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federal register

Tuesday
March 16, 1999

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

WASHINGTON, DC

WHEN: March 23, 1999 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

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

EXECUTIVE OFFICE OF THE PRESIDENT

3 CFR Part 100

Repeal of Standards of Conduct for Employees of the Executive Office of the President

AGENCY: Executive Office of the President (EOP).

ACTION: Final rule.

SUMMARY: The Executive Office of the President (EOP) is repealing its old standards of conduct that have been superseded by the Office of Government Ethics (OGE) Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and executive branch financial disclosure regulations. The EOP is inserting a cross-reference to these OGE regulations.

EFFECTIVE DATE: This regulation is effective March 16, 1999.

FOR FURTHER INFORMATION CONTACT: Amy Comstock, Associate Counsel to the President, (202) 456–6229.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published new Standards of Ethical Conduct for Employees of the Executive Branch (Standards). See 57 FR 35006–35067, as corrected at 57 FR 48557 and 57 FR 52583, with additional grace period extensions at 59 FR 4779–4780 and 60 FR 6390–6391. The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, established uniform standards of ethical conduct that apply to all executive branch personnel.

The EOP is repealing its superseded Standards of Conduct at 3 CFR part 100, and is replacing those provisions with a single section that provides cross-references to 5 CFR parts 2634 and 2635.

II. Repeal of the Old EOP Standards of Conduct Regulations

Because the EOP's Standards of Conduct have been superseded by the new executive branch financial disclosure regulations at 5 CFR part 2634, and by the Standards at 5 CFR part 2635, the EOP is repealing all of its existing 3 CFR part 100. To ensure that employees are on notice of the currently effective ethical standards which apply to them, the EOP is replacing its old standards at 3 CFR part 100 with a residual provision that cross-references 5 CFR parts 2634 and 2635.

III. Matters of Regulatory Procedure

Administrative Procedures Act

The Executive Office of the President has found that good cause exists under 5 U.S.C. 553(b) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30 day delay in effectiveness as to this final rule and repeal. This rulemaking is related to the EOP organization, procedure, and practice.

Executive Order 12866

In promulgating this final rule, EOP has adhered to the regulatory philosophy and the applicable principles of regulations set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation is not deemed ''significant'' under that Executive order.

Regulatory Flexibility Act

The EOP has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant impact on small business entities because it affects only EOP employees.

Paperwork Reduction Act

The Executive Office of the President has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements.

Environmental Impact

This decision will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

List of Subjects in 3 CFR Part 100

Conflicts of Interest, Government employees.

Approved: March 3, 1999.

Charles Ruff,

Counsel to the President, Executive Office of the President.

For the reasons set forth in the Preamble, the Executive Office of the President is amending title 3 of the Code of Federal Regulations, Chapter I as follows:

1. Part 100 of 3 CFR chapter I is revised to consist of § 100.1 to read as follows:

PART 100—STANDARDS OF CONDUCT

§ 100.1 Ethical conduct standards and financial disclosure regulations.

Employees of the Executive Office of the President are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635, and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

Authority: 5 U.S.C. 7301.

[FR Doc. 99–6392 Filed 3–15–99; 8:45 am]
BILLING CODE 3195–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 360 and 361

[Docket No. 98–063–2]

Noxious Weeds; Update of Weed Lists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the noxious weeds regulations by adding *Solanum tampicense* Dunal (wetland nightshade) and *Caulerpa taxifolia* (Mediterranean clone) to the list of aquatic weeds and removing *Ipomoea triloba* Linnaeus from the list of terrestrial weeds. We are also updating the taxonomic names of two other weeds currently listed and making one editorial change to the regulations. These actions are necessary to prevent the artificial spread of noxious weeds into noninfested areas of

the United States, to remove unnecessary restrictions, and to make the regulations easier to understand.

EFFECTIVE DATE: April 15, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Polly Lehtonen, Botanist, Biological Assessment and Taxonomic Support, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236, (301) 734–8896.

SUPPLEMENTARY INFORMATION:

Background

The noxious weed regulations were promulgated under authority of the Federal Noxious Weed Act (FNWA) of 1974, as amended (7 U.S.C. 2801 *et seq.*), and are set forth in 7 CFR part 360. They contain restrictions on the movement of listed noxious weeds into or through the United States, but do not affect the movement of listed noxious weeds that are moved solely intrastate.

Under the authority of the Federal Seed Act (FSA) of 1939, as amended (7 U.S.C. 1551 *et seq.*), the U.S. Department of Agriculture (USDA) regulates the importation and interstate movement of certain agricultural and vegetable seeds and screenings. Title III of the FSA, ''Foreign Commerce,'' requires shipments of imported agricultural and vegetable seeds to be labeled correctly and to be tested for the presence of the seeds of certain noxious weeds as a condition of entry into the United States. The Animal and Plant Health Inspection Service's (APHIS') regulations implementing the provisions of Title III of FSA are found in 7 CFR part 361. A list of noxious weed seeds is contained in § 361.6. Paragraph (a)(1) of § 361.6 lists species of noxious weeds whose seeds have no tolerances applicable to their introduction into the United States.

On December 4, 1998, we published in the **Federal Register** (63 FR 67011–67014, Docket No. 98–063–1) a proposal to amend the noxious weed regulations by adding two weeds to the list of aquatic weeds in § 360.200(a), removing another weed from the list of terrestrial weeds in § 360.200(c), and updating the taxonomy of two other currently listed weeds. Also, since the FSA regulations in § 361.6(a) support the noxious weed regulations by prohibiting or restricting the importation of the seeds of noxious weeds listed in § 360.200, we proposed to amend the noxious weed seed list in § 361.6(a) accordingly.

We held a public hearing on the proposed rule on January 6, 1999. No one came to speak about the proposed rule. We also solicited comments concerning our proposal for 60 days ending February 2, 1999. We received six comments by that date. They were from representatives of State governments and members of the scientific community. We carefully considered all of the comments we received. They are discussed below.

Caulerpa taxifolia

All six of the comments that we received were strongly in favor of adding *Caulerpa taxifolia* (Mediterranean clone) to the list of aquatic weeds.

One commenter stated that it may be difficult to distinguish the Mediterranean clone of *C. taxifolia* from other strains of *C. taxifolia,* and thus, in order to effectively implement our proposal to prohibit the importation of *C. taxifolia* (Mediterranean clone), all strains of *C. taxifolia,* and possibly other species of *Caulerpa,* or even the whole genus, should be listed as Federal noxious weeds.

We agree that there may be some difficulty distinguishing between the Mediterranean clone and noninvasive strains of *C. taxifolia;* however, we believe that listing other, noninvasive strains of *C. taxifolia* would create unnecessarily rigid trade restrictions. We believe that listing only the Mediterranean clone of *C. taxifolia,* as proposed, is sufficient to protect against the introduction of the weed into United States. APHIS personnel will be instructed to refuse shipments that contain what appears to be *C. taxifolia* of any variety if it originates or passes through areas where the Mediterranean clone is established or thought to be established. We believe these measures to be sufficient to protect against the introduction of *C. taxifolia* (Mediterranean clone). Therefore, we are not making any changes in response to this comment.

Revision of the Weed List

Three commenters suggested that instead of listing weeds that are prohibited from being imported into the United States, APHIS should develop a list of plant species that are allowed to be imported into the United States. Under the commenters' suggestion, all plants of foreign origin would be prohibited from entering into the United States unless scientific evidence showed that the importation of such plants presented little or no risk of endangering U.S. agriculture, fish and wildlife, or the public health.

The Federal noxious weed list was created under the authority of the Federal Noxious Weed Act (FNWA) of 1974, as amended (7 U.S.C. 2801 *et seq.*). We are unable to propose or make changes to the weed list as suggested by the commenters because we have no authority to do so under the FNWA. The FNWA provides APHIS with the authority to identify noxious weeds and regulate their importation into the United States. The FNWA does not give APHIS the authority to prohibit the importation of all non-native plant species pending judgment that individual species pose no risk to U.S. agriculture, fish and wildlife, or the public health.

Ipomoea triloba

One commenter stated that *Ipomoea triloba* should not be removed from the list of terrestrial weeds because, according to an expert on *I. triloba,* the species has greatly expanded its range within the past 5 years within Florida. The commenter further stated that it is possible that new genetic strains of the species have been introduced into Florida, and that these new strains, which may be of foreign origin, have out-competed the native species, and have spread beyond the range of the native species.

We are not making any changes in response to this comment because we have no scientific data available to distinguish between native and foreign strains of *I. triloba.* Under current law, we have no authority to regulate native weed species. When taxonomists can distinguish non-native genetic strains of *I. triloba* from native strains of *I. triloba,* we will consider listing the non-native strains as Federal noxious weeds.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 603, we have performed a Final Regulatory Flexibility Analysis, set forth below, regarding the impact of this rule on small entities.

In accordance with 7 U.S.C. 2803 and 2809, the Secretary of Agriculture is authorized to promulgate regulations to prevent the movement of any noxious weed into the United States, or interstate, except under conditions prescribed by the Secretary.

Addition of S. tampicense and C. taxifolia (Mediterranean clone)

This rule will add *Solanum tampicense* (wetland nightshade) to the list of Federal noxious weeds. *S.*

tampicense will grow as a perennial only in areas free of frost, and is therefore a threat to southern Florida and areas of the country with a climate similar to that of southern Florida. *S. tampicense* is currently established in five counties in southwestern Florida and could have economic consequences for livestock producers in those areas. Its prickly growth may inhibit access by livestock to wetland areas, a potentially serious dry-season problem.

The majority of cattle operations in the counties harboring existing populations of *S. tampicense* are small entities. The extent to which they would be adversely affected by the continued spread of *S. tampicense* is not known. Preventing further introductions and curtailing spread would have a positive economic impact on livestock producers not yet affected.

The unchecked spread of *S. tampicense* could also have a negative effect on natural ecosystems. Although the extent to which *S. tampicense* could displace other natural species is not known, the weed could have harmful effects on natural vegetation and wildlife due to the proximity of Everglades National Park to the currently affected areas. In responding to the potential harm caused by *S. tampicense* to natural ecosystems, one or more small organizations or governmental jurisdictions in affected areas could incur control costs if the weed were to spread. Although the size and magnitude of such potential costs are not known, it is clear that this rule will help to ensure that the costs would be minimized.

This rule will also add *Caulerpa taxifolia* (Mediterranean clone) to the list of aquatic noxious weeds. We believe that some importers may currently be importing *C. taxifolia* (Mediterranean clone) into the United States for use in public and private aquariums, but data on the amount of *C. taxifolia* (Mediterranean clone), if any, currently being imported into the United States is unavailable. The unchecked spread of *C. taxifolia* (Mediterranean clone) into the United States could, however, have a negative effect on natural ecosystems, given its significant negative effects on the regions in the Mediterranean where it is already established. In responding to the potential harm caused by *C. taxifolia* (Mediterranean clone) to natural ecosystems, one or more organizations or governmental jurisdictions in affected areas could incur control costs if the weed were to be introduced into the environment. Although the size and magnitude of such potential costs are not known, it is clear that this rule will help to prevent the need for such expenditures.

We therefore believe that adding *S. tampicense* and *C. taxifolia* (Mediterranean clone) to the list of Federal noxious weeds will help preclude potential economic and ecological consequences that could result from their spread.

Removal of Ipomoea triloba

We are removing *Ipomoea triloba* (little bell, aiea morning glory) from the list of Federal noxious weeds because it has been determined that *I. triloba* is a species native to Florida. Native species are not within the scope of the FNWA, and we therefore have no authority to continue to regulate *I. triloba*. The delisting of *I. triloba* could have a slightly positive economic effect on importers of agricultural and vegetable seed, whose shipments would no longer be delayed or refused at the port of entry due to contamination with *I. triloba*.

Alternatives Considered

The only significant alternative to this rule was to make no changes in the regulations, i.e., to not add *S. tampicense and C. taxifolia* (Mediterranean clone) to the list of Federal noxious weeds and to retain *I. triloba* on that list. We rejected the alternative of not listing *S. tampicense* and *C. taxifolia* (Mediterranean clone) as Federal noxious weeds because of the potential economic and ecological consequences that we believe will result from their spread. We also rejected the alternative of retaining *I. triloba* on the list of Federal noxious weeds because it has been determined that *I. triloba* is a species native to Florida. Native species are not within the scope of the FNWA, and we therefore have no authority to regulate *I. triloba* as a Federal noxious weed.

This final rule contains no new information collection or recordkeeping requirements.

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects

7 CFR Part 360

Imports, Plants (Agriculture), Quarantine, Reporting and recordkeeping requirements, Transportation, Weeds.

7 CFR Part 361

Agricultural commodities, Imports, Labeling, Quarantine, Reporting and recordkeeping requirements, Seeds, Vegetables, Weeds.

Accordingly, we are amending 7 CFR parts 360 and 361 as follows:

PART 360—NOXIOUS WEED REGULATIONS

1. The authority citation for part 360 continues to read as follows:

Authority: 7 U.S.C. 2803 and 2809; 7 CFR 2.22, 2.80, and 371.2(c).

§ 360.200 [Amended]

2. Section § 360.200 is amended as follows:

a. In paragraph (a), the paragraph heading is revised to read ''Aquatic and wetland weeds.''

b. In paragraph (a), the list of noxious weeds is amended by adding, in alphabetical order, entries for ''*Caulerpa taxifolia* (Mediterranean clone)'' and ''*Solanum tampicense* Dunal (wetland nightshade)''.

c. In paragraph (c), the list of noxious weeds is amended by removing the entries for ''*Borreria alata* (Aublet) de Candolle'', ''*Ipomoea triloba* Linnaeus (little bell, aiea morning glory)'', and ''*Rottboellia exaltata* Linnaeus f.(itchgrass, raoulgrass)'', and by adding, in alphabetical order, entries for ''*Rottboellia cochinchinensis* (Lour.) W. Clayton'' and ''*Spermacoce alata* (Aublet) de Candolle''.

PART 361—IMPORTATION OF SEED AND SCREENINGS UNDER THE FEDERAL SEED ACT

3. The authority citation for part 361 continues to read as follows:

Authority: 7 U.S.C. 1581–1610; 7 CFR 2.22, 2.80, and 371.2(c).

§ 361.6 [Amended]

4. In § 361.6, paragraph (a)(1), the list of noxious weeds is amended as follows:

a. The entries for ''*Borreria alata* (Aublet) de Candolle'' and ''*Ipomoea triloba* L.'' are removed.

b. The entry for ''*Rottboellia cochinchinensis* Clayon (''=*R. exaltata* (L.)L. f.)'' is amended by removing the words ''Clayon (=*R. exaltata* (L.)L. f.)'' and adding the words ''W. Clayton'' in their place.

c. New entries for ''*Caulerpa taxifolia* (Mediterranean clone)'', ''*Solanum tampicense* Dunal (wetland nightshade)'', and ''*Spermacoce alata* (Aublet) de Candolle'' are added in alphabetical order.

Done in Washington, DC, this 11th day of March 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–6344 Filed 3–15–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 782

RIN 0560–AF64

End-Use Certificate Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This final rule will amend regulations governing the End-Use Certificate Program for imported Canadian wheat to allow the Farm Service Agency (FSA) to collect additional information regarding distinguishing characteristics of imported wheat. This rule also will revise the definition of importer to include only the importer of record as recognized by the U.S. Customs Service. Lastly, the deadline for submission of the End-Use Certificate will be revised from 15 work days to 10 work days after the date of entry. These changes are necessary to facilitate a cooperative effort between FSA and the U.S. Customs Service to make End-Use Certificates a part of the official entry summary package. These changes will also help ensure that Canadian wheat will not benefit from U.S. export programs. This rule takes into consideration the comments received on a January 13, 1999 proposed rule (64 FR 2152).

EFFECTIVE DATE: March 16, 1999.

FOR FURTHER INFORMATION CONTACT: Timothy R. Murray, Chief, Inventory Management Branch, U.S. Department of Agriculture, Farm Service Agency, STOP 0553, 1400 Independence Avenue, SW, Washington, DC 20250–0553; telephone (202) 720–6125; FAX (202) 690–0014; E-mail Tim__Murray@usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule is issued in conformance with Executive Order 12866 and has been determined not significant and therefore has not been reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12778

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Paperwork Reduction Act

The amendments to 7 CFR part 782 set forth in this proposed rule involve a change in the existing information collection requirements which were previously cleared by OMB under the provisions of 44 U.S.C. 35. In accordance with § 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements were included in the proposed rule and a request for emergency approval was submitted to the Office of Management and Budget (OMB). OMB has assigned control number 0560–0151 to the information collection and recordkeeping requirements. A regular submission of the information collection will be forwarded to OMB at the end of the comment period.

Regulatory Flexibility Act

On January 26, 1995, FSA published a final rule that established program requirements for the End-Use Certificate Program. A copy of this Regulatory Flexibility Analysis is available upon request from Timothy Murray, Warehouse and Inventory Division, FSA, STOP 0553, 1400 Independence Avenue, Washington, DC 20250–0553; telephone (202) 690–4321.

Because these changes will not have an adverse impact on a substantial number of small businesses, a Regulatory Flexibility Assessment is not required.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Analysis is needed.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule are not retroactive and do not preempt any State laws.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Background

This final rule amends the regulations at 7 CFR Part 782 with respect to the U.S. End-Use Certificate Program. Since February 27, 1995, the effective date for the implementation of the End-Use Certificate Program, several items have been identified that could improve the effectiveness and the efficiency of the End-Use Certificate Program. To further ensure that Canadian wheat does not benefit from U.S. export programs, End-Use Certificates will include distinguishing characteristics of grade, protein content, moisture content, dockage and date of sale in addition to the class and/or varietal information currently collected for each shipment. These additional data are deemed necessary because imported wheat may benefit from U.S. export programs even if the imported wheat itself is not directly eligible for use under such programs. Such benefit may accrue if wheat of the type or quality used under U.S. export programs (including humanitarian assistance programs) is imported into the United States in anticipation of, or as a result of use of a similar type or quality of U.S. wheat under the U.S. program. Indeed, the Department of Agriculture is frequently implored not to take action to facilitate sales of U.S. wheat out of a concern that such sales will only encourage off-setting imports of Canadian wheat. This rule provides for the collection of necessary information to monitor for such an occurrence and potentially allow appropriate actions to minimize such an occurrence. In addition, these additional data will help facilitate effective program audits while minimizing the burden on importers of Canadian wheat.

This rule will also replace the current definition used for ''Importer'' found at 7 CFR 782.2 with the same definition

used by the U.S. Customs Service and found at 19 U.S.C. 1484(a).

The U.S. Customs Service has amended the provisions of their basic import bond to allow for the assessment of damages if there is a failure to provide the End-Use Certificate in the time period provided by FSA.

Public Comments

A proposed rule was published in the **Federal Register** (64 FR 2152) on January 13, 1999. Comments from interested parties were due on or before January 25, 1999. A total of 12 comments were received from 7 different sectors as follows: 5 Industry Associations; 2 State Agriculture Departments; 1 Interested Party; 1 Grain Company; 1 Foreign Government; 1 Foreign Wheat Board; 1 U.S. Government Official. Of the above comments 4 were against the proposed rule, and 8 were in favor of the proposed rule.

Comments opposing the proposed rule addressed different aspects as follows:

1. Reduction to 10 days for submission of Certificate

Issue: Impracticality in transactions involving multiple parties (1 Comment).

Response: Only one of the parties (the importer of record) is responsible for the submission.

2. Additional identifying characteristics

Issue: Sensitivity of proprietary information (2 Comments).

Response: We agree that this data is proprietary and is therefore exempt from disclosure under 5 U.S.C 552(b)(4) as confidential commercial or financial information.

Issue: Changes will exacerbate trade conflicts between U.S. and Canada (2 Comments).

Response: This data will provide valuable insight that should help mitigate some of the misinformation and misunderstanding surrounding the Canadian Wheat Board's sales into the United States. In response to previous requests from the United States for this type of information, Canadian officials have encouraged the United States to use its own data gathering sources.

Issue: Domestic Origin regulations are sufficient to cover this issue (1 Comment).

Response: All U.S. export programs authorized under the Agricultural Trade Act of 1978, as amended, require that any agricultural commodity benefitting from the particular program be entirely produced in the United States. Enforcement of this rigorous standard requires additional information to facilitate identification of the distinguishing characteristics of Canadian wheat. With respect to other programs, a vendor or exporter would only have to demonstrate access to an amount of U.S. wheat equivalent to that exported in the transaction to satisfy the applicable origin requirement. To the extent such origin requirements rely on inventory accounting of a fungible, commingled mass, collection of information on distinguishing characteristics of Canadian wheat will facilitate proper accounting.

Issue: Most sales are based on destination weights and grades (1 Comment).

Response: The contractual terms (i.e. minimum grades and factors) should be sufficient for tracking purposes.

Issue: Date of Sale is too ambiguous to be useful (1 Comment).

Response: We agree that the date of sale could be an issue of interpretation. Consequently, if there is a contract for sale giving rise to the particular import, the date of the contract is required. If no contract for sale exists, the date of entry will be accepted.

The opposition comments also pointed out that there is no evidence that Canadian wheat is benefitting, either directly or indirectly, from any USDA programs. Our response is that with this additional data we will be better able to ascertain whether that is true.

Other comments were received that did not directly address the proposed changes. These comments are summarized as follows:

1. Collect information regarding total damage and vitreous kernel content to enhance identification of the imported wheat.

Response: Total damage is integral to the U.S. grade and standards that will be collected. Dark, hard, and vitreous kernel count (DHV) is integral in the classing of spring wheat and durum.

2. Utility grade ''feed wheat'' should be denatured because grade factors will not be available.

Response: Not within the scope of this rulemaking.

3. Standardize the testing procedures between NAFTA participants. e.g. moisture/protein relationships, dockage removal, and Near Infrared Reflectance Technology (NIRT) testing for protein.

Response: Not within the scope of this rulemaking.

4. Require licensed Inspection Certificates for all imported grain (especially Canadian wheat).

Response: Not within the scope of this rulemaking.

List of Subjects in 7 CFR Part 782

Administrative practice and procedure, Barley, Reporting and Recordkeeping, Wheat.

Accordingly, the provisions of 7 CFR part 782 are amended as follows:

PART 782—END-USE CERTIFICATE PROGRAM

1. The authority citation for part 782 continues to read as follows:

Authority: 19 U.S.C. 3391(f).

2. Amend § 782.2 to revise the definition for ''Importer'' to read as follows:

§ 782.2 Definitions

* * * * *

Importer means a party qualifying as an Importer of Record pursuant to 19 U.S.C. 1484(a).

* * * * *

3. Amend § 782.12(a) as follows:

A. Revise the first sentence to read as follows:

''Each entity that imports wheat originating in Canada shall, for each entry into the U.S., obtain form FSA–750, End-Use Certificate for Wheat, from Kansas City Commodity Office, Warehouse Contract Division, P.O. Box 419205, Kansas City, MO 64141–6205, and submit the completed original form FSA–750 to KCCO within 10 workdays following the date of entry or release.''

B. Redesignate paragraph (a)(6) through (a)(9) as paragraphs (a)(8) through (a)(11), and add new paragraphs (a)(6) and (a)(7) to read as follows:

§ 782.12 FSA, End-Use Certificate for Wheat.

(a) * * *

(6) Grade, protein content, moisture content, and dockage level of wheat being imported,

(7) If imported as a result of a contract for sale, the date of such contract.

* * * * *

Signed at Washington, DC, on March 11, 1999.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 99–6381 Filed 3–15–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 96P–0500 and 91N–384H]

RIN 0910–AA19

Food Labeling; Nutrient Content Claims, Definition of Term: Healthy; Extension of Partial Stay

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; extension of partial stay.

SUMMARY: The Food and Drug Administration (FDA) is extending until January 1, 2003, the partial stay of certain provisions of the nutrient content claim regulations pertaining to the use of the term ''healthy.'' This action is in response to a citizen's petition from ConAgra, Inc. (the petitioner), to amend the definition of this term.

DATES: Effective March 16, 1999; 21 CFR 101.65(d)(2)(ii)(C), (d)(3)(ii)(C), and (d)(4)(ii)(B) are stayed until January 1, 2003. Written comments by April 15, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ellen M. Anderson, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5662.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 10, 1994 (59 FR 24232), FDA published a final rule to define the term ''healthy'' under section 403(r) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(r)). The final rule set up criteria for foods and for meals and main dishes to be able to use the nutrient content claim ''healthy.'' Among other things, it defined two separate timeframes in which different criteria for sodium content would be effective (i.e., before January 1, 1998, and after January 1, 1998) and specified the criteria for a food to qualify to be labeled with either the term ''healthy'' or another related term.

Among other things, before January 1, 1998, under § 101.65(d)(2)(ii)(A), (d)(2)(ii)(B), (d)(3)(ii)(A), and (d)(3)(ii)(B), for a food to qualify to bear the term ''healthy'' or a derivative of that term, the food could contain no more than 480 milligrams (mg) of sodium (first-tier sodium level): (1) Per reference amount customarily consumed (RACC) per eating occasion; (2) per serving size listed on the product label; and (3) per 50 grams (g) for products with small RACC's (i.e., less than 30 g or less than 2 tablespoons). After January 1, 1998 (§ 101.65(d)(2)(ii)(C) and (d)(3)(ii)(C)), the food could contain no more than 360 mg of sodium (second-tier sodium level) per RACC, per labeled serving size, and per 50 g for products with small RACC's. Under § 101.65(d)(4)(ii), main dish and meal products, to qualify to bear this or a related term, could contain no more than 600 mg of sodium per RACC before January 1, 1998 (§ 101.65(d)(4)(ii)(A)), and no more than 480 mg of sodium per RACC after January 1, 1998 (§ 101.65(d)(4)(ii)(B)).

On December 13, 1996, FDA received from ConAgra, Inc., a petition requesting that the agency amend § 101.65(d) to ''eliminate the sliding scale sodium requirement for foods labeled 'healthy' by eliminating the entire second tier levels of 360 mg sodium for individual foods and 480 mg sodium for meals and main dishes.'' As an alternative, the petitioner requested that the effective date of January 1, 1998, in § 101.65(d)(2) through (d)(4), be delayed until such time as food technology ''catches up'' with FDA's goals to reduce the sodium content of foods and there is a better understanding of the relationship between sodium and hypertension.

In the **Federal Register** of April 1, 1997 (62 FR 15390), in response to this petition, FDA announced a stay until January 1, 2000, of the provisions in § 101.65(d)(2)(ii)(C) and (d)(4)(ii)(B). This stay was intended: (1) To allow time for FDA to reevaluate the standard, including the data contained in the petition and any additional data that the agency might receive; (2) to conduct any necessary rulemaking; and (3) to allow time for industry to respond to the rule or to any change in the rule that may result from the agency's reevaluation.

In the **Federal Register** of December 30, 1997 (62 FR 67771), FDA published an advanced notice of proposed rulemaking (ANPRM) announcing that it was considering whether to initiate rulemaking to reevaluate and possibly amend the nutrient content regulations pertaining to use of the term ''healthy.'' Among other things, FDA requested information on the current status of ''healthy'' labeling and on the impact of permitting the second-tier, more-restrictive sodium levels to become effective. The agency also asked that persons who support changing the definition should address what the new definition should require to ensure that the term can appear on a significant number of foods but is not so broadly defined as to lose its value in highlighting foods that are useful in constructing a diet consistent with dietary guidelines. The agency asked that those who support keeping the existing definition, including the second-tier sodium levels, should provide data showing that the second-tier sodium levels are not so restrictive as to effectively prevent use of the term.

FDA received 22 responses to the ANPRM. The comments responding to the ANPRM presented strong and opposing views on whether FDA should let the second-tier sodium levels take effect. They also contained a significant amount of data relating to use of the term ''healthy.''

FDA has reviewed the comments and also made an independent assessment of the number of foods labeled as ''healthy.'' Based on the information available, the agency tentatively concludes that, in some cases, the second-tier sodium levels may be overly restrictive, thereby eliminating a term that may potentially assist consumers in maintaining a healthy diet. The agency needs time to reevaluate the definition of the term ''healthy'' to consider options that preserve the public health intent while permitting manufacturers to use this term on foods that are consistent with dietary guidelines.

FDA has not completed its reevaluation in the time allowed by the April 1, 1997, partial stay due to: (1) Limited agency resources; (2) other agency priorities; and (3) the need to investigate independently the validity of the strong, opposing positions expressed in the comments. Because FDA needs additional time to consider whether proposing a change in the definition is necessary, the agency is extending the partial stay until January 1, 2003.

Under § 10.35(a) and (d)(1), the Commissioner of Food and Drugs (the Commissioner) may at any time stay or extend the effective date of a pending action if the Commissioner determines that it is in the public interest to do so. As discussed previously in the partial stay (62 FR 15390) and the ANPRM (62 FR 67771), the petition has raised significant issues that have public health implications.

FDA also recognizes, as mentioned in the petition, that manufacturers must begin very soon to revise the formulations and labeling if they have not already done so for those products that do not currently comply with the requirement that must be met after January 1, 2000, for a product to bear

the claim. FDA needs time to consider the supporting and opposing positions and to conduct any necessary rulemaking on the issues raised. Given these factors, the agency is persuaded that it is in the public interest to stay the provisions for the lower standards for sodium in the definition of ''healthy'' (§ 101.65).

Therefore, while the agency resolves these issues, FDA is staying until January 1, 2003, the provisions in § 101.65(d)(2)(ii)(C) for foods and in § 101.65(d)(4)(ii)(B) for meals and main dishes. The agency also is staying the provisions in § 101.65(d)(3)(ii)(C) for raw, single-ingredient seafood or game meat, a citation that was inadvertently omitted in the initial stay. This action is being taken to: (1) Allow FDA time to reevaluate the information that supports and opposes the petition, (2) conduct any necessary rulemaking on the sodium limits for the term ''healthy,'' and (3) provide time for companies to respond to any changes that may result from agency rulemaking.

Interested persons may submit comments regarding the appropriateness of the basis of this stay. In doing so, however, FDA encourages manufacturers who can meet the lower sodium levels for particular foods and still produce an acceptable product to do so even as the agency reevaluates the issues discussed.

Interested persons may, on or before April 15, 1999, submit to the Dockets Management Branch (address above) written comments regarding this document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This document is issued under the authority of 15 U.S.C. 1453, 1454, 1455, and 21 U.S.C. 321, 331, 342, 343, 348, 371.

For the reasons set forth in the preamble, 21 CFR 101.65(d)(2)(ii)(C), (d)(3)(ii)(C), and (d)(4)(ii)(B) are stayed until January 1, 2003.

Dated: March 8, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–6300 Filed 3–15–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 94P–0240]

Food Labeling; Serving Sizes; Reference Amount for Baking Powder, Baking Soda, and Pectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the nutrition labeling regulations to change the reference amount customarily consumed per eating occasion for the food category ''Baking powder, baking soda, pectin'' from 1 gram (g) to 0.6 g to more accurately reflect the amount of these products that is customarily consumed. The agency is also including 1/8 teaspoon (tsp) as an additional allowable household measure, because it is a common household measure available to consumers. This action is being taken in response to a petition submitted by Church Dwight Co., Inc., on behalf of Arm & Hammer.

DATES: Effective January 1, 2002. Full compliance is required for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after January 1, 2002. Voluntary compliance may begin April 15, 1999.

FOR FURTHER INFORMATION CONTACT: Ellen M. Anderson, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5662.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 18, 1997 (62 FR 61476), FDA published a proposed rule to amend the nutrition labeling regulations to change the reference amount customarily consumed per eating occasion for the food category ''Baking powder, baking soda, pectin'' from 1 g to 0.6 g to more accurately reflect the amount of these products that is customarily consumed. The agency also proposed to include 1/8 tsp as an additional allowable household measure because it is a common household measure available to consumers. Interested persons were given until February 2, 1998, to comment on the proposal.

FDA had issued the proposal in response to a petition dated June 23, 1994, from Church Dwight Co., Inc., on behalf of Arm & Hammer (94P–0240). The petitioner requested that the agency amend Table 2 in § 101.12(b) (21 CFR 101.12(b)) under ''Miscellaneous Category: Baking powder, baking soda, pectin'' to create a separate subcategory for baking soda with a reference amount of ''500 milligrams (mg)'' and to permit a corresponding serving size of ''1/8 tsp (500 mg)'' (which would require amending § 101.9(b)(5)(i) (21 CFR 101.9(b)(5)(i)).

II. Final Action

The agency received no comments in response to the proposal. Therefore, FDA concludes that, for the reasons set out in the proposal, it is appropriate to amend §§ 101.9(b)(5)(i) and 101.12(b) as proposed to better reflect the amounts customarily consumed for these products. Thus, in the final rule set forth below, FDA is revising its food labeling regulations to: (1) Amend § 101.12(b) by changing the reference amount for ''Baking powder, baking soda, pectin'' from ''1 g'' to ''0.6 g'' (the weight of 1/8 tsp of baking powder and baking soda, and close to the weight of 1/8 tsp of pectin); (2) amend § 101.9(b)(5)(i) by including 1/8 tsp as an additional allowable household measure; and (3) reorganize § 101.9(b)(5)(i) to simplify the options for teaspoon and tablespoon measures and to improve clarity.

III. Effective and Compliance Dates

Voluntary compliance with this final regulation, including any required labeling changes, may begin April 15, 1999, and all affected products initially introduced or initially delivered for introduction into interstate commerce on or after January 1, 2002, shall fully comply.

IV. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (62 FR 61476 at 61479). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. Benefit—Cost Analysis

FDA has examined the economic implications of this final rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential

economic, environmental, public health and safety, and other advantages; (distributive impacts and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, or adversely affecting jobs or competition. A regulation is also considered a significant regulatory action under Executive Order 12866 if it raises novel legal or policy issues.

The Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires a cost-benefit analysis and other analyses when a rule is a significant rule. Under section 1532(a) of the UMRA, a significant rule is a rule containing ''any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.''

Finally, the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) defines a major rule for the purpose of congressional review as having resulted in or being likely to result in one or more of the following: An annual effect on the economy of $100 million or more; a major increase in costs or prices; significant adverse effects on competition, employment, investment, productivity, or innovation; or significant adverse effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

FDA finds that this final rule is neither an economically significant rule nor a significant regulatory action as defined by Executive Order 12866. FDA has determined that this final rule does not constitute a significant rule under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) and, therefore, this rule does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act. Furthermore, this rule is not a major rule for the purpose of congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121).

Because FDA received no comments on the proposal, the benefit-cost analysis included in the proposed rule will not be changed.

This final rule will cause the labels of baking powder, baking soda, and pectin to be revised. FDA estimates that there are 29 firms producing baking powder, baking soda, or pectin. There are 23 baking powder labels, 18 baking soda labels, and 25 fruit pectin labels for a total of 66 labels affected by this rule. On average, the administrative, redesign, and inventory disposal costs for a labeling change of this type, with a 1-year compliance period, are $600 per product, or a total of $39,600.

The benefit of this proposed regulation is that because manufacturers will provide information on a serving size that is more appropriate for baking soda, baking powder, and pectin, product labels will provide more accurate information to consumers.

VI. Small Entity Analysis

FDA has examined the economic implications of this final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze options that would minimize the economic impact of that rule on small entities. Under the Regulatory Flexibility Act, FDA concludes that this final rule will have a significant economic impact on a substantial number of small entities.

FDA is amending the nutrition labeling regulations to change the reference amount customarily consumed per eating occasion for baking powder, baking soda, and pectin to more accurately reflect the amount of these products customarily consumed. The agency is also adding 1/8 tsp as a household measure because it is a common household measure available to consumers.

A. Estimate and Description of the Small Entities

According to the Regulatory Flexibility Act, the definition of a small entity is a business independently owned and operated and not dominant in its field. The Small Business Administration (SBA) has set size standards for most business categories through use of four-digit Standard Industrial Classification codes. For baking powder, baking soda, and pectin, a business is considered small if it has fewer than 500 employees.

FDA estimates that four of the firms producing baking powder, baking soda, or pectin are small. FDA also estimates that each small firm produces two products that might be relabeled as a result of this rule.

B. Description of the Impacts

FDA received no comments on the preliminary regulatory flexibility analysis and will, therefore, not alter that analysis. As estimated in the analysis in the proposed rule, the cost of this rule per small firm will be $1,200 ($600 x 2 products). The 95th percentile firm has annual sales of $275,000 and 1 employee. The cost of the rule as a percentage of annual sales is 0.4 percent. Return on sales for this industry is 8.3 percent for the upper quartile, 2.9 percent for the median, and 0.9 percent for the lower quartile. FDA is uncertain which quartile this firm belongs to because the number of employees and annual sales do not imply anything about the profitability of a firm. The costs of this rule will be 4.8 percent of profits if this firm falls into the upper quartile for the industry, 13.8 percent of profits if this is a median firm, and 44.4 percent of profits if this firm falls into the lower quartile. Therefore, the smallest 5 percent of affected firms will be adversely affected by this rule. Under the Regulatory Flexibility Act (5 U.S.C. 605), the agency concludes that this final rule will have a significant impact on a substantial number of small entities.

C. Compliance Requirements and Necessary Skills

The Regulatory Flexibility Act also requires agencies to describe the projected reporting, recordkeeping, and other compliance requirements of the rule and the type of professional skills necessary for preparation of the report or record. Manufacturers of baking soda, baking powder, and pectin who are not exempt from compliance as described in section VI.D.1 of this document will be required to amend their labels to reflect the new serving sizes and to recalculate the reported levels of nutrients in the foods based on the new serving sizes. No further analyses are required, only that the reported amounts are based on the correct serving size.

D. Alternatives

In the proposed rule, FDA examined alternatives to the rule that may minimize the significant economic impact on small entities consistent with stated objectives. Both alternatives are described as follows.

1. Exempt Small Entities

In § 101.9(j)(18), the agency exempts from mandatory nutrition labeling low volume food products of certain small businesses (see 61 FR 40963, August 7, 1996). Section 101.9(j)(18) applies to manufacturers, packers, distributors, or retailers of low volume products, defined as fewer than 100,000 units, produced by firms with fewer than 100 employees. To the extent that baking powder, baking soda, or pectin products are eligible for this exemption and manufacturers have chosen to take advantage of the exemption, then

products might not require relabeling as a result of this rule. However, if the products are currently nutritionally labeled either because the label contains nutrient content claims or because the manufacturer has voluntarily labeled the product, then the Nutrition Facts panel must be correct and the label must be changed. FDA is uncertain how many products, if any, can or will take advantage of this option. FDA discussed this exemption in the proposed rule but no comments were submitted.

2. Lengthen the Compliance Period

FDA also considered the option of providing small entities with a longer compliance period. Longer compliance periods typically result in lower costs because firms can combine mandated label changes with planned changes and because firms have more opportunity to use up existing labels. A compliance period longer than 1 year would reduce costs to less than $1,200 per small firm. Because the mandatory compliance date for this rule is January 1, 2002, firms will have almost 3 years to come into compliance with this rule.

E. Description of Outreach to Small Entities

The Regulatory Flexibility Act requires a description of the outreach activities undertaken by the agency to inform small entities about the rule and to encourage comments from small businesses. In addition to publishing the proposed rule in the **Federal Register**, the agency also notified by phone all small businesses known to produce products affected by the rule.

VII. The Paperwork Reduction Act of 1995

This final rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection requirements are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Serving Sizes; Reference Amount for Baking Powder, Baking Soda, Pectin.

Description: Section 403(q)(1)(A) and (q)(1)(B) of the Federal Food, Drug, and Cosmetic Act requires that the label or labeling of a food bear information that provides the serving size that is appropriate to the food and the number of servings per container. FDA has issued regulations in § 101.9(d)(3) that require the Nutrition Facts panel on the label of a food product to disclose information on serving size and on servings per container. FDA has also issued regulations in § 101.9(b) that provide that the serving size declared on a product label shall be determined from the ''Reference Amounts Customarily Consumed Per Eating Occasion'' that appear in § 101.12(b).

