

State of Texas; Amendment #2

In accordance with a notice from the Federal Emergency Management Agency dated November 6, 1998, the above-numbered Declaration is hereby amended to include the Counties of Atascosa, Brazoria, Galveston, Liberty, Matagorda, Nueces, and San Jacinto in the State of Texas as a disaster area due to damages caused by severe storms, flooding, and tornadoes which occurred October 17 through October 31, 1998.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Frio, Hardin, Jefferson, Jim Wells, Kleberg, La Salle, McMullen, Polk, and Trinity in the State of Texas. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is December 19, 1998 and for economic injury the termination date is July 19, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 9, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–30663 Filed 11–16–98; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Renewal of Treatment on Government Procurement of Products from Countries Designated under the Caribbean Basin Economic Recovery Act

Under the authority delegated to me by the President in section 1–201 of Executive Order 12260 of December 31, 1980, I hereby direct that products of countries, listed below, designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, et. seq.), shall continue to be treated as eligible products for purposes of section 1–101 of Executive Order 12260 until September 30, 1999. Additionally, products of Panama shall continue to be treated as eligible products for purposes of section 1–101 of Executive Order 12260 until September 30, 2000. Such treatment shall not apply to products originating in these countries that are excluded from duty free treatment under 19 U.S.C. 2703(b). Decisions on the subsequent renewal of this treatment beyond September 30, 1999, and September 30, 2000 for Panama, will be based on beneficiaries' efforts to improve domestic procurement practices, their support for relevant international initiatives, including in the World Trade Organization (WTO) Working Group on Transparency in Government Procurement, and the Free Trade Area of the Americas (FTAA) Negotiating Group on Government Procurement, including support for an FTAA Agreement on Transparency as an element of business facilitation, and on progress toward accession to the WTO Government Procurement Agreement.

Charlene Barshefsky,

United States Trade Representative.

List of Countries Designated as Beneficiary Countries for Purpose of the Caribbean Basin Economic Recovery Act (CBERA):

Antigua and Barbuda, Aruba, the Bahamas, Barbados, Belize, Costa Rica, Dominica, the Dominican Republic; El Salvador; Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, the Netherlands Antilles, Nicaragua, Panama, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, Montserrat, Netherlands Antilles, Saint Kitts-Nevis, British Virgin Islands.

[FR Doc. 98–30703 Filed 11–16–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 USC Chapter 35). Section 3507 of Title 44 of the United States Code, requires that agencies prepare a notice for publication in the **Federal Register**, listing information collection request submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

The **Federal Register** Notice with a 60-day comment period soliciting comments on information collection 2120–0034 was published on September 4, 1998 (63 FR 47340).

DATES: Comments on this notice must be received on or before December 17, 1998.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Ms. Judith Street, Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Ave., SW., (202) 267–9895, Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Commuter Operations and General Certification and Operations Requirements.

OMB Control Number: 2120–0593.

Form(s): FAA Form 8400–6.

Type of Request: Revision of a currently approved collection.

Affected Public: Transition of some 135 carriers to part 121 rules.

Abstract: The regulation requires that certain commuter operators conduct their operations under part 121 instead of part 135. Affected operators include those conducting scheduled, passenger-carrying operations with airplanes with 10–30 seats. The reporting requirements are similar but different between parts 121 and 135. This submission reflects only the additional burden associated with part 135 carriers transitioning to part 121 standards.

There will be a change to the collection of information. The transition portion of this rule is complete. However, Part 119 continues to cover new carriers and some ongoing requirements. The burden associated with the transition portion will be removed, and only burden associated with new carriers and ongoing requirements will be reflected in the updated submission.

Estimated Burden: The estimated total annual burden is 8,803 hours.

ADDRESSES: Written comments on the DOT information collection request should be forwarded, within 30 days of publication, to Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, Washington, D.C. 20503, ATTN: FAA Desk Officer. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

Comments Are Invited On

Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collections; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on November 9, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–30688 Filed 11–16–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements filed during the week ending November 6, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–4709
Date Filed: November 4, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC23 AFR–TC3 0057 dated October 20, 1998 r1–23
PTC23 AFR–TC3 0058 dated October 20, 1998 r24–36
Africa-Japan/Korea & Southwest Pacific Resos
PTC23 AFR–TC3 0054 dated October 16, 1998—Minutes
PTC23 AFR–TC3 Fares 0027 dated October 27, 1998
PTC23 AFR–TC3 Fares 0028 dated October 27, 1998—Tables
Intended effective date: April 1, 1999.

Docket Number: OST–98–4710
Date Filed: November 4, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC23 ME–TC3 0053 dated October 16, 1998
Middle East–TC3 Resolutions r1–51
PTC23 ME–TC3 0053 dated October 20, 1998—Minutes
PTC23 ME–TC3 Fares 0023 dated October 27, 1998—Tables
Intended effective date: April 1, 1999.

Docket Number: OST–98–4711
Date Filed: November 4, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC123 0056 dated October 27, 1998
Reso 015v—Add-on Amounts (except in USA)
Intended Effective Date: April 1, 1999.

Docket Number: OST–98–4712
Date Filed: November 4, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC31 N/C 0072 dated October 30, 1998 r1–4
PTC31 N/C 0073 dated October 30, 1998 r5
Expedited Japan/TC3—North America/Caribbean Resos
PTC31 S/CIRC 0055 dated October 30, 1998 r6–7
Expedited Circle Pacific Resos
Intended effective date: December 15, 1998.

Docket Number: OST–98–4713
Date Filed: November 4, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC31 N/C 0074 dated October 20, 1998
TC3-Central/South America Reso 002n
Intended effective date: December 15, 1998.

Dorothy W. Walker,
Federal Register Liaison.

[FR Doc. 98–30690 Filed 11–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending November 6, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–4686.
Date Filed: November 2, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 30, 1998.
Description: Application of Continental Airlines, Inc. pursuant to 49 U.S.C. 41108 and subpart Q, applies for a certificate of public convenience and necessity authorizing it to provide scheduled foreign air transportation of persons, property and mail between a point or points in the United States either directly or via intermediate points and a point or points in France and beyond France to points in their countries to the full extent authorized by the U.S.-France Air Transport Agreement.

Docket Number: OST–97–3187.
Date Filed: November 3, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 1, 1998.
Description: Application of Transportes Aereos Ejecutivos, S.A. de C.V. pursuant to 49 U.S.C. 41302 and subpart Q, requests an amendment and re-issuance of its Foreign Air Carrier Permit issued by Order 95–3–11, to permit TAESA to engage in scheduled air transportation of persons, property and mail on the following Mexico-U.S. scheduled combination routes for; the coterminal points Guadalajara and Leon (El Bajio), Mexico, on the one hand, and Ontario, California on the other hand.

Docket Number: OST–98–4688.
Date Filed: November 3, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 1, 1998.
Description: Application of Air Evac Services, Inc. pursuant to 49 U.S.C. 41102 and subpart Q, requests authority to engage in interstate charter air transportation of passengers and cargo.

Docket Number: OST–98–4707.
Date Filed: November 4, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 2, 1998.
Description: Application of Trans World Airlines, Inc. pursuant to 49 U.S.C. 41101 and subpart Q, requests a certificate to engage in scheduled foreign air transportation of persons, property and mail between any point in the United States, on the one hand, and any point in Canada, on the other hand.

Docket Number: OST–98–4685.
Date Filed: November 6, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 4, 1998.
Description: Application of Federal Express Corporation pursuant to 49 U.S.C. 41102 and subpart Q, applies for a new certificate of public convenience and necessity authorizing scheduled foreign air transportation of property and mail between points in the United States, on the one hand, and points in France, on the other hand.

Dorothy W. Walker,
Federal Register Liaison.

[FR Doc. 98–30689 Filed 11–16–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Joint Special Committee 182/ EUROCAE Working Group 48; Minimum Operational Performance Standards (MOPS) for an Avionics Computer Resource

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee

(SC)–182/EUROCAE Working Group (WG)–48 meeting to be held December 9–11, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Chairman's Introductory Remarks; (2) Review and Approval of the Agenda; (3) Review of Meeting Report: Joint RTCA SC–182/EUROCAE WG–48 Meeting (9/09–11/98); (4) Review MOPS Draft 1.3: Inclusion of selected comments; (5) Discuss and recommend for inclusion in draft 1.4: Comments 14, 36, 38, 43–66; (6) Portability and DO–178B objectives achieved independent of the platform; (7) Working Group Sessions; (8) Working Group Reports; (9) Other Business; (10) Date and Place of Next Meeting (03/09–11/99, location to be announced).

Attendance 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, NW., 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 November 9, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–30728 Filed 11–16–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Joint RTCA Special Committee 180 and EUROCAE Working Group 46 Meeting; Design Assurance Guidance for Airborne Electronic Hardware

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a joint RTCA Special Committee 180 and EUROCAE Working Group 46 meeting to be held December 15–17, 1998, starting at 8:30 a.m. on December 15. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Review and Approval of Minutes of Previous Joint Meeting; (4) Leadership Team Meeting Report; (5) Review Action Items; (6) Review Issue Logs; (7) Issue Team Status; (8) Plenary Disposition of Document Comments; (9) New Items for Consensus; (10) Special Committee 190 Committee Activity Report; (11) Other Business; (12) Establish Agenda for Next Meeting; (13) Date and Place of Next Meeting.

Attendance 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, NW., 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 November 9, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–30727 Filed 11–16–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Palm Beach International Airport, West Palm Beach, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites pubic comment on the application to impose and use the revenue from a PFC at Palm Beach International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 17, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jerry L. Allen, Director of Planning and Development of the Palm Beach County Department of Airports at the following address: Palm Beach International Airport, Building 846, West Palm Beach, Florida 33406–1491.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Palm Beach Department of Airports under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Jennifer A. Ganley, P.E., Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822. Phone: (407) 812–6331, ext. 25. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Palm Beach International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 9, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Palm Beach County Department of Airports was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 17, 1999.

The following is a brief overview of the application.

PFC Application No.: 99–04–C–00–PBI.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 1999.

Proposed charge expiration date: March 1, 2002.

Total estimated PFC revenue: $18,933,000.

Brief description of proposed project(s): Extend Runway 9L–27R by 1,200 feet to the west and 811 feet to the east; Acquire approximately 10.577 acres of land located in the Runway 31 Runway Protection Zone; Update the Facility Management System, the Multiple User Flight Information System, and Audio Systems in the main terminal.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators Filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Palm Beach County Department of Airports.

Issued in Orlando, Florida on November 9, 1998.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 98–30729 Filed 11–16–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket MARAD–98–4736]

Crowley American Transport, Inc.; Notice of Application to Increase Service in the Non-Contiguous Domestic Trade for Puerto Rico

Crowley American Transport, Inc. (Crowley), by application dated September 30, 1998, as amended on November 9, 1998, has applied for an increase in the authorized level of the container service that it provides to the Commonwealth of Puerto Rico (Puerto Rico), pursuant to section 656(d) of Subtitle B, Title VI, of the Merchant Marine Act, 1936, as Amended (1936 Act). Crowley has requested that this increase in its authorized service level be made on the basis of the information on growth in Real Gross Product for Puerto Rico provided in support of the application filed by Sea-Land Service, Inc. for a similar increase in its container service to Puerto Rico in Docket 98–4297.

This application is Crowley's first request for such adjustment as permitted under section 656(d) and contains adjustments for growth in Puerto Rico's RGP for Fiscal Years 1996, 1997 and 1998. A summation of the service level increases requested by Crowley is attached hereto as Table I.

Any person, firm or corporation having an interest in this application for increased service authorization, and who desires to submit comments concerning Crowley's application, should refer to the docket number that appears on this notice and must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Nassif Building, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. Such comments must be filed in triplicate and received no later than 5:00 P.M. Eastern Time, December 17, 1998.

The application and all comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http:/dms.dot.gov.

By Order of the Maritime Administrator.

Dated: November 10, 1998.

Joel C. Richard,

Secretary, Maritime Administration.

TABLE I.—CROWLEY AMERICAN TRANSPORT, INC.; REQUESTED INCREASE IN AUTHORIZED NON-CONTIGUOUS DOMESTIC SERVICE FOR THE COMMONWEALTH OF PUERTO RICO

Default and authorized level of service as of August 9, 1995: 220,750 TEUs.
Increase for Puerto Rico Fiscal Year 1996 (July 1, 1995 to June 30, 1996).
Growth in Real Gross Product: +3.3 percent.
Proration, August 9, 1995 to June 30, 1996 = 326/366 Days (1996 was a leap year) = .89.
(.89) × (3.3) = 2.94 percent.
Increase = (.0294) × (220,750) = 6,490 TEUs.
Total as of June 30, 1996 = 227,240 TEUs.
Increase for Puerto Rico Fiscal Year 1997 (July 1, 1996 to June 30, 1997).
Growth in Real Gross Product: +3.2 percent.
Increase = (.032) × (227,240) = 7,272 TEUs.
Total as of June 30, 1997 = 234,512 TEUs.
Increase for Puerto Rico Fiscal Year 1998 (July 1, 1997 to June 30, 1998).
Growth in Real Gross Product: +3.0 percent (Tentative).
Increase = (.030) × (234,512) = 7,035 TEUs.
Total as of June 30, 1998 = 241,547 TEUs.

[FR Doc. 98–30730 Filed 11–16–98; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Research and Development Programs Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will describe and discuss specific research and development projects. Further, the notice requests suggestions for topics to be presented by the agency.

Dates and Times: The National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on December 17, 1998, beginning at 1:30 p.m. and ending at approximately 5:00 p.m. The deadline for interested parties to suggest agenda topics is 4:15 p.m. on November 30, 1998. Questions may be submitted in advance regarding the agency's research and development projects. They must be submitted in writing by December 3, 1998, to the address given below. If sufficient time is available, questions received after the December 3 date will be answered at the meeting during the discussion period. The individual, group, or company asking a question does not have to be present for the question to be answered. A consolidated list of answers to questions submitted by December 3 will be available at the meeting and will be mailed to requesters after the meeting.

ADDRESSES: The meeting will be held at the Clarion Hotel, 9191 Wickham Road, Romulus, MI. Suggestions for specific R&D topics as described below and questions for the December 17, 1998, meeting relating to the agency's research and development programs should be submitted to the Office of the Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Room 6206, 400 Seventh St., SW, Washington, DC 20590. The fax number is (202) 366–5930.

SUPPLEMENTARY INFORMATION: In recent years, since April 1993, NHTSA has provided detailed information about its research and development programs in presentations at a series of public meetings. The purpose is to make available more complete and timely information regarding the agency's research and development programs. This is the twenty-second meeting in that series, and it will be held on December 17, 1998, at the Clarion Hotel, 9191 Wickham Road, Romulus, MI.