The regulations set forth in this final rule revise the reference amount that is used for determining the serving sizes for baking powder, baking soda, and pectin. As a result, manufacturers and other producers of these products are required to change the serving sizes and the number of servings per container that they disclose in the nutrition facts panel for their products. The regulations also provide for the use of 1/8 tsp as an additional household measure for the disclosure of serving sizes for food products.

Description of Respondents: Persons and businesses, including small businesses.

TABLE 1.—Estimated Annual Reporting Burden[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Hours per Response	Total Hours	Operating Costs
101.12(b)	29	66	1	66	$39,600

[1]There are no capital or maintenance costs associated with this collection of information.

FDA believes that the burden associated with the disclosures required by this final rule will be a one-time burden created by the need for firms to change the statement of serving size and the number of servings on the labels for their products. As noted above, FDA estimates that there are 29 firms producing baking powder (23 labels), baking soda (18 labels), and pectin (25 labels). FDA estimates that these firms will require an average of 1 hour per product to comply with the requirements of this final rule. Further, as noted above, FDA estimates that the final rule will result in a one-time operating cost of $39,600.

Individuals and organizations may submit comments on these burden estimates or on any other aspect of these information collection provisions, including suggestions for reducing the burden, and should direct them to the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

The information collection provisions in this final rule have been approved under OMB control number 0910–0357. This approval expires on January 31, 2001. 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.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. Section 101.9 is amended by revising paragraph (b)(5)(i) to read as follows:

§ 101.9 Nutrition labeling of food.

* * * * *

(b) * * *

(5) * * *

(i) Cups, tablespoons, or teaspoons shall be used wherever possible and appropriate except for beverages. For beverages, a manufacturer may use fluid ounces. Cups shall be expressed in 1/4- or 1/3-cup increments. Tablespoons shall be expressed as 1, 1 1/3, 1 1/2, 1 2/3, 2, or 3 tablespoons. Teaspoons shall

be expressed as 1/8, 1/4, 1/2, 3/4, 1, or 2 teaspoons.

* * * * *

3. Section 101.12 is amended in paragraph (b), in Table 2, under the ''Product category'' column, under ''Miscellaneous category'' by revising the entry for ''Baking powder, baking soda, pectin'' to read as follows:

§ 101.12 Reference amounts customarily consumed per eating occasion.

* * * * *

(b) * * *

TABLE 2.—REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY[1, 2, 3, 4]

Product category	Reference amount	Label statement[5]
* * * * *	*	*
Miscellaneous Category:		
Baking powder, baking soda, pectin	0.6g	__tsp (__g)
* * * * *	*	*

[1] These values represent the amount (edible portion) of food customarily consumed per eating occasion and were primarily derived from the 1977–1978 and the 1987–1988 Nationwide Food Consumption Surveys conducted by the U.S. Department of Agriculture.

[2] Unless otherwise noted in the Reference Amount column, the reference amounts are for the ready-to-serve or almost ready-to-serve form of the product (i.e., heat and serve, brown and serve). If not listed separately, the reference amount for the unprepared form (e.g., dry mixes; concentrates; dough; batter; fresh and frozen pasta) is the amount required to make the reference amount of the prepared form. Prepared means prepared for consumption (e.g., cooked).

[3] Manufacturers are required to convert the reference amount to the label serving size in a household measure most appropriate to their specific product using the procedures in 21 CFR 101.9(b).

[4] Copies of the list of products for each product category are available from the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

[5] The label statements are meant to provide guidance to manufacturers on the presentation of serving size information on the label, but they are not required. The term ''piece'' is used as a generic description of a discrete unit. Manufacturers should use the description of a unit that is most appropriate for the specific product (e.g., sandwich for sandwiches, cookie for cookies, and bar for ice cream bars). The guidance provided is for the label statement of products in ready-to-serve or almost ready-to-serve form. The guidance does not apply to the products which require further preparation for consumption (e.g., dry mixes, concentrates) unless specifically stated in the product category, reference amount, or label statement column that it is for these forms of the product. For products that require further preparation, manufacturers must determine the label statement following the rules in § 101.9(b) using the reference amount determined according to § 101.12(c).

* * * * *

Dated: March 9, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–6299 Filed 3–15–99; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–144–FOR]

Indiana Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions, an amendment to the Indiana regulatory program (hereinafter referred to as the ''Indiana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposed revisions to and additions of statutes pertaining to other State and Federal laws and permit revisions. Indiana intends to revise its program to incorporate the additional flexibility afforded by SMCRA and to provide the guidelines for permit revisions, including incidental boundary revisions.

EFFECTIVE DATE: March 16, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521. Telephone (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program.
II. Submission of the Proposed Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the July 26, 1982, **Federal Register** (47 FR 32107). You can find later actions concerning the conditions of approval and program amendments at 30 CFR 914.10, 914.15, 914.16, and 914.17.

II. Submission of the Proposed Amendment

By letter dated May 14, 1998 (Administrative Record No. IND–1606), Indiana sent us an amendment to its program under SMCRA. The amendment concerns revisions to IC 14–8 and several sections of IC 14–34 made by the Indiana House Enrolled Act No. 1074. Indiana sent the amendment at its own initiative.

We announced receipt of the amendment in the May 29, 1998, **Federal Register** (63 FR 29365). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on June 29, 1998. Because no one requested a public hearing or meeting, we did not hold one.

During our review of the amendment, we identified concerns relating to IC 14–34–4–18, Permit Conditions; IC 14–34–5–7, Definition of Permit Revision; IC 14–34–5–8.2, Nonsignificant Permit Revisions; and IC 14–34–5–8.4, Minor Field Revisions. We notified Indiana of these concerns by letter dated September 15, 1998 (Administrative Record No. IND–1621).

Indiana responded to our concerns by letter dated December 21, 1998. Included with Indiana's response letter was a letter sent by Indiana to the Indiana Coal Council, Inc. (ICC) and a

letter from the ICC to Indiana (Administrative Record No. IND–1627). We will discuss the State's response to our concerns in the Director's Findings below.

In its letter to Indiana, the ICC commented that Indiana House Enrolled Act No. 1074 is the law of the State of Indiana and is legally binding regardless of OSM's approval or disapproval unless and until such time as OSM may undertake action to pre-empt it under 30 CFR 730.11(a). We disagree with the ICC's comment. Provisions at 30 CFR 732.17 detail the procedures for approving a State program amendment. Paragraph (g) requires a State to submit to OSM any proposed changes to the laws or regulations that make up an approved program as an amendment. Further, paragraph (g) provides that ''no such change to laws or regulations shall take effect for purposes of a State program until approved as an amendment.'' Thus, as a matter of law, the various provisions of House Enrolled Act No. 1074 cannot be implemented as part of Indiana's regulatory program until we approve them. Further, any provisions which are disapproved cannot be implemented as part of a State regulatory program under SMCRA. Therefore, we are proceeding with this final rule under the authority of 30 CFR 732.17(g).

III. Director's Findings

Set forth below, in accordance with SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the proposed amendment.

1. IC 14–8–2–117.3, Definition for ''Governmental Entity''

This section defines ''governmental entity.'' There is no Federal counterpart to this definition, and it is not used elsewhere in the approved program. Indiana apparently included it because of the use of the term in related programs. We approve the definition because it is not inconsistent with any requirements of SMCRA and it has no effect on the Indiana program.

2. IC 14–34–4–18, Permit Conditions

Indiana added new subsection (b) to this section to allow the director to condition a permit to require that a permittee obtain or maintain in force other licences or permits required for surface coal mining and reclamation operations. However, these conditions do not authorize or require the director to administer or enforce the requirements of any Federal or State law other than this article.

We interpret this provision to mean that any such condition would make the permit dependent upon a permittee obtaining and maintaining in force other required licenses or permits and that the director would enforce such conditions. We also interpret this provision to mean that the director will continue to administer and enforce all requirements of the approved program including those incorporated through cross references, such as Mine Safety and Health Administration (MSHA) dam safety requirements and Environmental Protection Agency (EPA) effluent limits. In its letter dated December 21, 1998, Indiana confirmed that it would interpret the above provision in a manner consistent with our interpretation.

We approve IC 14–34–5–18(b), as clarified by the above interpretation, because it provides additional assurance that the regulatory authority will be able to comply with the provisions of SMCRA found in section 503(a)(6), which requires the approved State Program to establish, for the purpose of avoiding duplication, a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other Federal or State permit process applicable to the proposed operation. Thus, we find IC 14–34–5–18(b) is no less stringent than section 503(a)(6) of SMCRA.

3. IC 14–34–5–7, Permit Revisions

a. *IC 14–34–5–7(a).* Indiana revised subsection (a) to define a permit revision as a change in mining or reclamation operations from the approved mining and reclamation plans that adversely affects the permittee's compliance with the State's statutes and regulations. Such permit revisions are subject to review and approval as provided in this section and sections 8 through 8.4 of IC 14–34–5.

The above statute would essentially create two categories of changes in mining and reclamation operations: those that affect the permittee's ability to comply with the State's statutes and regulations; and those that do not affect the permittee's ability to comply with the State's statutes and regulations. Only those changes that affect the permittee's ability to comply with the State's statutes and regulations are required to undergo regulatory review and approval. Other changes do not have to undergo regulatory review and approval.

The above statute has three problems. First, it is inconsistent with 30 CFR 773.17(b), which require that a permittee conduct only those mining and reclamation operations detailed in the approved mining and reclamation plan. The above statute would allow a permittee to make a change in mining and reclamation operations without notifying the regulatory authority and obtaining its approval. Thus, under IC 14–34–5–7(a), the permittee may conduct mining and reclamation operations that deviate from the approved mining and reclamation plan. Clearly, this is inconsistent with 30 CFR 773.17(b).

Further, the above statute is inconsistent with our interpretation of a permit revision. As stated in the preamble of a September 28, 1983, final rule, ''all revisions must be approved and incorporated into the permit since they are changes to that document'' (48 FR 44377).

Thus, all changes to the approved mining and reclamation plan are permit revisions subject regulatory authority review and approval. IC 14–34–5–7(a) would limit permit revisions to only those changes in the mining and reclamation operations that adversely affects the permittee's ability to comply with the State's statutes and regulations. Clearly, this is inconsistent with our interpretation of a permit revision.

Finally, the above statute would allow the permittee to determine whether a change is a permit revision that adversely affects his or her ability to comply with the State's laws and regulations. Thus, only after a permittee determines that a proposed change adversely affects his or her compliance will he or she submit it to the regulatory authority for review and approval. This is inconsistent with section 511(a)(2) of SMCRA, which requires the regulatory authority to determine the scale or extent of a revision request for which all permit application information requirements and procedures apply.

In its December 21, 1998, letter, Indiana responded to our concerns about IC 14–34–5–7(a) by stating that it interprets the statutory reference to IC 14–34–5–8 through 8.4 to mean that the director or his designee is the only person authorized to determine whether a proposed change is significant or nonsignificant. The permit applicant does not make the determination.

We agree that the director or his designee is the only person authorized to determine whether a proposed change is significant or nonsignificant. However, the distinction between significant and nonsignificant revisions is not at issue. At issue is who determines whether changes in the mining and reclamation operation require regulatory review and approval at all. IC 14–34–5–7(a) leaves the

determination of whether a change requires review and approval in the hands of the permittee. The director or his designee cannot determine whether a proposed change is significant or nonsignificant if the permittee does not submit it for review. Under IC 14–34–5–7(a), the permittee would first determine that a proposed change adversely affects his or her compliance, and then submit it to the regulatory authority for review and approval. As stated above, this provision is inconsistent with section 511(a)(2) of SMCRA, which requires the regulatory authority to determine the scale or extent of a revision request for which all permit application information requirements and procedures apply.

Even if IC 14–34–5–7(a) is interpreted to mean that the director or his designee is the only person authorized to determine if a proposed change adversely affected the permittees' ability to comply with the State's statutes and regulations, the provision is still inconsistent with our interpretation of permit revisions and 30 CFR 773.17(b). All changes to the approved mining and reclamation plan, regardless of their effect of the permittees' ability to comply with the State's statutes and regulations, are permit revisions that must be submitted to the regulatory authority for review and approval. Further, the permittee can conduct only those changes that are detailed in the approved mining and reclamation plan. Therefore, we do not approve IC 14–34–5–7(a).

b. *IC 14–34–5–7(b).* Indiana revised subsection (b) to establish three types of permit revisions: significant revisions with notice and hearing requirements; non-significant revisions without hearing and notice requirements; and minor field revisions. We approve subsection (b) because it is consistent with, and no less stringent than, section 511(a)(2) of SMCRA, which requires the State to establish guidelines as to the scale or extent of a revision request for which all permit application information requirements and procedures shall apply.

c. *IC 14–34–5–7(c).* Indiana added subsection (c) to provide that the director or his or her designated representative may approve permit revisions. We approve this provision because it is no less stringent than section 511(a)(2) of SMCRA, which requires the regulatory authority to approve permit revisions.

d. *IC 14–34–5–7(d).* Finally, Indiana added subsection (d) to provide that the regulatory authority may not approve a permit revision unless the director or his or her designated representative finds that reclamation can be accomplished, the applicable requirements of IC 14–34–4–7 are met, and the permit revision complies with all applicable requirements of the State's statutes and regulations. We approve this provision because it is consistent with, and no less stringent than, the Federal provisions at 511(a)(2) of SMCRA, which requires a regulatory authority to approve a permit revision only after it finds that reclamation can be accomplished under the revised reclamation plan.

4. IC 14–34–5–8, Permit Revisions

In this section, Indiana revised subsection (a) to require the regulatory authority to hold hearings and publish public notices for significant permit revisions, but not nonsignificant or minor field revisions. We approve this statute because it is consistent with, and no less stringent than, Section 511(a)(2) of SMCRA, which requires the State to establish guidelines as to the scale or extent of a revision request for which all permit application information requirements and procedures shall apply.

5. IC 14–34–5–8.1, Significant Permit Revisions

Indiana added this section to establish guidelines for determining whether a proposed revision is significant and, therefore, subject to Indiana's notice and hearing requirements. The statute provides eight specific examples of significant revisions. The examples are similar to those contained in the Federal program for Tennessee. We approve this statute because it is consistent with, and no less stringent than, Section 511(a)(2) of SMCRA, which requires the State to establish guidelines as to the scale or extent of a revision request for which all permit application information requirements and procedures shall apply. However, we advise Indiana that this list cannot be considered all inclusive, as there are many other changes not listed at IC 14–34–5–8.1 that would be considered significant revisions.

6. IC 14–34–5–8.2, Nonsignificant Permit Revisions

Indiana added this new section to establish guidelines for determining whether a proposed change to a permit is a nonsignificant revision. The statute provides five specific examples of nonsignificant revisions. Examples in sections 8.2(1), (2), (3), (5)(A), and (5)(B) are similar to examples approved in other State programs. Further, they are consistent with, and no less stringent than, section 511(a)(2) of SMCRA, which requires the State to establish guidelines as to the scale or extent of a revision request for which all permit application information requirements and procedures shall apply. Therefore, we approve sections 8.2(1), (2), (3), (5)(A), and (5)(B).

a. *IC 14–34–5–8.2(4).* Section 8.2(4) would allow the director to approve postmining land use changes other than residential, commercial or industrial, recreational, or developed water resources meeting MSHA requirements for a significant impoundment as nonsignificant revisions without notice and hearing requirements.

Section 511(a)(2) of SMCRA requires the State to establish guidelines for determining which revision requests are subject to notice and hearing requirements. However, it also requires, at a minimum, notice and hearing requirements for any significant alterations in a reclamation plan. IC 14–34–5–8.2(4) would allow many changes that could produce significant alterations in a reclamation plan, such as a change from cropland to forest, without notice and hearing requirements. Allowing such a change without notice and hearing requirements is inconsistent with, and less stringent than, section 511(a)(2) of SMCRA.

In its December 21, 1998, letter, Indiana stated that it interprets this section to mean that the director of the State regulatory authority retains discretion under IC 14–34–5–8.2(5) to determine whether land use changes other than those listed in IC 14–34–5–8.1(8) could be significant revisions. Indiana further stated that all permit revision decisions are appealable under the Indiana Administrative Orders and Procedures Act.

We agree that the director retains discretion as to whether a change is significant or nonsignificant. However, director discretion does not change the fact that the statute is inconsistent with section 511(a)(2) of SMCRA, which requires notice and hearing requirements for any significant alterations in a reclamation plan. Further, the fact that all permit revision decisions are appealable under the Indiana Administrative Orders and Procedures Act does not justify the inclusion of a provision in this section that is inconsistent with, and less stringent than, section 511(a)(2) of SMCRA. Finally, changes in postmining land use are the kind of issue that the public should have an opportunity to comment on. Therefore, we do not approve section 8.2(4).

b. *IC 14–34–5–8.2(5)(C).* Section 8.2(5)(C) would allow the director to

approve changes in the mining or reclamation plan necessitated by unanticipated and unusually adverse weather conditions, other Acts of God, strikes, or other causes beyond the reasonable control of the permittee as nonsignificant revisions without notice and hearing requirements if all of the steps specified by the director to maximize environmental protection are taken.

This provision is similar to the Illinois program provision found at 62 IAC 1774.13(b)(2)(F). However, it has one major difference. The Illinois program regulation provides that a permit revision is not significant if the revision is a temporary change necessitated by unanticipated and unusually adverse weather conditions, other acts of God, strikes, or other cause beyond the reasonable control of the permittee. The Indiana statute as written would allow those changes to be permanent. Many of the causes listed in this statute could result in major environmental impacts requiring permanent changes to mining and reclamation plans. If these changes are permanent in nature, they must go to public notice and hearing.

In its December 21, 1998, letter, Indiana responded to our concerns about this provision by stating that it interprets this section to mean that the director determines whether a change necessitated by causes beyond the reasonable control of the permittee is significant or insignificant. Because the causes listed in this section are by their nature temporary, the vast majority of permit revisions will be insignificant. Indiana pointed out that the provision at IC 14–34–5–8.3 reiterates that the director must review and approve revisions before implementation. Therefore, any permanent changes that the director determines to be significant revisions will be subject to public review before being approved as permanent.

We approve IC 14–34–5–8.2(5)(c) with the understanding that Indiana will interpret it to mean that temporary changes necessitated by unanticipated and unusually adverse weather conditions, other acts of God, strikes, or other cause beyond the reasonable control of the permittee will be approved as nonsignificant permit revisions. Permanent changes will be reviewed by the director, and the director will make a determination as to whether the change qualifies as significant or nonsignificant. Interpreted in this manner, we find that the above statute is consistent with, and no less stringent than, the provisions of section 511(a)(2) of SMCRA, which requires the State to establish guidelines for determining which revision requests are subject to notice and hearing requirements.

7. IC 14–34–5–8.3, Nonsignificant Permit Revisions

This section provides that before a nonsignificant permit revision can be implemented, the director must review and approve it. We approve this provision because it is consistent with, and no less stringent than, the requirements of section 511(a)(2) of SMCRA, which requires the regulatory authority to approve permit revisions.

8. IC 14–34–5–8.4, Minor Field Revisions

a. *IC 14–34–5–8.4(a), (b), and (c)(1).* Subsections 8.4(a), (b), and (c)(1) establish the guidelines for determining whether a proposed change to a permit is a minor field revision. Subsection (a) establishes that a minor field revision must not require technical review or design analysis and must be capable of being evaluated in the field by the director's designated delegate for compliance with the regulations of IC 14–34–5–7(d). Subsection (b) provides that field inspectors may approve minor field revisions on either an inspection report or a form signed in the field. Subsection (c)(1) provides that a minor field revision must be properly documented and separately filed.

We approve the provisions of the above statutes because they are similar to those approved in other State Programs and are no less stringent than the requirements of section 511(a)(2) of SMCRA, which requires the State to establish guidelines as to the scale or extent of a revision request for which all permit application information requirements and procedures shall apply.

b. *IC 14–34–5–8.4(c)(2).* Subsection (c)(2) provides twelve specific examples of minor field revisions. Because IC 14–34–5–8.4(a) defines a minor field revision as a change that does not require technical review or design analysis and is capable of being evaluated in the field by a designated delegate of the director, we approve the examples at subsection (c)(2)(A) through (J) and (L) because they are consistent with, and no less stringent than, section 511(a)(2), which requires the State to establish guidelines for determining which revision requests are subject to notice and hearing requirements.

However, we do not approve the provision at subsection (c)(2)(K) regarding temporary cessation of mining because it is not considered a permit revision under Federal regulations. Because temporary cessation of mining often has a significant effect on the mining and reclamation process and progress, specific Federal regulations were developed at 30 CFR 816.131 and 817.131. We find that cessation of mining cannot be considered under the permit revision regulations and therefore cannot be considered as either a minor field revision or a non-significant revision. Therefore, we do not approve the provision at IC 14–34–5–8.4(c)(2)(K).

9. IC 14–34–5–8.5, Permit Area Extensions

Indiana's added this section to provide that a permittee must apply for a new permit for an extension of the area covered by a permit, except for an incidental boundary revision. We approve the addition of this section because it is substantively identical to the Federal provisions at 511(a)(3) of SMCRA.

10. IC 14–34–5–8.6, Incidental Boundary Revisions

Indiana added this section to establish the scale and extent of incidental boundary revisions, provide guidance on the standards that must be met on any areas approved through the incidental boundary revision process, and describe the application and approval procedures. We approve the addition of this section because it is consistent with, and no less stringent than, section 511(a)(2) of SMCRA, which requires the State to establish guidelines as to the scale or extent of a revision request for which all permit application information requirements and procedures shall apply.

11. Revisions to Other State Statutes

Indiana included the following statute revisions in the amendment: IC 14–22–10–2; IC 14–22–10–2.5; and IC 14–27–7–4. We did not review these statute revisions because they concern other State laws and not Indiana's approved program.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the proposed amendment. By telefax dated June 26, 1998 (Administrative No. IND–1617), the Indiana Coal Council, Inc. (ICC) commented that it supports all the program amendments proposed for IC 14–34. They also provided specific comments in support of IC 14–34–5–7(a), which defines a permit revision as a ''change in mining or reclamation operations from the approved plans that would adversely affect the permittee's compliance with this article.'' ICC

commented that SMCRA does not specifically define a permit revision or state that all mining or reclamation changes are revisions subject to regulatory authority approval. Furthermore, they contend that the Indiana program already has an approved regulation, 310 IAC 12–3–121(a), that does not require regulatory authority approval of all permit revisions. Thus, ICC believes that the statutory language found at IC 14–34–5–7(a) will not interfere with the proper implementation of the Indiana program because it excludes from the definition of permit revision only those changes that do not effect the permittee's compliance with SMCRA. They point out that such changes would have to be fairly insignificant and that no practical purpose would be served by subjecting them to the permit review and approval process. ICC contends that it would be ''arbitrary and capricious for OSM to disapprove this program amendment based on a perceived inconsistency with OSM's interpretation of what SMCRA 'envisions' if OSM is unable to identify a specific provision of SMCRA with which the amendment conflicts.''

We agree that SMCRA does not specifically define a permit revision. However, as stated in Finding No. 3a, we have established that all revisions must be approved and incorporated into the permit since they are changes to that document (48 FR 44377). The finding in this document is consistent with our September 28, 1983, final rule. Furthermore, while 310 IAC 12–3–121(a) requires permit revisions for significant changes in original mining or reclamation plans, it also specifically states that such changes are not limited to those changes which could result in the operator's inability to comply with the performance standards outlined in 310 IAC 12–5–1 through 310 IAC 12–5–158. Thus, IC 14–34–5–7(a) is inconsistent with the State program regulations at 310 IAC 12–3–121(a). Finally, it is entirely possible that a change to a reclamation plan would not adversely affect a permittee's ability to comply with the provisions of Article 34 of the Indiana Code or SMCRA, but still represent a significant change to the mining or reclamation plan. Thus, the definition found at IC 14–34–5–7(a) conflicts with Section 511(a)(2) of SMCRA, which requires that any significant alterations of a reclamation plan be subject to, at a minimum, notice and hearing requirements. As discussed in Finding No. 3a, we are not approving IC 14–34–5–7(a).

ICC commented that the category of permit revisions defined at IC 14–34–5–8.4, minor field revisions, has been employed for some time in the approved Kentucky state program. ICC pointed out that while Indiana Department of Natural Resources (IDNR) staff and the IDNR Commission have approved variants of the language located at IC 14–34–5–8.4, they were never finalized because of questions raised by the Indiana Attorney General about the need for a statutory change. ICC commented that defining minor field revisions and providing for their approval minimizes administrative burdens on the permittee and the regulatory authority. ICC strongly supports the idea of minor field revisions and the specific language found at IC 14–34–5–8.4, ''which was arrived at after lengthy discussions between regulators and industry to identify categories of revisions most suitable for field approval.'' The ICC believes that the minor field revisions approval process established at IC 14–34–5–8.4 is consistent with IDNR's efforts to centralize responsibility for permit areas in the field inspector.

ICC also commented that the language at IC 14–34–5–8.4(a) clearly limits the approval of minor field revisions to those that meet the conditions set forth in IC 14–34–5–8.4(a)(1) and (2). Thus, ICC contends that the fact that some of the categories of revisions identified at IC 14–34–5–8.4(c) may require technical review or design analysis is no basis for disapproval of the statute. ICC pointed out that pond design and drainage control measures do not usually require technical review or design analysis in Indiana. ICC stated that ''circumstances in the field require minor changes in the configuration of sediment ponds which are so obviously inconsequential that a cursory examination suffices to show that the modified design is as effective as the original design. * * * If IDNR inspectors are not competent enough to evaluate such changes in the field, then they would not be able to judge whether ponds conformed to approved designs in general.'' ICC commented that Kentucky program regulations provide for approval of some pond relocations and some drainage control measures as minor field revisions. Finally, ICC contends that any concern that IC 14–34–5–8.4(a) would be abused in practice is no basis for disapproval of the statute, as OSM conducts continuous oversight of approved State programs and has adequate resources for remedying defective state programs.

As stated in Finding No. 8b, we are approving the examples at subsection (c)(2)(A) through (J) and (L) because the provisions of IC 14–34–5–8.4(a) clearly define a permit revision as a change that does not require technical review or design analysis and is capable of being evaluated in the field by a designated delegate of the director. However, we are not approving the example at IC 14–34–5–8.4(c)(2)(K) concerning cessation of mining. As stated in Finding No. 8b, Federal regulations do not consider cessation of mining a permit revision.

ICC commented that incidental boundary revisions as defined at IC 14–34–5–8.6 are not a separate category of permit revisions, but rather fall into one of the three categories defined at IC 14–34–5–7(b). ICC commented that every incidental boundary revision will be either a nonsignificant revision or a minor field revision since one of the criteria for an incidental boundary revision is that the revision may not be a major revision. ICC stated that in practice, they do not anticipate incidental boundary revisions will ever qualify as a minor field revision. Therefore, incidental boundary revisions will be approved under the criteria for nonsignificant revisions. ICC commented that this corresponds to the current practice in Indiana. Thus, the statutory provision should be approved as submitted.

We realize it would be difficult to anticipate every change needed by a mining and reclamation operator and to categorize it as significant, insignificant, or a field revision. Even the same type of change can vary in size or scope to the degree that a single category would not be applicable. Further, we agree that in most cases an incidental boundary revision would qualify as an insignificant revision. However, we maintain that because the addition of area through an incidental boundary revision requires permit document modification, and may include areas with significant environmental resources, such changes cannot be approved as a minor field revision.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Indiana program. By letter dated June 19, 1998 (Administrative Record No. IND–1615), the U.S. Fish and Wildlife Service (FWS) responded that the meaning of IC 14–34–4–18(b) is unclear and that they would like an analysis of how the wording would change the IDNR's role in the Copperbelly Watersnake Conservation Agreement.

Interpreted in the manner stated in Finding No. 2, IC 14–34–4–18(b) will provide additional assurance that the regulatory authority will be able to comply with the provisions of SMCRA

found in Section 503(a)(7) which requires the approved State program to establish for the purpose of avoiding duplication, a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other Federal or State permit process applicable to the proposed operation. This requirement will not have any affect on the IDNR's role in the Copperbelly Watersnake Conservation Agreement.

The FWS commented that the language at IC 14–34–5–8.2(5) does not identify who makes the determination that additional fish and wildlife impacts will occur. Further, the FWS commented that the wording at IC 14–34–5–8.1(8) and IC 14–34–5–8.2(4) does not clearly identify the threshold for determining whether a revision resulting in loss post-mining wildlife habitat is significant or not. The FWS recommends that the final rule should not result in fewer opportunities for the FWS to review post-mining land use changes.

IC 14–34–5–7(c) states that any permit revision may be approved by the director or the director's designated representative. Thus, the director or the director's designated representative would be responsible for determining whether the permit revision qualifies as a significant, nonsignificant, or minor field revision under the guidelines provided at IC 14–34–5–8.1 through IC 14–34–5–8.4.

All post-mining changes found at IC 14–34–5–8.1(8) are considered significant and can only be approved after the notice and hearing requirements of the state law have been fulfilled. We did not approve the language at IC 14–34–5–8.2(4). Further, we have advised the state that the list found at IC 14–34–5–8.1 cannot be considered all inclusive.

Finally, the FWS stated that in all appropriate sections, the rule should specifically state that a proposed change is not insignificant or incidental if it will result in new or additional impacts on endangered species or wetlands.

IC 14–34–5–8.1(5) provides that a proposed revision of a permit is significant if the changes result in an adverse impact on fish, wildlife, and related environmental values beyond that previously considered. Related environmental values include impacts on endangered species or wetlands. IC 14–34–5–8.1(5) requires that a permit revision be designated as significant if this condition exists. The inclusion of a specific statement in other related sections would be redundant and excessive.

Environmental Protection Agency (EPA)

Provisions at 30 CFR 732.17(h)(11)(ii) require us to get written agreement from the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Indiana proposed to make in this amendment concern air or water quality standards. Therefore, we did not request the EPA to agree on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the proposed amendment from the EPA (Administrative Record No. 1609). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Provisions at 30 CFR 732.17(h)(4) require us to ask the SHPO and ACHP for comments on amendments which may have an effect on historic properties. On May 21, 1998, we requested comments on Indiana's amendment (Administrative Record No. 1609), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the proposed amendment as sent to us by Indiana on May 14, 1998, with the following exceptions:

We do not approve, as stated in Finding No. 3a, IC 14–34–5–7(a), concerning permit revisions; as stated in Finding No. 6a, IC 14–34–5–8.2(4), concerning postmining land use changes; and as stated in Finding No. 8b, IC 14–34–5–8.4(c)(2)(K), concerning minor field revisions.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 914, which codify decisions concerning the Indiana program. We are making this final rule effective immediately to speed the State program amendment process and to encourage Indiana to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the Secretary approves its State program. Similarly, 30 CFR 732.17(a) requires the State regulatory authority to submit any alterations of an approved State program to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to State programs that OSM does not approve. In the oversight of the Indiana program, we will recognize only the statutes, regulations and other materials the Secretary and we approve, together with any consistent implementing policies, directives and other materials. We will require the enforcement by Indiana of only such provisions.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5

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

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 24, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 914 is amended as set forth below:

PART 914—INDIANA

1. The authority citation for Part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 914.15 Approval of Indiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
May 15, 1998	March 16, 1999	IC14–8–2–117.3, 14–34–4–18, 14–34–5–7(b) through (d), –8, –8.1, –8.2(1) through (3), –8.2(5)(A) through (5)(C), –8.3, –8.4(a) through (c)(1),–8.4(c)(2)(A) through (J) and (L), –8.5,–8.6.

3. Section 914.17 is added to read as follows:

§ 914.17 State regulatory program provisions and amendments disapproved.

(a) The amendment at Indiana Code 14–34–5–7(a) submitted on May 14, 1998, concerning permit revisions is hereby disapproved effective March 16, 1999.

(b) The amendment at Indiana Code 14–34–5–8.2(4) submitted by Indiana on May 14, 1998, concerning postmining land use changes is hereby disapproved effective March 16, 1999.

(c) The amendment at Indiana Code 14–34–5–8.4(c)(2)(K) submitted by Indiana on May 14, 1998, concerning minor field revisions of temporary cessation of mining is hereby disapproved effective March 16, 1999.

[FR Doc. 99–6350 Filed 3–15–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[ND–035–FOR, Amendment No. XXV]

North Dakota Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the North Dakota regulatory program (hereinafter, the ''North Dakota program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). North Dakota proposed revisions to rules pertaining to a proposal to eliminate the requirement for companies to submit a copy of the Federal Coal Production and Reclamation Fee Report, changes to revegetation success standards, and a new rule on inspection frequency for inactive mines. The amendment revised the State program to improve operational efficiency.

EFFECTIVE DATE: March 16, 1999.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 307/261–6550, Internet address: GPadgett@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the North Dakota program can be found in the December 15, 1980, **Federal Register** (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.15 and 934.16.

II. Proposed Amendment

By letter dated August 29, 1997, North Dakota submitted a proposed amendment to its program (Amendment No. XXV, administrative record No. ND–Z–01) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota submitted the proposed amendment at its own initiative. The provisions of the North Dakota Administrative Code (NDAC) that North Dakota proposed to revise were: NDAC 69–05.2–13–01, concerning its coal production and reclamation fee report; NDAC 69–05.2–22–07, concerning revegetation success standards; and the addition of NDAC 69–05.2–28–18, concerning inspections of inactive surface coal mining operations.

OSM announced receipt of the proposed amendment in the September 17, 1997 **Federal Register** (62 FR 48807), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. ND–Z–13). The public comment period ended at 4 p.m., m.d.t. on October 17, 1997.

During its review of the amendment, OSM identified concerns with NDAC 69–05.2–22–07.4.1, pertaining to the time frame for demonstrating revegetation success. OSM notified North Dakota of the concerns in a telephone conversation on March 11,

1998 (administrative record No. ND–Z–09).

North Dakota responded in a letter dated April 23, 1998, by submitting additional explanatory information pertaining to NDAC 69–05.2–22–07.4.1 (administrative record No. ND–Z–10).

Based upon the additional explanatory information for the proposed program amendment submitted by North Dakota, OSM reopened the public comment period in the June 17, 1998 **Federal Register** (63 FR 33022; administrative record No. ND–Z–12). The public comment period ended on July 2, 1998.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by North Dakota on August 29, 1997, and as supplemented with additional explanatory information on April 23, 1998, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves the proposed amendment.

1. NDAC 69–05.2–13–01, Deletion of North Dakota's Requirement for Coal Production and Reclamation Fee Report

North Dakota proposed to delete at NDAC 69–05.2–13–01 the requirement that a copy of the Coal Production and Reclamation Fee Report (that is prepared by mining companies and submitted to OSM) also be furnished to the North Dakota Public Service Commission.

The Federal regulations at 30 CFR 870.15(c) requires, in part, that

> All operators who receive a Coal Sales and Reclamation Fee Report (Form OSM–1), including those with zero sales, uses or transfers, must submit a completed Form OSM–1, as well as any fee payment due [to OSM].

North Dakota stated that it proposed to delete NDAC 69–05.2–13–01 because there is no Federal regulation requiring it and the information contained in the report is readily available from OSM.

Because the Federal regulations do not require a State to mandate that an operator provide the State, as well as OSM, with a Form OSM–1, the Director finds that the proposed deletion of NDAC 69–05.2–13–01 is not inconsistent with the Federal regulations at 30 CFR 870.15(c). The Director approves this proposed revision.

2. NDAC 69–05.2–22–07.4.1, Time Frame for Demonstrating Reclamation Success

North Dakota proposed to add a new rule at NDAC 69–05.2–22–07.4.1, which states that as an alternative to meeting revegetation success standards for the last two consecutive growing seasons of the responsibility period, an operator may demonstrate that the applicable standards have been achieved in any three of five consecutive years starting no sooner than the eighth year of the responsibility period. North Dakota's proposed rule explicitly states that the alternative does not apply to demonstration of success on prime farmlands.

North Dakota submitted the following explanation for the proposed rule:

> This language will give the mining companies more flexibility in using vegetation data collected during a number of years near the end of the revegetation liability period. The new provision will allow mining companies to use data from any three of the last five years of the responsibility period, starting in year eight, to provide reclamation success. Occasionally hail storms, insect damage, very localized droughts, or other factors cause reduced yields in the last year or two of the liability period. Under current rules this can result in the bond being held for at least two more years. For example, assume a mining company meets cropland yield standards during the eighth and ninth years of the ten year responsibility period and, during the tenth year, a hail storm destroys the crop on the reclaimed land. Under the present rule, the company could not use any of the data from the eighth and ninth years and would have to meet the standards in the eleventh and twelfth years before final bond release could be granted. However, under the new proposal, a company would be eligible for final bond release in the eleventh year if success standards are met that year. In this example, data from the eighth, ninth and eleventh years would be used to achieve reclamation success for three out of five consecutive years.

North Dakota also clearly stated that separate standards apply to reclaimed prime farmlands and that the new proposal would not affect those standards.

In response to an OSM concern that the proposal lacked sufficient justification for situations in which the revegetation success standard is a reference area, North Dakota submitted additional information on daily precipitation, climatology of hail, grasshopper biology and management, and reference area location. Use of reference areas generally involves direct annual comparison of vegetative cover and production between the reference area and the revegetated area. Reference areas are used, in part, to account for the impact of climatic variation on both undisturbed and reestablished plant communities in the vicinity of the mine. North Dakota's original supporting information failed to explain why reference areas, which are located close to the revegetated areas, would not experience the same climatic variability or insect damage as the revegetated areas.

North Dakota provided four reasons that the proposed amendment should be approved. First, the State has a semiarid climate where vegetative growth is highly dependent upon rainfall during the growing season. Precipitation records emphasize the localized nature of summer rainfall events and amounts. For example, on May 22, 1997, Beulah recorded 0.35 inch of rain, while Zap, located 7 miles away, received 0.57 inch. On July 11, 1997, Beulah received 1.50 inches while Zap received 2.60 inches. As another example, on June 23, 1997, Underwood received 0.73 inch, while Washburn, located 12 miles away, received 0.31 inch. On July 2, 1997, Underwood received 2.14 inches while Washburn received 3.07 inches. Precipitation for the entire month of May 1997 totaled 0.58 inch in Beulah, 0.97 inch in Zap, 1.02 inches in Underwood, and 0.58 in Washburn. Because rainfall is the major limiting factor in plant production in the Northern Great Plains, precipitation differences could result in significant corresponding variations in yield.

Second, much of the rainfall during the summer months in North Dakota occurs as thunderstorms that may contain hail. The size and areal distribution of the hailstones, in combination with the timing of the hailstorms, may substantially reduce yields or completely destroy a crop for a particular growing season. Hail damage can vary greatly over short distances. In a particular year, a hailstorm could destroy the crop on the reclaimed area without damaging the undisturbed reference area located a few miles away, or vice versa.

Hailstorms are associated with the localized convective storms that result in the variable precipitation amounts discussed above. In general, areas with the most rainfall events also have the most hail events. Of the hailstorms occurring in the coal mining regions of the state (Regions 3 and 4) between 1976 and 1986, 19–24 percent were severe or moderate. Both severe and moderate hailstorms are capable of damaging crop production. Further, the most damaging hail occurred during the months of July and August in Region 3 and June and July in Region 4, key periods for plant growth and crop ripening.

Third, pests, such as grasshoppers, may have differential impacts on lands only a few miles apart. Grasshopper survey information for North Dakota demonstrates that grasshopper infestations are highly erratic in distribution. In addition, North Dakota submitted a publication, *Grasshopper Biology and Management* (Phillip A. Glogoza and Michael J. Weiss, North Dakota State University Extension Service, 1997), stating that damage to small grains is generally concentrated near field margins where grasses tend to be seeded. This damage pattern may disproportionately impact reclaimed areas because only a part of the field must be cultivated to prove productivity, the areas cropped may be relatively narrow, and test plots are often surrounded by native or tame pastureland or hayland seeded with a grass-legume mixture. Conversely, the undisturbed reference area is frequently surrounded by other cropland and thus may experience relatively little grasshopper damage in comparison to the corresponding test plots in a reclaimed area.