NHTSA requests suggestions from interested parties on the specific agenda topics to be presented. NHTSA will base its decisions about the agenda, in part, on the suggestions it receives by close of business at 4:15 p.m. on November 30, 1998. Before the meeting, it will publish a notice with an agenda listing the research and development topics to be discussed. The agenda can also be obtained by calling or faxing the information numbers or the E-mail address listed elsewhere in this notice or from NHTSA's Web site under Announcements/Public Meetings at URL http://www.nhtsa.dot.gov/nhtsa/announce/meetings/. NHTSA asks that the suggestions be limited to six, in priority order, so that the presentations at the December 17 R&D meeting can be most useful to the audience. Specific R&D topics are listed below. Many of these topics have been discussed at previous meetings. Suggestions for agenda topics are not restricted to this listing, and interested parties are invited to suggest other R&D topics of specific interest to their organizations. Additionally, if any interested parties would like to make a presentation regarding technical issues concerning any of NHTSA's research programs, information concerning the proposed topic and speaker should be submitted in writing by close of business November 30, 1998.

Specific R&D topics are:

Fiscal Year 1999 R&D Research Efforts,
International Harmonized Research Activities (IHRA),
On-line tracking system for NHTSA's research projects, and
Crash Injury Research and Engineering Network (CIREN).

Specific Crashworthiness R&D topics are:

Status of advanced air bag research,
Demonstration of CD ROM for child restraint/vehicle compatibility,
Preparation of new dummies for assessment of advanced air bag technology,
Status of research on restraint systems for rollover protection,
Improved frontal crash protection (program status, problem identification, offset testing),
Advanced glazing research,
Vehicle aggressivity and fleet compatibility,
Upgrade side crash protection,
Upgrade seat and occupant restraint systems,
Child restraint/air bag interaction (CRABI) dummy testing,
Truck crashworthiness/occupant protection,
National Transportation Biomechanics Research Center (NTBRC),
Head and neck injury research,
Lower extremity injury research,
Thorax injury research,
Human injury simulation and analysis,
Refinements to the Hybrid III dummy, and
Advanced frontal test dummy.

Specific Crash Avoidance R&D topics are:

National Advanced Driving Simulator (NADS),
Intelligent vehicle initiative,
Status and plans for anti-lock brake system (ABS) research and testing,
Human factors guidelines for crash avoidance warning devices,
Drowsy driver monitoring,
Driver workload assessment,
Rearend collision avoidance system guidelines,
Road departure collision avoidance system guidelines,
Intersection collision avoidance system guidelines,
Lane change/merge collision avoidance system guidelines.

National Center for Statistics and Analysis (NCSA) topic is:

Special crash investigation studies of air bag cases.

Separately, questions regarding research projects that have been submitted in writing not later than close of business on December 3, 1998, will be answered. The summary minutes of the meeting, copies of materials handed out at the meeting, and answers to the questions submitted for response at the meeting will be available for public inspection in the DOT Docket in Washington, DC, within 3 weeks after the meeting. Copies of this material will then be available at ten cents a page upon request to DOT Docket, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. The DOT Docket is open to the public from 10:00 a.m. to 5:00 p.m. The summary minutes, handouts, and answers to the questions will also be available on NHTSA's Web site under Announcements/Public Meetings at URL http://www.nhtsa.dot.gov/nhtsa/announce/meetings/.

NHTSA will provide technical aids to participants as necessary, during the Research and Development Programs Meeting. Thus, any person desiring the assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunication devices for deaf persons (TTDs), readers, taped texts, braille materials, or large print materials and/or a magnifying device), please contact Rita Gibbons by telephone on (202) 366–4862, by telefax on (202) 366–5930, or by E-mail at rgibbons@nhtsa.dot.gov by close of business December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Rita Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–4862. Fax number: (202) 366–5930. E-mail: rgibbons@nhtsa.dot.gov.

Issued: November 10, 1998.

Raymond P. Owings,

Associate Administrator for Research and Development.

[FR Doc. 98–30675 Filed 11–16–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33556 (Sub-No. 2) et al.]

Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company; et al.

AGENCY: Surface Transportation Board.

ACTION: Decision No. 21; Notice of Acceptance of Responsive Applications.

SUMMARY: The Board is accepting for consideration the responsive application filed by Ontario Michigan Rail Corporation (OMR)[1] in STB Finance Docket No. 33556 (Sub-No. 2), and the responsive application filed by Canadian Pacific Railway Company (CPR) and St. Lawrence & Hudson Railway Company Limited (SL&H) in STB Finance Docket No. 33556 (Sub-No. 3). The responsive applications relate to the primary application filed July 15, 1998, by Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and Grand Trunk Western Railroad Incorporated (GTW), Illinois Central Corporation (IC Corp.), Illinois Central Railroad Company (ICR), Chicago, Central and Pacific Railroad Company (CCP), and Cedar River Railroad Company (CRRC).[2]

DATES: The effective date of this decision is November 17, 1998. Comments regarding the responsive filings must be filed with the Board by December 11, 1998. Rebuttal in support of the responsive filings must be filed with the Board by January 11, 1999. Briefs (not to exceed 50 pages for the primary applicants and not to exceed 25 pages for all other parties) must be filed with the Board by February 19, 1999.[3]

ADDRESSES: An original and 25 copies of all comments referring to the responsive applications in STB Finance Docket No. 33556 (Sub-No. 2) and STB Finance Docket No. 33556 (Sub-No. 3) must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, Attn: STB Finance Docket No. 33556, 1925 K Street, N.W., Washington, DC 20423–0001.[4]

In addition to submitting an original and 25 copies of all paper documents filed with the Board, parties also must submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or compact discs (CDs), copies of all textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence. Textual materials must be in, or convertible by and into, WordPerfect 7.0. Electronic spreadsheets must be in, or convertible by and into, Lotus 1–2–3 97 Edition, Excel Version 7.0, or Quattro Pro Version 7.0. A copy of each disk or CD submitted to the Board should be provided to any other party upon request.[5] Further details are discussed below.

In addition, one copy of each document filed in these proceedings must be served on: the U.S. Secretary of Transportation; the U.S. Attorney General; Administrative Law Judge David Harfeld, Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Suite 11F, Washington, DC 20426 [(202) 219–2514; FAX: (202) 219–3289] and on each of applicants' representatives: (1) Paul A. Cunningham, Esq., Harkins Cunningham, 1300 19th Street, N.W., Suite 600, Washington, DC 20036–1609; and (2) William C. Sippel, Esq., Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601–6710.

In addition, one copy of all comments filed in these proceedings must be served on the responsive applicants' representatives: Fritz R. Kahn, Esq., Fritz R. Kahn, P.C., Suite 750 West, 1100 New York Avenue, N.W., Washington, D.C. 20005–3934 (representing OMR); and Terence M. Hynes, Esq., Sidley & Austin, 1722 Eye Street, N.W., Washington, DC 20006 (representing CPR and SL&H).