Fourth, some mining companies in the State have difficulty locating suitable reference (or control) areas close to reclaimed lands. To find undisturbed areas with similar soils and topography, the mining companies may have to locate reference areas several miles away from the reclaimed areas. In addition, mining companies must use equivalent management practices on both reclaimed and reference areas. For this reason, the companies prefer to have the same person managing both the reclaimed and undisturbed areas, which can also affect the location of reference areas. The greater the distance between the reclaimed and reference areas, the greater the likelihood of differences in precipitation or pest damage, which may result in widely varying yields between the two areas in a given year. The State encourages companies to locate reference areas as close to reclaimed areas as possible. However, some of the North Dakota mines will disturb many thousands of acres in large blocks, which means that establishing a suitable undisturbed reference area nearby is not always possible. The distance between reclaimed areas and their corresponding reference areas sometimes exceeds 10 miles. OSM accepts North Dakota's rationale justifying its proposed alternative to the current method for determining revegetation success.

The Federal rules at 30 CFR 816.116(c)(3) require that revegetation success standards be met during the last two consecutive years of the 10-year revegetation responsibility period in areas in which the average annual precipitation is equal to or less than 26 inches. On September 7, 1988, OSM revised 30 CFR 816.116(c)(2) to provide that in areas with more than 26 inches of average annual precipitation the vegetation parameters identified in 30 CFR 816.116(b) for grazing land, pasture land, or cropland must equal to exceed the approved success standards during the growing seasons of any two years of the 5-year responsibility period, excluding the first year. This change eliminated the requirement to measure revegetation success during the last two years of the responsibility period in areas with more than 26 inches of average annual precipitation.

North Dakota's proposal, which provides an option to demonstrate revegetation success using measurements from any three of five consecutive years, starting with the eighth years of the revegetation responsibility period, affords greater flexibility than 30 CFR 816.116(c)(3) but less flexibility than 30 CFR 816.116(c)(2). The amendment provides an additional safeguard by requiring that revegetation success standards be met during at least three years of the applicable portion of the revegetation responsibility period, rather than just two as in 30 CFR 816.116(c)(2) and (c)(3). Furthermore, it prohibits the inclusion of measurements taken during the first seven years of the responsibility period. Hence, like 30 CFR 816.116(c)(3), the North Dakota proposal requires that revegetation success standards be met during at least two years after the eighth year of the revegetation responsibility period. This restriction minimizes any potential impacts that augmentative practices, such as fertilization or irrigation, might have on the productivity and permanence of the reestablished plant communities.

For these reasons, the Director finds that the proposed North Dakota rule allowing the use of data from any three of the last five years of the responsibility period, starting in year eight, to demonstrate achievement of revegetation success is no less effective than the corresponding Federal regulation at 30 CFR 816.116(c)(3) in achieving the revegetation requirements of sections 515(b)(19) and (b)(20) of SMCRA.

3. NDAC 69–05.2–28–19, Inspection and Enforcement—Inspection of Inactive Surface Coal Mining Operations

a. *NDAC 69–05.2–28–19, Inspection Frequency.* North Dakota proposed at NDAC 69–05.2–28–19 one complete inspection per quarter and partial inspections as necessary. This proposed rule is substantially identical to the counterpart provisions in the Federal regulations at 30 CFR 840.11(a) and (b). Therefore the Director finds that NDAC 69–05.2–28–19 is no less effective than 30 CFR 840.11(a) and (b), and approves it.

b. *NDAC 69–05.2–28–19.1, Definition of Inactive Coal Mining Operations.* North Dakota proposed at NDAC 69–05.2–28–19.1 the first of two alternative definitions of inactive coal mining operations. Proposed NDAC 69–05.2–28–19.1 requires that surface coal mining operations have permanently ceased, and all disturbed areas have been reclaimed, and vegetation has been established in accordance with the approved reclamation plan, and the lands are not contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section 69–05.2–16–04. The Federal regulations at 30 CFR 840.11(f) state that an inactive surface coal mining and reclamation operation is one for which: (1) the State regulatory authority has secured from the permittee the written notice under 816.116(b) or 817.131(b) of this chapter for temporary cessation or (2) Reclamation Phase II or defined at 800.40 has been completed and liability of the permittee has been reduced by the State regulatory authority. The Federal regulations at 30 CFR 800.40(c)(2) require, prior to Phase II bond release (North Dakota's Third Stage bond release), vegetation establishment and no contributions of suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by Section 515(b)(10) of SMCRA and by subchapter K.

With the exception that NDAC 69–05.2–28–19 does not (1) require that the liability of the permittee has been reduced by the regulatory authority (RA) or (2) provide a definition of inactive surface coal mining which requires a written notice from the permittee provided for under 30 CFR 816.131(b) or 817.131(b), the proposed rule is identical to the Federal regulation at 30 CFR 842.11(c)(2).

In a January 30, 1997 telephone conversation (administrative record No. ND–Z–15) between OSM and North Dakota, North Dakota provided the following four reasons for North Dakota's lack of a requirement that the liability of the permittee has been reduced by the RA for determining when a coal mining operation is inactive and therefore subject to fewer inspections:

1. OSM's approval of a similar Ohio program amendment that OSM approved on October 29, 1996 (Vol. 61, No. 210 FR 55748, 55749);

2. Monthly inspections of North Dakota's reclaimed mines where mining has ceased and vegetation has been established is a waste of time and resources, especially during North Dakota winters where reclaimed mine sites are covered with snow;

3. OSM allows a lesser frequency for inspections at mines that have temporarily ceased operations; and

4. North Dakota would verify via an inspection prior to the declaration of ''inactive'' that Phase III Reclamation (the same as Phase II under SMCRA) had been completed.

As North Dakota stated, OSM approved an amendment that allowed Ohio to deem a coal mining operation inactive when Phase II reclamation standards had been achieved that also deleted the requirement for the release of phase II bond liability.

In its rationale for approving Ohio's state program amendment, OSM cities the preamble to the final Federal regulation at 30 CFR 842.11 published on August 16, 1982 (47 FR 35620). The rationale was contained in OSM's response to four commenters on the proposed rule 30 CFR 842.11(c)(2)(iii)(B) (published on December 1, 1981 (46 FR 58464); OSM stated

> the same policy considerations of efficiency in Federal programs [should] apply to State programs (47 FR 35620, 35621; August 16, 1982).

The Federal regulation at 30 CFR 842.11(c)(2)(iii)(B) requires that an inactive surface coal mining and reclamation operation is one in which reclamation Phase II as defined at 30 CFR 800.40 has been completed. In the final rule OSM affirmed its agreement with the commenters and stated that:

> The final rule allows States to distinguish between active and inactive mines in the same manner as was proposed and is being adopted for OSM when acting as the regulatory authority.
>
> OSM, in its discussion of 30 CFR 842.11 responded to commenters that wanted the requirement for Phase II bond release deleted because it could cause ''OSM to continue monthly inspections long after Phase II reclamation is completed.'' 47 FR at 35627 (August 16, 1982), as follows:
>
> OSM agrees. In view of the broad discretion granted to OSM in releasing a portion of the performance bond following completion of Reclamation Phases I and II, the determination of a mine's status as active or inactive should be based solely on the completion of Reclamation Phase II.

The aforementioned position OSM took on August 16, 1982 has not been rescinded; OSM has not changed its regulations at 30 CFR 800.40 which applies when a state is the regulatory authority.

The Director finds that proposed NDAC 69–05.2–28–19.1 is consistent with and no less effective than the Federal regulations at 30 CFR 842.11(1)(c) and 800.40(c)(2) and approves it.

c. *NDAC 69–05.2–28–19.2, definition of inactive surface coal mining operations.* North Dakota proposed at NDAC 69–05.2–28–19.2 the second of the two alternative definitions of inactive surface coal mining operations, which requires that the regulatory authority has granted partial bond release for the disturbed areas. It has the same requirements as Federal regulations at 30 CFR 840.11(f)(2) in that the NDAC reference describes its Third Stage bond release which is the same as OSM's Reclamation Phase II bond release at 30 CFR 800.40(c)(establishment of vegetation on the regraded mined lands).

Since this proposed rule is substantively identical to the counterpart provision of the Federal regulations at 30 CFR 840.11(f)(2), the Director finds that proposed NDAC 69–05.2–28–18.2 is no less effective than 30 CFR 840.11(f)(2) and approves it.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

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

2. Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the North Dakota program.

USDA Rural Development responded on September 25, 1997 that ''the proposed changes are consistent with USDA Rural Development construction policies (administrative record No. ND–Z–04).

USDA Agriculture Research Service responded on October 2, 1997 and stated that they believed the changes proposed in the amendment ''are necessary and an improvement.'' The Agriculture Research Service also suggested revising the wording of the proposed rule to read, ''three out of five consecutive years,'' instead of the way it currently reads, ''three out of consecutive five years'' (administrative record No. ND–Z–05). In a November 12, 1998 telephone conversation (administrative record No. 14), Director of the Reclamation Division, North Dakota Public Service Commission, Jim Deutsch, stated that he would revise the final rule to be, ''three out of five consecutive years.''

U.S. Army Corps of Engineers responded on October 16, 1997 that ''our review of the proposed changes found them to be satisfactory to our agency'' (administrative record No. ND–Z–06).

U.S. Fish and Wildlife Service responded on December 17, 1997 and stated that the ''proposed changes are logical and reasonable.'' The letter also stated: ''I do not anticipate any significant impacts on Fish and Wildlife Resources as a result of the proposed rules'' (administrative record No. ND–Z–08).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. ND–Z–03). It responded to OSM's request on September 30, 1997, and stated that it concurred with the proposed modifications (administrative record No. ND–Z–07).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. ND–Z–03). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves North Dakota's proposed amendment as submitted on August 29, 1997, and as supplemented with additional explanatory information on April 23, 1998.

The Director approves, as discussed in:

Finding No. 1, NDAC 69–05.2–13–01, concerning the deletion of North

Dakota's requirement for mining companies to send the Coal Production and Reclamation Fee Report to the North Dakota Public Service Commission;

Finding No. 2, NDAC 69–05.2–22–07.4.1, concerning the time frame for demonstrating reclamation success; and

Finding No. 3, NDAC 69–05.2–28–19, concerning the inspection frequency of inactive surface coal mining operations.

The Federal regulations at 30 CFR Part 934, codifying decisions concerning the North Dakota program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

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

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

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

6. Unfunded Mandates

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

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 25, 1999.

Brent Wahlquist,

Regional Director, Western Regional Coordinating Center.

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

PART 934—NORTH DAKOTA

1. The authority citation for part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 934.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 934.15 Approval of North Dakota regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
August 29, 1997	March 16, 1999	Rules: NDAC 69–05.2–13–01; NDAC 69–05.2–22–07.4.1; NDAC 69–05.2–28–19.

[FR Doc. 99–6352 Filed 3–15–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket #: 990204043–9043–01]

RIN 0651–AB03

Consideration of Interlocutory Rulings at Final Hearing in Interference Proceedings

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The Patent and Trademark Office (Office) is amending its interference regulations to clarify the standard under which the Board of Patent Appeals and Interferences (Board) considers interlocutory decisions entered by a single administrative patent judge (APJ) at the time of the final hearing.

DATES: *Effective Date:* March 16, 1999.

Comment Deadline Date: Written comments must be received on or before

May 17, 1999. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail over the Internet to ''Interference.Rules@uspto.gov'' and should include ''Rule 655(a)'' in the subject line. Comments may also be submitted by mail addressed to BOX INTERFERENCE, Commissioner of Patents and Trademarks, Washington, DC 20231, or by facsimile to (703) 305–0942, marked to the attention of Fred McKelvey or Richard Torczon. The Office prefers to receive comments by electronic mail via the Internet. Where comments are submitted by mail, please include an electronic copy of the comments on a DOS-formatted 3½ inch diskette in addition to a paper copy.

The comments will be available for public inspection in Room 10C10 of Crystal Gateway, 1225 Jefferson Davis Highway, Arlington, Virginia, and will be available through anonymous file transfer protocol (ftp) *via* the Internet (address: ftp.uspto.gov). Since comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Fred McKelvey or Richard Torczon by telephone at (703) 308–9797, or by mail addressed to: BOX INTERFERENCE, Commissioner of Patents and Trademarks, Washington, DC 20231, or by facsimile to (703) 305–0942, marked to the attention of Mr. McKelvey or Mr. Torczon.

SUPPLEMENTARY INFORMATION: The Patent and Trademark Office has for some time received inquiries from members of the bar with respect to the meaning of Rule 655(a). In particular, the Patent and Trademark Office has received inquiries concerning the application of the abuse of discretion standard by a merits panel of the Board when considering an interlocutory order entered by a single administrative patent judge during the interlocutory phase of an interference. The purpose of this notice of interim rule is to clarify Rule 655(a). This clarification should eliminate unnecessary issues from arising in interference cases and should provide the public with more certainty as to how matters will be considered. The notice will also make practice within the Board more uniform.

Any final decision in an interference is entered by a panel of at least three members of the Board. Rule 655(a), as currently worded, gives the impression that the abuse of discretion standard is to be applied by a merits panel for all interlocutory orders, including those involving the merits of the interference, e.g., patentability or attempts to obtain benefit of an earlier filed application. The rule is amended to emphasize that a panel of the Board will resolve the merits of an interference as a panel without deference to any interlocutory order. Panels will, however, continue to apply the abuse of discretion standard, but only with respect to procedural orders. No list could completely detail which issues are procedural, but examples would include granting or denying an extension of time, granting or denying additional discovery under 37 CFR 1.687(c), dismissing a motion for failure to comply with the rules and setting of times to take action in an interference, and determining the dates for conference calls.

For the convenience of the reader, the precise changes being made to § 1.655(a) are reproduced in the following paragraph, with deleted text in brackets and added text *underlined:*

(a) In rendering a final decision, the Board may consider any properly raised issue, including priority of invention, derivation by an opponent from a party who filed a preliminary statement under § 1.625 *of this title,* patentability of the invention, admissibility of evidence, any interlocutory matter deferred to final hearing, and any other matter necessary to resolve the interference. The Board may also consider whether [entry of any] *an* interlocutory order [was an abuse of discretion] *should be modified.* [All interlocutory orders shall be presumed to have been correct, and the] *The* burden of showing [an abuse of discretion] *that an interlocutory order should be modified* shall be on the party attacking the order. [When two or more interlocutory orders involve the same issue, the last entered order shall be presumed to have been correct.] *The abuse of discretion standard shall apply only to procedural matters.*

Interested members of the public are invited to present written comments on the change to § 1.655(a) contained in this Interim Rule.

Other Considerations

An interim final rule is appropriate under the present circumstances for at least two reasons. First, the rulemaking is procedural within the meaning of 5 U.S.C. 553(b)(A). Second, the Commissioner of Patents and Trademarks for good cause finds that notice and public procedure would be contrary to the public interest within the meaning of 5 U.S.C. 553(b)(B) because delay in the promulgation of this rule would perpetuate the burdens on parties seeking full consideration of interlocutory decisions at the time of the final hearing.

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This rule involves no collection of information subject to the Paperwork Reduction Act, 44 U.S.C. ch. 35. Notwithstanding any other provision of law, no person is required to respond nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612 (October 26, 1987).

This rule has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993).

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small Businesses.

For the reasons set forth in the preamble, 37 CFR part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.655 is amended by revising paragraph (a) to read as follows:

§ 1.655 Matters considered in rendering a final decision.

(a) In rendering a final decision, the Board may consider any properly raised issue, including priority of invention, derivation by an opponent from a party who filed a preliminary statement under § 1.625, patentability of the invention, admissibility of evidence, any interlocutory matter deferred to final hearing, and any other matter necessary to resolve the interference. The Board may also consider whether an interlocutory order should be modified. The burden of showing that an interlocutory order should be modified shall be on the party attacking the order. The abuse of discretion standard shall apply only to procedural matters.

* * * * *

Dated: March 10, 1999.

Q. Todd Dickinson,

Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.

[FR Doc. 99–6346 Filed 3–15–99; 8:45 am]

BILLING CODE 3510–16–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 202

Change of Mailing Address for Notices of Intent to Enforce a Restored Copyright

AGENCY: Copyright Office, Library of Congress.

ACTION: Technical amendment.

SUMMARY: On January 20, 1999, the Copyright Office notified the public that it was changing the mailing address for submitting a Notice of Intent to Enforce (NIE) a restored copyright or registering claims in restored works under the Uruguay Round Agreements Act, effective February 22, 1999. The number of these filings has greatly decreased making it unnecessary for the Office to maintain a special post office box. In the future all NIEs must be mailed to the special GC/I&R address given below for mail, and all future registration claims should be mailed to the same address given for other registration claims.

EFFECTIVE DATE: February 22, 1999.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Assistant General Counsel, or Sandra Jones, Writer-Editor, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: The Uruguay Round General Agreement on Tariffs and Trade (GATT) and the Uruguay Round Agreements Act (URAA) provide for the restoration of copyright in certain works that were in the public domain in the United States. Under 17 U.S.C. 104A (1994) as provided by the URAA, copyright protection automatically was restored on January 1, 1996, in certain works by foreign nationals or domiciliaries of a country that is the subject of a presidential proclamation declaring its eligibility or that is a member of the World Trade Organization (WTO) or of the Berne Convention.

Copyright owners of works meeting the requirements of section 104A may register a copyright claim in a restored work and file a Notice of Intent to Enforce (NIE) a restored copyright in the Copyright Office or serve an NIE on an individual reliance party, anyone who is already using the work or acquired copies of the work before the date of enactment of the URAA. The URAA instructs the Register of Copyrights to publish lists in the **Federal Register** identifying the restored works and their owners if a notice of intent to enforce a restored copyright has been filed.

During the first two years that the lists were published, a special mailing address was established for the submission of NIEs and applications to register copyright claims under the URAA because of the large number of expected filings and the special handling that they required. The initial two-year period for filing NIE's with the Office ended for the overwhelming majority of countries on December 31, 1997. The number of filings has decreased drastically, therefore, the special address is no longer needed.

On January 22, 1999, the Office issued a notice informing all interested parties of the change in the mailing address for filing NIEs or URAA/GATT registrations. The former address was: URAA/GATT, NIEs and Registrations, P.O. Box 72400, Southwest Station, Washington, DC 20024, USA. The new address for filing NIE's is GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024, USA. The revised address for GATT registrations is Register of Copyrights, Library of Congress, Copyright Office, 101 Independence Avenue, S.E., Washington, D.C. 20559–6000. (64 FR 3574, Jan. 22, 1999). The Office is now amending its regulations to reflect the change of addresses.

List of Subjects

37 CFR Part 201

Copyright.

37 CFR Part 202

Copyright.

Final Rules

For the reasons set out in the preamble, amend parts 201 and 202 of Title 37 of the Code of Federal Regulations as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Amend § 201.33 by revising paragraph (d)(1) to read as follows:

§ 201.33 Procedures for filing Notices of Intent to Enforce a restored copyright under the Uruguay Round Agreements Act.

* * * * *

(d * * *

(1) Notices of Intent to Enforce should be sent to the following address: GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024, USA.

* * * * *

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

3. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 202.12 [Amended]

4. Amend § 202.12 by revising the last sentence of paragraph (c)(1) to read ''The application, filing fee, and deposit should be sent in a single package to the following address: Library of Congress, Copyright Office, 101 Independence Avenue S.E., Washington, D.C. 20559–6000.''

Marilyn Kretsinger,

Assistant General Counsel, Copyright Office.

[FR Doc. 99–6355 Filed 3–15–99; 8:45 am]

BILLING CODE 1410–30–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–53; RM–9253]

Radio Broadcasting Services; Malvern and Bryant, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 227A from Malvern to Bryant, Arkansas, and modifies the license of Malvern Entertainment Corporation for Station KBOK–FM, as requested, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. *See* 63 FR 24518, May 4, 1998. The allotment of Channel 227A to Bryant will provide a first local aural service to the community without depriving Malvern of local aural transmission service. Coordinates used for Channel 227A at Bryant are 34–30–30 NL and 92–32–42 WL. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 19, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–53, adopted February 24, 1999, and released March 5, 1999. The full text of this Commission decision is available for

inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 227A at Malvern, and adding Bryant, Channel 227A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–6320 Filed 3–15–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–186; RM–9318]

Radio Broadcasting Services; Rio Grande City, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 236A to Rio Grande City, Texas, in response to a petition filed by Arturo Lopez and Eleazar Trevino. *See* 63 FR 55831, October 19, 1998. The coordinates for Channel 236A at Rio Grande City are 26–25–47 and 98–49–25. There is a site restriction 5.79 kilometeres (3.6 miles) north of the community. Mexican concurrence has been obtained for this allotment. With this action, this proceeding is terminated. A filing window for Channel 236A at Rio Grande will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: April 19, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–186, adopted February 24, 1999, and released March 5, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 236A at Rio Grande City.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–6318 Filed 3–15–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 970829218–9064–03; I.D. 080597E]

RIN 0648–AK39

Atlantic Swordfish Fishery; Dealer Permitting and Import Documentation Requirements

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to prohibit the import into the United States of Atlantic swordfish or Atlantic swordfish pieces, weighing less than 33 lb (15 kg) dressed weight (dw) unless documented as coming from an Atlantic swordfish weighing 33 lb (15 kg) dw or more; to require dealer permitting and reporting for importation of swordfish from any source; and to implement a Certificate of Eligibility (COE) program for all swordfish imports.

These measures are necessary to implement a 1995 recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) with respect to controlling the harvest of undersized Atlantic swordfish and to facilitating the collection of information relating to the trade in Atlantic swordfish which may hinder conservation efforts by the United States and ICCAT.

DATES: This final rule is effective June 14, 1999 with the exception of § 630.5(b)(1)(ii) which will be made effective when approval of the information collection requirement contained therein is obtained from the Office of Management and Budget. When approved, NMFS will publish a separate document in the **Federal Register** giving notice of the effective date for that section.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) supporting this action may be obtained from Rebecca Lent, Chief, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments regarding the collection-of-information requirement contained in this extended interim rule, as amended, should be sent to the previous address and to the Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Jill Stevenson or Steve Meyers, 301–713–2347 or FAX 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA).

Introduction

You may obtain background information about the need for revisions to Atlantic swordfish fishery regulations from the preamble to the proposed rule (63 FR 54661, October 13, 1998). That information is not repeated here.

NMFS has been concerned that sales of swordfish less than 33 lb (15 kg) dw in the United States diminish the

effectiveness of domestic conservation efforts due to the inability to differentiate in the marketplace between imported swordfish weighing less than 33 lb (15 kg) dw (legal prior to June 14, 1999 and domestic Atlantic swordfish weighing less than 33 lb dw (illegal). Therefore, as required by an ICCAT recommendation, NMFS has concluded it is necessary to prevent the sale in the United States of Atlantic swordfish weighing less than 33 lb (15 kg) dw harvested either by non-U.S. vessels or by fishermen from other countries and imported to the United States. Import restrictions, coupled with reporting requirements for swordfish importers, will facilitate enforcement of the domestic minimum size for Atlantic swordfish and provide NMFS with additional information on swordfish harvests from all ocean areas. Such information will contribute to stock assessments and estimates of fishing mortality.

ICCAT has requested that all countries that import frozen swordfish collect and examine as much import or landing data and associated information as possible and report that information to ICCAT.

Under the authority of ATCA (971 d (c)(3)), the United States may impose requirements or other measures necessary to implement ICCAT recommendations or to obtain scientific data necessary to accomplish the purpose of the Convention.

This final rule (1) prohibits any Atlantic swordfish weighing less than 33 lbs (15 kg) dw from entering the United States, (2) prohibits any shipment of swordfish from entering the United States unless accompanied by a Certificate of Eligibility, and (3) establishes permitting and reporting requirements for swordfish importers to facilitate tracking of swordfish imports.

You may not import swordfish unless you possess a valid swordfish dealer permit and submit bi-weekly reports on a NMFS-dealer report form and relevant COEs to NMFS. You may obtain a permit application from the NMFS Southeast Permit Office, St. Petersburg, FL by calling (727) 570–5326. Once your permit is issued, you will receive, under separate cover, bi-weekly dealer report forms (including import report forms).

Electronic Access

You may obtain a blank example of a COE from the NMFS Highly Migratory Species Management Division by mail (see **ADDRESSES**) or the Internet (www.usatuna.com).

If you export swordfish to the United States, you may use an existing form to serve the purpose of the COE or you may obtain a copy of a COE from NMFS. The COE accompanying the swordfish shipment does not need to be on an official form but must contain, in English, at least the following: (1) flag of harvesting vessel, (2) ocean of origin, (3) weight of the shipment, (4) date, name, signature, title, authorizing government agency, and address of validating official or authorized agent and government seal, (5) certification that the shipment does not contain swordfish weighing less than 33 lb (15 kg) dw or, if it does, that it is not Atlantic swordfish, or, if it is Atlantic swordfish, that it was taken from a fish weighing greater than 33 lb (15 kg) dw, and (6) Customs Form 7501 entry number (to be completed by importer before submission to NMFS).

Comments and Responses

NMFS received written comments and held five public hearings during the 45-day comment period on the proposed rule. When drafting the final EA/RIR and the final regulations, NMFS considered all comments received.

Comment 1: All but two commenters supported the proposed measures. One dissenting commenter felt that these measures would do little to aid the recovery of the swordfish stock, considering swordfish are not mature when they reach the U.S. minimum size. Another commenter, representing the Federal fisheries agency in Canada, opposed the COE requirement for Canadian exports given that Canada has also adopted the 33–lb (15 kg) dw minimum size for Atlantic swordfish and has documentation and enforcement restrictions in place to implement that minimum size.

Response: NMFS agrees that the minimum size ''allows'' fishermen to harvest immature swordfish. However, the Standing Committee for Research and Statistics of ICCAT has determined that swordfish yields may increase substantially with the current minimum size if fishing mortality on undersized swordfish can be further reduced. NMFS believes these final actions will facilitate enforcement of the U.S. minimum size (recommended by ICCAT) and may encourage other countries to target swordfish larger than 33 lb (15 kg) dw in order to sell to the U.S. market. Because Canada has not implemented the ban on sale of undersized swordfish, NMFS cannot make an exemption for Canada regarding the documentation requirements, or all countries that adopt the 33– lb (15 kg) dw minimum size would also have to be exempted. This would create an enforcement loophole which might allow transhipments of undersized swordfish through exempted countries and into the United States without a COE.

Comment 2: One commenter expressed support for including very specific information on the COE, including the name of the harvesting vessel. The commenter felt that this information is collected by other ICCAT countries and would help in enforcing ICCAT conservation and management measures.

Response: NMFS believes this information is useful; however, it would increase the burden on exporting firms. At this time, NMFS does not consider that further information is necessary to implement the ICCAT minimum size recommendation. If an ICCAT recommendation adopts a multi-lateral information collection, NMFS would implement the ICCAT recommendation.

Comment 3: Several commenters, including importers and wholesalers, did not think the dealer reporting and COE paperwork burden would be onerous.

Response: NMFS agrees. Although this final rule requires new and revised paperwork collections, exporters and importers have the information readily available and are likely to transcribe this information from an existing invoice (with the exception of the flag of the harvesting vessel).

Comment 4: Two commenters stressed the need for a governmental official to validate the COE form certifying that the data are accurate. They believe it will increase the accountability for disregarding ICCAT recommendations.

Response: NMFS agrees that governmental oversight might increase the accountability for an exporting firm's activities. However, allowing an authorized agent to validate the shipment minimizes the burden on governmental officials and decreases interference with trade in fresh swordfish (possible delay over a weekend, for example). NMFS, therefore, will allow the exporting nation's governmental official to authorize another person or entity to validate COEs.

Comment 5: Two commenters believe NMFS should monitor the trade of all ICCAT species with a COE.

Response: NMFS acknowledges the benefits of monitoring trade in highly migratory species, especially with regard to monitoring compliance with ICCAT measures. However, a certification program may be costly to implement and there are no current ICCAT recommendations which would justify the increased reporting burden on exporting countries.

Comment 6: One commenter indicated the need to monitor total species imports by country to ensure compliance with ICCAT's established quotas.

Response: NMFS currently monitors total species imports by exporting country. These data are available to the public on the NMFS statistics website http://www.st.nmfs.gov/st1/trade/index.html). Because U.S. Customs does not require information about flag of harvesting vessel, these data cannot infer the total harvest by country but can illustrate a broad picture of HMS trade activities. Data contained on the COEs, the bi-weekly dealer reports, and bluefin tuna statistical documents allow NMFS to monitor bluefin tuna and swordfish imports by harvesting nation.

Comment 7: Commenters were concerned about the enforcement of these regulations if the importer of record is a foreign firm.

Response: Under U.S. Customs regulations, an importer of record must have a registered agent in the United States. NMFS can then serve the charging documents to the registered agent of the corporation.

Comment 8: General comments were received on the formatting of the COE and the dealer report form.

Response: NMFS has altered those forms to reflect the submitted comments. Specifically, the entry number from the Customs Form 7501 will be required on the COE and the dealer report form so that NMFS can cross-check the entry form, dealer report, and COE for accuracy. In addition, individual weights of headed and gutted swordfish will be required on the dealer report form. However, NMFS is not requiring a specific form, but rather any form that contains the required information may be used as a COE.

Comment 9: A request for extension of the comment period was submitted. The commenter indicated the usefulness of allowing exporting firms to review these measures at the International Boston Seafood Show in March 1999.

Response: NMFS believes that a 60-day comment period and five public hearings were sufficient to notify the public about these measures. Further, NMFS agrees with the idea of disseminating information at the International Boston Seafood Show and has reserved exhibit space. NMFS has also planned a special seminar to explain the final COE requirements to swordfish importers and exporters.

Comment 10: Enforcement concerns were raised relative to unlawful entry of swordfish by non-resident corporations.

Response: To facilitate enforcement, NMFS has referenced pertinent U.S. Customs regulations pertaining to entry of merchandise by non-resident corporations. The resident agent for a foreign corporation which serves as a swordfish importer in the United States would receive any notice regarding the violation for the corporation. NMFS could then prosecute the case against the foreign corporation.

Changes From the Proposed Rule

NMFS has changed the proposed dealer reporting requirement to include the individual weights of headed and gutted swordfish and to require the Customs Form 7501 entry number of each swordfish shipment on the COE and dealer report form. NMFS has also included a clause stating that the COE and dealer report form must be submitted in English. NMFS has also allowed a foreign government to authorize a person or entity to sign and seal the COE form that will accompany a shipment of swordfish to the United States. NMFS cross-referenced existing U.S. Customs regulations applying to entry of a shipment into the United States by a non-resident corporation. NMFS has also clarified requirements for non-resident importers. Finally, editorial changes have been made in this final rule.

Classification

This final rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.*

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification, and the initial certification remains valid. As a result, a Regulatory Flexibility Analysis was not prepared.

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

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This rule contains three collection-of-information requirements subject to the PRA. Two of these collections have been approved by the Office of Management and Budget under OMB control numbers 0648–0013 and 0648–0363 for dealer permits and the COE, respectively. The estimated burden for dealer permitting is a 200 response increase at 5 minutes per response. The estimated burden for the Certificate of Eligibility is 6500 hours or 1 hour for each response.

The third collection, dealer reporting, has been submitted to OMB for approval. The public reporting burden for this collection of information is estimated to average 1440 additional hours or a 16–minute response each for 5400 responses, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this dealer reporting collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; 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, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: March 10, 1999.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 630 is amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

2. In § 630.2, definitions for ''First transaction in the United States'' and ''Import'' are added in alphabetical order and the definition of ''Swordfish'' is revised to read as follows:

§ 630.2 Definitions.

* * * * *

First transaction in the United States means the time and place at which the swordfish is filleted, cut into steaks, or

processed in any way that physically alters it after being landed in or imported into the United States.

* * * * *

Import, for the purpose of these regulations, means the release of swordfish from a nation's Customs' custody and entry into the territory of that nation. Swordfish are imported into the United States upon release from U.S. Customs' custody pursuant to filing an entry summary document (Customs Form 7501) or to any authorized electronic medium. Swordfish destined from one foreign country to another, which transits the United States and for which an entry summary is not required to be filed, are not considered an import under this definition, so long as they remain in customs bond.

* * * * *

Swordfish means a fish of the species *Xiphias gladius*, occurring in, or harvested from, any ocean area, or any part or product thereof.

* * * * *

3. In § 630.4, paragraph (a)(2) is revised to read as follows:

§ 630.4 Permits and fees.

(a) * * *

(2) *Annual dealer permit.* A dealer in the United States who first receives swordfish harvested from the north or south Atlantic swordfish stocks, or who imports swordfish harvested from any ocean area, must have been issued a valid dealer permit under paragraph (e) of this section. Importation of swordfish by nonresident corporations is restricted to those entities authorized under 19 CFR 141.18.

* * * * *

4. In § 630.5, paragraphs (b)(1)(ii) and (b)(1)(iii) are revised to read as follows:

§ 630.5 *Recordkeeping and reporting.*

* * * * *

(b) * * *

(1) * * *

(ii) For imported swordfish, the dates of import, total weight of the shipments, individual weights of headed and gutted swordfish, Customs Form 7501 entry numbers, weight and price per pound or kilogram by product form (round, dressed, steaks, fillets or loins), condition (fresh or frozen), as specified at § 630.42; this information must be submitted in English and a copy of each certificate of eligibility must be attached;

(iii) For swordfish landed by vessels of the United States, the dates of receipt and the names and official numbers of fishing vessels from which swordfish were received; and

* * * * *

5. In § 630.7, paragraphs (d) and (g) are revised to read as follows:

§ 630.7 Prohibitions.

* * * * *

(d) As a dealer, purchase, barter, or trade or attempt to purchase, barter, or trade a swordfish from the north or south Atlantic stock, or to import or attempt to import swordfish harvested from any ocean area into the United States without a valid dealer permit, as specified in §§ 630.4(a)(2) and 630.21(c).

* * * * *

(g) Falsify or fail to maintain or submit information required to be maintained or submitted, as specified in § 630.5 (a), (b), and (c).

* * * * *

6. Section 630.26 is redesignated as § 630.27, and a new § 630.26 is added to read as follows:

§ 630.26 Compliance monitoring.

Compliance with the minimum size requirements specified at §§ 630.23(a) and 630.41 will be determined from the point at which the swordfish is either landed in, or imported into, the United States up to, and including, the point of first transaction in the United States as follows:

(a) Except for a swordfish landed in a Pacific state and remaining in the state of landing, a swordfish, or part thereof, weighing less than 33 lb (15 kg) dressed weight will be deemed to be harvested by a vessel of the United States and to be in violation of the minimum size requirement specified at § 630.23(a) unless such swordfish, or part thereof, is accompanied by a certificate of eligibility attesting that the swordfish was imported.

(b) An imported swordfish, or part thereof, weighing less than 33 lb (15 kg) dressed weight that is imported into the United States will be deemed in violation of the minimum size requirement specified at § 630.41 unless it is accompanied by a certificate of eligibility attesting either that the swordfish was harvested from an ocean area other than the Atlantic or that the fish part was derived from a swordfish harvested from the Atlantic that weighed at least 33 lb (15 kg) dressed weight at harvest.

7. Section 630.40 is revised to read as follows:

§ 630.40 Applicability.

The policies and procedures contained in §§ 285.80 through 285.86 of this title, which implement the provisions of section (6)(c) of the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.*, with respect to import controls, and which specify procedures for the establishment of restrictions on imports of tuna, apply to swordfish taken from the north and south Atlantic stocks.

8. Sections 630.41 and 630.42 are added to read as follows:

§ 630.41 Minimum size requirement.

To facilitate enforcement of domestic regulations, a swordfish, or part thereof, less than the minimum size specified at § 630.23(a) may not be imported, or attempted to be imported into the United States, unless it is accompanied by the certificate of eligibility specified at § 630.42 attesting either that the swordfish was harvested from an ocean area other than the Atlantic Ocean or that the fish part was derived from a swordfish harvested from the Atlantic that weighed at least 33 lb (15 kg) dressed weight at harvest.

§ 630.42 Certificate of eligibility.

(a) A shipment of swordfish in any form offered for import into the United States, directly or indirectly, from any country is admissible only if accompanied by a certificate of eligibility. Such a certificate is required for swordfish identified by any item number from the Harmonized Tariff Schedule including, but not limited to, the following:

(1) Fresh or chilled swordfish, steaks, No. 0302.69.20.41.

(2) Fresh or chilled swordfish, excluding fillets, steaks and other fish meat, No. 0302.69.20.49.

(3) Frozen swordfish, steaks, No. 0302.79.20.41.

(4) Frozen swordfish, excluding fillets, steaks and other fish meat, No. 0302.79.20.49.

(5) Frozen swordfish, fillets, No. 0304.20.60.92.

(b) The certificate of eligibility required under this section must indicate, in English, the flag state of the harvesting vessel, the ocean area of harvest and, if the shipment contains swordfish, or parts thereof, less than the minimum size specified at § 630.23(a), the reason such swordfish is eligible for entry as specified in § 630.41. The certificate shall be attached to the invoice accompanying the swordfish shipment from the point of original export up to and including the point of first transaction in the United States.

(c) The certificate of eligibility required under this section must include, in English, the date, the name, the title of the governmental official or other authorized person, and the name of the authorizing government agency of the country exporting the swordfish to the United States. The certificate of eligibility must be signed and dated by

that governmental official or authorized person with an official government seal affixed, thus validating the information on the certificate of eligibility.

(d) A certificate of eligibility may refer to swordfish taken from only one ocean area of harvest (Atlantic, Pacific, Indian) and by vessels under the jurisdiction of only one nation. If a shipment contains swordfish taken from more than one ocean area, or swordfish harvested by several vessels from different flag states, a separate certificate must accompany the shipment for each ocean area of harvest and for each flag nation of the harvesting vessels.

(e) A model certificate of eligibility can be obtained by contacting NMFS at 1315 East-West Highway, F/SF1, Silver Spring, MD 20910. An equivalent form may be used provided it contains all the information required under this section.

(f) The importer must write the Customs Form 7501 entry number on each COE and attach to the dealer report form all COEs from shipments that are recorded on the bi-weekly dealer report form. The Customs Form 7501 can be obtained by contacting U.S. Customs at http://www.customs.treas.gov/order.htm.

[FR Doc. 99–6376 Filed 3–15–99; 8:45 am]

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Proposed Rules

Federal Register

Vol. 64, No. 50

Tuesday, March 16, 1999

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.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, 239, 240, 270, and 274

[Release Nos. 33–7653; 34–41150; IC–23735 File No. S7–9–99]

RIN 3235–AH70

Rulemaking for EDGAR System

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is modernizing the Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system. When the programming for the new system is accomplished, we will be able to accept filings submitted to EDGAR in HyperText Markup Language as well as documents submitted in the American Standard Code for Information Interchange format. Filers will have the option of accompanying their required filings with unofficial copies in Portable Document Format. In this release, we are proposing amendments to our rules to reflect initial changes to filing requirements resulting from EDGAR modernization, as well as certain other changes to clarify or update the rules. We also request comment on the impact that the new approach to EDGAR may have upon filers, investors, and the public, as well as on certain matters that will be the subject of later rulemaking in connection with the completion of EDGAR modernization.

DATES: We must receive your comments on or before April 15, 1999.