In addition, one copy of all documents filed in these proceedings must be served on all other persons designated parties of record on the Board's service list in STB Finance Docket No. 33556. *See* the service list attached to Decision No. 9 (served September 28, 1998), as modified in Decision No. 13 (served October 20, 1998).[6]

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1613. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: By application filed with the Board on July 15, 1998, the primary applicants seek approval and authorization under 49 U.S.C. 11321–26 for: (1) The acquisition of control, by CNR, through its indirect wholly owned subsidiary Blackhawk Merger Sub, Inc., of control of IC Corp. and through it of ICR and its railroad affiliates; and (2) the resulting common control by CNR of GTW and its railroad affiliates and ICR and its railroad affiliates. A related application for terminal trackage rights in Springfield, IL, was also filed in STB Finance Docket No. 33556 (Sub-No. 1), seeking relief contingent upon approval of the primary application. In Decision No. 6, served August 14, 1998, and published that day in the **Federal Register** at 63 FR 43744–51, the Board accepted for consideration the primary application and the related filing. In Decision No. 11, served October 2, 1998, the Board extended the procedural schedule at the request of various parties and directed that inconsistent and responsive applications be filed by October 27, 1998.[7]

---

[1] Although OMR referred to its filing as an ''inconsistent application,'' the relief sought by OMR is conditional to, rather than in lieu of, approval of the primary application. Accordingly, OMR's filing is a responsive application and will be referred to as such. *See* 49 CFR 1180.3(h).

[2] CNR, GTC, and GTW, and their affiliates, are referred to collectively as CN. IC Corp., ICR, CCP, and CRRC, and their affiliates, are referred to collectively as IC. CN and IC are referred to collectively as applicants.

[3] The briefs should succinctly present all arguments on which parties intend to rely, supported by clear references to any portions of the evidentiary record supporting their positions.

[4] In order for a document to be considered a formal filing, the Board must receive an original and 25 copies of the document, which must show that it has been properly served. In addition, each formal filing must be accompanied by an electronic submission per our requirements as discussed in detail in this decision. Parties must clearly label each formal filing with an identification acronym and number. *See* 49 CFR 1180.4(a)(2). Each disk or CD should be clearly labeled with the identification acronym and number of the corresponding paper document, and labeled as containing confidential or redacted materials. Documents transmitted by facsimile (FAX) will not be considered formal filings and are not encouraged because they will result in unnecessarily burdensome, duplicative processing.

[5] In Decision No. 3 (served May 19, 1998, and published on May 22, 1998, in the **Federal Register** at 63 FR 28442–44), we denied a petition for reconsideration of Decision No. 2, concerning the requirement that parties submit copies of all textual materials on disks or CDs, and stated that parties may individually seek a waiver from the disk-CD requirement.

[6] Members of the United States Congress and Governors are not parties of record and therefore need not be served with copies of filings, unless any such Member or Governor is designated as a party of record. *See* Decision No. 6 (served Aug. 14, 1998), slip op. at 9.

[7] By motion filed November 2, 1998 (designated as ECA–8), Exxon Chemical Americas (ECA) requests that the public version of its comments filed on October 27, 1998, be reclassified as confidential because its public version filed on that date inadvertently included information that should have been redacted. ECA states that it has served corrected copies of the public version of its comments on all parties of record. ECA's motion will be granted.

Responsive Filings: Conditions Requested

In STB Finance Docket No. 33556 (Sub-No. 2), as a condition to any approval of the CN/IC transaction, OMR seeks to require CN to convey its 50% interest in the CNCP Niagara-Detroit Partnership (NDP), owner of the Detroit River Tunnel Company (DRTC), to OMR.[8] In STB Finance Docket No. 33556 (Sub-No. 3), CPR seeks a similar condition requiring CN to convey its one-half interest in DRTC to CPR's affiliate SL&H, which would result in CPR's indirect ownership of 100% of DRTC.

In its application, OMR requests that its proposed divestiture be found to be a minor transaction.[9] Even if OMR's requested relief is a minor transaction, a responsive applicant is required to submit certain information, including operational data and a discussion of the public interest justification in support of the application. *See* 49 CFR 1180.6 and 1180.8. The filing by OMR provides rudimentary financial and operational evidence. On the basis of this information alone, however, the Board will be unable to determine whether there will be significant changes in traffic patterns or whether OMR's proposed acquisition and operation of the DRTC will be in the public interest in terms of OMR's ability to cover, through tunnel operating profits, the fixed charges that will arise from the proposed financing.

We previously reserved the right to require the filing of supplemental information from any party or individual if necessary to complete the record in this matter. *See* Decision No. 6, slip op. at 7 n.14, 63 FR at 43747 n.14. To enable the Board to assess the impact of OMR's proposal, OMR will be required to submit no later than December 1, 1998, the following information: (1) the operational data prescribed at 49 CFR 1180.8(b); (2) information regarding carrier usage of the existing tunnel and the impact of projected traffic increases on carrier facilities on both sides of the Detroit River; (3) identity and amount of financing for each expected source of capital, as outlined on page 2 of the verified statement of Patrick J. O'Neill; (4) method(s) and amount of financing expected to be undertaken by any prospective partnership group to fund construction and ongoing operations of the proposed Detroit-Windsor Tunnel; (5) balance sheet of OMR giving effect to construction and financing of the tunnel, as estimated for the beginning of the first year of post-construction operations, including the proposed method of handling interest on debt financing during construction; and (6) income statements showing expected revenues, expenses, fixed charges, and net income from operations for the first year of operations and for a normal year of operations.

Responsive Filings Accepted

The responsive applications filed by OMR, CPR, and SL&H are in substantial compliance with the applicable regulations. We are accepting for consideration the responsive application by CPR and SL&H. Subject to the supplemental filing requirement above, we are accepting for consideration the responsive application by OMR.

Public Inspection

The responsive filings are available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, N.W., in Washington, DC. The responsive filings may also be obtained upon request from the applicants' representatives named above.

Proceedings Consolidated

The responsive filings in STB Finance Docket No. 33556 (Sub-Nos. 2 and 3) are consolidated for disposition with the primary application in STB Finance Docket No. 33556 (and the embraced Sub-No. 1 proceeding).

Comments May Be Submitted

Interested persons may participate formally by submitting written comments regarding any or all of these responsive filings, subject to the filing and service requirements specified above. Such comments (referred to as "Response[s]" in the procedural schedule) must be filed with the Board by December 11, 1998. Comments must include the following: the commenter's position in support of or in opposition to the transaction proposed in the responsive filing; any and all evidence, including verified statements, in support of or in opposition to such proposed transaction; and specific reasons why approval of such proposed transaction would or would not be in the public interest.

Requests for Affirmative Relief Will Not Be Accepted

Because the responsive applications accepted for consideration in this decision contain proposed conditions to approval of the primary application in STB Finance Docket No. 33556, the Board will entertain no requests for affirmative relief with respect to these responsive applications. Parties may only participate in direct support of or in direct opposition to these responsive applications as filed.

Electronic Submissions

In addition to submitting an original and 25 paper copies of each document filed with the Board, parties must submit, on disks or CDs, copies of all textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence. Data must be submitted on 3.5 inch IBM-compatible floppy disks or CDs. Textual materials must be in, or convertible by and into, WordPerfect 7.0. Electronic spreadsheets must be in, or convertible by and into, Lotus 1–2–3 97 Edition, Excel Version 7.0, or Quattro Pro Version 7.0. Each disk or CD should be clearly labeled with the identification acronym and number of the corresponding paper document, *see* 49 CFR 1180.4(a)(2), and a copy of such disk or CD should be provided to any other party upon request. Also, each disk or CD should be clearly labeled as containing confidential or redacted materials. The data contained on the disks and CDs submitted to the Board will be subject to the protective order granted in Decision No. 1, served February 26, 1998, and will be for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.[10]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

---

[8] In addition, OMR seeks the divestiture of CN's one-half interest in The Canada Southern Railway Company and The Niagara River Bridge Company, switching railroads also owned by NDP. OMR states that these rail properties are potential sources of needed traffic to support the DRTC.

[9] Although OMR filed a description of its anticipated inconsistent application on the August 31, 1998 due date for such submissions, OMR failed to file a petition for waiver or clarification with respect to its proposed relief. In Decision No. 7 (served September 18, 1998), however, we granted CPR's petition for waiver or clarification by finding, among other things, that CPR's similar divestiture proposal constituted a minor transaction. A similar conclusion is warranted here with respect to OMR's proposal.

[10] The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in our regulations. *See* 49 CFR 1104.3(a), as amended in *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings,* STB Ex Parte No. 527, 61 FR 52710, 52711 (Oct. 8, 1996), 61 FR 58490, 58491 (Nov. 15, 1996).

It is ordered:

1. The responsive applications in STB Finance Docket No. 33556 (Sub-Nos. 2 and 3) are accepted for consideration, and are consolidated for disposition with the primary application in STB Finance Docket No. 33556 (and the embraced Sub-No. 1 proceeding), subject to the requirement that OMR file the supplemental information outlined in this decision no later than December 1, 1998.

2. The parties shall comply with all provisions as stated above.

3. The motion in ECA–8 to reclassify as confidential the public version of ECA's comments filed on October 27, 1998, is granted.

4. This decision is effective on November 17, 1998.

Decided: November 10, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–30704 Filed 11–16–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

[Treasury Order Number 101–05]

Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury

Dated: October 29, 1998.

By virtue of the authority vested in the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b), and Executive Order (E.O.) 11822, dated December 10, 1974, it is ordered that:

1. The Deputy Secretary shall report directly to the Secretary.

2. The Chief of Staff shall report directly to the Secretary and shall exercise supervision over the Director, Secretary's Scheduling Office, and the Executive Secretary.

3. The Executive Secretary shall report directly to the Chief of Staff and shall exercise supervision over the functions of the Executive Secretariat Correspondence Unit; the Office of Public Correspondence; and, for purposes of administrative and managerial control, over the Special Assistant to the Secretary (National Security). The Special Assistant to the Secretary (National Security) shall report to the Secretary and the Deputy Secretary.

4. The following officials shall report through the Deputy Secretary to the Secretary and shall exercise supervision over those officers and organizational entities set forth on the attached organizational chart:

Under Secretary (International Affairs)
Under Secretary (Domestic Finance)
Under Secretary (Enforcement)
General Counsel
Assistant Secretary (Legislative Affairs and Public Liaison)
Assistant Secretary (Public Affairs)
Assistant Secretary (Economic Policy)
Assistant Secretary (Tax Policy)
Inspector General
Assistant Secretary (Management) and Chief Financial Officer
Commissioner of Internal Revenue
Comptroller of the Currency
Director, Office of Thrift Supervision

5. The Assistant Secretary (Management) serves as the Department's Chief Financial Officer pursuant to Chapter 9 of Title 1, U.S.C., and serves as the Department's Chief Operating Officer for purposes of the Presidential Memorandum, ''Implementing Management Reform in the Executive Branch,'' dated October 1, 1993.

6. The Deputy Assistant Secretary (Information Systems) reporting to the Assistant Secretary (Management) and Chief Financial Officer is designated as the Department's Chief Information Officer pursuant to Division E of the Clinger-Cohen Act of 1996, and E.O. 13011, dated July 16, 1996, and shall have direct access to the Secretary to the extent required by that Act and related statutes.

7. The Deputy Secretary is authorized, in that official's own capacity and that official's own title, to perform any functions the Secretary is authorized to perform and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary. Any action heretofore taken by the Deputy Secretary in that official's own title is hereby affirmed and ratified as the action of the Secretary.

8. The Under Secretaries, the General Counsel, and the Assistant Secretaries are authorized to perform any functions the Secretary is authorized to perform. Each of these officials will ordinarily perform under this authority only functions which arise out of, relate to, or concern the activities or functions of, or the laws administered by or relating to, the bureaus, offices, or other organizational units over which the incumbent has supervision. Each of these officials shall perform under this authority in the official's own capacity and the official's own title and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary. Any action heretofore taken by [the Deputy Secretary or] any of these officials in that official's own title is hereby affirmed and ratified as the action of the Secretary.

9. The following officials shall, in the order of succession indicated, act as Secretary of the Treasury in case of the death, resignation, absence or sickness of the Secretary and other officers succeeding the incumbent, until a successor is appointed, or until the absence or sickness shall cease:

a. Deputy Secretary;

b. The following individuals, in the order of the date on which they were first appointed to a position within the Department requiring appointment by the President by and with the advice and consent of the Senate:

- Under Secretary (International Affairs);
- Under Secretary (Domestic Finance); and
- Under Secretary (Enforcement);

c. General Counsel; and

d. Assistant Secretaries, appointed by the President with Senate confirmation, in the order designated by the Secretary.

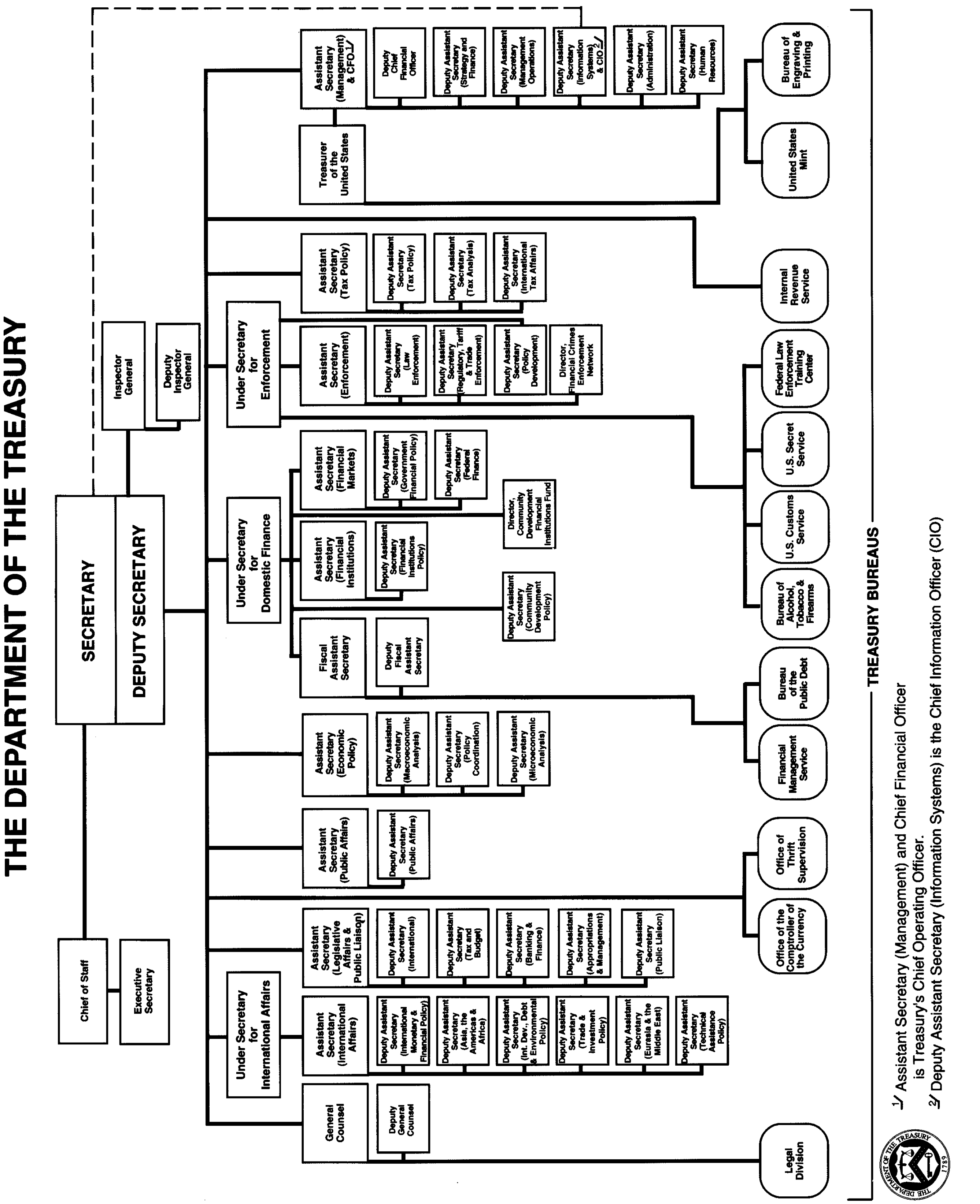
10. *Cancellation.* Treasury Order 101–05, ''Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury,'' dated May 4, 1995, is superseded as of this date.