ADDRESSES: Please submit three copies of your comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. You also may submit your comments electronically at the following e-mail address: rule-comments@sec.gov. Your comment letter should refer to File No. S7–9–99; include this file number in the subject line if you use e-mail. We will make comment letters available for your inspection and copying in our Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. We also will post any electronically submitted comment letters on our Internet Web Site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: If you have questions about the proposed rules, please contact one of the following members of our staff: in the Division of Investment Management, Ruth Armfield Sanders, Senior Counsel, (202) 942–0633; and in the Division of Corporation Finance, Margaret R. Black, (202) 942–2940. If you have questions about the development of the modernized EDGAR system, please contact Richard D. Heroux, (202) 942–8885, in the Office of Information Technology.

SUPPLEMENTARY INFORMATION: Today we propose amendments to the following rules relating to electronic filing on the EDGAR system: Rules 485, 486, 487, 495, and 497,[1] and Form S–6,[2] under the Securities Act of 1933 (''Securities Act'');[3] Rules 10, 11, 101, 102, 302, 303, 304, 305, 306, 307, and 310 of Regulation S–T;[4] Schedule 14A[5] under the Securities Exchange Act of 1934 (''Exchange Act'');[6] Rules 8b–23 and 8b–32,[7] and Form N–SAR,[8] under the Investment Company Act of 1940 (''Investment Company Act'');[9] and Forms N–1, N–1A, N–2, N–3, N–4, and N–5[10] under the Securities Act and the Investment Company Act. Today we also propose to add the following to Regulation S–T: Rules 104, 105, and 106.

I. Modernization of EDGAR

A. Background

In 1984, we initiated the EDGAR system to automate the receipt, processing, and dissemination of documents required to be filed with us under the Securities Act, the Exchange Act, the Public Utility Holding Company Act of 1935 (''Public Utility Act''),[11] the Trust Indenture Act of 1939,[12] and the Investment Company Act. Since 1996, we have required all domestic public companies to file with us electronically through the EDGAR system, absent an exemption. EDGAR filings are disseminated electronically and displayed on our web site at http://www.sec.gov, in the form in which we receive them. The EDGAR system's broad and rapid dissemination benefits the public by allowing investors and others to obtain information rapidly in electronic format, a form easily searchable and lending itself to ready financial analysis by using spreadsheets and other methods.

Recent technological advances, most notably the rapidly expanding use of the Internet, have led to unprecedented changes in the means available to corporations, government agencies, and the investing public to obtain and disseminate information. Today, many companies, regardless of size, maintain web sites via the World Wide Web through which companies can make information available to the public. Through links from one web site to others, individuals may obtain a vast amount of information in a matter of seconds. Advanced data presentation methods using audio, video, and graphic and image material are now available through even the most inexpensive personal computers or laptops.

We have recognized the profound impact that these technological advances have on the dissemination and collection of information governed by the securities laws.

- In October 1995, we issued an interpretive release on the electronic delivery of information, providing guidance to market participants on using electronic media to satisfy delivery obligations of disclosure documents.[13]

- In May 1996, we issued an interpretive release providing similar guidance concerning use of electronic

[1] 17 CFR 230.485, 486, 487, 495, and 497.

[2] 17 CFR 239.16.

[3] 15 U.S.C. 77a *et seq.*

[4] 17 CFR 232.10, 11, 101, 102, 302, 303, 304, 305, 306, 307, and 310.

[5] 17 CFR 240.101.

[6] 15 U.S.C. 78a *et seq.*

[7] 17 CFR 270.8b–23 and 8b–32.

[8] 17 CFR 274.101.

[9] 15 U.S.C. 80a–1 *et seq.*

[10] 17 CFR 239.15 and 274.11, 17 CFR 15A and 274.11A, 17 CFR 239.14 and 274.11a–1, 17 CFR 239.17a and 274.11b, 17 CFR 239.17b and 274.11c, 17 CFR 239.24 and 274.5.

[11] 15 U.S.C. 79a *et seq.*

[12] 15 U.S.C. 77sss *et seq.*

[13] Use of Electronic Media for Delivery Purposes, Securities Act Release No. 7233, Exchange Act Release No. 36345 (Oct. 6, 1995) [60 FR 53458].

media by broker-dealers and investment advisers.[14]

• In October 1997, we issued a report to Congress, under Section 510(a) of the National Securities Markets Improvement Act of 1996, on the impact of recent technological advances on the securities markets.

• In March 1998, we issued another interpretive release providing guidance on when we would consider offers of securities or investment services made on Internet web sites by foreign entities not to be offerings in the United States.[15]

These releases and reports discuss the increasing use of such technologies as Internet web sites, CD–ROMs, and e-mail for delivery to investors of documents such as prospectuses, tender offer materials, and proxy statements. The releases and reports also discuss the impact of such technologies on the reporting and disclosure requirements of the securities laws. Also, we adopted technical amendments to our filing and reporting rules that were premised on the filing and distribution of paper documents to take into account these technological changes.[16] Our staff also has provided interpretive guidance regarding the application of technology to market practices and has addressed electronic issues on a case-by-case basis as questions have been raised by market participants.

B. Implementation of HTML/PDF Environment

The purpose of our new EDGAR contract is to modernize EDGAR completely, making the system easier for filers to use, and the documents more attractive and readable for the users of public information. Currently, filers must submit electronic filings to the EDGAR system in a text-based American Standard Code for Information Interchange (''ASCII'') format. With EDGAR modernization, filers will be able to submit most filings to us in HyperText Markup Language (''HTML''), as well as in ASCII. We expect that HTML will eventually replace ASCII for most filings. Filers also may submit unofficial copies of filings in Portable Document Format (''PDF''). Unlike ASCII documents, HTML and PDF documents can include graphics, varied fonts, and other visual displays that filers use when they create Internet presentations or material for distribution to shareholders. In this release, we refer to the required filings that filers must submit only in either ASCII or HTML formats as ''official filings.'' We refer to the PDF documents as ''unofficial PDF copies'' because filers may *not* use them instead of HTML or ASCII documents to meet filing requirements.

Our plan for the evolution of the EDGAR system is to include an HTML/PDF environment. In May of 1999, we will provide limited support for HTML by allowing only certain tags (commands and identifying information) to be accepted by the EDGAR system. Later, we plan to modernize the EDGAR system so that it will be able to accept and display filings that use graphic and other visual presentations. Filers will be able to submit documents to the EDGAR system that can appear in substantially the same graphic format as those prepared by the filer for delivery to investors and the marketplace. Although initially graphics and hypertext links will be very limited, we anticipate expanding both of these elements, as we discuss below.

These advances will greatly expand the amount and kinds of information that we can make available to investors and other members of the public through the EDGAR system. These advances also will ease the burden upon filers, by enabling the submission of documents to the EDGAR system in a format similar to that in which documents are presented to the public and to investors. However, as discussed below, these advances also pose significant issues concerning the rules governing documents filed with us under the EDGAR system, which we must address before these advances are implemented.

The modernization schedule provides that the EDGAR system will accept HTML/PDF documents beginning on May 24, 1999. However, we envision an initial implementation period for HTML filings, extending until early 2000, during which we will impose certain limitations on HTML filings (the ''HTML implementation period''). This period is necessary due to technical issues that we must resolve before full implementation of the new HTML component of the EDGAR system.

The modernized EDGAR system is designed to be Year 2000 compliant. During the summer of 1999, we plan to turn the dates forward on the EDGAR system at specified times to give filers an opportunity to submit test filings so they can assure themselves that the Commission-owned and operated EDGAR components will operate after January 1, 2000. We advise filers to have their own operating environments certified to be Year 2000 compliant. Other than testing to assure that documents are received and disseminated by us, is there any other testing that filers may want to see performed for Year 2000 compliance?

In this release, we describe how the EDGAR system will change at the beginning of the initial HTML implementation period, and we propose rule changes to govern EDGAR filing during this period.[17] We also describe further changes to the system that we plan to make after the HTML implementation period. We will propose corresponding rule changes closer to that time.

Currently, some filers use multi-media prospectuses, including videos, CD–ROMs, and streamed video or audio files that can be played over the Internet. The current EDGAR modernization contract will not accommodate these media, but we are considering whether we should include some of these media in the future. As noted in our release proposing rules on the regulation of securities offerings, we must consider factors such as security; development and maintenance costs; costs of database storage; how these materials should be disseminated to the public; whether investors would have as ready access to these materials as to the current electronic filings; how to meet the archival requirements for storage of these materials; wide divergence in industry standards for most multi-media formats; and how to assure that filed documents continue to be readable in the future, since applications that present these media may change or even disappear over time.[18]

C. Use of HTML

Although the EDGAR system will be able to accept HTML documents beginning May 24, 1999, we are not now proposing to require the use of HTML. However, we expect to require HTML for most filings as soon as practicable, so we encourage filers to use it and gain

[14] Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information, Securities Act Release No. 7288, Exchange Act Release No. 37182 (May 9, 1996) [61 FR 24644].

[15] Statement of the Commission Regarding the Use of Internet Web Sites to Offer Securities, Solicit Securities Transactions or Advertise Investment Services Offshore, Securities Act Release No. 7516 (Mar. 23, 1998) [63 FR 14806].

[16] Securities Act Release No. 7289 (May 9, 1996) [61 FR 24652].

[17] We will revise the EDGAR Filer Manual at a later date. The EDGAR Filer Manual sets forth the technical formatting requirements governing the preparation and submission of electronic filings through the EDGAR system. Filers must comply with the provisions of the Filer Manual to assure timely acceptance and processing of electronic filings. *See* Rule 301 of Regulation S–T [17 CFR 232.301].

[18] *See* Section VII.B of ''The Regulation of Securities Offerings,'' Securities Act Release No. 7606A (Nov. 13, 19980) [63 FR 67174].

experience with this format if they do not have it already.[19] We intend to provide technical support for filers to assist them in submitting and correcting HTML documents through our filer technical support function.

During the HTML implementation period, if HTML is used, each EDGAR document may consist of no more than one HTML file. Filers may not submit EDGAR documents composed of multiple linked HTML files, although we may permit this after the conclusion of the HTML implementation period.

We request comment on whether we should continue to accept all EDGAR submissions in ASCII, or whether, in the future, we should require submission of all or some documents in HTML. If you think we should require some or all submissions in HTML, please state when HTML should become mandatory and specify the submissions we should require in HTML format. How soon will individuals, companies, filing agents and training agents begin using HTML? We request comments and data on the impact of converting to HTML from ASCII. Are there one-time or ongoing extra costs? Will the conversion affect all filers equally, *e.g.*, small business issuers or frequent issuers of securities? We request comment on the use of eXtensible Markup Language (''XML''), particularly for EDGAR submission header tags.

D. Use of PDF

In addition to permitting the use of HTML for filings, we intend to permit filers to submit a single unofficial PDF copy of each document.[20] These copies will be disseminated publicly. Filers may wish to submit these copies, since PDF documents retain all the fonts, formatting, colors, images, and graphics contained in an original document. The unofficial PDF copy will be optional, but if an unofficial PDF copy of a document is submitted, it must be substantively equivalent[21] to the document contained in the official filing of which it is a copy. Further, filers may not make a submission consisting solely of PDF documents; filers must include unofficial PDF copies only in submissions that contain official filings in HTML or ASCII format.

We request comment on our proposal to allow unofficial PDF copies of official filings. Should the unofficial PDF copy contain a legend or disclaimer that it is not the official filing? How else could we alert viewers to the unofficial status of the PDF copy? We also request comment on whether we should require the exhibit index to a filing to note which exhibits, if any, are accompanied by an unofficial PDF copy. Further, should we initially impose a size limitation for unofficial PDF documents? How quickly will individuals, companies, filing agents, and training agents start using PDF? Because PDF documents will be delivered to dissemination subscribers, we also request comment on how our dissemination subscribers and providers of information services will use the PDF documents.

E. Graphic and Image Material

During the HTML implementation period, we will not accept graphic or image material in HTML documents.[22] The EDGAR system will suspend submissions made during the HTML implementation period if they contain tags for graphic or image files. However, the optional, unofficial PDF copy of an EDGAR document may contain graphic and/or image material.

We also propose to prohibit, during the HTML implementation period, any EDGAR submission containing animated graphics (*e.g.*, files with moving corporate logos or other animation), either in any official submission or any unofficial PDF copy. We are proposing this requirement during HTML implementation due to the issues concerning how to capture and represent the animated graphics, which we cannot print or search, in identifying the official filing. We request comment concerning what would constitute the official filing in the event that we later propose to allow animated graphics.

We intend to propose permitting graphic and image material in HTML documents after the HTML implementation period. However, due to concerns about data storage limitations and ease of viewing, we may propose restrictions on the type and size of graphic and image material included. Also, we may propose that information presented as tables, charts, text, or otherwise in a graphic or image file be presented as text in an ASCII file or as an HTML table in an HTML file.

We have some concerns about the potential size of data files that filers may submit in connection with graphic and image material if we allow it following the implementation period, not only because of our own database storage needs, but also because some Internet users may encounter difficulties in downloading or viewing documents that are very large. We request comment on the circumstances and manner in which we might limit file size and the type of graphic and image materials. For example, should we propose a limitation on the allowed size of each file or group of files, including graphic and image files, and provide EDGAR Filer Manual instructions on ways to minimize file size? Should we limit the total number of files that include graphic and/or image material?

We are considering whether, once the HTML implementation period is over, if we permit graphic and image material in HTML documents, we should require graphic and image material to be included in HTML documents under some circumstances. Should we propose that, when our rules require information to be in graphic form, filers using HTML be required to present the graphic, rather than merely giving the data, in the HTML document?[23] Or, should the presentation of graphic and image material continue to be optional to alleviate the burden on filers who do not currently have the resources to prepare graphic and image material?

F. Limitation on Hypertext Links

During the HTML implementation period, we propose to prohibit hypertext links from HTML documents to external web sites. Similarly, we propose to prohibit hypertext links from HTML documents to external documents (including exhibits), regardless of whether the document is part of the same filing. Electronic filers may include hypertext links to different sections within a single HTML document.[24] A document may include an inactive textual reference to external sites or documents for informational

[19] *See* footnote 39 and accompanying text for submissions that we will keep in ASCII format.

[20] For example, if a filing consists of a registration statement plus five exhibits, there are six documents for EDGAR purposes. Generally, the filer could submit all of these as HTML documents, all as ASCII documents, or some as HTML and some as ASCII documents. The filer also would have the option to accompany any or all of the six documents with an unofficial PDF copy. But the rules would not permit a filer to submit a single unofficial PDF copy including the registration statement and exhibits; each PDF document should reflect only one ASCII or HTML document.

[21] ''Substantively equivalent'' documents are the same in all respects except for the formatting and inclusion of graphics (instead of the narrative and/or tabular description of the graphics). For documents to be substantively equivalent, the text of the two documents must be identical.

[22] Filers should continue to provide a fair and accurate description of the differences between a version including graphic or image material and the filed version, as required by Rule 304 of Regulations S–T [17 CFR 232.304].

[23] *See, e.g.*, the performance line graph required by Item 402(l) of Regulation S-K [17 CFR 229.402(l)] and the bar chart and performance graph required for investment companies by Items 2 and 5 of Form N–1A [17 CFR 239.15A and 274.11A].

[24] For example, companies might wish to include a prospectus table of contents containing links to the various sections of the prospectus.

purposes,[25] but it may not include a link to such an external site or document.

We expect to propose allowing hypertext links to exhibits within the same filing after the HTML implementation period. We also will consider whether to propose permitting external hypertext links to documents contained in other filings or to web sites. However, as discussed below, we recognize that use of such external links poses significant issues concerning the content of an ''official filing,'' which we must resolve before we would permit such links.[26] We request comment on whether, following the HTML implementation period, we should allow external hypertext links. For example, should we allow links from within a filing to previously filed documents that are incorporated by reference?

G. Method of Electronic Transmission

Most filers currently make EDGAR submissions by using a dial-up modem process, with or without the use of EDGARLink,[27] directly to EDGAR or through CompuServe to EDGAR. The EDGAR system requires three codes for a filer to access EDGAR: a Central Index Key (''CIK''), a CIK Confirmation Code (''CCC'') for filer authentication, and a Password Modification Authorization Code (''PMAC''). We contemplate that, after the HTML implementation period, filers will be able to make EDGAR filings through Internet-based technology via an Internet Service Provider (''ISP'') of their choice. We plan to revise EDGARLink to support Internet-based filing. We envision providing security by Secure Socket Layer (''SSL,'' *i.e.*, encrypted transmissions) and server side certificates. We request comment on whether we should propose to allow or to require filers to acquire and present client side certificates from one for more vendors that we designate. This would enhance the security of the transaction, provide for non-repudiation, and allow for digital signing of the filings. We request comment on our planned revision to the method of electronic transmission, including our planned security precautions.

H. Regulatory Impact of EDGAR Modernization Filing Requirements

Although these technical advances provide the potential for much more effective use of the EDGAR system for compliance with filing requirements and investor access to information, they also raise significant issues concerning our current filing requirements that we must address as these changes are implemented. In addition to the specific rule changes which we discuss in Section II below, we request comment on the following issues.

We recognize that different Internet browsers used by filers or the public may display the information presented in an HTML document in a different fashion. A document viewed through one browser may have a different appearance and layout from the same filing viewed through a different browser. This problem would be especially evident when a filing printed in hard copy from one browser appears significantly different from the same filing printed out from another browser. We initially propose to maximize the likelihood of consistent document appearance across different browsers by specifying HTML 3.2 as the required standard for HTML documents. We request comment on our selection of a standard. We also request comment on whether we should specify a standard screen size (e.g., 800 by 600 pixels) for HTML document preparers to use to assure that documents will fit most viewers' browser screens and will be printable on most printers.

In addition to using HTML 3.2 as the standard, we also propose to adopt a set of permissible HTML 3.2 tags for use in HTML documents during the HTML implementation period. These permissible tags allow for most HTML 3.2 formatting capability while eliminating active content and certain classes of hypertext links.[28] The tentative list of these tags, which will be included in the EDGAR Filer Manual and updated from time to time, appears in Appendix A to this release.[29] In general, the EDGAR system will suspend filings if they contain tags that are not permitted. We request comment on the proposed tag set, including whether we should permit, require, or prohibit any particular tag. In particular, we call attention to the fact that we do not plan to allow tables within tables (''nested tables''). This is because users of EDGAR information may find it difficult to locate and use information in documents with nested tables.

We anticipate proposing that, following the HTML implementation period, HTML documents may consist of more than one HTML file. However, we envision proposing certain restrictions on the presentation and grouping of HTML files within a single HTML document to promote complete, readable, and accurate printing by our staff and web users. We request comment on technical approaches to facilitate printing of HTML documents, including file ordering and width restrictions.

We believe that these advances will ease the burden upon filers by enabling them to submit documents to the EDGAR system in a format similar to the documents they present to the public and to investors. In addition, we believe that these advances will maintain the ability for the public to view, process and analyze the content of filings. We request comment on whether the changes we propose will achieve these goals. We also request comment on what other steps we can take to ease filer burden further while maintaining the usability of the filings. We also seek comment on whether filers will handle the shift to HTML/PDF themselves or by hiring outside filing agents, and whether the benefits to electronic filers and the public of HTML will exceed any associated burdens. We are particularly interested in receiving data on whether the use of a limited set of HTML tags presents a burden to filers.

Currently, electronic filers may make electronic submissions either as direct transmissions or on magnetic tape or diskette.[30] Diskette filings often present formatting difficulties, and the percentage of filers using diskettes is minimal, well under one percent. As the EDGAR modernization effort continues, we anticipate eventually discontinuing acceptance of electronic submissions on diskettes. We request comment on whether diskettes remain useful for certain types of filings and whether we should continue to permit them.

II. Rule Amendments to Accommodate EDGAR Modernization

We propose to amend certain rules and regulations, which we discuss below, to accommodate the modernization of EDGAR. We request comment on our proposed amendments and on whether we should amend any other rules and regulations under the securities laws in connection with EDGAR modernization.

[25] It is the staff's position that such a reference will not be deemed to incorporate the material by reference into the filing. *See* ITT Corp. (Dec. 6, 1996) and Baltimore Gas & Electric Co. (Jan. 6, 1997).

[26] *See* Section II.A of this release and our discussion of proposed new Rule 105 below.

[27] EDGARLink is the filer assistance software we provide to filers filing on the EDGAR system.

[28] The 3.2 tag set will not include proprietary extensions that are not supported by all browsers.

[29] We anticipate that the permitted tag set will evolve over time to accommodate the industry standard and needs of filers.

[30] *See* Rules 12(b) and 12(c) of Regulation S-T [17 CFR 232.12(b) and 12(c)].

A. Amendments to Regulation S–T

We propose to amend certain provisions of Regulation S–T, which governs the preparation and submission of electronic filings to us, as described below in connection with the addition to the EDGAR environment of HTML documents and unofficial PDF copies.

Rule 11—*Definition of Terms used in Part 232.* Rule 11 contains definitions used in Regulation S–T. We propose to add to the definition section of Regulation S–T the following new terms in connection with EDGAR modernization: animated graphics; ASCII document; disruptive code; electronic document; executable code, HTML document; hypertext links or hyperlinks; and unofficial PDF copy. We also propose to revise the current definition of ''electronic filing'' to make it clear that an electronic filing may include more than one document.

New Rule 104—*Unofficial PDF Copies Included in an Electronic Submission.* Proposed Rule 104 would provide that an electronic submission may include one unofficial PDF copy of each electronic document contained within an electronic submission.[31] As proposed, each unofficial PDF copy would have to be substantively equivalent to its associated ASCII or HTML document contained in the submission.[32] Filers wanting to submit an unofficial PDF copy to replace a flawed one, or to include an omitted one, would have to submit the unofficial PDF copy as part of another electronic submission containing an amendment to the original submission. The amendment would have to include an explanatory note that the purpose of the amendment was to add or replace an unofficial PDF copy.[33] If the amendment was being filed to add or resubmit an unofficial PDF copy of one or more exhibits, the submission would need to include an exhibit document for each exhibit for which an unofficial PDF copy was being submitted.[34]

Rule 104 would provide that unofficial PDF copies are not official filings.[35] The rule would make it clear that unofficial PDF copies that are prospectuses retain prospectus liability under Section 12 of the Securities Act.[36] The rule also would make it clear that an unofficial PDF copy could contain graphic and image material even though its ASCII (and, during the implementation period, HTML) counterpart might not contain such material.[37]

We propose to accept electronic submissions even if an unofficial PDF copy is flawed and not accepted. In such a case, we propose to accept the submission but not the PDF document.[38] Otherwise, filers would risk having a time-sensitive filing being made late because of a problem with the unofficial PDF copy.

New Rule 105—*Limitation on Use of HTML Documents and Unofficial PDF Copies; Use of Hypertext Links.* We propose to exclude Form N–SAR, Form 13F, and Financial Data Schedules from being submitted as HTML documents.[39] These documents have standard formats and tagging designed for presentation in ASCII, and their current format facilitates their downloading and use in other computer applications. We request comment on whether we should allow unit investment trust and small business investment company filers, who currently submit Forms N–SAR as text rather than in standard format, to submit their Forms N–SAR in HTML.

Rule 105 as proposed would prohibit electronic filers from including in HTML documents hypertext links to sites or documents outside the HTML document.[40] However, the rule would allow electronic filers to include hypertext links to different sections within a single HTML document.

We recognize that use of hypertext links to external web sites and documents in a filing may enhance filers' ability to present information as well as the public's ability to access information. As noted above in Section I.F, initially we will not permit such hypertext links. Links or references in an EDGAR filing to such external sites present significant issues concerning what constitutes an ''official filing'' submitted to and accepted by us. With paper filings, or even text-based ASCII filings, an ''official filing'' is encompassed entirely within the four corners of the text documents submitted to us by the filer, as well as specific documents incorporated by reference, and is thus easily identifiable. A document submitted to us in HTML format, however, could include links to web sites or other documents that reside outside the EDGAR database. The content of these web sites or documents could change on a regular basis, even after the ''official filing'' was received by us. As a result, someone trying to determine the content of the ''official filing'' at a later date would not necessarily be able to re-create the document as it was originally filed.

This also raises issues concerning the extent to which filers' use of such external links could lead to liability under the securities laws. We request comment on whether allowing hypertext links to other documents or web sites in the future is advisable. We request comment on the impact of such links on the definition of an official filing for regulatory and liability purposes, as well as the impact on automated analysis systems used by the processors and disseminators of EDGAR data. We also request comment on what we should accept as an official filing and on possible methods of archiving the official filing.

Proposed Rule 105 provides that, if an accepted filing includes external links in contravention of this rule, we will not consider information contained in the linked material to be part of the official filing for determining compliance with reporting obligations, but such information will be subject to the civil liability and anti-fraud provisions of the federal securities laws.[41] We request comment on the need for this proposed provision, the impact of including hypertext links within an official filing, and the effect of different liability provisions.

New Rule 106—*Prohibition Against Electronic Submissions Containing Executable Code.* Our planning for the modernized EDGAR system is designed to minimize security risks. Accordingly, new Rule 106 would prohibit any EDGAR submission containing

[31] Proposed Rule 104(a). We also would permit the filer to submit an unofficial PDF copy of correspondence or a cover letter document.

[32] *See* note 21 and accompanying text.

[33] The amendment could consist solely of the cover page (or the first page of the document), the explanatory note, and the signature page and exhibit index (where appropriate), and the corresponding unofficial PDF copy would include the complete text of the official filing for which the amendment was being submitted.

[34] The amendment could consist of the cover page (or first page of the document), the explanatory note, the signature page (where appropriate), the exhibit index, a separate electronic document for each exhibit for which an unofficial PDF copy was being submitted, and the corresponding unofficial PDF copy of each exhibit document. However, the text of the official exhibit document(s) could contain only the following legend: ''RESUBMITTED TO ADD/REPLACE UNOFFICIAL PDF COPY OF EXHIBIT.''

[35] Proposed Rule 104(d).

[36] Proposed Rule 104(e).

[37] Proposed Rule 104(b).

[38] *See* the discussion of proposed Rule 106 below.

[39] Proposed Rule 105(a). We propose to allow filers the option of submitting all exhibits to Form N–SAR except Financial Data Schedules as HTML documents.

[40] Proposed Rule 105(b).

[41] The proposed rule provides that information contained in the linked material is not part of the official filing for reporting purposes in order to prevent a filing from being considered complete when the entire content of the filing is not available without reference to another document. This provision should not, however, be viewed as a statement that linked material is not considered to be part of the filed document for other purposes.

executable code,[42] either in any official submission or any unofficial PDF copy, at any time, either during the HTML implementation period or subsequently. ''Executable code'' includes, but is not limited to, disruptive code.[43] This requirement is necessary to protect the integrity of the EDGAR system and database, by reducing the possibility of unauthorized access to sensitive information, and to reduce the possibility of introducing viruses or other destructive applications into the EDGAR system (and to any disseminator receiving data from the EDGAR system). We request comment on this proposal and on the sanctions that we should impose if a filer or filing agent submits a document containing executable code. We also request comment on whether, following HTML implementation, we should continue to prohibit the submission of all executable code.

We propose, in general, to suspend any attempted submission that our staff determines contains executable code.[44] We will program the EDGAR system to detect and prohibit acceptance of such code during acceptance processing. If a submission is accepted, and our staff later determines that the accepted submission contains executable code, our staff may delete any document contained in the electronic submission from the EDGAR system and direct the electronic filer to resubmit electronically replacement documents for all or selected documents deleted from the submission. We request comment on this proposal and on other possible alternative treatment of attempted and accepted submissions containing executable code. We are aware that suspending acceptance of a filing, or deleting it from the EDGAR database, could have significant consequences to the filer, such as causing a filing to miss its due date or preventing a time-sensitive filing from moving forward. Nevertheless, we need to take whatever steps are necessary to address potential security problems.

Rule 302—*Signatures.* Rule 302 currently provides that signatures to or within electronic documents must be in typed form. We propose to revise Rule 302 to make it clear that this provision relates only to *required* signatures to or within electronic submissions.[45] We recognize that signatures that are not required may appear as script in HTML documents once we permit graphic and image material.[46] We solicit comment, however, on whether we also should accept required signatures as script in HTML documents.

Rule 304—*Graphic, Image, Audio and Video Material.* Currently, Rule 304 prohibits the inclusion of graphic, image, or audio material in an EDGAR document. We propose to add the word ''video'' to the rule to clarify that that information also is prohibited. As discussed above in Section I.E, as part of a later rulemaking proposal, we anticipate lifting the prohibition on graphic and image material (but not on audio or video material) after the HTML implementation period. Rule 304 applies only to official filings, not to unofficial PDF copies, which may contain graphic and image material (but not animated graphics, audio or video material).[47]

Rule 305—*Number of Characters per Line; Tabular and Columnar Information.* Currently, Rule 305 limits the number of characters per line. We propose to add paragraph (b) to Rule 305 to provide that the limitations of paragraph (a)[48] do not apply to HTML documents.[49]

Rule 306—*Foreign Language Documents and Symbols.* Rule 306 currently provides that foreign currency denominations be expressed in words or letters in the English language rather than representative symbols. We propose to amend Rule 306 to allow HTML documents to include the representative foreign currency symbols specified in the EDGAR Filer Manual and to provide that the limitations would not apply to documents which are unofficial PDF copies.

Rules 307—*Bold-Face Type.* Rule 307 currently states that filers should present required bold-face type as capital letters in ASCII documents. We propose to amend this rule to make it clear that the current provision does not apply to HTML documents, since filers are able to include bold-face type in HTML documents.

Rule 310—*Marking Changed Material.* Currently, Rule 310 provides that the marking of changed materials is satisfied by inserting the tag <R> before and the tag </R> following a paragraph containing changed material. We propose to retain this redlining convention and extend it to HTML documents. Further, we propose to allow filers to mark changed material in HTML documents within paragraphs, as well.[50]

B. Other Rule Amendment in Connection With EDGAR Modernization

Currently, paragraph (k)(2)(ii) of Rule 497[51] requires filers to submit additional copies of certain forms of profiles in the primary form intended for distribution to investors (*e.g.*, paper or electronic media) or, if the profile is distributed primarily on the Internet, to provide the URL of the profile pages(s) in an exhibit to the electronic filing. We propose to amend paragraph (k)(2)(ii) of Rule 497 to allow the electronic filer to submit with its electronically filed definitive form of profile an unofficial PDF copy of the profile instead.

C. Miscellaneous Amendments

We also propose several electronic filing rule amendments not directly associated with EDGAR modernization.

1. Amendments to Regulation S–T

Rule 10—*Form ID.* Rule 10 provides that filers must file Form ID, the uniform application for access codes to file on the EDGAR system, before they begin electronic filing. We propose to amend Rule 10 to make it clear that filers must submit Form ID in paper format. We are investigating other methods of beginning electronic filing, but these would not become available until after the HTML implementation period. We request comment on more convenient methods of submitting Form ID and initiating electronic filing.

[42] Executable code is defined as instructions to a computer to carry out operations that use features beyond the viewer's, reader's, or Internet browser's native ability to interpret and display HTML, PDF, and static graphic files. Such code may be in binary (machine language) or in script form. *See* proposed Rule 11(n). Thus, scripting languages, such as JavaScript and similar scripting languages, fall into this class of executable code, as does Java, ActiveX, Postscript, and any other programming language.

[43] The term ''disruptive code'' means any active content or other executable code, or any program or set of electronic computer instructions inserted into a computer, operating system, or program that replicates itself or that actually or potentially modifies or in any way alters, damages, destroys or disrupts the file content or the operation of any computer, computer file, computer database, computer system, computer network or software, or as otherwise set forth in the EDGAR Filer Manual. A violation of this provision or the relevant provision of the EDGAR Filer Manual also may be a violation of the Computer Fraud and Abuse Act of 1986, as amended, and other statutes and laws.

[44] If the executable code is contained only in one or more PDF documents, we propose to accept the submission but not the PDF document(s).

[45] We propose to keep the rule that required signatures be typed to ensure legibility of these signatures.

[46] Proposed Rule 302. We will not require signatures in unofficial PDF copies.

[47] *See* proposed Rule 104.

[48] *I.e.*, the narrative portion of an electronic document may not exceed certain character limitations per line and other formatting restrictions.

[49] Proposed Rule 305(b).

[50] Filers should not redline PDF documents. While the EDGAR system will remove the redlining tags from HTML documents before they are publicly disseminated (just as is currently the case with ASCII documents), the EDGAR system will not remove the redlining tags from PDF documents. Therefore, if a filer includes redlining tags in a PDF document, the disseminated PDF document will contain redlining tags.

[51] 17 CFR 230.497(k)(2)(ii).

Rule 101(a)—*Mandated Electronic Submissions and Exceptions.* Currently, the note to paragraph (a)(1)(iii) of Rule 101 instructs filers filing Schedules 13D and 13G with respect to foreign private issuers to file in paper because one of the required data elements—the IRS tax identification number—is not available for foreign issuers. However, a paper filing is no longer necessary. The staff currently advises these filers to include in the EDGAR submission header all zeroes (*i.e.*, 00–0000000) for the IRS tax identification number, so that they may file electronically. We propose to amend the note to this rule to formalize the existing practice and permit electronic filing.

Rules 101(b), 102(e), and 303—*Permitted Electronic Submissions; Exhibits; and Incorporation by Reference.* Currently, electronic filers may still submit exhibits to Forms N–SAR, other than the Financial Data Schedule, either electronically or in paper.[52] We have allowed filers to submit these exhibits in paper because, during phase-in to electronic filing, registrants could file their Forms N–SAR electronically on a voluntary basis in advance of their phase-in date, at a time when they were not able to make any other electronic filings. Since phase-in is complete, we propose to require that filers submit all Form N–SAR exhibits electronically.[53]

We also propose to remove the references to phase-in for registered investment companies and business development companies, since phase-in has been completed.

2. Other Rule Amendments

Item 22(a)(4) of Schedule 14A and Forms N–1, N–1A, N–2, N–3, N–4, N–5, and S–6—*Financial Data Schedules.* We propose to revise provisions concerning Financial Data Schedules (''Schedules'') submitted by registered investment companies and business development companies. We believe that electronic filers that are registered investment companies will provide us with sufficient financial information in Schedule form by filing their Schedules with their Forms N–SAR.[54] Therefore, we propose to remove the requirement for registered investment companies to submit Schedules with other forms and submissions.[55] Business development companies will continue to submit Schedules with their Form 10–K filings; face amount certificate companies and other investment companies filing on forms not unique to investment companies will continue to submit Schedules with the relevant forms.[56]

Investment Company Act Rules 8b–23 and 8b–32—*Incorporation by Reference; Incorporation of Exhibits by Reference.* We propose to make minor revisions to Rules 8b–23 and 8b–32[57] to remove the reference to Regulation S–T Rule 102, since this reference is no longer relevant following completion of phase-in by investment company registrants.

III. General Request for Comment

You are invited to submit written comments relating to the rule proposals set forth in this release by submitting three copies to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. You also may submit your comments electronically at the following e-mail address: rule-comments@sec.gov. Your comment letter should refer to File No. S7–9–99; include this file number in the subject line if you use e-mail. We will make comment letters available for your inspection and copying in our Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. We also will post any electronically submitted comment letters on our Internet Web Site (http://www.sec.gov).

We request comment not only on the specific issues we discuss in this release, but on any other approaches or issues that we should consider in connection with the EDGAR modernization that we envision. We seek comment from the point of view of parties required to file information with us via the EDGAR system, as well as that of investors, disseminators of EDGAR data, and other members of the public who have access to and use information from the EDGAR system.

IV. Cost-Benefit Analysis

We expect that the envisioned EDGAR modernization will eventually result in considerable benefit to the securities markets, investors, and other members of the public, by expanding the types of information and available media that can be filed and made available for public review through the EDGAR system. We also envision that the changes will eventually result in economic benefits to filers by easing their burden in filing required materials through the EDGAR system. The vastly expanding quantities of information that are made available to the public through the Internet are predominantly presented in HTML format. The EDGAR system's ability to accept filings submitted in this format means that filers will eventually be able to file required documents with us in a format similar to that they already use in making documents available to the public, thus easing the burden that filing requirements place upon filers.

The rule proposals are not intended to substantively change the information and disclosures that are required to be submitted to us under the current filing requirements. Rather, they are intended to modify current rules to reflect the expanded types of media and modes of presentation through which information can be submitted to us electronically once the EDGAR system is modernized.

We encourage commenters to identify any other costs or benefits associated with the rule proposals that have not been addressed. In particular, please identify any costs or benefits associated with the rule proposals relating to the contents of an ''official filing,'' impermissible types of code and content, hypertext links to external documents or web sites, variations in the appearance of an ''official filing'' that is accessed through different browsers, and any impact that the rule proposals may have on the ease of locating and using EDGAR data.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, we request information regarding the potential impact of the proposed amendments on the economy on an annual basis. In particular, comments should address whether the proposed changes, if adopted, would have a $100,000,000 annual effect on the economy, cause a major increase in costs or prices, or have a significant adverse effect on competition, investment, or innovations. Commenters should provide empirical data to support their views.

Section 23(a)(2) of the Exchange Act requires us, in adopting rules under the Exchange Act, to consider the anti-competitive effects of any rules we adopt thereunder. Furthermore, Section 2(b) of the Securities Act, Section 3(f) of the Exchange Act, and Section 2(c) of

[52] *See* Rules 101(b)(8), 102(e)(2), and 303(a)(3)(ii) [17 CFR 101(b)(8), 102(e)(2), and 202(a)(3)(ii)].

[53] We also propose to remove the last sentence of Instruction F(2) of Form N–SAR [17 CFR 274.101], which currently allows filers to submit exhibits to the form in paper, and to remove the exemption for small business investment companies, which are now phased-in to electronic filing. Finally, we are proposing to revise Instruction F(1) to correctly reference ''Sub-Item 77Q1: Exhibits.''

[54] Unit investment trusts are not required to submit the Schedule with their N–SARs.

[55] *See* proposed revisions to Item 22(a)(4) of Schedule 14A [17 CFR 240.101]; and Forms N–1 [§§ 239.15 and 274.11], N–1A [§§ 239.15A and 274.11A], N–2 [§§ 239.14 and 274.11a–1], N–3 [§§ 239.17a and 274.11b], N–4 [§§ 239.17b and 274.11c], N–5 [§§ 239.24 and 274.5], and S–6 [§ 239.16]. We also propose to revise Rules 485, 486, 487, and 495 [17 CFR 230.485, 486, 487, and 495], which refer to Financial Data Schedule requirements within registration statement forms.

[56] *See* Rule 483(e)(2)(ii) [17 CFR 483(e)(2)(ii)].

[57] 17 CFR 270.8b–23 and 8b–32.

the Investment Company Act require us, when engaging in rulemaking, and considering or determining whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.

We preliminarily believe that the proposed rule and amendments would not have an effect on competition. The proposed rules and amendments apply equally to all entities currently required to file on EDGAR. Moreover, the proposed rules and amendments are designed in part to permit filers to provide information in a format that will be more useful to investors. We request comment on any burden on efficiency, competition, or capital formation that might result from the adoption of these proposals.

V. Summary of Regulatory Flexibility Act Certification

Our Chairman has certified, under Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the new rules and rule amendments we propose in this release (the ''Proposals'') would not, if adopted, have a significant economic impact on a substantial number of small entities. The certification, documenting the factual basis therefor, is attached to this Release as Appendix B. We encourage written comments on the Certification. We ask commenters to describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VI. Paperwork Reduction Act

The new rules and amendments do not come within the scope of the Paperwork Reduction Act of 1995 [58] because the new rules and amendments do not create a new collection of information.[59]

VII. Statutory Basis

We propose the rule amendments outlined above under Sections 6, 7, 8, 10 and 19(a) of the Securities Act, Sections 3, 12, 13, 14, 15(d), 23(a) and 35A of the Exchange Act, Sections 3, 5, 6, 7, 10, 12, 13, 14, 17 and 20 of the Public Utility Holding Company Act of 1935, [60] Section 319 of the Trust Indenture Act of 1939, [61] and Sections 8, 30, 31 and 38 of the Investment Company Act of 1940. [62]

[58] 44 U.S.C. 3501 *et seq.*
[59] 5 CFR 1320.5(g).
[60] 15 U.S.C. 79a *et seq.*
[61] 15 U.S.C. 77aaa *et seq.*
[62] 15 U.S.C. 80a–1 *et seq.*

List of Subjects

17 CFR Parts 230 and 270

Confidential business information, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 232

Administrative practice and procedure, Confidential business information, Reporting and recordkeeping requirements, Securities.

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Confidential business information, Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of the Proposed Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

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

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

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

§ 230.485 [Amended]

* * * * *

2. By amending § 230.485 by removing paragraph (f)(2) before the Note and redesignating paragraph (f)(1) as paragraph (f).

§ 230.486 [Amended]

3. By amending § 230.486 by removing paragraph (f)(2) before the Note and redesignating paragraph (f)(1) as paragraph (f).

§ 230.487 [Amended]

4. By amending § 230.487 by removing paragraph (d)(2) and redesignating paragraph (d)(1) as paragraph (d).

§ 230.495 [Amended]

5. By amending § 230.495 by removing paragraph (e)(2) and redesignating paragraph (e)(1) as paragraph (e).

6. By amending § 230.497 by adding a sentence before the last sentence in paragraph (k)(2)(ii) to read as follows:

§ 230.497 Filing of investment company prospectuses—number of copies.

* * * * *

(k)* * *

(2) *Filing procedures.* * * *

(ii) * * * Filers may fulfill the requirements of this paragraph by submitting with their definitive form of profile filed electronically under paragraph (k)(1)(ii) of this section an unofficial PDF copy of the profile in accordance with § 232.104 of this chapter. * * *

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

7. The authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

8. By amending § 232.10 by revising paragraph (b) before the Note to read as follows:

§ 232.10 Application of part 232.

* * * * *

(b) Each registrant, third party, or agent must file in paper format a Form ID (§§ 239.63, 249.446, 259.602, 269.7 and 274.402 of this chapter), the uniform application for access codes to file on EDGAR, before beginning to file electronically.

* * * * *

9. By amending § 232.11 by redesignating paragraphs (a) as (c), (b) as (d), (c) as (f), (d) as (g), (e) as (i), (f) as (j), (g) as (k), (h) as (l), (i) as (m), (j) as (p), (k) as (r), (l) as (s), (m) as (t), (n) as (u), (o) as (v), (p) as (w), (q) as (x), (r) as (y), (s) as (z), (t) as (aa), (u) as (bb), (v) as (cc) and (w) as (dd); by revising newly redesignated paragraph (j); and by adding paragraphs (a), (b), (e), (h), (n), (o), (q) and (ee) to read as follows:

§ 232.11 Definition of terms used in part 232.

* * * * *

(a) *Animated graphics.* The term *animated graphics* means text or images that do not remain static but that move when viewed in a browser.

(b) *ASCII document.* The term *ASCII document* means an electronic text document with contents limited to American Standard Code for Information Interchange (''ASCII'') characters and that is tagged with Standard Generalized Mark Up Language (''SGML'') tags in the format required for ASCII/SGML documents by the EDGAR Filer Manual.

* * * * *

(e) *Disruptive code.* The term *disruptive code* means any active content or other executable code, or any program or set of electronic computer instructions inserted into a computer, operating system, or program that replicates itself or that actually or potentially modifies or in any way alters, damages, destroys or disrupts the file content or the operation of any computer, computer file, computer database, computer system, computer network or software, and as otherwise set forth in the EDGAR Filer Manual.

* * * * *

(h) *Electronic document.* The term *electronic document* means the portion of an electronic submission separately tagged as an individual document in the format required by the EDGAR Filer Manual.

* * * * *

(j) *Electronic filing.* The term *electronic filing* means one or more electronic documents filed under the federal securities laws that are transmitted or delivered to the Commission in electronic format.

* * * * *

(n) *Executable code.* The term *executable code* means instructions to a computer to carry out operations that use features beyond the viewer's, reader's, or Internet browser's native ability to interpret and display HTML, PDF, and static graphic files. Such code may be in binary (machine language) or in script form. Executable code includes disruptive code.

(o) *HTML document.* The term *HTML document* means an electronic text document tagged with HyperText Markup Language tags in the format required by the EDGAR Filer Manual.

* * * * *

(q) *Hypertext links or hyperlinks.* The term *hypertext links* or *hyperlinks* means the representation of an Internet address in a form that an Internet browser application can recognize as an Internet address.

* * * * *

(ee) *Unofficial PDF copy.* The term *unofficial PDF copy* means an optional copy of an electronic document that may be included in an EDGAR submission tagged as a Portable Document Format document in the format required by the EDGAR Filer Manual and submitted in accordance with Rule 104 of Regulation S–T (§ 232.104).

10. By amending § 232.101 by revising the note to paragraph (a)(1)(iii) and by removing paragraph (b)(7) to read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) *Mandated electronic submissions.*

(1) * * *

(iii) * * *

Note to paragraph (a)(1)(iii). Electronic filers filing Schedules 13D and 13G with respect to foreign private issuers should include in the submission header all zeroes (*i.e.,* 00–0000000) for the IRS tax identification number, since the EDGAR system requires an IRS number to be inserted for the subject company as a prerequisite to acceptance of the filing.

* * * * *

11. By amending § 232.102 by revising paragraph (e) to read as follows:

§ 232.102 Exhibits.

* * * * *

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, any incorporation by reference by a registered investment company or a business development company must relate only to documents that have been filed in electronic format, unless the document has been filed in paper under a hardship exemption (§ 232.201 or 232.202) and any required confirming copy has been submitted.

* * * * *

By adding §§ 232.104, 232.105 and 232.106 to read as follows:

§ 232.104 Unofficial PDF copies included in an electronic submission.

(a) An electronic submission may include one unofficial PDF copy of each electronic document contained within that submission, tagged in the format required by the EDGAR Filer Manual.

(b) Except as provided in paragraph (c) of this section, each unofficial PDF copy must be substantively equivalent to its associated electronic document contained in the electronic submission. An unofficial PDF copy may contain graphic and image material (but not animated graphics, or audio or video material), notwithstanding the fact that its HTML or ASCII document counterpart may not contain such material but must contain a fair and accurate narrative description or tabular representation of any omitted graphic or image material.

(c) If a filer omits an unofficial PDF copy from, or submits one or more flawed unofficial PDF copies in, the electronic submission of an official filing, the filer may add or resubmit an unofficial PDF copy by electronically submitting an amendment to the filing to which it relates. The amendment should include an explanatory note that the purpose of the amendment is to add or to correct an unofficial PDF copy.

(1) If such an amendment is filed, the official amendment may consist solely of the cover page (or first page of the document), the explanatory note, and the signature page and exhibit index (where appropriate). The corresponding unofficial copy must include the complete text of the official filing document for which the amendment is being submitted.

(2) If the amendment is being filed to add or resubmit an unofficial PDF copy of one or more exhibits, the submission may consist of the following: the official filing—consisting of the cover page (or first page of the document), the explanatory note, the signature page (where appropriate), the exhibit index, and a separate electronic exhibit document for each exhibit for which an unofficial PDF copy is being submitted—and the corresponding unofficial PDF copy of each exhibit document. However, the text of the official exhibit document need not repeat the text of the exhibit; that document may contain only the following legend: ''RESUBMITTED TO ADD/REPLACE UNOFFICIAL PDF COPY OF EXHIBIT.''

(d) An unofficial PDF copy is not filed for purposes of section 11 of the Securities Act (15 U.S.C. 77k), section 18 of the Exchange Act (15 U.S.C. 78r), section 16 of the Public Utility Act (15 U.S.C. 79p), section 323 of the Trust Indenture Act (15 U.S.C. 77www), or section 34(b) of the Investment Company Act (15 U.S.C. 80a–33(b)), or otherwise subject to the liabilities of such sections, and is not part of any registration statement to which it relates. An unofficial PDF copy is, however, subject to all other civil liability and anti-fraud provisions of the above Acts or other laws.

(e) Unofficial PDF copies that are prospectuses are subject to liability under Section 12 of the Securities Act (15 U.S.C. 77*l*).

§ 232.105 Limitation on use of HTML documents and hypertext links.

(a) Electronic filers must submit the following documents in ASCII: Form N–SAR (§ 274.101 of this chapter), Form 13F (§ 249.325 of this chapter), and Financial Data Schedules submitted in accordance with Item 601(c) of Regulation S–K (§ 229.601(c) of this chapter), Item 601(c) of Regulation S–B (§ 228.601(c) of this chapter), or Rule 483(e) (§ 230.483(e) of this chapter). Notwithstanding the foregoing provision, electronic filers may submit exhibits to Form N–SAR in HTML, except for Financial Data Schedules, which filers must submit in ASCII.

(b) Electronic filers may not include in any HTML document hypertext links to sites, locations, or documents outside

the HTML document, including links to exhibit documents. Electronic filers may include within an HTML document hypertext links to different sections within that single HTML document.

(c) If, notwithstanding paragraph (b) of this section, electronic filers include hypertext links to external sites within a submission, information contained in such links will not be considered part of the official filing for determining compliance with reporting obligations; however, this information is subject to the civil liability and anti-fraud provisions of the federal securities laws.

§ 232.106 Prohibition against electronic submissions containing executable code.

(a) Electronic submissions must not contain executable code. Attempted submissions identified as containing executable code will be suspended, unless the executable code is contained only in one or more PDF documents, in which case the submission will be accepted but the PDF document(s) containing executable code will be deleted and not disseminated.

(b) If an electronic submission has been accepted, and the Commission staff later determines that the accepted submission contains executable code, the staff may delete from the EDGAR system the entire accepted electronic submission or any document contained in the accepted electronic submission. The Commission staff may direct the electronic filer to resubmit electronically replacement document(s) or a replacement submission in its entirety, in compliance with this provision and the EDGAR Filer Manual.

Note to § 232.106: A violation of this section or the relevant EDGAR Filer Manual section also may be a violation of the Computer Fraud and Abuse Act of 1986, as amended, and other statutes and laws.

13. By amending § 232.302 by revising paragraph (a) to read as follows:

§ 232.302 Signatures.

(a) Required signatures to or within any electronic submission must be in typed form rather than manual format. When used in connection with an electronic filing, the term ''signature'' means an electronic entry in the form of a magnetic impulse or other form of computer data compilation of any letter or series of letters or characters comprising a name, executed, adopted or authorized as a signature. Signatures are not required in unofficial PDF copies submitted in accordance with Rule 104 of Regulation S–T (§ 232.104).

* * * * *

14. By amending § 232.303 by revising paragraph (a)(3) to read as follows:

§ 232.303 Incorporation by reference.

(a) * * *

(3) For a registered investment company or a business development company, documents that have not been filed in electronic format, unless the document has been filed in paper under a hardship exemption (§ 232.201 or 232.202 of this chapter) and any required confirming copy has been submitted.

* * * * *

15. By amending § 232.304 by revising the section heading, paragraphs (a) and (b) and the first sentence of paragraph (c) to read as follows:

§ 232.304 Graphic, image, audio and video material.

(a) If a filer includes graphic, image, audio or video material in a document delivered to investors and others that may not, in accordance with the requirements of the EDGAR Filer Manual, be reproduced in an electronic filing, the electronically filed version of that document must include a fair and accurate narrative description, tabular representation or transcript of the omitted material. Such descriptions, representations or transcripts may be included in the text of the electronic filing at the point where the graphic, image, audio or video material is presented in the delivered version, or they may be listed in an appendix to the electronic filing. Immaterial differences between the delivered and electronically filed versions, such as pagination, color, type size or style, or corporate logo need not be described.

(b)(1) The graphic, image, audio and video material in the version of a document delivered to investors and others shall be deemed part of the electronic filing and subject to the civil liability and anti-fraud provisions of the federal securities laws.

(2) Narrative descriptions, tabular representations or transcripts of graphic, image, audio and video material included in an electronic filing or appendix thereto also shall be deemed part of the filing. However, to the extent such descriptions, representations or transcripts represent a good faith effort to fairly and accurately describe omitted graphic, image, audio or video material, they shall not be subject to the civil liability and anti-fraud provisions of the federal securities laws.

(c) An electronic filer shall retain for a period of five years a copy of each publicly distributed document, in the format used, that contains graphic, image, audio or video material where such material is not included in the version filed with the Commission.

* * *

* * * * *

16. By amending § 232.305 by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 232.305 Number of characters per line; tabular and columnar information.

(a) * * *

(b) Paragraph (a) of this section does not apply to HTML documents.

17. By amending § 232.306 by revising paragraph (b) to read as follows:

§ 232.306 Foreign language documents and symbols.

(a) * * *

(b) Foreign currency denominations must be expressed in words or letters in the English language rather than representative symbols, except that HTML documents may include any representative foreign currency symbols that the EDGAR Filer Manual specifies. The limitations of this paragraph do not apply to unofficial PDF copies submitted in accordance with Rule 104 of Regulation S–T (§ 232.104).

18. By amending § 232.307 by designating the existing language as paragraph (a) and by adding paragraph (b) to read as follows:

§ 232.307 Bold-face type.

(a) * * *

(b) Paragraph (a) of this section does not apply to HTML documents.

19. By revising § 232.310 to read as follows:

§ 232.310 Marking changed material.

Provisions requiring the marking of changed materials are satisfied in ASCII and HTML documents by inserting the tag <R> before and the tag </R> following a paragraph containing changed material. HTML documents may be marked to show changed materials within paragraphs. Financial statements and notes thereto need not be marked for changed material.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

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

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

21. By amending Form S–6 (referenced in § 239.16) by removing Instruction 5 of Instructions as to Exhibits.

Note—The text of Form S–6 and the amendments will not appear in the Code of Federal Regulations.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

22. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

§ 240.14a–101 [Amended]

23. By amending § 240.14a–101 by removing paragraph (a)(4) of Item 22.

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

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

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39 unless otherwise noted:

* * * * *

25. By amending § 270.8b–23 by revising paragraph (a) to read as follows:

§ 270.8b–23 Incorporation by reference.

(a) Any registrant may incorporate by reference, in answer or partial answer to any item of a registration statement or report, any information contained elsewhere in the statement or report or any information contained in any other statement, report or prospectus filed with the Commission under any Act administered by it, so long as a copy of the other statement, report or prospectus is filed with each copy of the registration statement or report in which it is incorporated by reference. In the case of a registration statement, report, or prospectus filed in electronic format, the registrant need not file a copy of the document incorporated by reference if that document also was filed in electronic format. A registrant may incorporate by reference matter contained in an exhibit, however, only to the extent permitted by §§ 270.8b–24 and 270.8b–32. A registrant may not incorporate by reference a Financial Data Schedule.

* * * * *

26. By amending § 270.8b–32 by revising paragraph (c) to read as follows:

§ 270.8b–32 Incorporation of exhibits by reference.

* * * * *

(c) *Electronic filings.* (1) A registrant may incorporate by reference into a registration statement or report required to be filed electronically only exhibits that have been filed in electronic format, unless the exhibit has been filed in paper under a hardship exemption (§ 232.201 or 232.202 of this chapter) and any required confirming copy has been submitted.

(2) Notwithstanding paragraph (c)(1) of this section, a registrant may not incorporate by reference a Financial Data Schedule.

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

27. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

28. By amending Form N–SAR (referenced in § 274.101) by revising General Instruction F to read as follows:

Note—The text of Form N–SAR and the amendments will not appear in the Code of Federal Regulations.

Instructions and Form

Form N–SAR

Semi-Annual Report for Registered Investment Companies

* * * * *

General Instructions

* * * * *

F. Filings on EDGAR.

(1) Attention is directed to Sub-Item 77Q1: Exhibits for certain items of financial information that are required (Financial Data Schedule).

(2) Management investment companies must file Form N–SAR electronically only by direct electronic submission, and in accordance with the EDGAR Filer Manual. Filing of the form on magnetic tapes or diskettes is not permitted.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

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

Note—The text of Forms N–2, N–1, N–1A, N–3, N–4 and N–5 and the amendments will not appear in the Code of Federal Regulations.

29. By amending Form N–2 (referenced in §§ 239.14 and 274.11a–1) by removing General Instruction I and redesignating General Instruction J as General Instruction I and removing paragraph 2.r of Item 24 of Part C.

30. By amending Form N–1 (referenced in §§ 239.15 and 274.11) by removing General Instruction H and paragraph (b)(16) to Item 1 of Part II.

31. By amending Form N–1A (referenced in §§ 239.15A and 274.11A) by removing paragraph (n) of Item 23 and by redesignating paragraph (o) of Item 23 as paragraph (n).

32. By amending Form N–3 (referenced in §§ 239.17a and 274.11b) by removing General Instruction J and paragraph (b)(17) to Item 28 of Part C.

33. By amending Form N–4 (referenced in §§ 239.17b and 274.11c) by removing General Instruction J and paragraph (b)(14) to Item 24 of Part C and redesignating paragraphs (b)(15) through (b)(17) as paragraphs (b)(14) through (b)(16).

34. By amending Form N–5 (referenced in §§ 239.24 and 274.5) by removing General Instruction H and Instruction 13 to Instructions as to Exhibits.

Dated: March 10, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendix A and Appendix B to the preamble do not appear in the Code of Federal Regulations.

APPENDIX A—ACCEPTABLE TAGS FOR HTML DOCUMENTS

[Acceptable HTML 3.2 Tags—Document Header]

Non-format tags	Definition
<HTML>	Identifies text as HTML document.
<!-->	Comment—does not appear in browser, only in HTML source.
<A>	Anchor/Hyperlink. [Note: For the attribute HREF, external references are not supported; however, Bookmark (internal) references will be supported.]
<BODY>	Signifies the body of the HTML document. [Note: The BACKGROUND attribute is not supported for this tag.]

APPENDIX A—ACCEPTABLE TAGS FOR HTML DOCUMENTS—Continued

[Acceptable HTML 3.2 Tags—Document Header]

Non-format tags	Definition
<HEAD>	Signifies header information for HTML document.
<ISINDEX>	Signifies document is an index for a search engine.
<BASE>	Base URL to be used by all links in the document.
<LINK>	Like a hyperlink, but only contained within header.
<META>	Extended information to be included in document header. [Note: The HTTP–EQUIV attribute is not supported for this tag.]
<TITLE>	Title of document. It is displayed at the top of the browser.

[Acceptable HTML 3.2 Tags—Within Document]

Format-specific tags (change the appearance of the text only)	Definition
<~<>	Escape Sequences—Used to display characters normally reserved (such as ''<'') as plain text in the HTML document.
<A>	Anchor/Hyperlink. [Note: For the attribute HREF, external references are not supported; however, Bookmark (internal) references will be supported.]
<ADDRESS>	Address—Usually italicized.
<B>	Bold.
<BLOCKQUOTE>	Block Quote—Usually indented.
 	Line Break.
<CITE>	Citation.
<CODE>	Code.
<DIR>	Directory List.
<DL>	Definition List—Used with <DT> and <DD>.
<DT>	Definition Term.
<DD>	Definition.
<EM>	Emphasized—Like Bold.
<H1>	Heading 1—Largest.
<H2>	Heading 2.
<H3>	Heading 3.
<H4>	Heading 4.
<H5>	Heading 5.
<H6>	Heading 6—Smallest.
<HR>	Horizontal Rule—Displays a thin line across the page separating text.
<I>	Italic.
<KBD>	Keyboard—Preformatted text.
<LI>	List Item—Used by <DIR>, <MENU>, <OL>, and <UL>.
<LISTING>	Listing—Same as <PRE>.
<MENU>	Menu List.
<OL>	Ordered List—Includes numbers.
<P>	Paragraph.
<PLAINTEXT>	Plain Text.
<PRE>	Preformatted Text.
<SAMP>	Sample—Uses fixed width font—Like <PRE>.
<STRIKE>	Strikethrough.
<STRONG>	Strong—Similar to bold.
<TT>	Teletype—Uses fixed width font—Like <PRE>.
<U>	Underlined.
<UL>	Unordered List—Bullets only.
<VAR>	Variable—Uses fixed width font—Like <PRE>.
<XMP>	Example—Same as <PRE>.
<BIG>	Big Text—Increases font size.
<CAPTION>	Caption—Can only be used with tables.
<CENTER>	Centers elements between tags.
<DFN>	Definition—Like <I>.
<DIV>	Division—Helps separate a document into parts.
<FONT>	Allows alteration of font contained within tags.
<SMALL>	Small Text—Decreases font size.
<SUB>	Subscript.
<SUP>	Superscript.
<TABLE>	Table. Note: No HTML documents with nested <TABLE> tags are to be accepted or disseminated by EDGAR.]
<TD>	Table Data or Cell.
<TH>	Table Header—Displayed in bold.
<TR>	Table Row.

[Acceptable Legacy SGML Tags—Within HTML Documents]

Non-standard tags	Definition
<PAGE>	SGML tag for page markers (browsers will ignore this tag if present).
<R>	[Note: The <R> tag can also be represented as &ltR&gt.]
</R>	[Second Note: The <R> tag will not be publicly disseminated; it is for SEC use only.]
<SEGMENTS>	
</SEGMENTS>	
<MODULE>	
<NAME>	
<CIK>	
<CCC>	
</MODULE>	For incorporation of document text at the Host. [Note: These tags will not be publicly disseminated.]

Appendix B—Regulatory Flexibility Act Certification

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendments to Rules 485, 486, 487, 495, and 497,[63] and Form S–6,[64] under the Securities Act of 1933 (''Securities Act''),[65] Rules 10, 11, 101, 102, 302, 303, 304, 305, 306, 307, and 310 of Regulation S–T [66] under the Securities Act, Schedule 14A [67] under the Securities Exchange Act of 1934 (''Exchange Act''),[68] Rules 8b-23 and 8b-32,[69] and Form N–SAR,[70] under the Investment Company Act of 1940 (''Investment Company Act''),[71] and Forms N–1, N–1A, N–2, N–3, N–4, and N–5 [72] under the Securities Act and the Investment Company Act; and the addition of new Rules 104, 105, 106, and 107 under Regulation S–T, as set forth in Release Number 33–7653 (together, the ''Proposals''), if adopted, would not have a significant economic impact on a substantial number of small entities.

The Proposals generally would not have a significant economic impact on a substantial number of small entities because they would only provide filers additional options for making their submissions on the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system, which they may choose to use on a voluntary basis; codify several existing interpretations and practices relating to the preparation, filing, and processing of electronic documents; remove the requirement for submission of a financial data schedule exhibit for certain filings made by investment companies; and make technical corrections to current rules. Therefore, the Proposals would not have a significant economic impact on a substantial number of small entities within the definitions of ''small business'' and ''small organization'' (together, ''small entities'') set forth in Rule 0–10 [73] under the Investment Company Act, Rule 0–7 [74] under the Investment Advisers Act of 1940,[75] Rule 0–10 [76] under the Exchange Act, and Rule 157 [77] under the Securities Act.

Dated: March 10, 1999.

Arthur Levitt

[FR Doc. 99–6277 Filed 3–15–99; 8:45 am]

BILLING CODE 8010–01–P

[63] 17 CFR 230.485, 486, 487, 495, and 497.

[64] 17 CFR 239.16.

[65] 15 U.S.C. 77a *et seq.*

[66] 17 CFR 232.10, 11, 101, 102, 302, 303, 304, 305, 306, 307, and 310.

[67] 17 CFR 240.101.

[68] 15 U.S.C. 78a *et seq.*

[69] 17 CFR 270.8b-23 and 8b-32.

[70] 17 CFR 274.101.

[71] 15 U.S.C. 80a-1 *et seq.*

[72] 17 CFR 239.15 and 274.11, 17 CFR 15A and 274.11A, 17 CFR 239.14 and 274.11a-1, 17 CFR 239.17a and 274.11b, 17 CFR 239.17b and 274.11c, 17 CFR 239.24 and 274.5.

[73] 17 CFR 270.0–10.

[74] 17 CFR 275.0–7.

[75] 15 U.S.C. 80b-1 *et seq.*

[76] 17 CFR 240.0–10.

[77] 17 CFR 230.157.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR–4425–N–02]

Operating Fund Rule; Final Notice of Establishment of Negotiated Rulemaking Committee and Notice of First Meeting

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

ACTION: Establishment of Negotiated Rulemaking Advisory Committee and first meeting.

SUMMARY: HUD announces the establishment of a negotiated rulemaking advisory committee under the Federal Advisory Committee Act. The establishment of the committee is required by the Quality Housing and Work Opportunity Act of 1998, which requires issuance of regulations under the Negotiated Rulemaking Act of 1990. The purpose of the committee is to discuss and negotiate a proposed rule that would change the current method of determining the payment of operating subsidies to public housing agencies (PHAs). The committee consists of representatives with a definable stake in the outcome of the proposed rule. This document announces the committee members and the dates, location, and agenda for the first committee meeting.

DATES: The first committee meeting will be held on March 23–March 25, 1999. On March 23, 1999, the meeting will start at 10:00 am and run until completion; on March 24, 1999, the meeting will start at 9:00 am and run until completion; and on March 25, 1999, the meeting will start at 9:00 am and run until approximately 3:00 pm.

ADDRESSES: The first committee meeting will take place at the Channel Inn Hotel (Captain's Room), 650 Water Street, SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Joan DeWitt, Director, Funding and Financial Management Division, Public and Indian Housing, Room 4216, Department of Housing and Urban Development, 431 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–1872 ext. 4035 (this telephone numbers is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

HUD currently uses a formula approach called the Performance Funding System (PFS) to distribute operating subsidies to public housing agencies (PHAs). A regulatory description of the PFS can be found at 24 CFR part 990. Generally, the amount of subsidy received by a PHA is the difference between projected expenses and projected income, with the PFS regulations detailing how these projections will be made. While the amount varies, this subsidy can represent a substantial amount of revenue for a PHA. For example, in 1998, HUD distributed over $2.9 billion in operating subsidies to PHAs.

On February 3, 1999 (65 FR 5570), HUD published a notice of intent to establish an advisory committee to discuss and negotiate a proposed rule

that would change the current method of determining the payment of operating subsidies to PHAs. The establishment of the committee is required by the Quality Housing and Work Responsibility Act of 1996 (Pub. L. 105–276, approved October 21, 1998; 112 Stat. 2461) (the ''Public Housing Reform Act''). The Public Housing Reform Act makes extensive changes to HUD's public and assisted housing programs. These changes include the establishment of an Operating Fund for the purpose of making assistance available to PHAs for the operation and management of public housing. The general effective date for the formula (the beginning date of the fiscal year for which PHAs will determine their subsidy eligibility using the new formula) is October 1, 1999. Section 519(n)(f) of the Public Housing Reform Act, however, permits HUD to extend the effective date for up to six months beyond the general effective date.

The Public Housing Reform Act requires that the assistance to be made available from the new Operating Fund be determined using a formula developed through negotiated rulemaking procedures. The basic concept of negotiated rulemaking is to have the agency that is considering drafting a rule bring together representatives of affected interests for face-to-face negotiations that are open to the public. The give-and-take of the negotiation process is expected to foster constructive, creative, and acceptable solutions to difficult problems.

The February 3, 1999 document: (1) advised the public of HUD's intent to establish the negotiated rulemaking committee; (2) solicited public comments on the proposed membership of the committee; and (3) explained how persons could be nominated for membership on the committee. In particular, HUD solicited expressions of interest or nominations from groups or individuals that operate on behalf of the communities and neighborhoods served by public housing, and organizations that represent local officials.

II. The Negotiated Rulemaking Advisory Committee

This document announces HUD's establishment of the Negotiated Rulemaking Committee on Operating Fund Allocation. As noted above, the February 3, 1999 document tentatively identified a list of possible interests and parties to be represented on the negotiated rulemaking committee, and requested public comment on the proposed committee membership. The public comment period on the February 3, 1999 document closed on March 5, 1999. HUD received 72 comments on the document, including comments from PHAs, PHA associations, and nonprofit organizations. After careful consideration of all the comments received on the February 3, 1999 document, HUD has made the following changes to the proposed list of committee members:

1. The Little Housing Authority (Littleton, Co) has been removed from the list of committee members; and

2. The following two small PHAs have been added to the list of committee members:

- The Meade County Housing and Redevelopment Authority, Meade County, SD; and
- The Marble Falls Housing Authority, Marble Falls, TX.

The final list of 24 committee members includes representatives of PHAs, PHA organizations, tenant groups, and HUD. Additionally, two members of the Federal Mediation and Conciliation Service will serve as facilitators. HUD believes the group as a whole represents a proper balance of interests that are willing and able to work within a consensus framework on the new Operating Fund formula. The PHA representatives on the committee have been selected to reflect the diversity of PHAs in terms of size, location, and special circumstances.

The final list of members for the Negotiated Rulemaking Committee on Operating Fund Allocation is as follows:

- Large Housing Authorities
  1. Atlanta Housing Authority, Atlanta, GA
  2. Chicago Housing Authority, Chicago, IL
  3. New York City Housing Authority, NYC, NY
  4. Pittsburgh Housing Authority, Pittsburgh, PA
  5. Seattle Housing Authority, Seattle, WA
- Medium Housing Authorities
  1. Akron Metro Housing Authority, Akron, OH
  2. Athens Housing Authority, Athens, GA
  3. Indianapolis Housing Authority, Indianapolis, IN
  4. Oakland Housing Authority, Oakland, CA
  5. Wilmington Housing Authority, Wilmington, DE
- Small Housing Authorities
  1. Marble Falls Housing Authority, Marble Falls, TX
  2. Meade County Housing and Redevelopment Authority, Meade County, SD
  3. Reno Housing Authority, Reno, NV
  4. York Housing Authority, York, NE
- Non-PFS Housing Authority
  1. Puerto Rico Public Housing Authority, San Juan, PR
- Tenant Organizations
  1. Massachusetts Union of Public Housing Tenants, Needham, MA
  2. New Jersey Association of Public and Subsidized Housing Residents, Newark, NJ
- Public Interest Groups
  1. National Low Income Housing Coalition, Washington, DC
  2. Housing and Development Law Institute, Washington, DC
  3. Center for Community Change, Washington, DC
- National PHA Associations
  1. Public Housing Authority Directors Association (PHADA)
  2. National Association of Housing and Renewal Officials (NAHRO)
  3. Council of Large Public Housing Authorities (CLPHA)
- Federal Government
  1. U.S. Department of Housing and Urban Development

III. First Committee Meeting

The first meeting of the Negotiated Rulemaking Committee on Operating Fund Allocation will be held on March 23, March 24, and March 25, 1999. On March 23, 1999, the meeting will start at 10:00 am and run until completion; on March 24, 1999, the meeting will start at 9:00 am and run until completion; and on March 25, 1999, the meeting will start at 9:00 am and run until approximately 3:00 pm. On all three days, the meetings will take place at the Channel Inn Hotel (Captain's Room), 650 Water Street, SW, Washington, DC 20024.

The agenda planned for the meeting includes: (1) Orienting members to the negotiated rulemaking process; (2) establishing a basic set of understandings and ground rules (protocols) regarding the process that will be followed in seeking a consensus; and (3) discussion of the issues relating to the development of an Operating Fund formula.

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

In accordance with the General Services Administration (GSA)

regulations implementing the Federal Advisory Committee Act, HUD normally publishes a **Federal Register** meeting notice at least 15 calendar days before the date of an advisory committee meeting (see 41 CFR 105–54.301(i)). The GSA regulations, however, also provide that an agency may give less than 15 days notice if the reasons for doing so are included in the **Federal Register** meeting notice. (See 41 CFR 105–54.301(j).) Given the strict statutory deadline for implementation of the Operating Fund formula, HUD believes it is imperative that the negotiations for development of the formula begin as soon as possible. Failure to publish the Operating Fund final rule on a timely basis will delay the provision of operating subsidies to PHAs. Accordingly, rather than defer the start of the negotiations, HUD has decided to proceed with the committee meeting announced in the February 3, 1999 document.

IV. Future Committee Meetings

Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter. A second meeting is tentatively scheduled for April 13 and 14, 1999, at a location within the Washington, DC area, to be determined. The April 13th meeting is tentatively scheduled to begin at approximately 9:00 am and continue until approximately 5:00 pm. The April 14th meeting is scheduled to begin at approximately 9:00 and continue until approximately 3:00 pm. Notices of all future meetings will be published in the **Federal Register**. HUD will make every effort to publish such notices at least 15 calendar days prior to each meeting.

Dated: March 11, 1999.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–6464 Filed 3–15–99; 8:45 am]

BILLING CODE 4210–33–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–73, RM–9348]

Radio Broadcasting Services; Gulf Hammock, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Levy County Broadcasting proposing the allotment of Channel 257A at Gulf Hammock, Florida, as that community's first local broadcast service. The channel can be allotted to Gulf Hammock with a site restriction 13.8 kilometers (8.6 miles) southwest of the community at coordinates 29–09–37 NL and 82–49–15 WL.

DATES: Comments must be filed on or before April 26, 1999, and reply comments on or before May 11, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Cary S. Tepper, Booth, Freret, Imlay & Tepper, P.C., 5101 Wisconsin Avenue, NW., Suite 307, Washington, DC 20016–4120.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–73, adopted February 24, 1999, and released March 5, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–6323 Filed 3–15–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–72, RM–9323]

Radio Broadcasting Services; Cedar Key, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Jeffrey Mark Tillery proposing the allotment of Channel 244A at Cedar Key, Florida. Channel 244A can be allotted to Cedar Key without a site restricton at coordinates 29–08–12 and 83–02–06.

DATES: Comments must be filed on or before April 26, 1999, and reply comments on or before May 11, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Jeffrey Mark Tillery, 2104 Southwest 42nd Avenue, Ocala, Florida 34474.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–72, adopted February 24, 1999, and released March 5, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–6322 Filed 3–15–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–71, RM–9362]

Radio Broadcasting Services; Ironton and Salem, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Dockins Communications, Inc., licensee of Station KYLS–FM, Ironton, Missouri, and Ultra-Sonic Broadcast Stations, Inc., licensee of Station KKID(FM), Salem, Missouri (''Petitioners''). Petitioners request the substitution of Channel 240C3 for Channel 224A at Ironton, Missouri, and modification of the license for Station KYLS–FM to specify operation on Channel 240C3 and substitution of Channel 225C3 for Channel 240A at Salem, Missouri, and modification of the license for Station KKID(FM) to specify operation on Channel 225C3. Since the proposal for Ironton and Salem constitutes an incompatible channel swap, we will not accept competing expressions of interest for Channel 240C3 at Ironton. *See Modification of FM Broadcast Licenses to Higher Class Co-Channels or Adjacent Channels,* 60 RR 2d 114,120 (1986). The coordinates for Channel 240C3 at Ironton are 37–33–46 and 90–44–29 and the coordinates for Channel 225C3 at Salem are 37–38–01 and 91–32–05.

DATES: Comments must be filed on or before April 26, 1999, and reply comments on or before May 11, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsels, as follows: John M. Pelkey, Haley Bader & Potts P.L.C., 4350 North Fairfax Drive, Suite 900, Arlington, VA 22203 (Dockins Communications, Inc.) and Christopher D. Imlay, Booth Freret Imlay & Tepper, PC., 5101 Wisconsin Avenue, NW, Suite 307, Washington, DC 20016 (Ultra-Sonic Broadcast Stations, Inc.).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–71, adopted February 24, 1999, and released March 5, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–6321 Filed 3–15–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–70, RM–9380]

Radio Broadcasting Services; Deer Lodge, Hamilton, & Shelby, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Marathon Media of Montana, L.P. and Robert C. Toole proposing the substitution of Channel 242C for Channel 240C3 and modification of the license for Station KBMG, Hamilton, MT, substitution of Channel 245C1 for Channel 243C2 and modification of the license for Station KQRV, Deer Lodge, MT, and substitution of Channel 244C1 for Channel 242C1 and modification of the license for Station KZIN, Shelby, MT. The coordinates for Channel 242C, Hamilton, are 46–48–09 and 113–58–21. The coordinates for Channel 245C1, Deer Lodge, are 46–06–03 and 112–57–00. The coordinates for Channel 244C1 at Shelby are 48–19–42 and 112–02–03. Canadian concurrence will be requested for the allotments at Hamilton and Shelby. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 242C at Hamilton, Channel 245C1 at Deer Lodge or Channel 244C1 at Shelby, or require petitioners to demonstrate the availability of additional equivalent class channels for use by such parties.

DATES: Comments must be filed on or before April 26, 1999, and reply comments on or before May 11, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners' counsel, as follows: Lee J. Peltzman, Shainis & Peltzman, Chartered 1901 L Street, NW, Suite 290, Washington, DC (counsel for Marathon Media of Montana, L.P.) and F. Joseph Brinig, 1427 Dolley Madison Boulevard, McLean, Virginia 22101 (counsel for Robert C. Toole).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–70–, adopted February 24, 1999, and released March 5, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–6317 Filed 3–15–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–69, RM–9478]

Radio Broadcasting Services; Giddings and Buda, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of LBJS Broadcasting company, L.P. requesting the reallotment of Channel 268C1 from Giddings, Texas, to Buda, Texas, and modification of the license for Station KROX to specify Buda, Texas, as the community of license. The coordinates for Channel 268C1 at Buda are 29–57–00 and 97–22–13. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 268C1 at Buda.

DATES: Comments must be filed on or before April 26, 1999, and reply comments on or before May 11, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Howard M. Weiss, Anne Goodwin Crump, Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street, Eleventh Floor, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–69, adopted February 24, 1999 and released March 5, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–6316 Filed 3–15–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF30

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Special Regulations for the Preble's Meadow Jumping Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reopening of public comment period.

SUMMARY: The Fish and Wildlife Service (Service) provides notice that the comment period on the Service's proposal to establish special regulations for the conservation of the Preble's meadow jumping mouse *(Zapus hudsonius preblei)* (63 FR 66777, December 3, 1998) is reopened as of March 16, 1999 and will remain open for 45 days through April 30, 1999. The Service notes that revisions of Mouse Protection Areas and Potential Mouse Protection Areas referenced in the December 3, 1998, proposed rule are available for review.

DATES: The public comment period is reopened for a period of 45 days and will close April 30, 1999.

ADDRESSES: Written comments and materials should be sent to the Colorado Field Supervisor, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. Comments and materials received will be available for inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service's Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: LeRoy W. Carlson, Colorado Field Supervisor, telephone 303/275–2370, facsimile 303/275–2371 (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

The Preble's meadow jumping mouse, a small rodent in the family Zapodidae, is known to occur only in eastern Colorado and southeastern Wyoming. It lives primarily in heavily vegetated riparian habitats and immediately adjacent upland habitats. Habitat loss and degradation caused by agricultural, residential, commercial, and industrial development have resulted in concern over its continued existence.

On May 13, 1998, the Service published a final rule (3 FR 26517) to list the Preble's meadow jumping mouse as a threatened species under the Endangered Species Act (Act) of 1973 (16 U.S.C. sections 1531 to 1544) without critical habitat. At the time the Preble's was listed, a special rule for the conservation of the Preble's was not promulgated and therefore virtually all of the restrictions of the Act became applicable to the species. On December 3, 1998, the Service proposed a special rule under 4(d) of the Act to establish standards for the conservation of the Preble's for 18 months.

Some revisions have been made to the geographic locations of Mouse Protection Areas and Potential Mouse Protection Areas described in the December 3, 1998 proposed rule. These revisions, based on the best scientific information that is currently available, are maintained by the Service at addresses provided below. These geographic locations can be viewed at the U.S. Fish and Wildlife Service, Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado, telephone 303/275–2370 or at the U.S. Fish and Wildlife Service, Wyoming Field Office, 4000 Morrie Avenue, Cheyenne, Wyoming 82001, telephone 307/772–2374. Depictions of these geographic locations are also available on our internet home page (www.r6.fws.gov/preble).