Robert E. Rubin,

Secretary of the Treasury.

Attachment

BILLING CODE 4810–25–P



[FR Doc. 98–29720 Filed 11–16–98; 8:45 am]

BILLING CODE 4810–25–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–9–95]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–9–95 (TD 8702), Certain Transfers of Domestic Stock or Securities by U.S. Persons to Foreign Corporations (§ 1.367(a)–3).

DATES: Written comments should be received on or before January 19, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certain Transfers of Domestic Stock or Securities by U.S. Persons to Foreign Corporations.

OMB Number: 1545–1478.

Regulation Project Number: INTL–9–95.

Abstract: This regulation relates to certain transfers of stock or securities of domestic corporations pursuant to the corporate organization, reorganization, or liquidation provisions of the Internal Revenue Code. Transfers of stock or securities by U.S. persons in tax-free transactions are treated as taxable transactions when the acquirer is a foreign corporation, unless an exception applies under Code section 367(a). This regulation provides that no U.S. person will qualify for an exception unless the U.S. target company complies with certain reporting requirements.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 10, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–30615 Filed 11–16–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–41–93]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–41–93 (TD 8703), Automatic Extension of Time for Filing Individual Income Tax Returns; Automatic Extension of Time To File Partnership Return of Income, Trust Income Tax Return, and U.S. Real Estate Mortgage Investment Conduit Income Tax Return (§ 1.6081–4).

DATES: Written comments should be received on or before January 19, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Automatic Extension of Time for Filing Individual Income Tax Returns; Automatic Extension of Time To File Partnership Return of Income, Trust Income Tax Return, and U.S. Real Estate Mortgage Investment Conduit Income Tax Return.

OMB Number: 1545–1479.

Regulation Project Number: IA–41–93.

Abstract: Internal Revenue Code section 6081(a) provides that the Secretary may grant a reasonable extension of time for filing any return. Under regulation section 1.6081–4, an individual required to file an income tax return is allowed an automatic 4-month extension of time to file if (a) an application is prepared on Form 4868, Application Extension of Time to File U.S. Individual Income Tax Return, or in such other manner as may be prescribed by the Internal Revenue Service, (b) the application is filed on or before the date the return is due, and (c) the application shows the full amount properly estimated as tax.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

The burden for the collection of information is reflected in the burden for Form 4868, Application for Automatic Extension of Time to file U.S. Individual Income Tax Return.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 10, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–30616 Filed 11–16–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Open Meeting of the Electronic Tax Administration Advisory Committee (ETAAC).

SUMMARY: In 1998 the IRS established the Electronic Tax Administration Advisory Committee (ETAAC). The primary purpose of ETAAC is to provide an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC offers constructive observations about current or proposed policies, programs, and procedures, and suggests improvements.

There will be a meeting of ETAAC Thursday, December 3, 1998. The meeting will be held in the Longworth House Office Building, Washington, D.C. A summarized version of the agenda along with a list of topics that are planned to be discussed are listed below.

Summarized Agenda for Meeting Thursday, December 3, 1998

8:30—Meeting Opens
12:00—Break for Lunch
1:00—Meeting Resumes
3:00—Meeting Adjourns

The topics that are planned to be covered are as follows:

(1) Presentation on alignment of the IRS and ETA Strategic Plans
(2) Importance of ETA to Modernization Effort
(3) Presentation on how ETA is and will be supported
(4) Quarterly Progress Report from ETA (strategic level)
(5) Congress' expectations for ETAAC
(6) Strategic Plan
(7) Presentation on how ETAAC will work with the IRS to assist it in meeting its ETA objectives

Note: Last minute changes to these topics are possible and could prevent advance notice.

SUPPLEMENTARY INFORMATION: ETAAC reports to the Assistant Commissioner, Electronic Tax Administration, who is the executive responsible for the electronic tax administration program. Increasing participation by external stakeholders in the development and implementation of the Internal Revenue Service' (IRS') strategy for electronic tax administration will help achieve the goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend the public meetings, working sessions, and an orientation each year.

DATES: The meeting will be open to the public, and will be in a room that accommodates approximately 150 people, including members of ETAAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis. To get your name on the access list, *notification of intent to attend this meeting must be made with Ms. Robin Marusin by November 27, 1998. Ms. Marusin can be reached at 202–622–8284.* Notification of intent should include your name, organization and phone number. If you leave this information for Ms. Marusin in a voice-mail message, please spell out all names. A draft of the agenda will be available via facsimile transmission the week prior to the meeting. Please call Ms. Robin Marusin on or after Monday, November 23, 1998, to have a copy of the agenda faxed to you. Please note that a draft agenda will not be available until that date.

FOR FURTHER INFORMATION CONTACT: To get on the access list to attend this meeting, to have a copy of the agenda faxed to you, or to get general information about ETAAC call Robin Marusin at 202–622–8184.

Robert E. Barr,

Assistant Commissioner, Electronic Tax Administration.

[FR Doc. 98–30614 Filed 11–16–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–31: OTS No. 1260]

Central Federal Savings and Loan Association of Wellsville, Wellsville, Ohio; Approval of Conversion Application

Notice is hereby given that on November 6, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Central Federal Savings and Loan Association of Wellsville, Wellsville, Ohio, 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, NW, Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: November 10, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–30628 Filed 11–16–98; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–32: OTS Nos. H–2170 and 04626]

The Neodesha Savings & Loan Association, FSA, Neodesha, Kansas; Approval of Conversion Application

Notice is hereby given that on November 6, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of The Neodesha Savings & Loan Association, FSA, Neodesha, Kansas, 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, NW, Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039–2010.

Dated: November 10, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–30629 Filed 11–16–98; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register

Vol. 63, No. 221

Tuesday, November 17, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board (AFEB)

Correction

In notice document 98–30082, appearing on page 63033, in the issue of Tuesday, November 10, 1998, make the following corrections:

1. On page 63033, the subject line is corrected to read as set above.

2. On page 63033, in the second column, under the heading **SUMMARY:**, in the seventh line, ''0700'' should read ''0730''.