A news release announcing the extension of the comment period is being published in newspapers concurrently with this **Federal Register** notice.

Written statements concerning the proposed special rule should be mailed to the Service office identified in the **ADDRESSES** section above on or before April 30, 1999.

Author

The author of this notice is Peter Plage, Colorado Field Office (see **ADDRESSES** above), telephone 303/275–2370.

Authority

Authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: March 10, 1999.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 99–6314 Filed 3–15–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 021899A]

Central Registry System for Limited Access Permits (Registry); Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Sustainable Fisheries Act (SFA) requires the Secretary of Commerce (Secretary) to establish an exclusive central registry system for limited access permits (LAPs). The registry will be the exclusive means of perfecting title to LAPs. It will also be the exclusive means of perfecting security interests in, assignments of, and liens and other encumbrances against LAPs. There will be a meeting to receive public comments to be used in developing proposed implementing rules.

DATES: The public meeting will be held April 13–14, 1999. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at NMFS Headquarters, 1315 East-West Highway, Building 3, 4th Floor, Room 4527, Silver Spring, MD, telephone (301) 713–2334.

FOR FURTHER INFORMATION CONTACT: John Reisenweber, 1315 East-West Highway, Building 3, 13th Floor, Room 13321, Silver Spring, MD 20910, telephone (301) 713–2334; fax: (301) 713–0596; email: john.reisenweber@noaa.gov

SUPPLEMENTARY INFORMATION:

Background

Conservation and management sometimes requires limiting access to federally-managed fisheries. Only parties with LAPs can fish in these limited access fisheries. Some LAPs are transferable independently of fishing vessels, while others are not.

The Sustainable Fisheries Act of 1996 (P.L.104–297) amended the Magnuson-Stevens Act (MSA) and included a provision requiring NMFS to establish the Registry:

> ...the Secretary [of Commerce] shall establish an exclusive central registry system (which may be administered on a regional basis) for limited access system permits established under section 303(b)(6) or other Federal law, including individual fishing quotas, which shall provide for the registration of title to, and interests in, such permits...

Section 305(h) of the MSA makes the Registry the legally exclusive means of perfecting LAP titles and liens, with the exception of Federal tax liens.

Before establishing the registry, NMFS wanted the public's guidance. On March 6,1997, NMFS published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register. The ANPR was published to allow the public an opportunity to offer comments and guidance before Registry regulations were proposed. Although comments were welcomed from the general public, NMFS particularly requested comments from:

1. Fisheries parties who buy and sell LAPs,
2. Creditors and other parties who will file liens for registration against LAPs, and
3. The Regional Fishery Management Councils.

Following the publication of the ANPR, NMFS conducted a Registry workshop in Kodiak, Alaska on March 20,1997. The purpose of the workshop was to bring together all parties with an interest in the implementation of the Registry. Participants in the workshop included: NMFS personnel, fishing industry representatives, attorneys, and members of the marine banking community. Several workshop participants and other interested parties submitted written comments to NMFS regarding issues raised in the ANPR and discussed at the workshop in Kodiak. These issues include: Registry location, role of the IRS, registration of non-transferable permits, fee imposition, use of standard forms, and title/lien validation. Comments from the public about these issues will be considered when implementing the registry.

All those interested in the public meeting to be held in Silver Spring in April are encouraged to participate, either by attending or submitting written comments. Written comments should be forwarded via mail or fax to the information contact above.

Meeting Dates

The public meeting will begin at 2:00 PM on April 13, 1999 and continue until 6:00 PM that evening. The meeting will reconvene at 9:00 AM on April 14, 1999 and conclude at 5:00 PM later that afternoon. A summary document about issues related to the Registry is under development and is scheduled to be mailed to meeting registrants approximately two weeks prior to the meeting.

If you plan to attend the meeting, please RSVP with your mailing address and telephone number at least 15 days prior to the meeting. If anyone is interested in making presentations at the meeting, please contact John Reisenweber at least 10 business days prior to the meeting in order to be included on the agenda. Also, please identify any special audio/visual needs for your presentation. Due to time constraints and the number of presenters, it may be necessary to limit each presentation.

Special Accommodations

The meeting is physically accessible to those with disabilities. Requests for sign language or other auxiliary aids should be directed to John Reisenweber (see **FOR FURTHER INFORMATION CONTACT**) at least 10 business days prior to the meeting.

Dated: March 9, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–6378 Filed 3–15–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 50
Tuesday, March 16, 1999

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

Animal and Plant Health Inspection Service

[Docket No. 99–003–1]

Agritope, Inc.; Receipt of Petition for Determination of Nonregulated Status for Cantaloupe Genetically Engineered for Altered Fruit Ripening

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 received a petition from Agritope, Inc., seeking a determination of nonregulated status for certain cantaloupe lines, which have been genetically engineered for altered fruit ripening. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether these cantaloupe lines present a plant pest risk.

DATES: Written comments must be received on or before May 17, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 99–003–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 99–003–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Sivramiah Shantharam, Biotechnology and Biological Analysis, PPQ, APHIS, Suite 4C03, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–4882. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–4885; e-mail: Kay.Peterson@usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On December 16, 1998, APHIS received a petition (APHIS Petition No. 98–350–01p) from Agritope, Inc., (Agritope) of Portland, OR, requesting a determination of nonregulated status under 7 CFR part 340 for cantaloupe (*Cucumis melo* L.) lines designated as A and B, which have been genetically engineered for altered fruit ripening. The Agritope petition states that the subject cantaloupe lines should not be regulated by APHIS because they do not present a plant pest risk.

As described in the petition, cantaloupe lines A and B have been genetically engineered to contain a SAMase gene derived from *Escherichia coli* bacteriophage T3. The SAMase gene encodes an *S*-adenosylmethionine hydrolase enzyme capable of degrading and thus reducing *S*-adenosyl-methionine (SAM). The reduction of SAM results in less ethylene production during fruit ripening in cantaloupe lines A and B and a corresponding increase in the uniformity of ripening in the field.

The subject cantaloupe lines also contain the *nptII* marker gene used in the early stages of plant transformation. Expression of the added genes is controlled in part by gene sequences derived from the plant pathogen *Agrobacterium tumefaciens* and the *A. tumefaciens* method was used to transfer the added genes into the parental inbred cantaloupe lines.

Cantaloupe lines A and B have been considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences from a plant pathogen. The subject cantaloupe lines have been field tested in the United States since 1997 under APHIS permits and notifications. In the process of reviewing the applications for field trials of this cantaloupe, APHIS determined that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), ''plant pest'' is defined as ''any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.'' APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The Food and Drug Administration (FDA) published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended (21 U.S.C. 301 *et seq.*), and provides guidance to industry on the

scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. Agritope has begun consultation with FDA on the subject cantaloupe lines.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Agritope's cantaloupe lines A and B and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 10th day of March 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–6345 Filed 3–15–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 99–019N]

National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Fresh Produce Subcommittee of the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) will hold a public meeting on March 29, 1999, to review and discuss its ongoing work on sprouts.

DATES: The Fresh Produce Subcommittee will meet at 9:00 a.m. on March 29, 1999.

ADDRESSES: The public meeting will be held in Room 1813 Federal Office Building 8, 200 C Street, SW, Washington, DC 20240. Persons interested in making a presentation, submitting technical papers, or providing comments should contact Ms. Amelia L. Wright, Advisory Committee Specialist, Scientific Research Oversight Staff, Food Safety and Inspection Service, Department of Agriculture, Suite 6913 Franklin Court, 1400 Independence Avenue, SW, Washington, DC 20250–3700, or by FAX 202–501–7366. Comments and requests may be provided by e-mail to amelia.wright@usda.gov. Submit one original and two copies of comments to the FSIS Docket Clerk, Docket No. 99–019N, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. All comments submitted in response to this notice will be considered part of the public record and will be available for viewing in the Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Wright by March 24, 1999. All meeting rooms will be wheelchair accessible.

This meeting is open to the public; however, space is limited and will be on a first-come first-serve basis. Please register by March 24, 1999, by contacting Ms. Catherine M. DeRoever, Center for Food Safety and Applied Nutrition, Food and Drug Administration, by FAX 202–205–4970 or by e-mail cderoeve@bangate.fda.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Amelia L. Wright, Advisory Committee Specialist, Scientific Research Oversight Staff, Food Safety and Inspection Service at the address given above.

SUPPLEMENTARY INFORMATION:

Background

NACMCF provides advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services on the microbiological safety and wholesomeness of food by assessing available data as it relates to the human health consequences of food safety. The Committee also provides guidance to the Departments of Commerce and Defense.

The Fresh Produce Subcommittee will be editing and revising its white paper on sprouts. Dr. Robert L. Buchanan, Senior Science Advisor, Center for Food Safety and Applied Nutrition, Food and Drug Administration, will be the subcommittee chair.

Done at Washington, DC, on March 9, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–6343 Filed 3–15–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–815 & A–580–816]

Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews

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

ACTION: Final results of antidumping duty administrative reviews.

SUMMARY: On September 9, 1998, the Department of Commerce (''the Department'') published the preliminary results of the administrative reviews of the antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea. These reviews cover three manufacturers/exporters of the subject merchandise to the United States and the period August 1, 1996, through July 31, 1997. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: March 16, 1999.

FOR FURTHER INFORMATION CONTACT: Juanita Chen (Dongbu), Becky Hagen (POSCO), Cindy Sonmez (Union), Steve Bezirganian, or James Doyle, AD/CVD Enforcement Group III—Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone 202/482–0409 (Chen), 202/482–1102 (Hagen), 202/482–0961 (Sonmez), 202/482–0162 (Bezirganian), or 202/482–0159 (Doyle), fax 202/482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (''the Act'') are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act

by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1998).

Background

The Department published antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea on August 19, 1993 (58 FR 44159). The Department published a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty orders for the 1996/97 review period on August 4, 1997 (62 FR 41925). On August 29, 1997, respondents Dongbu Steel Co., Ltd. (''Dongbu'') and Union Steel Manufacturing Co., Ltd. (''Union'') requested that the Department conduct an administrative review of the antidumping duty order on corrosion-resistant carbon steel flat products from Korea, and Pohang Iron and Steel Co., Ltd. (''POSCO'') requested that the Department conduct administrative reviews of the antidumping duty orders on cold-rolled and corrosion-resistant carbon steel flat products from Korea. On September 2, 1997, petitioners in the original less-than-fair-value (''LTFV'') investigations (AK Steel Corporation; Bethlehem Steel Corporation; Inland Steel Industries, Inc.; LTV Steel Company; National Steel Corporation; and U.S. Steel Group—A Unit of USX Corporation) requested that the Department conduct administrative reviews of the antidumping duty orders on cold-rolled and corrosion-resistant carbon steel flat products from Korea with respect to all three of the aforementioned respondents. We initiated these reviews on September 19, 1997 (62 FR 52092—September 25, 1997).

On August 31, 1998, the Department issued the preliminary results of the these administrative reviews. See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Preliminary Results of Antidumping Duty Administrative Reviews, 63 FR 48173 (September 9, 1998) (''Korean Flat-Rolled 4th Reviews Prelim.''). The Department has now completed these administrative reviews in accordance with section 751 of the Act.

Scope of the Review

The review of ''certain cold-rolled carbon steel flat products'' covers cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (''HTS'') under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

The review of ''certain corrosion-resistant carbon steel flat products'' covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

These HTS item numbers are provided for convenience and U.S. Customs purposes. The written descriptions remain dispositive.

The period of review (''POR'') is August 1, 1996 through July 31, 1997. These reviews cover sales of certain cold-rolled and corrosion-resistant carbon steel flat products by POSCO and the companies collapsed with POSCO (referred to collectively as ''the POSCO Group''), Dongbu, and Union.

Fair-Value Comparisons

To determine whether sales of the subject merchandise from Korea to the United States were made at less than fair value, we compared the export price (''EP'') or constructed export price (''CEP'') of the merchandise to normal value (''NV''), as described in Korean Flat-Rolled 4th Reviews Prelim., modified as noted in this notice.

Verification

We verified information provided by the POSCO Group with respect to its costs, including on-site inspection of facilities, the examination of relevant accounting and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the cost verification report. See Cost Verification Report—Pohang Iron and Steel Company, Ltd., from Bill Jones and Symon Monu to Christian Marsh (August 5, 1998).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments and rebuttal comments from the POSCO Group, Dongbu, Union, and petitioners. The POSCO Group and petitioners requested a public hearing, which was held on October 29, 1998.

Comment 1: Home Market Credit Days

While the Department's preference is to calculate shipment-specific credit days based on the difference between shipment date and payment date, when actual payment dates are not readily accessible in respondents' accounting systems the Department may accept calculations based on the average age of accounts receivable. In these reviews, as in prior reviews of these antidumping duty orders, respondents' calculations of customer-specific credit days are based on the average age of receivables during the POR. Specifically, credit days for each customer equals average monthly POR receivables for the customer divided by average daily POR sales to the customer.

Petitioners argue that respondents' methodology is inherently flawed because it includes accounts receivable from prior periods as well as from the POR, and allocates those receivables only over sales made during the POR. Petitioners note that unless the volumes of sales and payments are stable over time, this method will distort the calculation of the credit period. Petitioners state that the potential for manipulation is particularly high when the calculation of credit expenses for U.S. sales is based on actual rather than estimated credit periods.

Petitioners argue that it is appropriate to analyze several years' worth of accounts receivable and sales data to determine whether the estimates are consistent with historical experience and, therefore, accurate. Petitioners note that such analysis is typical for calculations of warranty expenses, which are generally estimates of actual warranty expenses. Petitioners state that for Dongbu and Union the overall average credit period across all home market customers for two years' worth of aggregate data on accounts receivable and sales varied significantly from the overall average credit period across all home market customers for just one years' worth of such data.

Regarding the POSCO Group specifically, petitioners note that despite POSCO's statements before the U.S. Securities Exchange Commission regarding the importance of POSCO's stated credit terms, the Department neither utilized those stated credit terms for its credit days calculations nor explained why it did not. Petitioners argue that, contrary to POSCO's statements, POSCO did not charge and receive interest revenue in cases where customers substantially exceeded normal payment terms.

Petitioners argue that the Department should base the calculation of credit days on one of two alternative methodologies proposed by petitioners prior to the issuance of the preliminary results of these reviews: (1) calculating the credit periods as done by respondents but using several years' worth of data on accounts receivable and sales rather than just the data for the POR; or (2) using the POR accounts receivable and sales data, but excluding the accounts receivable resulting from prior periods' sales. Petitioners also note that the Department, in its preliminary results, rejected POSCO's arbitrary selection of credit days for several customers, but did not make any adjustments either for other aberrant calculations of credit days for POSCO customers or those for Union and Dongbu customers. Petitioners argue that if the Department chooses not to apply either of petitioners' proposed methodologies, it should at the very least reject calculated credit expenses based on aberrationally high credit days.

The POSCO Group argues that its reported home market credit expenses were based on the same methodology used for the calculation of credit days in prior reviews. The POSCO Group argues that it did not know the date of payment for each transaction, and that its credit days methodology does not yield systematically overstated or aberrant results. The POSCO Group argues that most customers maintain a fairly constant level of sales and accounts receivable activity. Regarding petitioners' allegations pertaining to the POSCO Group's stated credit terms, the POSCO Group states that the record indicates that the use of promissory notes for payment in Korea typically adds up to 30 additional days to a customer's payment terms and that, in any case, the POSCO Group's transaction-specific payment terms are merely guidelines and do not represent the actual payment dates for specific transactions. The POSCO Group states that it is a commercial reality that a company may not be able to charge, let alone collect, interest revenue from all of its customers for late payment. The POSCO Group notes that the Department's rejection of credit expenses for several customers does not indicate that the POSCO Group's entire home market credit methodology should be rejected.

Dongbu and Union argue that the existence of long credit periods for certain customers does not render their credit calculations distortive and unreliable, and state that they reported home market credit expenses based on the same credit days methodology in prior reviews. Dongbu and Union note that receivables balances during the POR may include unpaid balances from sales before the POR but, similarly, there will be sales during the POR with outstanding receivables after the POR. Dongbu and Union conclude that the balances brought into the POR from sales prior to the POR will not be markedly dissimilar from the balances carried forward from sales during the POR. Dongbu and Union argue that while the Department has, at times, used historical warranty figures because of the often periodic and intermittent nature of those expenses, credit, by contrast, is extended to one degree or another to most customers, and the Department does not compare POR credit expenses to prior experience. Dongbu and Union argue that the Department correctly noted, in its preliminary results, that the sample of customers it analyzed included aberrationally high credit days, and correctly did not apply a shorter period for those customers. Unlike for the POSCO Group, for which the Department rejected certain calculated credit days because they were arbitrarily selected by the POSCO Group, all of the calculated credit days for Dongbu and Union were based on the methodology as stated. Contrary to petitioners'

assertion, argue Dongbu and Union, there is no significant variation in the average credit periods across all home market customers using two years' worth of aggregate data on accounts receivable and sales compared to just one years' worth of such accounts receivable and sales data.

Department's Position: In its preliminary results, the Department recognized that respondents' methodology included accounts receivable from prior periods as well as from the POR, and allocated those receivables only over sales made during the POR. However, the Department agrees with Dongbu and Union that this methodology also includes sales during the POR with outstanding receivables after the POR. Petitioners implicitly accept this point in their argument that the methodology distorts the calculation of the credit period unless the volumes of sales and payments are stable over time. While it is certainly possible that for some customers the balances brought into the POR from sales prior to the POR will be ''markedly dissimilar'' from the balances carried forward from sales during the POR, it is not clear that any systematic credit-reporting distortion exists for the respondents in these reviews. The Department requested documentation from respondents supporting seemingly aberrant results for those customers with particularly long credit periods. The information provided by respondents, with one exception, indicates that respondents utilized the methodology as stated in their initial questionnaire responses and as employed in prior reviews. The only exception involved those few customers for which the POSCO Group arbitrarily set credit days equal to 365 days, in contradiction to its stated calculation methodology as described above.

Furthermore, the variation in average credit days for all customers based on one years' worth of data versus two years' worth of data was not significant enough to call into question the general reasonableness of the methodology utilized. That variation also does not justify using a non-customer specific calculation of credit days, given the preference of the Department to calculate imputed credit on as specific a basis as possible.

Variation between POSCO's stated credit terms and the actual calculated credit days for its customers may, and in fact did, provide a basis for analyzing the nature of POSCO's relationships with its customers. However, such variation does not justify using its credit policy as the basis for the calculation of credit days, given that the Department has accepted the inherent reasonableness of the respondents' methodology and the accuracy (with the exception noted above) of the data used as the basis for the calculation of credit days.

For its final results, the Department has continued to utilize the respondents' home market imputed credit expense methodology, and has also continued to deny any credit expense for sales by the POSCO Group to customers for which the POSCO Group arbitrarily assigned credit days of 365.

Comment 2: Interest Expenses as Part of Indirect Selling Expenses

Petitioners argue that the Department should deduct from CEP the interest expenses incurred by the U.S. selling affiliates of the POSCO Group, Union, and Dongbu. The statute requires that the Department deduct from CEP all selling expenses, including indirect selling expenses, defined as ''any selling expenses'' not deducted as commissions, direct selling expenses, or selling expenses that the seller pays upon behalf of the purchaser. See section 772(d) of the Act. The Statement of Administrative Action explains further that indirect selling expenses are expenses that ''would be incurred by the seller regardless of whether the particular sales in question are made, but reasonably may be attributed (at least in part) to such sales.'' See URAA Statement of Administrative Action, H.R. Doc. No. 103–316, at 824 (1994) (''SAA''). Petitioners argue that because a company incurs interest expenses to finance its selling activities (separate from the financing of accounts receivable), including interest expenses in the indirect selling expenses calculation is appropriate. Petitioners cite several cases in which the Department deducted from CEP interest expenses incurred by U.S. sales affiliates. See Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review, 63 FR 38373, 38381 (July 16, 1998) (''Cookware from Mexico''); Certain Fresh Cut Flowers from Colombia; Final Results and Partial Recission of Antidumping Duty Administrative Review, 62 FR 53287, 53294 (October 14, 1997); Certain Cold-Rolled Carbon Steel Flat Products from Germany; Preliminary Results of Antidumping Duty Administrative Review, 60 FR 39355 (August 2, 1995), unchanged in Certain Cold-Rolled Carbon Steel Flat Products from Germany; Final Results of Antidumping Duty Administrative Review, 60 FR 65264, 65281 (December 19, 1995) (''Cold-Rolled from Germany''); and Notice of Amended Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled Carbon Steel Flat Products from Korea; Certain Corrosion-Resistant Carbon Steel Flat Products from Korea, 63 FR 20572, 20573 (April 27, 1998). In Cookware from Mexico, 63 FR at 38381, the Department noted its practice of deducting respondent's depreciation, financial and bad debt expenses, which are considered related to respondent's sales of the subject merchandise and thus deducted from CEP pursuant to section 772(d)(1)(D). In Cold-Rolled from Germany, 60 FR at 39355, petitioners note, the Department included that portion of the interest expense attributable to the U.S. selling affiliate in calculating the U.S. indirect selling expense adjustment. In the present reviews, according to petitioners, the respondents sold subject merchandise in the United States through affiliated entities that performed various U.S. selling functions and, in addition to incurring expenses that the Department normally treats as indirect selling expenses, these affiliated entities incurred interest expenses that were related to these selling functions.

Petitioners argue that respondents have not demonstrated how the inclusion of interest expenses in indirect selling expenses would ''double-count'' the credit or inventory carrying cost deductions. Petitioners state that respondents simply assert that because most, if not all, of their U.S. affiliates' borrowing was short-term, their loans cover the financing of in-transit inventory and accounts receivable as well as activities unrelated to the sale of the subject merchandise. Petitioners argue that respondents did not demonstrate that the affiliates' borrowings covered such financing. Because money is fungible, petitioners argue, these borrowings could have been used for other purposes (e.g., payment of salaries of those involved with U.S. sales of subject merchandise).

Petitioners argue that the imputed credit expense and the interest expenses of the affiliates are not equivalent because the imputed credit expense adjustment is made to account for the time value of money between shipment and payment independent of whether or not a company incurs non-imputed interest expenses. Therefore, petitioners argue, the interest expense figure cannot be automatically attributed to the imputed credit expense, nor can the inclusion of interest expenses in indirect selling expenses automatically be deemed to constitute double-counting. Petitioners provide

calculations of the adjustments they claim are appropriate for the POSCO Group, Dongbu, and Union, based on the assumption that the interest expenses in total should be included in the calculation of the indirect selling expenses deducted from CEP. Petitioners also state that if the Department wrongly determines that some portions of these interest expenses relate to the financing of accounts receivable or to non-subject merchandise, then the Department must for each respondent deduct from CEP the portion of the interest expenses that do not relate to financing of accounts receivable or to non-subject merchandise. Petitioners provide estimates for such alternative adjustments to the reported indirect selling expenses of the U.S. affiliates of the POSCO Group, Dongbu, and Union.

The POSCO Group argues that the Department's standard practice is not to include interest expenses in indirect selling expenses because such inclusion would constitute double-counting. The POSCO Group cites several cases, including Final Determination of Sales at Less Than Fair Value: New Minivans from Japan, 57 FR 21937, 21956–57 (May 26, 1992) (''Minivans from Japan''), which the POSCO Group states articulate the Department's policy of not deducting U.S. affiliates' interest expenses from CEP. The POSCO Group cites several other cases, including Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review, 63 FR 13204, 13205 (March 18, 1998) (''Cold-Rolled from the Netherlands''), in which the Department did not in fact deduct such expenses from CEP. The POSCO Group argues that such a deduction would constitute double-counting, given that imputed credit expenses are deducted from CEP. The POSCO Group cites Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 FR 31692, 31721 (July 11, 1991) (''AFBs from Germany'') as an example where the Department reduced interest expenses from indirect selling expenses to account for the portion of those expenses related to imputed credit and inventory carrying cost.

The POSCO Group characterizes the cases cited by petitioners as ''aberrant'' ones in which the direct issue of whether interest expense should be deducted from the price in the United States was apparently never briefed or litigated, or in which the deduction of interest expenses involved use of facts available. Furthermore, the POSCO Group notes that the Department determined in its preliminary results that the interest expenses should not be included in indirect selling expenses because virtually all of those interest expenses relate to the financing of receivables or to borrowings involving non-subject merchandise. The POSCO Group states that the interest rates it used to calculate the imputed credit expenses for sales by the U.S. sales affiliates reflect all of the short-term borrowings of the affiliates. The POSCO Group states that the long-term interest expenses of POSAM relate to enterprises not involved with entries of subject merchandise, such as its joint venture with U.S. Steel. Furthermore, the POSCO Group argues, the sales of such enterprises, contrary to petitioners' assertion, are not included in the denominator used for the calculation of the indirect selling expenses factor. Finally, the POSCO Group argues that inclusion of the interest expenses of the U.S. affiliates in indirect selling expenses would constitute double-counting because POSAM's interest expenses are reflected both in POSCO's cost of production (''COP'') and in the calculated total profit which is used as a basis for the determination of CEP profit.

Union argues that it demonstrated that the majority of the interest expenses of its U.S. affiliate, DKA, are incurred on behalf of non-subject merchandise, and that the remainder relate to the financing of accounts receivable for subject merchandise. Union notes that there is very little activity at DKA, beyond the inventory carrying and credit periods that are separately included in the CEP calculation, that is related to subject merchandise which could have been financed through borrowings. Union argues that in Cookware from Mexico, the U.S. affiliate only performed activities related to the sale of subject merchandise, but that DKA was engaged in numerous other activities, including exporting merchandise purchased in the United States. Union argues that in its preliminary results the Department followed its consistent practice, articulated in Minivans from Japan and reflected in prior reviews of the order on certain corrosion-resistant carbon steel flat products from Korea, of not including interest expenses when calculating indirect selling expenses. Union argues that it has demonstrated that DKA's interest expenses are primarily related to non-subject merchandise and long-term interest, and that including the remaining, small portion of U.S. interest expenses attributable to financing accounts receivable would double-count these expenses as the Department's imputed credit expense has already accounted for them.

Dongbu argues that the interest rate used for the calculations of imputed credit and inventory carrying cost were based on the interest expenses incurred by Dongbu USA on its short-term borrowings in the POR. Dongbu indicates that these expenses were incurred for financing receivables and inventory, and that deductions from CEP for these expenses were made through the imputed credit and the inventory carrying cost variables.

Department's Position: The Department disagrees with respondents' assertions that the Department's policy is to exclude interest expenses of U.S. sales affiliates from U.S. indirect selling expenses because imputed credit and inventory carrying cost expenses are already deducted from the U.S. starting price. As noted by petitioners, there are various cases in which the Department has stated explicitly that it was deducting both an amount of actual interest expenses and imputed expenses. Furthermore, petitioners are correct in stating that the Department deducts imputed credit expenses whether or not a company incurs non-imputed interest expenses. This practice accords with section 772(d)(1)(D) of the Act, which dictates that the Department deduct from the CEP starting price ''any'' indirect selling expenses associated with the sale of the subject merchandise in the United States.

The Department's decision in Minivans from Japan is consistent with a general principle that the deduction of imputed and certain actual interest expenses may constitute double-counting. However, interest expenses incurred by sales affiliates may relate to activity other than the financing of inventory or accounts receivable, and still be associated with sales of subject merchandise. In AFBs from Germany, cited by the POSCO Group, the Department indicated that it ''reduced interest expenses on the firm's books for a portion of the expense related to these activities {imputed credit and inventory carrying cost} to avoid double-counting'' (emphasis added), as those imputed credit and inventory carrying costs were being deducted from U.S. starting price. See 56 FR at 31721. This indicates that any reduction to actual interest expenses to avoid double-counting would not exceed the amount of the imputed expenses. As we stated in the final results of the prior reviews, ''{w}e do not agree with {respondent's}

argument that an imputed credit figure covering the entire credit period inherently includes all credit/financing expenses.'' See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 63 FR 13170, 13175 (March 18, 1998) (''Korean Flat-Rolled 3rd Reviews Final'').

The Department under appropriate circumstances excludes some portion or all of a U.S. sales affiliate's interest expenses in its calculation of indirect selling expenses (as, for example, in Cold-Rolled from the Netherlands, 63 FR at 13205, which neither provides, nor was meant to provide, an exhaustive list of what may be included in indirect selling expenses). To the extent that a U.S. affiliate's interest expenses are associated with non-subject merchandise, the Department does not deduct them from the CEP starting price. We also note that, because the activities of U.S. sales affiliates differ considerably across cases, the Department must determine the appropriate universe of CEP deductions on a case-by-case basis. In this case, we excluded interest expenses associated with non-subject merchandise. Further, we reduced the remaining amount of interest expenses for an amount attributable to financing accounts receivable and inventory, leaving nothing left to include in the calculation of indirect selling expenses.

Comment 3: Movement Expenses and the Calculation of CEP Profit

Petitioners argue that the Department must implement the Court of International Trade (''CIT'') decision in *U.S. Steel Group—A Unit of USX Corp.* v. *United States,* Slip Op. 98–96 (Ct. Int'l Trade, July 7, 1998) by excluding movement expenses from the total expenses denominator used for the calculation of the CEP profit ratio. Petitioners argue that the total expenses denominator, like the U.S. expenses numerator of the CEP profit ratio, should only include expenses pertaining to the production and sale of the subject merchandise. Petitioners state that the calculation should not include movement expenses, which are neither production expenses nor sales expenses. Petitioners argue that this interpretation is consistent with the statute (see sections 772(f)(2)(B) and (C) of the Act) and supported by the legislative history (see SAA at 824) and the Senate Report, S. Rep. No. 103–412 at 66 (1994). Petitioners indicate that the very structure of the statute distinguishes between movement expenses (see section 772(c)(2)(A)), selling expenses (see section 772(d)(1)), and manufacturing expenses (see section 772(d)(2)).

Petitioners cite several cases in which movement expenses are distinguished from selling expenses. See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol from the Republic of South Africa, 62 FR 61084, 61091 (November 14, 1997). Petitioners note that the Department, consistent with longstanding practice, recognized these distinctions in these very reviews of steel from Korea when defining groups of reported expenses for the sales databases as movement or as selling expenses.

Petitioners argue that the inclusion of movement expenses in the total expenses denominator is unreasonable for the same reasons that the CIT indicated in U.S. Steel Group: it conflicts with past Department practice of distinguishing between movement expenses and production or selling expenses; it does not provide proportionality between the numerator and the denominator in the CEP profit ratio; and it is unnecessary because the Department has never explained why total actual expenses for determining total actual profit (the amount by which the CEP profit ratio is multiplied to determine total CEP profit) must be defined in the same manner as total expenses used in the denominator of the CEP profit ratio.

Finally, petitioners note that the Department deducts movement expenses from net price in calculating the gross amount of constructed value (''CV'') profit, but does not include movement expenses either in total COP (by which CV profit is divided to arrive at the CV profit ratio) or in total CV (by which the CV profit ratio is multiplied to arrive at the CV profit amount). Accordingly, petitioners note, the treatment of movement expenses in the derivation of the CV profit amount is in fact entirely consistent with the treatment of movement expenses in the calculation of CEP profit mandated by U.S. Steel Group.

The POSCO Group argues that the single CIT case that petitioners rely on is not binding on the Department, and is apparently wrongly decided. The POSCO Group asserts that it is the Department's consistent and standard policy to include movement expenses in the total U.S. expenses denominator of the CEP profit ratio. The POSCO Group states that the statute requires that all expenses be used in the ''total expenses'' calculations, and that the term ''production and sale'' is not a limiting term because no broader term could have been used. The POSCO Group argues that the U.S. Congress would have explicitly excluded movement expenses from the total expenses definition if it had intended that such a radical reading be given to the term ''total expenses.'' The POSCO Group states that, given that the subject merchandise must be moved to the United States in order to be sold, it makes sense to include those movement expenses in the CEP calculation.

Union and Dongbu argue that neither the statute nor the legislative history defines ''total expenses.'' Union and Dongbu note that the CIT, in U.S. Steel Group, held that the language defining total expenses is not entirely clear as to whether movement expenses should be included in the ''total expenses'' denominator. Union and Dongbu argue that if the Department seeks to determine what percent of ''total expenses'' is represented by the U.S. expenses, that total expenses amount must include all expenses, and not some subset of expenses. Union and Dongbu argue that the plain language of section 772(f)(2)(C) of the Act defines ''total expenses'' as ''all expenses,'' and that the statute assigns the profit to the additional CEP expenses only. Union and Dongbu note that petitioners do not object to other elements of cost, such as cost of manufacture (''COM'') and pre-import selling expenses, bearing their share of profit. Union and Dongbu state that movement expenses, like these other elements of cost (*e.g.*, COM and pre-import selling expenses), should not be assigned the CEP profit. In other words, Union and Dongbu reiterate, the statute seeks to deduct profit from the U.S. starting price only on those expense components that it has defined as additional CEP expenses. Union and Dongbu argue that the fact that the ''total expenses'' denominator is not defined specifically by the statute indicates that the prescription to include ''all expenses'' should be interpreted to mean just that. Furthermore, Union and Dongbu argue, the plain reading of ''all expenses * * * with respect to the production and sale'' would certainly include movement expenses, since transport of the merchandise is part of the sale.

Finally, Union and Dongbu state that the Department recognizes movement expenses as a cost in the calculation of CV profit, by either reducing the sales revenue by the amount of the freight and not including freight in the cost, or by leaving the sales price untouched and including freight in the COP. Union and Dongbu argue that the same principle applies to the calculation of CEP profit: movement expenses must

either be deducted from the sales prices in both markets or added to the COP in both markets.

Department's Position: We agree with respondents. The Department is currently appealing the CIT's decision in U.S. Steel Group, and will continue to follow its policy of including movement expenses in the denominator of the CEP profit ratio in accordance with its interpretation of section 772(f) of the Act. See Policy Bulletin 97.1, ''Calculation of Profit for Constructed Export Price Transactions'' (Sept. 4, 1997).

Nothing in the statute or its legislative history requires the Department to calculate a CEP profit ratio in the manner suggested by petitioners (*i.e.*, a ratio of total United States expenses to total expenses). To the contrary, the statute narrowly defines ''total United States expenses'' (the numerator) to include only commissions, direct and indirect selling expenses, expenses assumed by the seller on behalf of the purchaser, and the cost of further manufacturing.'' See sections 772(f)(2)(B) and (d)(1) and (2) of the Act. Because movement expenses may only be deducted from the U.S. starting price pursuant to section 772(c)(2)(A), the statute effectively prohibits their inclusion in the buildup of total United States expenses for purposes of the CEP profit ratio. The statute similarly excludes other types of expenses (*e.g.*, U.S. import duties) from the total United States expenses numerator because they are deducted under section 772(c) rather than section 772(d). See section 772(c)(2)(A) of the Act.

Unlike the definition of ''total United States expenses,'' the statute does not further define ''total expenses'' (the denominator) incurred in the production and sale of the merchandise. In fact, the CIT specifically acknowledged that ''the language defining total expenses is not entirely clear as to whether movement expenses should be included in the total expenses denominator.'' U.S. Steel Group, Slip Op. 98–96, at 14. However, section 772(f) of the Act requires the Department to use ''total actual profit'' in calculating the total CEP profit amount. Thus, to the extent that a producer/exporter and its U.S. affiliate incur movement expenses to deliver the merchandise to customers, these expenses must be included in total expenses in order to calculate actual profit. Indeed, this interpretation is based on the axiom that total profit equals total revenue minus total expenses, and resolves any confusion surrounding the definition of total expenses in favor of the inclusion of movement expenses. Accordingly, petitioners' argument that the Department distinguishes between movement and selling expenses in other aspects of the antidumping analysis is not persuasive. In short, all movement expenses incurred by the seller must be included in total expenses in order to calculate total profit accurately.

Petitioners' argument that including movement expenses in the denominator of the CEP profit ratio is unreasonable because it does not provide ''proportionality'' has no merit. The ratio is by definition the proportion of total expenses represented by total U.S. expenses, a subset of total expenses. In fact, the Department has properly calculated this proportion.

Further, we do not believe it is reasonable, as petitioners suggest, to interpret ''total expenses'' one way in calculating a respondent's actual profit, and another way in summing expenses for the denominator of the CEP profit ratio. Rather, the more reasonable approach is a unified reading of the CEP profit provisions in which the meaning of ''total expenses'' does not vary. Finally, petitioners' comparison of the Department's CV profit methodology with their proposed interpretation of the CEP profit calculation is unavailing. These calculations are performed under entirely different statutory provisions that involve different definitions. The essential question here is how reasonably to interpret the definition of total expenses for purposes of the CEP profit calculation. Because the statutory goal of accurately calculating total profit and allocating a portion of the total profit to CEP sales is served by the Department's current CEP profit methodology, we have continued to apply the methodology established in Policy Bulletin 97.1.

Comment 4: U.S. Date of Sale

The Department noted in its preliminary results that while it may use as date of sale a date other than the invoice date if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale, it preliminarily determined that there is no reason to depart from the Department's normal practice of using the invoice date. Accordingly, the Department used as date of U.S. sale the reported date of invoice from the U.S. sales affiliate to the first unaffiliated U.S. customer, and characterized this as typical for CEP sales. See Korean Flat-Rolled 4th Reviews Prelim., 63 FR at 48176.

Petitioners argue that the Department should determine that the contract date was the date of sale because the material terms of sale became final at that date. Petitioners also argue that the Department was incorrect in indicating that it has a distinct CEP date of sale methodology.

Petitioners state that the Department should not accept the separate date-of-sale methodology for EP and CEP sales urged by Union and Dongbu in its earlier responses (which was to adopt date of invoice to the U.S. affiliate as date of sale if the sale was classified as an EP transaction, and to adopt date of invoice by the U.S. affiliate to the unaffiliated U.S. customer if the sale was classified as a CEP transaction). Petitioners note that, in the third administrative reviews of these antidumping duty orders, the Department indicated that changing the classification of U.S. sales from EP to CEP transactions had no effect on the date of sale, and that there is no EP date-of-sale methodology, as claimed by respondents. See Korean Flat-Rolled 3rd Reviews Final, 63 FR at 13174.

Petitioners note that CEP sales can be made either before or after the date of importation (see section 772(b) of the Act). As such, petitioners state, there is no reason to assume that the CEP sale was made after importation. Petitioners also state that assuming that the CEP sale was made after importation would violate the rule that the date of sale cannot occur after the date of shipment to the ultimate customer. Petitioners assert that the Department's general preference for using the invoice date as the date of sale is predicated on the assumption that the invoice date falls close to the date of shipment. In fact, in the third reviews of these orders, the Department determined that the shipment date relevant in this regard was the date of shipment from the factory in Korea, and not shipment from the U.S. port.

Petitioners state that the Department recently exercised its discretion to use a date other than invoice date as the date of sale in a case where the respondents' home market and U.S. sales processes appear to have been the same as those of Union, Dongbu, and the POSCO Group in these reviews. With regard to the appropriate date of sale for these sale processes, the Department stated:

> ''invoice'' dates in both markets, while the same in name, are materially quite different for purposes of determining price discrimination simply because the sales processes for the two markets are quite different. If we were to use invoice date as the date of sale for both markets, we would effectively be comparing home market sales in any given month to U.S. sales whose

material terms were set months earlier—an inappropriate comparison for purposes of measuring price discrimination in a market with less than very inelastic demand.

See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 63 FR 32833, 32835–6 (June 16, 1998) (''Pipe from Korea''). As in that case, petitioners argue, the Department should determine that for the POSCO Group, Dongbu, and Union the only dates which are substantively equivalent for purposes of measuring price discrimination are the invoice date in the home market and the contract date in the U.S. market. All three respondents reported that their U.S. sales are made to order, and that once the order is confirmed, the U.S. affiliate issues a sales contract or order confirmation setting forth the essential terms of sale. The merchandise is then produced to order and shipped to the U.S. customer. For all three respondents, there are typically delays of several months between the contract date and the date of invoice to the unaffiliated U.S. customer. The sample sales documents in the responses indicate that there were no material changes to the terms of sale after issuance of the sales contract. In the home market, however, as with the respondent in Pipe from Korea, the sales of Union and Dongbu are from inventory, and once the order is received the merchandise is shipped and the invoice issued almost immediately.

Petitioners argue that because the respondents did not report the contract date for their U.S. sales, the Department should resort to facts available to estimate a contract date. Petitioners state that for all three respondents the reported date of shipment from Korea is generally the closest reported date to the contract date.

The POSCO Group notes that the Department used date of invoice as date of sale in the final results of the third reviews of these orders, that petitioners stated explicitly on the record of the fourth reviews that they were not questioning POSCO's date of sale methodology in the fourth reviews, and at no time in these fourth reviews did the Department or petitioners suggest that POSCO should report the contract/order confirmation as date of sale. The POSCO Group argues that use of invoice date as date of sale is consistent with Department regulations. The POSCO Group argues that the Department's proposed regulations (see Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 61 FR 7308, 7330–1 (February 27, 1996) (''Proposed Regulations'')) and the Department's original questionnaire in these fourth reviews (at page 4 of Appendix I) indicate there are generally two exceptions to the Department's preference for invoice date as date of sale: (1) if a sale is made pursuant to a long-term contract; and (2) if an exceptionally long period of time passes between the invoice date and shipment date. The POSCO Group notes that the Department applies a different date of sale in such cases only when the different date of sale ''better reflects the date on which the exporter or producer establishes the material terms of sale.'' See 19 CFR 351.401(i).

The POSCO Group also argues that use of invoice date as date of sale is consistent with Department practice. In addition to the Department's use of invoice date as date of sale in the third reviews of these orders, the Department also used invoice date in other recent cases where various petitioners argued that agreement dates were more appropriate: Brass Sheet and Strip from the Netherlands: Notice of Preliminary Results of Antidumping Duty Administrative Review, 63 FR 25821, 25822 (May 11, 1998) (''Brass from the Netherlands''); Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 63 FR 55578, 55588 (October 16, 1998) (''Pipe from Thailand''); Certain Steel Wire Rope from Mexico; Final Results of Antidumping Duty Administrative Review, 63 FR 46753, 46755 (September 2, 1998) (''Wire Rope from Mexico''); Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Atlantic Salmon from Chile, 63 FR 2664, 2667 (January 16, 1998) (''Salmon from Chile''); and Certain Stainless Steel Wire Rod from India; Final Results of New Shipper Antidumping Duty Administrative Review, 62 FR 38976, 38978–89 (July 21, 1997) (''Wire Rod from India'').

The POSCO Group argues that the Department cannot use facts available against a respondent where the Department never requested the information, and that it would be unfair to POSCO to seek a change in the date of sale for the first time as a result of arguments in petitioners' brief because there is not adequate time for POSCO to provide information in order for the Department to fully analyze this issue. For these reasons alone, the POSCO Group argues, petitioners' arguments on date of sale should be rejected.

The POSCO Group argues that petitioners' apparent proposal to use two different dates of sale for the two markets would directly contradict the Department's finding in a recent case, in which the Department rejected petitioners' argument for use of confirmation date as U.S. date of sale because to do so would have established different bases for date of sale in the U.S. and home markets, and because the terms of sale in the United States could change after the order confirmation date. See Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany: Final Results of Antidumping Duty Administrative Review, 63 FR 13217, 13226 (March 18, 1998) (''Small Pipe from Germany''). For one of the U.S. sales for which the POSCO Group provided sales documentation, the POSCO Group notes that the quantity ultimately shipped to the customer varied enough from the originally ordered quantity to reflect a change in the terms of sale. This distinguishes these reviews from the sole precedent cited by petitioners, Pipe from Korea.

Finally, the POSCO Group agrees with petitioners that there is no CEP date of sale methodology, but notes there is no evidence that the Department used any such methodology in its preliminary results. Rather, the POSCO Group argues, the Department simply followed its normal practice of using invoice date as date of sale, a practice developed to foster predictability of outcomes and ease in reporting and verifying information.

In their rebuttal briefs, Union and Dongbu state that in the third reviews of these orders the Department ''used the date of invoice to the first unaffiliated purchaser in the United States as the date of sale,'' and that in the preliminary results of these fourth reviews the Department again decided to use the date of invoice from the U.S. sales affiliate to the first unaffiliated U.S. customer. Union and Dongbu argue that the preamble to the Department's final regulations note that this date-of-sale methodology promotes predictability of outcomes, and that invoice date is the best indicator of the date of sale because the terms are fixed when the seller demands payment (*i.e.*, when the sale is invoiced). Union and Dongbu argue that the fact that sales terms are rarely altered after the initial agreement is quite distinct from a finding that they are ''finally established'' at that date. Whether they are rarely or frequently changed does not diminish the fact that they could, and sometimes do, change, which means that they are not finally established as of the date of contract. Furthermore, Union and Dongbu argue,

it is burdensome to both respondents and the Department to report and verify contract dates.

Union and Dongbu argue that if the Department follows the precedent of Pipe from Korea because the sales processes in that case were comparable to those in these reviews, then it should also classify the U.S. sales of the three respondents in these reviews as EP sales, given that the U.S. sales of the respondent in the pipe case were classified as EP sales. Furthermore, Union and Dongbu note that the Department only requested that Union provide contract dates in its sales databases. Union notes that use of these dates would contradict the date of sale methodology used in the final results of the prior review, where the same fact pattern existed. Dongbu notes that facts available cannot be used for its date of sale because the Department did not ask it to report contract dates.

Finally, Union and Dongbu argue that the Department did not employ a new CEP date of sale methodology in its preliminary results but, rather, simply noted that it was typical for the date of sale of CEP sales to be the date of the invoice to the unaffiliated U.S. customers.

Department's Position: While we agree with respondents that it is the Department's normal practice to use invoice date as date of sale, we disagree with the respondents' assertions regarding the circumstances in which the Department is to resort to use of invoice date as date of sale. Long-term contracts and exceptionally long periods of time between invoice date and shipment date are examples of situations where reliance upon invoice date as date of sale would be inappropriate as date of sale, regardless of convenience. In most of the cases cited by the POSCO Group (Brass from the Netherlands, 63 FR at 25822; Pipes from Thailand, 63 FR at 55587–88; Wire Rope from Mexico, 63 FR at 46755; and Wire Rod from India, 62 FR at 38979), the Department indicated that it was using invoice date as date of sale because it had no reason to believe that the terms of sale were established on some other date. In Salmon from Chile, no clear reason for use of date of invoice is indicated, but it is evident that use of the date of invoice was in accordance with policy, and no party suggested otherwise.

Nevertheless, even if documentation from a few sample U.S. sales suggests that essential terms of sale did not change after initial contract date, this does not demonstrate that essential terms of sale were not subject to change after initial contract date, or that essential terms of sale did not in fact change after initial contract date for significant numbers of sales. The Department has no basis to conclude that essential terms of sale were set and not subject to change at the initial contract date. Consequently, we do not agree with petitioners' assertion that the appropriate U.S. date of sale, for these reviews, is contract date. While we agree with petitioners that the Department has no CEP-specific date-of-sale methodology, and that the determination that the U.S. sales were CEP sales does not preclude a date of sale prior to invoice date to the unaffiliated U.S. customer, we have determined that it would not be appropriate to consider contract date as U.S. date of sale for the reasons noted above.

However, it is clear that for U.S. sales, unlike home market sales, a significant amount of time may elapse between shipment from Korea and invoicing of the unaffiliated customer. There is also nothing on the record to suggest that terms of sale were subject to change after the merchandise was shipped from Korea. Neither petitioners nor respondents have asserted that the essential facts relating to date of sale have changed between the third and fourth administrative reviews of these orders, and respondents in fact refer to the appropriateness of the Department's U.S. date-of-sale determination in the third reviews in their arguments pertaining to the fourth reviews. The Department stated in its final results for the third reviews that ''we used the date of the invoice to the first unaffiliated purchaser in the United States as the date of sale, except for transactions where the date of invoice occurred after the date of shipment, in which case we used the date of shipment as the date of sale'' (see Korean Flat-Rolled 3rd Reviews Final, 63 FR at 13172–73). This methodology was consistent with the Department's general use of invoice date as date of sale, and its recognition that both the setting of essential terms of sale and the amount of time between shipment and invoicing are also relevant. There is no evidence on the record that terms of sale were subject to change after the invoicing of the U.S. customers by the U.S. affiliates, but this date in certain instances can be considerably later than the shipment date from Korea. Therefore, in these final results we have followed the Department's methodology from the final results of the third reviews, and have based date of sale on invoice date from the U.S. affiliate, unless that date was subsequent to the date of shipment from Korea, in which case that shipment date is the date of sale. Consistent with this approach, we have calculated imputed credit for U.S. sales based on the length of time between shipment from Korea and payment by the unaffiliated U.S. customer.

Comment 5: Exporter Price (''EP'') vs. Constructed Export Price (''CEP'')

The POSCO Group argues that the Department erred in categorizing its U.S. sales as CEP sales. The POSCO Group argues that such classification is unsupported by the record evidence and contrary to consistent Department practice. The POSCO Group indicates that the functions of the U.S. affiliates were limited to those of processors of sales-related documentation and communications links with the unaffiliated U.S. buyers, and that their role was only ancillary in the sales process. The POSCO Group argues that POSCO and POCOS approved or disapproved primary terms of sale for U.S. customers, and that the U.S. affiliates did not set prices with those unaffiliated U.S. customers. The POSCO Group argues that the Department's findings in the second reviews of these orders, in which the Department treated its U.S. sales as EP sales, are consistent with this description of the limited role of the U.S. affiliates.

The POSCO Group states that its U.S. sales meet the three-part criteria considered by the Department in classifying transactions as EP sales: (1) the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) this was the customary commercial channel of trade between the parties involved; and (3) the U.S. sales affiliates were mere processors of sales related documentation and communications links with unaffiliated customers in the United States. The POSCO Group argues that since they have met the Department's three-part test, there is a long line of Department and court precedent classifying these transactions as EP sales and the Department should reclassify POSCO's and POCOS's U.S. sales as EP sales. The POSCO Group cites *Independent Radionic Workers of America* v. *United States*, 19 CIT 375 (1995); *Zenith Electronics Corp* v. *United States*, 18 CIT 870, 873–75 (1994); Industrial Phosphoric Acid from Belgium, 63 FR 25830, 25831 (May 11, 1998); and Circular Welded Non-Alloy Steel Pipe from Korea, 62 FR 55574, 55579 (October 27, 1997).

While the POSCO Group acknowledges that the Department found the U.S. sales of its affiliates to be CEP sales in the final results of the third

reviews of these orders, the POSCO Group contends that finding was incorrect. Furthermore, the POSCO Group states that the fourth reviews are distinguished from the third reviews in that sample documentation for a fourth review period POSCO U.S. sale indicates that the customer contacted POSCO directly, and that POSCO itself rejected price terms. The POSCO Group also notes that sample documentation for a fourth review period POCOS U.S. sale indicates that the sale did not proceed until POCOS's confirmation of the customer's inquiry. The POSCO Group also argues that there is no evidence in the fourth reviews indicating that the U.S. affiliates had any input on the price charged to U.S. customers, which the Department incorrectly asserted did exist in the record of the third reviews (see Korean Flat-Rolled 3rd Reviews Final, 63 FR at 13183). The POSCO Group also notes that, unlike in the third reviews, in the fourth reviews it provided all of the direct and indirect selling expenses incurred by the U.S. sales affiliates, and the POSCO Group argues that these expenses clearly show that the levels of SG&A attributable to sales of subject merchandise through those affiliates are an insignificant portion of total SG&A of those affiliates.

The POSCO Group notes that the Department treated as EP transactions sales made by POSAM in Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Wire Rod from Korea, 63 FR 40404 (July 29, 1998) (''Wire Rod from Korea''). In that case, the Department found: that ''POSAM had no substantial involvement in the sales process, such as sales negotiation, providing technical support, or handling warranty claims, with respect to subject merchandise;'' that ''POSAM does not negotiate sales terms with U.S. customers, but rather relays pricing information'' between the Korean producer and the U.S. customer; that for each sale examined at verification the Korean producer ''ultimately accepted or rejected the sales price;'' and evidence of indirect contact between the Korean producer and the U.S. customer (see *id.* at 40419). The Department found that the functions performed by POSAM, ''document processing and other ancillary activities related to the sales of subject merchandise to the U.S. customer (*e.g.*, clearing customs, arranging for U.S. transportation, issuing invoices, and collecting payment),'' were consistent with a classification of sales as EP sales, and that ''POSAM had no substantial involvement in the sales process.'' *Id.* The POSCO Group argues that this analysis is consistent with that for the U.S. affiliates in these reviews, given that they did not negotiate prices but merely relayed pricing information, and that they did not provide technical support, handle warranty claims, or accept or reject the price for all sales of subject merchandise.

The POSCO Group also notes that the Department treated as EP transactions sales made under similar circumstances in Certain Welded Stainless Steel Pipe from Taiwan; Final Results of Administrative Review, 63 FR 38382 (July 16, 1998) (''Pipe from Taiwan''). In that case, the POSCO Group notes, the U.S. affiliate did not play a major role in the sales negotiation process or the selling activities, was not responsible for setting the prices of U.S. sales, and did not control the markup it earned on the resale of the goods purchased in back-to-back deals for the foreign parent (*id.* at 38385). The Department found that the functions performed by the U.S. affiliate in that case, ''issuing invoices, collecting payment, paying antidumping duty deposits, and taking title to the subject merchandise after entry into the United States' (*id.* at 38386) were consistent with the classification of the sales as EP sales, and these functions were the same as those performed by the U.S. affiliates in these fourth reviews.

Finally, the POSCO Group cites several cases in which it claims that the U.S. affiliates were more involved in the sales process than the affiliates in these fourth reviews, but for which the U.S. sales were classified as EP sales. Some of the additional functions performed by the affiliates in those cases included limited advertising, processing certain warranty claims, warehousing, and provision of technical services.

Union argues that the facts surrounding the activities undertaken by Union's U.S. affiliate have not changed from the third reviews and are not in dispute. Union attached to its brief pages from the third review verification reports as evidence of the limited role played by its U.S. affiliate, noting that verifications were not conducted for the fourth reviews. Union disagrees with the Department's decision in the final results of the third reviews to treat its U.S. sales as CEP sales, and argues that the Department must reclassify its fourth review U.S. sales as EP sales.

Dongbu argues that the facts surrounding the activities undertaken by its U.S. affiliate have not changed from the third reviews. Dongbu attached to its brief pages from the third review verification reports as evidence of the limited role played by its U.S. affiliate. Dongbu argues that should the CIT agree that the Department erred in its classification of Dongbu's sales in the third review as CEP sales, the Department will likewise have to reclassify its fourth review U.S. sales as EP sales.

Petitioners note that Union and Dongbu present no new argument why their U.S. sales should be treated as EP sales rather than CEP sales, and that they accept that the nature of the transactions in this regard was the same as in the third reviews, in which the Department found that the U.S. sales were in fact CEP sales.

Regarding the POSCO Group, petitioners note that the Department found its U.S. sales in the third reviews to have been CEP sales, and that the POSCO Group, like Union and Dongbu, had stated affirmatively on the record of the fourth reviews that its U.S. affiliates performed the same functions during the fourth review period as they did during the third review period. Furthermore, the Department had conceded as erroneous its determination in the second reviews that the POSCO Group's U.S. sales were EP sales rather than CEP sales in the appeal process before the CIT. Petitioners note that the Department even prior to its preliminary determinations in these fourth reviews, in its April 10, 1998, supplemental questionnaire, had instructed the POSCO Group to report its U.S. sales as CEP transactions.

Petitioners argue that the POSCO Group misstates the Department's CEP test when it implies that its U.S. sales are EP because its affiliates do not independently negotiate or approve sales to unaffiliated customers. Rather, the Department analyzes whether or not the role played by the U.S. affiliates was ''ancillary'' in the sales process. As long as the U.S. affiliate plays an active role in bringing about the U.S. sale, that sale will be classified as a CEP transaction even if the foreign parent does play some role in the sales process. Petitioners note that even if POSCO had some contact with a U.S. customer in a particular sale, which they assert is not established by the record, it does not demonstrate that POSAM was not involved in negotiating price terms for the underlying sale, or that POSAM was not involved in the sales process in more than an ''ancillary'' way more generally for U.S. sales. Petitioners note that the POSCO Group does not even argue that POCOS had direct contact with any of its customers.

Petitioners distinguish between the sales processes in these reviews and those in the other cases cited by the

POSCO Group. Petitioners note that in Wire Rod from Korea, 63 FR at 40418, the Department indicated that the Korean exporter had direct and substantive contact with U.S. customers (export strategy meetings wherein substantive terms of sale, payment and delivery terms were discussed and from which the exporter established its quarterly price lists). Petitioners note that in Pipe from Taiwan, 63 FR at 38385–6, the Department indicated that the respondent's customers had frequent direct contact with the producer in Taiwan, and that the producer itself responded directly to customers' price inquiries. Petitioners state that these aspects of the aforementioned two cases were not present in the reviews at issue here.

Petitioners argue that the level of general expenses incurred for subject vs. non-subject merchandise is not relevant for determining the importance of the U.S. affiliates in the sales process for subject merchandise and, given that the POSCO Group reported indirect selling expenses by dividing all such expenses by total sales, the percentage of indirect selling expenses borne by all of the affiliates' U.S. sales, subject or non-subject, will be the same. Furthermore, the functions performed by the U.S. sales affiliates for non-subject merchandise sales are not relevant in this context, either. Rather, the more appropriate comparison would be of indirect selling expenses incurred by POSCO and POCOS vs. those incurred by the U.S. affiliates for the same sales.

Department's Position: We agree with petitioners that the U.S. sales of Dongbu, the POSCO Group, and Union during the POR should be classified as CEP, rather than EP, transactions.

As noted by petitioners and all three respondents, the essential facts surrounding the activities of respondents' U.S. sales affiliates did not change from the third to the fourth administrative review periods. In the third reviews, based in part upon extensive verifications of the U.S. sales affiliates of Dongbu, POCOS, POSCO, and Union, the Department determined that U.S. sales for these companies were properly classified as CEP, rather than EP, transactions. Specifically, the Department concluded:

> In these cases, the record clearly establishes that the respondents' affiliates in the United States were in most instances the parties first contacted by unaffiliated U.S. customers desiring to purchase the subject merchandise and also that the sales affiliates in question signed the sales contracts and engaged in other sales support functions. These facts indicate that the subject merchandise is first sold in the United States by or for the account of the producer or exporter, or by the affiliated seller, and that the sales in question are therefore CEP transactions.

Korean Flat-Rolled 3rd Reviews Final, 63 FR at 13172.

In continuing to find that CEP classification is appropriate, and as petitioners note, U.S. sales affiliates need not be determined to have independently set U.S. prices and other terms of sale for those affiliates' involvement to be deemed more than ancillary. Rather, the Department must examine the totality of the circumstances surrounding the U.S. sales process, and assess whether the reviewed sales were effectively made ''in the United States'' for purposes of section 772(b) of the Act. Accordingly, in this analysis, neither the magnitude of indirect selling expenses incurred, nor the performance of a specific sales function—such as actual negotiation—is controlling. We stress that the Department's approach does not constitute a departure from its practice, or abandonment of the three-part sales classification test. Rather, this approach gives effect to the third prong of the test—whether the U.S. affiliate is more than a mere processor of sales-related documentation and communication link.

Turning to the evidence in this case, the U.S. affiliates: (1) Take title to the subject merchandise; (2) invoice and receive payment from their unaffiliated U.S. customers; (3) arrange for other aspects of the transactions, including Customs clearance, brokerage, and freight; and (4) serve as a source of information about the producer/exporters' products.

More specifically, the POSCO Group notes that its U.S. sales affiliates assist in the negotiations between the manufacturer and the unaffiliated U.S. customers, and U.S. customers contact POSAM to initiate discussions concerning the base price and total quantity. POSCO and POCOS provide the U.S. affiliates quarterly base prices for U.S. sales. The POSCO Group's U.S. sales affiliates also arrange for various functions related to transporting the merchandise to the unaffiliated U.S. customer. While those U.S. sales affiliates may not incur expenses for the publication of product brochures/catalogues, those items are made available to U.S. customers at the offices of the U.S. affiliates. Additionally, POSAM performs certain unspecified procurement services in the United States for certain specialized purchases. As we stated in the final results of the previous reviews, ''it is POSCO's and POCOS's roles that may be ancillary to the sales process . . ., and that in any case the record does not demonstrate that the U.S. affiliates' involvement in making the sales were incidental or ancillary.'' *Id.* at 13183.

With respect to Dongbu, the organizational structure of its U.S. affiliate, Dongbu USA, indicates that Dongbu USA staff are involved with selling subject merchandise. Dongbu USA issues sales contracts to the U.S. customers. Dongbu USA also processes shipment-related documentation and arranges for the U.S. broker to enter the merchandise, thereby incurring costs associated with these functions. It is also solely responsible for payment of antidumping and countervailing duty deposits. While Dongbu Steel may arrange for publication of product brochures and other company literature, these items are available at Dongbu USA. As we stated in the final results of the previous reviews, ''the totality of the evidence regarding Dongbu's sales process demonstrates that {Dongbu USA's} role is more than ancillary to the sales process.'' *Id.* at 13177.

With respect to Union, its U.S. affiliate, Dongkuk International (''DKA''), arranges with commissioned agents in the United States to refer customers to DKA. The initial discussion regarding customer orders is generally conducted over the phone between DKA and the customers. DKA advises the U.S. customers about Union prices based on information DKA receives from Union. Union employees at DKA may also offer comments to Union in Korea about the circumstances relevant to a particular sale. DKA issues sales contracts to the U.S. customers. DKA also arranges for banking services that relate to the U.S. sales process. Furthermore, DKA processes warranty claims, arranges warehousing and transportation at the customer's request, and prepares for the release of the merchandise to the customer when it arrives at the U.S. port. As we stated in the final results of the previous reviews, ''{t}he totality of the evidence regarding Union's sales process demonstrates it is Union's role that is ancillary to the sales process, and not that of {DKA}.'' *Id.* at 13190.

Importantly, no record evidence shows that the Korean manufacturers/exporters in this case were involved in the U.S. sales processes to the extent the respondents were in cases in which we have found EP treatment appropriate. See, *e.g.*, Pipe from Taiwan, 63 FR at 38386 (unaffiliated U.S. customers maintained direct contact with the foreign exporter or producer); Wire Rod from Korea, 63 FR at 40418 (producer held an export strategy meeting with its

U.S. customers wherein substantive terms of sale, payment, and delivery terms were discussed, and during which the producer established its pricing policy based on quarterly price lists); and Korean Flat-Rolled 3rd Reviews Final, 63 FR at 13183 (POSCO had substantive direct involvement in the sales to one U.S. customer, while POSAM's role was very limited). Rather, the only inference supported by the record is that, in virtually all instances, the producer/exporters' export departments merely approved sales offers forwarded by their U.S. affiliates. That the Korean export departments theoretically could have intervened to a greater extent does not alter the conclusion that, during the POR, a substantial portion of the sales process occurred in the United States. Therefore, U.S. sales during the fourth POR are properly treated as CEP sales.

Comment 6: U.S. Sales Universe

Dongbu contends that the Department incorrectly excluded certain U.S. sales made outside the POR, but entered during the POR, from its margin calculation. Dongbu argues that the Department requested all of Dongbu's U.S. sales entered during the POR and thus should include all reported sales in its final margin calculation. Dongbu argues that the CIT has upheld the practice of reviewing and assessing dumping duties on all entries of the merchandise made during the POR, regardless of when the entered merchandise was sold, in *Helmerich & Payne, Inc.* v. *United States*, Slip Op. 98–134 (Ct. Int'l Trade Sept. 17, 1998). Dongbu notes that while the Department will only use sales within the POR to calculate dumping duties in CEP situations where sales cannot be tied to entries, this situation does not exist in this case as Dongbu can tie its U.S. sales to entries. Dongbu also argues that consistency in the Department's reporting requirements will avoid confusion in the fifth administrative review.

Petitioners state that they take no position on the issue. However, petitioners argue that if the Department decides to include all of Dongbu's U.S. entries for the POR, the Department must do the same for the POSCO Group and Union as well. Petitioners assert that while the POSCO Group has reported the necessary information for such an analysis, Union has not. Petitioners note that Union has not provided contemporaneous home market sales for most of the U.S. sales of merchandise that entered during the POR which had a date of sale after the POR. In such an instance, the Department would be required to use facts available for all of Union's unmatched U.S. sales. Petitioners argue that if the Department decides to review all entries during the POR, then the Department should resort to adverse facts available for Union and apply the 10.74 percent rate assigned to Union in the first administrative review. Certain Corrosion-Resistant Carbon Steel Flat Products from Korea, 61 FR 18457, 18568 (April 26, 1996).

Department's Position: We agree with Dongbu that we should base our analysis on entries during the POR, although we note that the CIT decision in Helmerich & Payne does not mandate such a methodology. Rather, that decision stands for the proposition that the Department has discretion in EP situations to review and assess duties on entries within the POR, regardless when the corresponding sales occurred. Helmerich & Payne, Slip Op. 98–134, at 18–21. We also agree with petitioners that we should apply this methodology to the analysis for all respondents in these reviews. Where it is possible, and not excessively burdensome to respondents, to tie sales made prior to entry to entries, as in these reviews, the Department generally prefers to conduct its reviews based on POR entries, even if this means reviewing some sales made outside the POR.

Furthermore, we reject petitioners' contention that facts available must be applied for Union in this context. Given the date-of-sale methodology outlined earlier in this notice, there are no U.S. sales for which Union has failed to report contemporaneous home market sales.

Comment 7: Overruns

Petitioners argue that the Department should exclude certain low-priced home market sales of Dongbu in the final results as overruns. Petitioners argue that although Dongbu did not identify its overrun sales, it essentially admitted that it has such sales in correspondence to the Department in a letter from Dongbu's attorneys dated March 9, 1998. Petitioners argue that while Dongbu had notice that the Department requires overrun information, Dongbu intentionally failed to provide overrun information by eliminating its ability to identify overruns when installing its new computer system during the prior POR. In support of this argument, petitioners cite to Dongbu's May 18, 1998 submission, in which Dongbu states that it eliminated its overrun indicator because it felt the figure was not commercially significant and had no purpose.

Petitioners argue that the Department is required by the statute to rely on facts available when necessary or requested information is missing from the record. Petitioners argue that because Dongbu failed to report its overrun sales, which are necessary for proper price comparisons and analysis, the Department should rely on the facts available to calculate a figure for Dongbu's overruns. Petitioners note that the Department has previously used partial facts available where Dongbu has failed to report the necessary data. Petitioners reference the third administrative review where, when Dongbu reported the bill of lading date instead of the required date of shipment from the factory, the Department used a date closer to the date of shipment from the factory, rather than the date offered by Dongbu. See Korean Flat-Rolled 3rd Reviews Final, 63 FR at 13178. Petitioners suggest that the Department categorize a percentage of Dongbu's lowest-priced home market sales as overruns, and base that percentage upon the percentage of POSCO's total sales that were classified as overruns, and exclude those newly classified overrun sales as outside the ordinary course of trade. Petitioners note that the Department excluded other sales because they ''resemble sales excluded by the Department in prior reviews as overruns'' (see the August 31, 1998 Memorandum from Lisette Lach to the File (''Dongbu Prelim. Analysis Memo'') and Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18404, 18441 (April 15, 1997) (''Korean Flat-Rolled 2nd Reviews Final'').

In rebuttal, Dongbu argues that the Department correctly rejected petitioners' request to exclude certain Dongbu sales as overruns. Dongbu argues that the statement from the Department's preliminary determination relied upon by petitioners, stating that the Department had in past reviews excluded overruns for Dongbu, is factually incorrect. Dongbu asserts that the Department has never excluded Dongbu's prime grade overruns as outside Dongbu's ordinary course of trade. Dongbu argues that Petitioners have no legal support for suggesting that the Department similarly exclude overrun sales for Dongbu as it has excluded overrun sales for POSCO and Union. Dongbu argues that the Department's ordinary course of trade analysis focuses on the particular company. See Gray Portland Cement and Clinker from Mexico: Final Results

of Antidumping Duty Administrative Review, 63 FR 12764, 12772 (March 16, 1998) (''Cement from Mexico—March 1998''). Dongbu also argues that determinations on overrun sales for other companies have no bearing on the determination for Dongbu. See 19 CFR 351.102 (definition of ordinary course of trade).

Dongbu asserts that it produces almost exclusively for inventory in the home market, and, therefore, the only possible overruns arise from made-to-order production for export. Dongbu argues its product coding system has never had an overrun category. Dongbu explains that its previous product coding included a digit identifying the market for which unpainted galvanized products were produced, making it possible to identify which ones were produced for export that were sold in the home market. However, Dongbu argues that identification of overrun sales of these products had no bearing on the sales, because it was the quality and condition of the merchandise that was significant with respect to the conditions under which they were sold. Dongbu claims that the Department acknowledged this by never excluding Dongbu's sales of prime grade unpainted galvanized product overruns. In 1995, Dongbu eliminated the digit because it found the digit served no useful commercial purpose and the quantities involved did not justify the cost of tracking the information. Dongbu argues that petitioners' claim that Dongbu deliberately eliminated the digit to avoid having to report overrun sales is unsupported, as the Department has always determined that Dongbu's prime grade sales of overrun material were within Dongbu's ordinary course of trade.

Dongbu points out that even without an overrun category, the information needed to code home market sales of export specification material is on the record. Dongbu explains that if the second digit of the code is other than K or D, the sale of unpainted galvanized product is of export specification material. Dongbu states that there is no overlap between such sales and the ones petitioners request to be excluded. Dongbu also argues it has shown such sales are within the ordinary course of trade by demonstrating that: (1) with few exceptions the same customers purchased sales of export and domestic specification material; (2) the average quantity of the sale of export material was the same or higher than the quantity of domestic specification material; and (3) there is no definitive trend in the prices and profit ratios for domestic specification versus export specification material. See Dongbu's Supplemental Response, B–2 and B–3, and Attachment B–34 (May 18, 1998). Dongbu argues that this three-step analysis must be followed if the Department intends to exclude Dongbu's sales of overrun material. Laclede Steel Co. v. United States, 18 CIT 965 (Ct. Int'l Trade 1994).

Department's Position: We have determined that none of Dongbu's sales should be classified as overruns for purposes of the Department's analysis in these reviews. We find no basis for excluding a block of home market sales from the analysis simply because they are the lowest priced sales, and petitioners have not presented sufficient reasons for determining any of the sales in question were overruns, and therefore excludable as outside the ordinary course of trade. In its May 18, 1998 submission, Dongbu indicated that it did not have a separate classification for overrun material, and that the eliminated indicator presumably recorded whether or not the product was originally produced for the export market. Even if the information that Dongbu eliminated from its coding system might have enabled an educated guess as to what home market sales were of overruns, which has not been established by the record, there is no evidence on the record that Dongbu changed its coding system to avoid having to report overruns.

Comment 8: Certain Sales Outside the Ordinary Course of Trade

Petitioners argue that if the Department does not exclude Dongbu's low-priced sales as overruns, it should exclude what petitioners have identified as Dongbu's aberationally priced sales. Petitioners state that in its preliminary results, the Department excluded certain Dongbu home market sales as outside the ordinary course of trade, based on two factors: (1) the sales were made at aberrational prices; and (2) Dongbu characterized the sales as insignificant quantities and related to slow moving merchandise. See Korean Flat-Rolled 4th Reviews Prelim, 63 FR at 48174–75. Based on these two factors, petitioners identified over one thousand Dongbu home market sales with prices which petitioners argue are significantly less than Dongbu's POR weighted-average sales price. Petitioners state that the Department only excluded a few of these aberrational sales even though Dongbu itself, in its July 6, 1998 submission, identified the sales as ''insignificant quantities'' of ''slow moving prime grade material.'' Petitioners argue that, based on the Department's factors for exclusion of home market sales, and based on Dongbu's own characterization of the sales, all of the over one thousand sales in question should be excluded from the analysis.

Dongbu argues that the Department was correct not to exclude the other home market sales identified by petitioners as outside the ordinary course of trade. Dongbu argues that the Department has already concluded that it would be inappropriate to remove a broad portion of Dongbu's low-priced sales from the dumping analysis (see Korean Flat-Rolled 4th Reviews Prelim, 63 FR at 48174). Dongbu argues that price alone cannot be the dispositive factor. Dongbu points out that in petitioners' example, where the Department excluded certain low-priced sales for Union, such exclusions were of sales which Union made in place of a credit adjustment. Dongbu argues that Dongbu's low-priced sales were not made in place of a credit adjustment. Dongbu also argues that if Dongbu's low-priced sales are to be excluded, then so must its high-priced sales, as they also deviate from Dongbu's average home market price. Finally, Dongbu argues that exclusion of home market sales identified by petitioners as aberrationally low-priced amounts to rejection of the sales-below-cost test.

Dongbu applies a similar rationale in arguing that the Department erred in its exclusion of four sales from its preliminary analysis. Dongbu takes issue with the Department excluding four of its home market sales as outside the ordinary course of trade. Dongbu argues that the sales were identical in nature to over one thousand home market sales that petitioners suggest should be excluded but which the Department chose not to exclude in its preliminary results. Dongbu argues that the four sales failed neither the cost test nor the arm's-length test. Dongbu also argues that the excluded sales do not fall under the other circumstances in which the Department has excluded sales as outside the ordinary course of trade (such as overruns, different types of product, or unusual or unique sales). *Laclede Steel Co.* v. *United States*, 19 CIT 1076 (1995); *Cement from Mexico*—March 1998, 63 FR 12770–72; *Thai Pineapple Public Co.* v. *United States*, 946 F. Supp. 11, 15–17 (Ct. Int'l Trade 1996). Dongbu argues that the purpose of the ordinary course of trade provision was to prevent unrepresentative or irrational dumping margins. SAA at 834. While Dongbu concedes that the four exclusions are significant for Dongbu because, as a result of the exclusion, the weighted-average dumping margin increased to above *de*

minimis, Dongbu argues that the roughly one percentage point increase is neither an unrepresentative nor an irrational result.

Dongbu argues that the four excluded sales were not of overrun material nor similar to overrun sales, stressing that overrun material is basically excess material produced as part of a specific order. Dongbu asserts that the excluded sales consist of material with Korean, not U.S., specifications, and were produced for inventory, not to order. Dongbu argues that, contrary to the Department's comparison in its analysis memorandum, such sales do not compare with low-priced sales excluded for another respondent in an earlier review. See Dongbu Prelim. Analysis Memo at 9–10. In that earlier review, the merchandise was found to be obsolete, thinner than planned, or priced especially low to compensate a customer for previous payments. See Korean Flat-Rolled 2nd Reviews Final, 62 FR at 18441. Dongbu argues that the Department's comparison fails because Dongbu's sales do not have any of said characteristics, and thus the sales should not be excluded. Dongbu argues that, furthermore, a determination of what is outside the ordinary course of trade for another respondent is irrelevant in analyzing Dongbu's sales because the Department has stated that ''[i]n an ordinary course of trade inquiry, the pertinent issue is whether the conditions and practices are normal for the company in question.'' See Cement from Mexico—March 1998, 63 FR at 12772.

Dongbu also argues that merely because the sales were below the average per unit price and below the cost of production (see Dongbu Prelim. Analysis Memo at 10) does not make them aberrational; the low-priced sales merely reflect an unremarkable statistical fact. Dongbu argues that the sales already survived the cost test in section 773(b)(1) of the Act, which identifies sales below cost. Under the cost test, the sales were not disregarded as below COP because they were not made in substantial quantities (20 percent or more of Dongbu's home market sales of the product). Dongbu complains that the Department cannot then apply a second cost test which excludes sales for being made in insignificant volumes.

Dongbu argues that the Department has never rejected Dongbu's classification system, which classified the sales at issue as prime merchandise. Dongbu further asserts that it demonstrated, in its July 6, 1998 submission, that the merchandise sold had no defects, and that the merchandise was not overrun material. Dongbu argues that the merchandise was slow-moving because of its color, that it is common business practice to sell the merchandise at a reduced price, and that such transactions are not extraordinary. Dongbu argues that both the Department and petitioners acknowledged that there were over one thousand of these sales during the POR. Dongbu argues that while the Department concluded that it would be inappropriate to exclude such a broad portion of relatively low-priced Dongbu home market sales as overruns, neither could such a large number of sales be excluded as outside the ordinary course of trade other than by failing the cost test. Dongbu complains that the Department concluded that the four sales used by petitioners as examples were made under unusual circumstances, when over one thousand sales were made under the same circumstances. Dongbu argues that in doing so, the Department is following the petitioners' agenda for arbitrary margin creation.

Dongbu argues that there are sales which are the same percentage above the average price as the excluded sales are below the average price. Dongbu asserts that if petitioners' argument—that the low-priced sales should be excluded because they are likely matches for U.S. sales—is accepted by the Department, then the Department should also exclude Dongbu's high-priced sales as well as they are also likely matches for U.S. sales. Dongbu notes that the Department has declined to exclude high-priced sales in the past, because the respondents therein did not explain the unique, unusual or extraordinary circumstances placing the sales outside the ordinary course of trade. See Industrial Nitrocellulose from France: Final Results of Antidumping Duty Administrative Review, 63 FR 49085, 49087 (September 14, 1998); Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin from Italy, 63 FR 49080, 49082 (September 14, 1998). In applying the same standard to its low-priced sales, Dongbu argues that the over one thousand sales cited by petitioners, including the four excluded by the Department in its preliminary analysis, are not extraordinary or unique under common sense and ordinary business practice. In arguing that the Department has taken two different standards for excluding low and high-priced sales, Dongbu notes that the CIT has stated that the Department may not impose arbitrary standards in its ordinary course of trade analysis. *Koenig & Bauer-Albert* v. *United States,* Slip Op. 98–83, at 40, n. 8 (Ct. Int'l Trade June 23, 1998). Dongbu argues that by ignoring Dongbu's classification of the four sales as prime grade material, the Department has created an artificial category of only the four sales. Dongbu argues that by doing so, the Department is establishing a precedent under which parties can cherry-pick a database to identify sales that create or eliminate margins.

In their rebuttal, petitioners state that the Department correctly excluded four of Dongbu's low-priced sales as outside the ordinary course of trade. Petitioners argue that the Department made the exclusions in accordance with the law. Petitioners assert that the SAA and legislative history support a finding that Congress and the Administration intended for the ordinary course of trade provision to apply to more than just below cost sales. SAA at 834; H.R. Rep. No. 103–826(I), at 76 (1994); S. Rep. No. 103–412, at 61 (1994); Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 17148, 17153 (April 9, 1997) (''Cement from Mexico—April 1997''). Petitioners argue that Dongbu incorrectly limits the scope of the ordinary course of trade provision to below-cost sales and affiliated customer sales. Petitioners argue that, unlike Dongbu, the Department properly applied the legal standard providing for exclusion of transactions sold at aberrational prices in order to avoid basing normal value on sales which are extraordinary for the market in question, particularly when the use of such sales would lead to irrational or unrepresentative results. SAA at 834; S. Rep. No. 103–412, at 61 (1994); and Cement from Mexico—April 1997 at 17154.

Petitioners also argue that Dongbu fails to address, or addresses in an insufficient context, many of the factors on which the Department based its decision. The Department excluded Dongbu's sales because the sales: (1) were aberrationally low-priced compared to other sales of the same CONNUMH; (2) were made at prices comparable to Dongbu's non-prime merchandise; (3) were made at prices below the average cost of Dongbu's steel inputs; (4) had characteristics similar to overruns; and (5) were of insignificant quantities and involved slow moving merchandise. See Korean Flat-Rolled 4th Reviews Prelim, 63 FR at 48175.