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for Proposed Improvements to the Chesapeake & Delaware Canal and Connecting Channels, Delaware and Maryland

Correction

In notice document 98–30084, beginning on page 63033, in the issue of Tuesday, November 10, 1998, make the following corrections:

On page 63033, in the third column, the subject line is corrected to read as set above.

On page 63033, in the third column, under the heading **SUMMARY:**, in the sixth line, ''Cheaspeake'' should read ''Chesapeake''.

On page 63034, in the second column, the billing code, ''3710-08-M'' should read ''3710-GR-M''.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–6155–3]

RIN 2060–AF76

Control of Emissions of Air Pollution From Nonroad Diesel Engines

Correction

In rule document 98–24836, beginning on page 56968, in the issue of Friday, October 23, 1998, make the following correction.

§ 86.884–8 [Corrected]

On page 56995, in the second column, the table in § 86.884–8(c)(4) is corrected to read as follows:

Maximum rated horsepower	Exhaust pipe diameter (inches)
HP<50	1.5
50≤HP<100	2.0
100≤HP<200	3.0
200≤HP<300	4.0
300≤HP<500	5.0
HP≥500	6.0

* * * * *

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40546; File No. SR-NASD-98-73]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Fees for Subscribers Who Receive Nasdaq Level 1 and Last Sale Data Through Automated Voice Response Services

Correction

In notice document 98–28109, beginning on page 56055, in the issue of Tuesday, October 20, 1998, make the following correction:

On page 56056, in the first column, in the first full paragraph, in the second line from the bottom, ''not be made'' should read ''now be made''.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–37; Amendment 39–10857; AD 96–18–08 R1]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW2000 Series Turbofan Engines

Correction

In rule document 98–28534 beginning on page 57048, in the issue of Monday, October 26, 1998, make the following correction:

§ 39.13 [Corrected]

On page 57050, in the third column, in paragraph (l), in the first line, ''(m)'' should read ''(k)''.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ANM-10]

Correction to Class E Airspace; Akron, CO

Correction

In the issue of Friday, September 4, 1998, on page 47155, in the first column, in the correction of 98-23896, in the last line the correction should read by removing ''(Lat. 40°10'32''N, long. 103°13'19''W)'' and adding ''(Lat. 40° 10'32''N, long. 103° 13'20''W)''.

BILLING CODE 1505-01-D

Reader Aids

Federal Register

Vol. 63, No. 221

Tuesday, November 17, 1998

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–523–5227**
Laws	**523–5227**
Presidential Documents	
Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**
Other Services	
Electronic and on-line services (voice)	**523–4534**
Privacy Act Compilation	**523–3187**
Public Laws Update Service (numbers, dates, etc.)	**523–6641**
TTY for the deaf-and-hard-of-hearing	**523–5229**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications:

http://www.access.gpo.gov/nara

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access:

http://www.nara.gov/fedreg

E-mail

PENS (Public Law Electronic Notification Service) is an E-mail service that delivers information about recently enacted Public Laws. To subscribe, send E-mail to

listproc@lucky.fed.gov

with the text message:

subscribe publaws-l <firstname> <lastname>

Use listproc@lucky.fed.gov only to subscribe or unsubscribe to PENS. We cannot respond to specific inquiries at that address.

Reference questions. Send questions and comments about the Federal Register system to:

info@fedreg.nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

CFR PARTS AFFECTED DURING NOVEMBER

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.

39 ....59252, 59743, 60222, 60224, 62970, 62973, 63423, 63620
71 ....59255, 59256, 59257, 62975, 63622, 63623, 63624, 63625, 63626, 63627
91..........................59494, 62976
119..................................62976
121 ....59192, 59494, 62976
125..................................62976
135 ....59192, 59494, 62976
145..................................59192

15 CFR

740..................................63141
742..................................63141

16 CFR

1700................................63602
Proposed Rules:
305..................................58671

17 CFR

10....................................58811
200.......................59862, 63143
201..................................63404
240 ....58630, 59208, 59362, 63143
249.......................59862, 63143
274..................................62936
Proposed Rules:
240.......................59911, 63222

18 CFR

Proposed Rules:
4......................................59916
153..................................59916
157..................................59916
161..................................63425
250..................................63425
284..................................63425
375..................................59916

21 CFR

26....................................60122
175..................................59706
176.......................59707, 63406
178.......................59213, 59709
211..................................59463
314..................................59710
510..................................59215
520.......................59712, 59713
522 ....59215, 59714, 63788
524..................................59715
556..................................59715
558..................................59216
814..................................59217
862..................................59222
864..................................59222
866..................................59222
872..................................59715
876..................................59222
880.......................59222, 59717
882..................................59222
886..................................59222
890..................................59222
892..................................59222
Proposed Rules:
101..................................62977
310..................................59746
314..................................59746
600..................................59746
862..................................63122
864..................................63122
866..................................63122
868..................................63122
870..................................63122
872..................................63122
874..................................63122
876..................................63122
878..................................63122
880.......................59917, 63122
882..................................63122
884..................................63122
886..................................63122
888..................................63122
890..................................63122
892..................................63122
900..................................59750
1308................................59751
1310................................63253
1312................................59751

24 CFR

Proposed Rules:
5......................................58675

26 CFR

1......................................58811
Proposed Rules:
1..........................58811, 63016

27 CFR

Proposed Rules:
4......................................59921
19....................................59921
24....................................59921
194..................................59921
250..................................59921
251..................................59921

28 CFR

0......................................62937
27....................................62937

29 CFR

2704................................63178
4011................................63178
4022................................63178
4044....................63179, 63408

30 CFR

944..................................63608
Proposed Rules:
46....................................59258
913.......................63628, 63630
915..................................59627
938..................................59259

31 CFR

560..................................62940
575..................................62942
585..................................59883

32 CFR

199..................................59231
311..................................59718
318..................................60214

33 CFR

100.......................59232, 63611
117.......................60212, 63180
165.......................58635, 59719
Proposed Rules:
100..................................63426
117.......................58676, 60226
181..................................63638

36 CFR

200..................................60049

37 CFR

201.......................59233, 59235

38 CFR

3......................................62943
Proposed Rules:
14....................................59495
17.........................58677, 60227
21....................................63253
51....................................60227

40 CFR

52 ....58637, 59471, 59720, 59884, 60214, 62943, 62947, 63181, 63410
62 ....59887, 63191, 63414
79....................................63789
80....................................63793
81.........................58637, 59722
86....................................63967
281..................................63793
721..................................62955
Proposed Rules:
52 ....58678, 59754, 59923, 59924, 60257, 63428
62.........................59928, 63429
79....................................63807
80....................................63807
81....................................58678
745..................................59754

41 CFR

60–250............................59630
60–741............................59657
301-3...............................63417
301-10.............................63417

42 CFR

405..................................58814
410..................................58814
413..................................58814
414..................................58814
415..................................58814
424..................................58814
485..................................58814
Proposed Rules:
5......................................58679
51c 58679
409..................................63429
410..................................63429
411..................................63429
412..................................63429
413..................................63429
416..................................63430
419..................................63429
488..................................63430
489..................................63429
498..................................63429
1003................................63429

44 CFR

64.........................59236, 63796
Proposed Rules:
62 (2 documents) 63431, 63432

46 CFR

2......................................59472
199..................................63798
Proposed Rules:
45....................................58679

47 CFR

1......................................63612
2..........................58645, 63798
24....................................63612
52....................................63613
73 ....59238, 59239, 62956, 62957, 63617, 63618
90....................................58645
Proposed Rules:
Ch. 1 59755
25....................................63258
54....................................58685
64....................................63639
73 ....59262, 59263, 59928, 63016
90....................................58685

48 CFR

215..................................63799
253 ....60216, 60217, 63799
1827................................63209
1852................................63209
Proposed Rules:
Ch. 7 59501
11....................................63778
52....................................63778
712..................................59501
727..................................59501
742..................................59501
752..................................59501
801..................................60257
806..................................60257
812..................................60257
837..................................60257
852..................................60257
873..................................60257
909..................................60269
970..................................60269
1842................................63654
1852................................63654

49 CFR

1......................................59474
195.......................59475, 63210
385..................................62957
571 ....59482, 59755, 63800
Proposed Rules:
171..................................59505
177..................................59505
178..................................59505
180..................................59505
243..................................59928
571.......................60271, 63258
1420................................59263

50 CFR

17.........................59239, 63421
20....................................63580
23....................................63210
217..................................62959
227..................................62959
644..................................63421
679 ....58658, 59244, 63221, 63801
Proposed Rules:
17 ....58692, 63657, 63659, 63661
18....................................63812
20....................................60278
21....................................60278
222..................................58701
227..................................58701
622.......................60287, 63276
648 ....59492, 63434, 63436, 63819
649..................................63436
660..................................59758
679.......................60288, 63442

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 17, 1998

DEFENSE DEPARTMENT

Acquisition regulations:
- Contracting by negotiation; published 11-17-98

ENVIRONMENTAL PROTECTION AGENCY

Hazardous waste program authorizations:
- Georgia; published 9-18-98

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:
- Illinois; published 10-19-98
- Texas et al.; published 10-19-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:
- Trenbolone acetate and estradiol benezoate; published 11-17-98

TRANSPORTATION DEPARTMENT

Coast Guard

Lifesaving equipment for U.S. inspected vessels; published 11-17-98

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules, etc.:
- Grand Canyon National Park, AZ; special flight rules in vicinity (SFAR 50-2)—
  - Correction; published 11-17-98

Airworthiness directives:
- Boeing; published 10-13-98
- Cessna; published 9-24-98
- Dornier; published 10-13-98
- Saab; published 10-13-98

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle vehicle safety standards:
- Lamps, reflective devices, and associated equipment—
  - Technical amendments; published 11-17-98

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Beef promotion and research; comments due by 11-27-98; published 10-28-98

Onions (Vidalia) grown in—
- Georgia; comments due by 11-24-98; published 9-25-98

Walnuts grown in—
- California; comments due by 11-23-98; published 11-6-98

AGRICULTURE DEPARTMENT

Rural Utilities Service

Telecommunications standards and specifications:
- Materials, equipment, and construction—
  - Cable splicing connectors; comments due by 11-23-98; published 9-24-98

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:
- Gulf of Maine harbor porpoise; comments due by 11-23-98; published 10-22-98
- Sea turtle conservation; shrimp trawling requirements—
  - Mississippi and Louisiana inshore waters affected by Hurricane Georges; limited tow times use as alternative to turtle excluder devices; comments due by 11-23-98; published 10-28-98

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Foreign acquisition; Part 25 rewrite; comments due by 11-27-98; published 9-28-98

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Oil pipeline regulations; revisions; comments due by 11-25-98; published 10-26-98

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:
- Opacity continuous emission monitoring systems; comments due by 11-23-98; published 9-23-98

Air quality implementation plans; approval and promulgation; various States:
- Florida; comments due by 11-23-98; published 10-22-98

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
- Idaho; comments due by 11-25-98; published 10-26-98

Hazardous waste program authorizations:
- Arizona; comments due by 11-27-98; published 10-28-98
- Louisiana; comments due by 11-23-98; published 10-23-98
- North Carolina; comments due by 11-23-98; published 10-23-98

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Interstate depreciation rates; prescription process; comments due by 11-23-98; published 10-23-98
- Interstate, interexchange marketplace; telecommunications services, enhanced services, and customer premises equipment; bundling restrictions; comments due by 11-23-98; published 10-23-98

Radio stations; table of assignments:
- Arizona; comments due by 11-23-98; published 10-9-98
- Michigan; comments due by 11-23-98; published 10-9-98

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Foreign acquisition; Part 25 rewrite; comments due by 11-27-98; published 9-28-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Children and Families Administration

Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation:
- Temporary assistance for needy families program—
  - State child poverty rate determination methodology; comments due by 11-23-98; published 9-23-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs:
- Drug products discontinued from sale for reasons of safety or effectiveness; list; comments due by 11-23-98; published 10-8-98

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Government National Mortgage Association (Ginnie Mae):
- Mortgage-backed securities; book entry securities; comments due by 11-23-98; published 9-24-98

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
- Peregrine falcon; comments due by 11-24-98; published 8-26-98

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:
- Aliens—
  - Commerical airlines' transport to United States; privilege suspension; comments due by 11-23-98; published 10-23-98

JUSTICE DEPARTMENT

Grants:
- Bulletproof vest partnership program; comments due by 11-23-98; published 9-23-98

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Foreign acquisition; Part 25 rewrite; comments due by 11-27-98; published 9-28-98

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:
- Mississippi; comments due by 11-23-98; published 9-23-98

TRANSPORTATION DEPARTMENT
Federal Aviation Administration

Air carrier certification and operations:
  Terrain awareness and warning system; comments due by 11-24-98; published 8-26-98
Airworthiness directives:
  Airbus; comments due by 11-23-98; published 10-27-98
  Boeing; comments due by 11-23-98; published 10-9-98
  British Aerospace; comments due by 11-27-98; published 10-27-98
  Dornier; comments due by 11-27-98; published 10-27-98
  Eurocopter France; comments due by 11-27-98; published 10-27-98
  International Aero Engines AG; comments due by 11-27-98; published 9-28-98
  Puritan-Bennett Aero Systems Co.; comments due by 11-26-98; published 9-22-98
  Saab; comments due by 11-27-98; published 10-27-98
Airworthiness standards:
  Rotorcraft; normal and transport category—
    Critical parts regulations; harmonization; comments due by 11-23-98; published 8-24-98
Class E airspace; comments due by 11-25-98; published 10-9-98

TRANSPORTATION DEPARTMENT
Federal Highway Administration

Motor carrier safety standards:
  Driving of commercial motor vehicles—
    Railroad grade crossing safety; sufficient space; comments due by 11-27-98; published 7-30-98

TRANSPORTATION DEPARTMENT
Federal Railroad Administration

Locomotive engineers; qualification and certification:
  Miscellaneous amendments; comments due by 11-23-98; published 9-22-98
Steam locomotive inspection and maintenance standards; comments due by 11-24-98; published 9-25-98

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration

Motor vehicle safety standards:
  Electric vehicles—
    Battery electrolyte spillage, post-crash retention of batteries in their mounts, and electrical shock hazard; comments due by 11-27-98; published 10-13-98

TREASURY DEPARTMENT
Internal Revenue Service

Income taxes:
  Qualified State tuition programs; comments due by 11-23-98; published 8-24-98

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**

In the **List of Public Laws** printed in the *Federal Register* on November 13, 1998, H.R. 4110, Public Law 105-368, was printed incorrectly. It should read as follows:

H.R. 4110/P.L. 105–368

Veterans Programs Enhancement Act of 1998 (Nov. 11, 1998; 112 Stat. 3315)

Last List November 13, 1998

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, send E-mail to **listproc@lucky.fed.gov** with the text message:

subscribe PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new public laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.