Petitioners disagree with Dongbu's claim that the Department created an artificial category in order to make the exclusions. Petitioners argue that the Department merely found the low-

priced sales to have characteristics similar to overruns excluded in prior reviews. Petitioners also argue that Dongbu mistakes a factor in the Department's ordinary course of trade analysis as a second cost test. Petitioners argue that the Department did not create a second cost test, but, rather, the Department merely considered the sales of merchandise at below substrate costs as one factor in the total circumstances considered under the ordinary course of trade provision. Petitioners argue that Dongbu's blank assertion that the excluded sales were in its ordinary course of trade is unsupported by the evidence on the record and identified by the Department. Petitioners also argue that rather than ignoring Dongbu's classification system of prime and non-prime merchandise, the Department followed the classifications in finding that the price of the excluded prime sales were comparable to prices of Dongbu's sales of non-prime merchandise. Petitioners argue that such comparable pricing supports a finding that the sales were aberrational and properly determined to be outside the ordinary course of trade.

Petitioners take issue with Dongbu's accusation that petitioners are margin shopping, and note that aberrationally low-priced home market sales of Dongbu were in months which affect the matching to U.S. sales. Petitioners argue that excluding the sales follows Congressional intent and avoids irrational or unrepresentative results. Petitioners note that Dongbu had more than one hundred thousand home market sales of corrosion-resistant merchandise, yet exclusion of only four such sales raised the dumping margin from 0.13 percent to 1.47 percent. Thus, petitioners argue, the inclusion of such sales in the margin calculation would lead to unrepresentative results.

Petitioners also assert that Dongbu incorrectly states that the Department excluded only the four sales used by petitioners as examples when, in fact, petitioners did not identify one of the four sales excluded by the Department (see petitioners' August 7, 1998 submission at 2–6). Additionally, Petitioners argue that Dongbu fails to support its argument that if the Department excludes low-priced sales, it should similarly exclude high-priced sales. Petitioners argue that Dongbu did not identify the sales to be excluded and that no evidence exists to show that any high-priced sales were made outside the ordinary course of trade.

While Dongbu takes the position that the four sales were improperly excluded when there were over one thousand similarly low-priced sales which were not excluded, petitioners, as noted above, argue that the four sales were properly excluded and that the Department should exclude the other approximately one thousand sales as well. Petitioners note that those additional sales represent less than one percent of Dongbu's total home market sales. Petitioners also note that while Dongbu claims that the Department concluded that it would be inappropriate to exclude such a broad portion of relatively low-priced Dongbu home market sales as overruns, the referenced statement had nothing to do with the Department's exclusion of Dongbu's aberrationally low-priced sales. See Korean Flat-Rolled 4th Reviews Prelim, 63 FR at 48174. For these reasons, petitioners argue that Dongbu fails to address and refute the facts relevant to the Department's proper determination that the sales were outside Dongbu's ordinary course of trade.

Department's Position: We agree with petitioners that the four sales the Department excluded from its preliminary analysis should continue to be excluded because they were outside the ordinary course of trade. However, we disagree with petitioners regarding the additional approximately one thousand sales.

As an initial matter, contrary to claims of both Dongbu and petitioners, the four sales in question are not comparable to the other approximately one thousand sales cited by petitioners because there is significantly greater information on the record regarding the unusual nature of the four sales than there is regarding the approximately one thousand other sales. Petitioners asserted in their case brief that these other sales, like the four sales in question, involved insignificant quantities of slow-moving merchandise sold at aberrational prices, but in fact the Department's analysis of the four sales in question, both in Dongbu Prelim. Analysis Memo and as noted below, went beyond those factors, in part because of the greater information on the record for those four sales. Similarly, while Dongbu in its case brief proposed equivalent treatment between the four low-priced sales and an unspecified group of high-priced sales, we note that the paucity of information on the record regarding the claimed high-priced sales would have precluded any analysis of whether those sales were outside the ordinary course of trade. Our analysis in the preliminary results focused on more than just relative prices, as does the additional analysis provided below.

We also disagree with Dongbu's assertion that the Department's preliminary analysis applied a second cost test. The analysis below also clearly accounts for costs in a way consistent with other ordinary course of trade analyses that is independent of the Department's cost test and, furthermore, it clearly examines several factors in addition to cost considerations. Also, contrary to Dongbu's assertions, our analysis was specific to Dongbu's circumstances and not based on any conclusion that the four sales in question constituted non-prime merchandise or overrun merchandise. The analysis below is comparable in these respects and in accordance with the the Department's regulation pertaining to ordinary course of trade, which indicates that examples of sales that the Department might consider as being outside the ordinary course of trade are sales or transactions sold at aberrational prices. See 19 CFR 351.102.

In reviewing our preliminary conclusions for the final determination, we have analyzed factors we presented in detail in Korean Flat-Rolled 2nd Reviews Final, 62 FR at 18437 with respect to sales outside the ordinary course of trade. That analysis specifically related to production overruns and the determination of whether sales identified as overruns were outside the ordinary course of trade, and was based on various precedents. See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products From Australia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 14049, 14050–51 (March 29, 1996) (''Australian Corrosion-Resistant Steel''), and Certain Welded Carbon Steel Standard Pipes and Tubes From India, Final Results of Antidumping Duty Administrative Reviews, 56 FR 64753, 64755 (December 12, 1991).

Although that analysis concerned production overruns, this test is also useful in evaluating the fact pattern for the four Dongbu sales in question because the test provides objective factors which are revealing as to whether certain sales are so unusual as to be outside the ordinary course of trade. Those factors are: (1) whether the home market sales in question did in fact consist of production overruns; (2) whether differences in physical characteristics, product uses, or production costs existed between overruns and ordinary production; (3) whether the price and profit differentials between sales of overruns and ordinary production were dissimilar; and (4) whether the number of buyers of overruns in the home-

market and the sales volume and quantity of overruns were similar or dissimilar in comparison to other sales. Again, while we have not concluded that the four Dongbu sales in question were overruns, in this instance there cannot be any ''overruns'' *per se* because of the limitations of Dongbu's internal classification system. In any case, though, the statute does not require that sales be categorized as overruns, or any other particular designation, in order to be found as outside the ordinary course of trade. Therefore, we examined the last three of the critical factors noted above.

Regarding differences between the four Dongbu sales in question and Dongbu's other sales with respect to physical characteristics, product uses, or production costs, Dongbu has clearly indicated that it was an unpopular paint color that distinguished these sales from other sales of painted corrosion-resistant merchandise. Paint color is obviously a physical characteristic, though not one acknowledged in the Department's model matching hierarchy. Furthermore, if the color were so unpopular that Dongbu had to price the merchandise at extremely low prices in order to find buyers, it is reasonable to presume that the buyer intended to use the product in a way that differed from that of the vast majority of customers who were not interested in that color. Furthermore, in regard to price and profit differentials, the prices of the four sales were: (1) Well below those of other home market prime sales of the CONNUMs in question; (2) comparable to prices of Dongbu's non-prime merchandise, which by definition possessed some type of physical imperfections; and (3) well below even the cost of Dongbu's hot-rolled steel inputs, which, to be transformed into the painted corrosion-resistant merchandise had to undergo various costly processes, including cold-rolling, coating with metal, and painting (which are the most important product characteristics in the Department's model matching hierarchy for corrosion-resistant carbon steel flat products). Consequently, consistent with the detailed analysis in the Dongbu Prelim. Analysis Memo at 9–10, very large price and profit differentials exist between the sales in question and other prime sales of the CONNUMs in question. Finally, the quantity of sales and number of customers in question constitute a small fraction of the corresponding totals for Dongbu's sales as a whole. Regarding the four Dongbu sales in question, the unpopularity of the paint color is itself an indication of how such merchandise, even at rock-bottom prices, could only attract limited customers.

In conclusion, the fours sales in question were sufficiently unusual, according to the standards indicated above, to be characterized as outside the ordinary course of trade. Consequently, the Department has continued to exclude them from its analysis.

Comment 9: Dongbu Express Home Market Freight Expense

Dongbu reported the amount it is charged by its affiliate, Dongbu Express Co., Ltd. (''Dongbu Express''), as home market freight expense. Petitioners point out that this amount includes not only the unaffiliated trucking companies' charge to Dongbu Express, but also a markup of Dongbu Express' estimated overhead and profit. Petitioners point out that the Department made an adjustment for such a markup in the previous administrative review by deducting the markup from Dongbu's reported home market freight expense. Petitioners point out that the Department did not make such an adjustment in this administrative review when calculating its preliminary results. Petitioners assert that the Department should make an adjustment in its final determination in order to be consistent with the prior review. Petitioners suggest that the Department divide Dongbu's reported home market freight expense by one plus a factor reflecting the markup.

Dongbu argues that the Department was correct not to adjust Dongbu's inland freight cost for the markup of Dongbu Express. While Dongbu recognizes the Department made adjustments in the third administrative review, Dongbu states that the circumstances in the third review do not exist in the fourth review. Dongbu points out that in the third review, the Department was concerned that similar mark-ups for services on export sales were excluded from the analysis. Dongbu argues that the Department has determined in this fourth review that all relevant mark-ups were included. Dongbu also points out that the Department made no such adjustment for the first or second administrative reviews. Dongbu notes that in those reviews, Dongbu Express worked only for Dongbu. Because Dongbu could not show transactions with unaffiliated customers, Dongbu compared Dongbu Express' mark-up for export sales to those for domestic sales to show the affiliated party transactions were at arm's length. In the third review, Dongbu was able to provide evidence, along with the mark-up data, that Dongbu and unaffiliated customers pay the same price to Dongbu Express. However, Dongbu felt that the focus remained ''inexplicably'' on the mark-up.

In the fourth review, Dongbu asserts that it has again presented evidence that it pays Dongbu Express the same price for freight as unaffiliated companies. Dongbu's November 14, 1997 Response at 27 and Attachment B–9. Dongbu notes that a preferred method of the Department in testing the arms-length nature of transactions is comparing prices charged to affiliated and unaffiliated parties. While Dongbu feels the relevance of the mark-up is moot, Dongbu nevertheless argues that the mark-up data affirms an arms-length transaction, as the mark-up on export transactions is higher than the mark-up for domestic transactions. Dongbu's March 9, 1998 Supplemental Response at Attachment B–30. Dongbu also argues that all similar mark-ups have been included in the deductions to CEP. For these reasons, Dongbu argues that the Department properly deducted the total freight cost reported by Dongbu for home market and export sales.

Department's Position: While it is true that Dongbu Express is affiliated with Dongbu, the reported Korean inland freight expenses for both home market and U.S. sales include the Dongbu Express markups. In response to a Department request for additional information, Dongbu provided markup data in its March 9, 1998, supplemental questionnaire response. That information suggests that the markups for export sales were not significantly lower than those for domestic sales, and that on a percentage basis they were higher for export sales than for domestic sales. To the extent, if any, that Dongbu Express' markups were not at arm's-length, it appears that the magnitude of the markups were comparable for both home market and U.S. sales. Consequently, it does not appear that the magnitude of the markups has a systematically biased effect on the results, and we have not adjusted our calculations of the home market freight expenses.

Comment 10: Inventory Carrying Costs

Petitioners argue that the Department inadvertently set its margin program to read inventory carrying costs as zero, which resulted in a program failure to deduct inventory carrying costs from the calculation of net U.S. price. Dongbu argues that the costs at issue arise from holding the merchandise between production in Korea and shipment to the U.S., and from when the merchandise was on the water. Dongbu states that it reported these expenses as

inventory carrying costs incurred in the country of exportation, as required by the Department.

Department's Position: We agree with the respondent that the inventory carrying costs in question relate to time prior to entry into the United States, and are not to be deducted from the CEP starting price. However, as noted elsewhere in this notice, the period in question (e.g., between shipment from Korea and entry into the United States) is treated as part of the period in which imputed credit costs are incurred. As stated at 19 CFR 351.402(b), the Department ''will not make an adjustment for any expense that is related solely to the sale to an affiliated importer in the United States.''

Comment 11: U.S. Indirect Selling Expenses

Petitioners argue that the Department incorrectly applied an adjustment designed to revise the reported indirect selling expenses for U.S. sales incurred in the United States (variable ''INDIRSU'') to the reported indirect selling expenses for U.S. sales incurred in Korea. Petitioners also argue that the allocation used to determine the amount of U.S. indirect selling expenses does not appear to be derived from any specific source, and petitioners propose a corrected revised ratio based on their August 7, 1998 submission at 22. Petitioners also argue that the denominator of the correction factor used by the Department in its preliminary results is not consistent with the data that were reported in the Dongbu's U.S. sales database; petitioners cite the factor that was actually used by respondent for the reported INDIRSU, and state that the Department should incorporate this factor as part of the basis for the recalculation of INDIRSU.

Dongbu agrees with the petitioners that the Department did not apply the adjustment to INDIRSU, but, rather, to indirect selling expenses incurred in Korea. Dongbu states that the latter expenses are incurred by Dongbu in selling to its subsidiary and should not be deducted from the U.S. starting price, as such expenses are not related to the economic activity in the United States (see Antifriction Bearings (Other Than Tapered Roll Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 62 FR 54043, 54054 (October 17, 1997)). Dongbu also agrees with petitioner that the denominator of the correction factor used by the Department in its preliminary results was not consistent with the data that were reported in its U.S. sales database, and Dongbu agrees with petitioners on the actual correct factor.

In any case, though, Dongbu states that no adjustment to INDIRSU should have been made. Dongbu notes that the Department decided an adjustment was required because it believed certain expenses, such as freight, should be deducted from the denominator used to derive the portion of common expenses to be allocated to subject merchandise. Dongbu argues that these expenses, such as the salaries of people arranging freight, are included in the common expense salaries, and that the fact that these expenses related in large part to products other than flat-rolled does not take away from the fact that the common expenses related to these categories.

Furthermore, Dongbu argues that petitioners' proposed change to the allocation ratio used to determine the total amount of U.S. indirect selling expenses reflects petitioners' desire to calculate the indirect selling expense ratio solely on the basis of sales value. Dongbu argues that using a straight sales value approach, which would assign expenses solely on the basis of price, is not indicative of the efforts made by Dongbu USA for the merchandise in question, and that the Department has recognized that when it is necessary to split common expenses among products that the allocation key should be in relation to the expenses being allocated (see Pipe from Korea, 63 FR at 32846–47.

In rebuttal, petitioners argue that Dongbu has shown no correlation between direct expenses and indirect expenses such that direct expenses incurred should serve as an allocation methodology for common indirect selling expenses related to all products. Petitioners also argue that, were there such a correlation, such expenses would not be indirect selling expenses as they could be assigned to products based on a direct identification methodology. Petitioners also argue that Dongbu's assertion that the common expenses being allocated by the derived ratio relate in part to these direct expenses is unsupported. Petitioners argue that Dongbu USA's financial statements do not provide any description about the majority of the common indirect selling expenses at issue.

Department's Position: We agree with both petitioners and respondent that the incorrect denominator was used for the adjustment factor developed by the Department for its preliminary results and that the Department applied the adjustment factor to the wrong variable in its preliminary results. We agree with Dongbu that we should not have deducted indirect expenses incurred in Korea from U.S. starting price. We have corrected our programming accordingly.

Regarding the calculation of the numerator of the adjustment factor, the Department presented its methodology in the Dongbu Prelim. Analysis Memo at 3 and in the two pages of the ''Worksheet for DONGBU USA Indirect Selling Expense Ratio'' attachment to that memorandum. The Department used Dongbu's basic methodological approach, as outlined in Exhibit C–37 of its May 18, 1998 submission, which accounted for portions of total expenses it characterized as indirect selling expenses that could be assigned to flat-rolled steel (including subject merchandise), those that could be assigned to other products, and those which were common to all products. We disagree with petitioners' assertion that an ability to attribute certain expenses to a type of product implies that such expenses must be direct, rather than indirect, expenses; for example, the salary of a secretary devoted only to work pertaining to subject merchandise could be attributed to subject merchandise, but would not under normal circumstances be categorized as a direct expense. However, as discussed below, the Department excluded certain expenses (''freight-out,'' ''warehousing,'' ''packing,'' and ''insurance (Transportation)'') from the calculations of flat-rolled indirect expenses and of other product indirect expenses. Those expenses are typically categorized by the Department as other than indirect selling expenses, and it is not clear from the record the extent to which a portion of those costs cited by Dongbu reflect expenses that could be categorized as indirect selling expenses (e.g., salaries of those arranging for freight). As a result, the Department derived a different factor than Dongbu to use as the basis for allocating a portion of total common expenses to flat-rolled products.

Dongbu did not demonstrate that there are expenses associated with the excluded categories, such as for salaries of personnel arranging freight, in the common expenses. Dongbu had not reported INDIRSU in its November 14, 1997 questionnaire response, and in response to the Department's supplemental follow-up question regarding indirect selling expenses, Dongbu indicated that it provided worksheets for the additional expenses, but did not elaborate on the content of those worksheets (see page A–7 of Dongbu's May 18, 1998 submission). The worksheets did not indicate any

common expenses associated with the expenses in question (e.g., freight-out, etc.), and Dongbu did not demonstrate that there is any correlation between the direct expenses in question and common indirect selling expenses related to all products. Consequently, we are continuing to exclude those expenses not appropriately characterized as indirect expenses from the calculations, and thus have continued to use the numerator of the adjustment factor that we calculated in our preliminary results.

Comment 12: Depreciation

Union argues that the Department should accept Union's reported depreciation expenses based on net asset value (original acquisition cost less accumulated depreciation), as this is in accordance with Korean GAAP. Regarding the method of depreciation, Union argues that the Department retroactively applied the straight-line method to the original acquisition cost less salvage value, which resulted in a distortion of the depreciation expense for the current POR. Union further explains that the Department's present application of the straight-line method is distortive in that the Department double-counts a portion of the previously recognized depreciation. Union asserts that unlike Final Determination of Sales at Less than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea, 58 FR 15467, 15470 (March 23, 1993) (''DRAMs from Korea''), the Department in this proceeding captured a higher depreciation expense in the first and second reviews resulting from Union's use of double-declining balance method in those two reviews. For this reason, Union argues, the Department should accept Union's reported depreciation expense with net asset value (original acquisition cost less accumulated depreciation to date) as a depreciable base. By accepting Union's reported depreciation expense, the Department avoids double-counting and only accounts for depreciation that has not been formerly recognized in previous reviews.

Second, Union asserts that the only plausible reason for the Department to reject Union's reported depreciation costs is the nonconformance of Union's treatment of depreciation to U.S. GAAP. Union disputes the Department's possible stand on this issue by claiming that the determining factor for acceptance of a cost accounting methodology is whether the methodology is in accordance with local GAAP, even if the local GAAP proves to be at times contradictory to the U.S. GAAP.

Finally, Union asserts that the Department's treatment of Union's depreciation is also not in accordance with U.S. GAAP, as it creates inconsistency between the balance sheet and income statement. In applying a straight-line methodology to Union's asset values, the Department increased Union's assets without a simultaneous adjustment to Union's income statement. Therefore, in order to maintain consistency with the balance sheet and income statement under the present approach, the Department should perform an upward adjustment to Union's stated income (an adjustment equal to the sum effects of the restatements of depreciation from double-declining balance to straight-line depreciation).

Petitioners assert that the Department should sustain its preliminary determination on this issue of depreciation in the final results, as the Department properly adjusted Union's reported depreciation expenses in those preliminary results. Petitioners state that the Department's adjustments in the preliminary results were made in a way consistent with its adjustments in Korean Flat-Rolled 3rd Reviews Final. Petitioners note that in the third reviews, the Department rejected Union's methodology because of its distortive effect on the margin analysis. See Korean Flat-Rolled 3rd Reviews Final, 63 FR at 13191. Petitioners allude to ''Use and Measurement of Costs Under U.S. Antidumping Law,'' International Trade Resources, 24 (1995), by Christian Marsh and John Miller in support of their position that the Department relies on U.S. GAAP when evaluating exporter's reported costs to determine whether these costs truly reflect costs associated with the production and sale of the merchandise. Petitioners further argue that the Department should reject Union's application of the straight-line methodology on its face, as this accounting methodology uses the net value of the asset rather than the original acquisition cost as the depreciable base, resulting in an inconsistency with U.S. GAAP.

Petitioners cite the similar fact pattern in DRAMs from Korea as a basis for rejecting Union's claimed depreciation expenses. Petitioners state that the Department's method does not count depreciation expenses reported in previous reviews in the present review but, rather, it accurately measures the current period's depreciation expenses based on the original cost of assets and their useful lives.

Department's Position: We agree with petitioners that Union's change in depreciation methods from double-declining to straight-line understates overhead and distorts our margin analysis. As in Korean Flat-Rolled 3rd Reviews Final and in the preliminary results of these reviews, we continue to reject Union's use of a straight-line method of depreciation using the net asset value as the depreciable base. Union's 1996 financial statements include a special note referring to the shift to straight-line depreciation, indicating that it constitutes an explicit change to Union's depreciation methodology rather than a development of its pre-existing depreciation methodology. See Exhibit A–11 of Union's October 8, 1997 Section A response at 16. Even if a change in depreciation methodology is consistent with local accounting standards, the Department may reject the change due to its distorting effect in our margin analysis. In regard to Union's argument that an offset be made to the Union income statement, see Comment 14, below.

Comment 13: Restatement of the Useful Lives of Certain Assets

Union argues that the Department should accept the longer useful lives of its certain assets for the calculation of depreciation expense, as such a change is in accordance with the Korean GAAP and the company's actual financial structure. Union claims that by not recognizing the longer useful lives of assets, the Department uses a ''front-loaded'' depreciation calculation methodology in which the Department attributes a higher depreciation expense to the current POR rather than attributing those very depreciation expenses to later years when Union actually incurs them. Union argues that Department's non-recognition of Union's extended useful lives of its assets leads to a distortion as the Department deviates from the use of respondent's financial statements and rather establishes a methodology applicable only for purposes of the antidumping order.

Petitioners argue that the Department properly rejected Union's estimates of the useful lives of assets. According to the petitioners, respondents failed to justify the change in the useful lives of assets other than to state that the change in question is in accordance with the relevant provisions of the Korean Corporate Tax Law. Petitioners noted similar cases in which the Department found this justification meager in nature (see, e.g., 64K Dynamic Random Access Memory Components (64K DRAM's)

from Japan: Final Determination of Sales at Less Than Fair Value, 51 FR 15943, 15944 (April 29, 1986)); and, Erasable Programmable Read Only Memories (EPROMs) from Japan; Final Determination of Sales at Less than Fair Value, 51 FR 39680, 39684–86 (Oct. 30, 1986)). Finally, petitioners argue that the number of years for which assets are depreciated under specific tax purposes may not accurately reflect the actual useful lives of the assets in question.

Department's Position: We agree with petitioners. We decline Union's revised useful lives of its assets in the absence of sufficient justification for the extension in the useful lives of Union's assets other than that the change in the useful lives of assets is in accordance with the Korean tax laws. The Department considers Union's original useful lives of its assets to be the proper estimation of Union's useful lives of its assets and therefore continues to calculate Union's depreciation costs on the basis of Union's original useful lives of assets.

Comment 14: G&A and Financing Expenses Reflecting Depreciation Adjustment

Union argues that if the Department intends to use its current depreciation methodology in its final margin calculations, then the Department should make a corresponding reduction to the G&A and financing expense ratios to reflect the greater COM that results from the increased depreciation expense. In doing so, the Department should change the G&A and financial expense ratios calculated from the financial statements by increasing the COM denominator by the percentage increase in the unit COMs. Petitioners did not comment on this issue.

Department's Position: We agree with respondents that an adjustment to the COM value used to calculate G&A and interest expenses is required for consistency with the depreciation methodology followed by the Department in its preliminary results. G&A and interest expenses are calculated by multiplying COM by distinct G&A and interest expense factors. Those factors, in turn, are based on the expenses in question (G&A or interest) divided by cost of goods sold (''COGS''). For Union for the final results of these reviews, we have implemented Union's suggestion by using the unrevised Union COM values as the basis for calculation of G&A and interest expenses. Alternatively, we could have used the adjusted COM values (reflecting the recalculation of depreciation) and attempted a corresponding upward adjustment to the COGS denominator of the factors, but the effects of such adjustments would be offsetting. The Department's methodology is simpler, and the effects are comparable to those of the more complicated alternative approach just described.

Comment 15: Home Market Warehousing Expense

Union argues that the Department should treat home-market warehousing as a movement expense rather than an indirect selling expense. In this current review, Union states that it reported warehousing expenses in a single field in accordance with the Department's questionnaire instructions, rather than in separate fields as pre-sale and post-sale warehouse which would have been consistent with the first and second reviews. Union asserts that the Department should follow its practice in the former review and its intended policy as contemplated in the URAA by deducting warehousing expenses from home-market price rather than performing a circumstance of sale adjustment. *See* SAA at 827.

Petitioners also state that the home market warehousing is properly treated as a movement expense rather than as an indirect selling expense. Petitioners assert that it is the Department's longstanding practice to differentiate among expenses related to production, selling and movement expenses. Therefore, for the above stated reason, warehousing expenses categorized as movement expenses should not be included in the total expense denominator of the Department's CEP profit calculation.

Department's Position: Dongbu indicated in its November 14, 1997 Section B response at 24 that for most home market sales involving warehousing, the customers would request that a shipment from the Pusan factory be temporarily stored at the warehouse. While for some sales the warehousing appears to have been prior to sale, the Department's original questionnaire did not distinguish pre-sale from post-sale warehousing, and the Department did not subsequently request additional information in this regard. We have determined that the warehousing expenses in question are best characterized as post-sale movement expenses, and have adjusted our programming to reflect this determination. Regarding petitioners' arguments pertaining movement expense and CEP profit, this issue is addressed elsewhere in this notice (see Comment 3).

Comment 16: POSCO Representative Product Group (''RPG'') Costs and Use of Facts Available

While petitioners agree with the Department's preliminary conclusion that the POSCO Group's submitted costs should be rejected, they argue that the Department incorrectly relied on a non-adverse approach to apply facts available in deriving its COM. Petitioners argue that, given the POSCO Group's repeated false and misleading statements regarding its cost and production records, the Department should have applied an adverse inference in its selection of facts available. Petitioners claim that the Department should use as total adverse facts available the highest rates previously calculated for this respondent, 17.70 percent and 14.44 percent ad valorem for corrosion-resistant and cold-rolled products, respectively.

Petitioners assert that the POSCO Group failed to act to the best of its ability and, pursuant to Department practice, it is irrelevant whether or not the POSCO Group intended to mislead the Department. See Elemental Sulphur from Canada: Final Results of Antidumping Duty Administrative Review, 62 FR 37958, 37968 (July 15, 1997) (''Sulphur from Canada''). In the cited case, the Department made no pronouncement on respondent Mobil's intentions while assigning adverse facts available for respondent's failure to cooperate to the best of its ability. Petitioners claim that the following statements made by the POSCO Group were misleading: (1) That its submitted costs reflect actual production quantities; (2) that it lacks and does not maintain production data necessary to allocate POSCO production quantities to a single, specific control number (''CONNUM''); (3) that it may not retain detailed production data once production is completed, and (4) that its production records do not identify all relevant product characteristics and thus do not allow production quantities to be assigned to single specific CONNUMs. Petitioners claim that the Department's cost verification report provides evidence that these POSCO Group statements were inaccurate. Petitioners argue that the POSCO Group impeded the Department's ability to conduct this review by not disclosing until verification that it generated and maintained detailed production records. Petitioners claim that the POSCO Group's failure to inform the Department of its detailed production data prevented the Department from obtaining the correct weighting factors

for POSCO's RPG costs, and properly requesting and then verifying revised costs based on the correct weighting factors. Petitioners argue that the situation in the instant case is analogous to that encountered by the Department in Sulphur from Canada and Certain Cut-to-Length Carbon Steel Plate from Mexico: Preliminary Results of Antidumping Duty Administrative Review, 63 FR 48181, 48182 (September 9, 1998) (''Steel Plate from Mexico''). In both of those cases, petitioners note, the respondent withheld critical information until verification, which prevented the Department from performing adequate testing and quantifying the magnitude of any distortion present in the reported costs.

Petitioners argue that the three reasons cited by the Department for using a non-adverse approach are all fatally flawed, and not supported by substantial evidence. First, petitioners claim that, contrary to the Department's conclusion, POSCO's submitted costs have never been reconciled to its books and records. Petitioners argue that the Department reconciled POSCO's RPG costs, rather than the submitted costs, to the company's financial statements. As a result, petitioners argue, the submitted costs could be significantly understated because of the distortive weight-averaging methodology employed by the POSCO Group to report costs. Second, petitioners argue that POSCO's methodology results in a systematic overstatement of POSCO's production quantities, relative to its affiliates, and thus resulting in an understatement of reported costs for the POSCO Group. Petitioners also argue that, by assigning the total production quantity of certain RPGs to multiple CONNUMs, the POSCO Group's submitted costs are understated because the weighting of RPGs within a CONNUM is distorted. Third, petitioners argue that the allocation methodology relied upon for facts available by the Department (''the matrix'') is demonstrably distorted and incorrect. Petitioners note that the allocation methodology of the matrix excluded sales to the United States and third countries, and thus the sales quantities used in the matrix for weighting did not approximate actual production. Finally, petitioners argue, the Department must find another source of facts available for POSCO's affiliated companies. The costs of manufacturing for these affiliates are based in large part on POSCO's costs, which the Department has rejected, and the allocation methodology used for the preliminary results did not adjust these costs.

The POSCO Group argues that its submitted cost methodology is reasonable and that the Department properly rejected petitioners' arguments to use adverse facts available in the preliminary results. The POSCO Group asserts that its methodology is neutral, mechanical, objective, and reports costs to the greatest level of detail permitted by the RPG system, the company's normal cost accounting system. The POSCO Group argues that its submitted cost methodology was used and verified by the Department, without exception, in all prior administrative reviews. The POSCO Group also claims that neither petitioners nor the Department have ever raised any question with regard to the POSCO Group's weighting methodology in prior reviews. The POSCO Group notes that its methodology was necessary since the RPG physical characteristics do not correspond exactly to those in the Department's questionnaire.

The POSCO Group claims that it cooperated fully with the Department during this review and that adverse facts available is not warranted. The POSCO Group argues that its initial submission accurately described its reporting methodology and its use of actual production quantities to calculate CONNUM-specific costs. The POSCO Group claims that it properly informed the Department that its records would not allow it to comply with the Department's request to allocate production quantities to a single, specific CONNUM. The POSCO Group argues that its statement that actual production data do not identify all physical characteristics referred to its production records maintained in the ordinary course of business (i.e., its mill certificate database). The POSCO Group claims that, as the Department verified, it was unable to use raw production data in its existing form due to the massive size of the database which is in storage on computer tape. The POSCO Group asserts that raw production data are only maintained for use in the rare instances that a warranty claim is made, and that such data are generally not accessed even in those instances. The POSCO Group reiterates that it would be practically impossible to use its raw production data to identify CONNUM characteristics and calculate relevant production quantities. Because of the enormous burden of work that would be required to use raw production data, the POSCO Group argues, it has answered truthfully that its production records do not allow it to assign production quantities to specific CONNUMs.

The POSCO Group argues that the cases cited by petitioners are inapposite and that the respondents in those cases withheld from the Department the existence of actual substantive cost data and entire cost systems upon which a cost response could be constructed. In this case, the POSCO Group claims, the Department properly found that the POSCO Group cooperated and acted to the best of its ability in supplying information requested by the Department. In the case of Sulphur from Canada, the POSCO Group asserts that the respondents therein failed to disclose critical facts regarding the existence of an entire cost system that could have been used to calculate costs. Moreover, the POSCO Group states that the Department concluded that the respondents' data ''did not verify,'' while claiming that its own data were fully verified. In the case of Steel Plate from Mexico, the POSCO Group argues that the respondent failed to provide cost data from its normal accounting system, failed to include significant costs for various cost centers, and failed to reconcile submitted costs to its financial accounting system. The POSCO Group argues that none of these deficiencies applies in the instant case. The POSCO Group also notes that it, by contrast, included all relevant production costs, reconciled its submitted costs to its financial accounting system, and the Department was able to fully verify its submitted information. Because the facts in the cited cases are so different from those in the instant case, the POSCO Group argues that adverse facts available is not appropriate.

In addition, the POSCO Group claims that the matrix prepared before the cost verification addressed and resolved the problem of POSCO's costs being overstated relative to its affiliates. The POSCO Group argues that petitioners' criticisms of the matrix are groundless. The POSCO Group asserts that the matrix methodology was designed by the petitioners to ensure that each ton of production would only receive a weight of one, even though an individual RPG was assigned to multiple CONNUMs. The POSCO Group claims that the matrix methodology meets that objective and ensures that POSCO is not given undue weight in averaging its production costs with those of its affiliates. The POSCO Group asserts that the fact that the matrix methodology produces results entirely consistent with its submitted methodology confirms that there is no distortion arising from any differential in costs among the POSCO Group companies. The POSCO Group argues that, in preparing the matrix, the use of

home market sales is more than representative, since the home market constitutes more than seventy percent of total company sales. The POSCO Group asserts that the submitted matrix provides an accurate analysis of the distribution of production quantities relative to CONNUMs. The POSCO Group argues that the inclusion of third country sales in the matrix would have presented a massive burden on POSCO that the Department could not reasonably expect POSCO to bear. The POSCO Group also claims that the inclusion of U.S. sales would not have changed the results of the matrix in a meaningful way.

Department's Position: We have reconsidered our position in the preliminary results and, in accordance with section 776(b) of the Act, we have applied adverse facts available to calculate the POSCO Group's COM in these final results. We agree with petitioners that the POSCO Group failed to act to the best of its ability by making misleading statements and by failing to cooperate fully with the Department during this proceeding. The most critical instance of this occurred when the POSCO Group, in response to a specific and direct question, did not reveal its ability to report production quantities on a CONNUM-specific basis. As a result, the Department did not learn until the cost verification that POSCO generates and maintains detailed production records which identify all relevant product characteristics. Furthermore, we agree with petitioners that if the availability of this data had been disclosed by the POSCO Group when the Department inquired as to its availability, the Department would have had the opportunity to request that the POSCO Group provide corrected COP and CV data.

In reconsidering our position in the preliminary results, we have performed a more detailed analysis to measure the potential distortion inherent in the POSCO Group's submitted cost methodology. We have now concluded that the POSCO Group's reported costs could potentially be understated by a substantial amount and the amount of this potential understatement cannot be estimated with much precision.

Section 776(a)(2)(A) of the Act directs the Department to apply facts available in instances where the respondent has withheld information requested by the Department. In a supplemental questionnaire issued by the Department on March 13, 1998, we did not restrict our inquiry to POSCO's mill test certificate database, but rather stated, ''[e]xplain whether POSCO's *production records* allow production quantities to be assigned to a single specific CONNUM, as defined by the Department'' (*emphasis added*). We also asked, ''[a]re POSCO production quantities available at a greater level of detail than the level at which costs are maintained in the* * *RPG cost accounting systems?'' We then requested that the POSCO Group use such detailed production quantities, if available, to recalculate its COP and CV. In response to these inquiries, the POSCO Group stated in its May 8, 1998 submission that ''while a company such as POSCO may have data on certain product characteristics during the production process itself, once production is completed, all of the detailed data may no longer be retained. Finally, not all of the product characteristics required by the Department may be identified by using actual production data.'' *See,* cost supplemental response at 10. Also, the POSCO Group stated on page 11 of that response that the company ''is unable to report production quantities on a CONNUM-specific basis.'' The direct, specific responses above indicated that POSCO does not generate, and does not have in its possession, any records which would allow it to identify production quantities using the Department's selected product characteristics (*i.e.,* on a CONNUM-specific basis). At the cost verification, however, the POSCO Group revealed that such records are actually generated at the time of production and these detailed records are retained on computer tape after they are downloaded from POSCO's production control computer system. As noted in the Department's cost verification report from Bill Jones and Symon Monu to Christian B. Marsh, dated August 5, 1998: ''Company officials explained that the production database maintains production data at a very detailed level, including all of the physical characteristics identified by the Department.'' *See,* cost verification report at 9. When Department verifiers inquired as to why such information had not been used to report costs, POSCO officials stated that it was not possible to access production data for the entire 12-month review period due to capacity limits on their computer systems. In its case brief, the POSCO Group asserts that the Department verified its inability to use raw production data in its existing form, due to the size of the stored database. This, however, is an incorrect statement. Because we did not learn of the existence of POSCO's detailed production data before verification, we were unable to design verification procedures to determine whether or not the company was capable of accessing and using such data to report costs.

The detailed production data are of major importance in this case because they could have been used to allocate the company's production costs, which are maintained at the RPG level, to the CONNUMs that are determined using the Department's selected physical characteristics. Products recorded within an RPG often have different physical characteristics and therefore would be classified under multiple CONNUMs. We noted that the average costs of different RPGs within a single CONNUM can vary by a substantial amount, and therefore the weighting of RPGs can have a material impact on the company's reported costs.

We agree with petitioners' claim that the matrix, or allocation methodology relied upon by the Department for the preliminary results, is substantially flawed and therefore should not be relied upon for the final results. As noted by petitioners, the matrix prepared by the POSCO Group did not use worldwide sales quantities to allocate its RPG costs to CONNUMs; instead, the POSCO Group used only home market sales quantities to prepare the matrix. As a result, sales to the United States and third countries were not used in any way to allocate RPG costs. While POSCO claims that it does not have shipment quantities for sales to third countries, and therefore was not able to include such sales in preparing the matrix, nonetheless the absence of these sales renders the matrix unusable. As noted by POSCO, nearly thirty percent of company sales were made outside the home market and the exclusion of such sales means that the shipment quantities used in the matrix are not a reasonable surrogate for total production quantities.

We agree with petitioners that the determining factor in our assignment of adverse facts available should be the POSCO Group's failure to act to the best of its ability. As we stated in Sulphur from Canada, 62 FR at 37968, our application of adverse facts available is ''not based in any manner on any belief in this company's intentions.'' The POSCO Group claims that it was referring to the production records maintained in the ordinary course of business, such as the mill certificate database, when it stated that actual production data did not identify all physical characteristics. Such a qualifying statement, however, was not present in the POSCO Group's response and, thus, we believe it was impossible

to know or assume that the POSCO Group's response was limited in the manner described. As noted, the supplemental cost questions posed by the Department did not indicate that we were referring only to the mill certificate database and detailed production data are, in fact, maintained by the company.

We disagree, however, with petitioners' assertion that we should apply total adverse facts available in calculating the POSCO Group's dumping margin. Aside from its misleading statements relating to the existence of detailed production records, the POSCO Group appears to have been cooperative with the Department throughout the rest of the proceeding. We disagree with petitioners' assertion that the Department never reconciled POSCO's submitted costs to its books and records. With the exception of the weight-averaging problem identified by the Department, POSCO's RPG costs reconciled to its books and records. The purpose of our reconciliation procedures is to ensure that all costs from the company's normal accounting system have been captured in the company's reported costs. As outlined in the cost verification report and noted in the preliminary results, we performed verification testing to satisfy ourselves that this objective was met. The issue at hand relates specifically to the weight-averaging of these costs in deriving CONNUM-specific costs. Although we agree with petitioners' assertion that the POSCO Group's reporting methodology results in an overstatement of POSCO's production quantities, relative to its affiliates, we do not agree that this necessarily results in a systematic understatement of costs. This would only be the case if, for each CONNUM, POSCO's costs were lower than its affiliates' costs, and we found that this is not true in every instance. Moreover, the POSCO Group is correct in that the submitted allocation methodology had been used by the POSCO Group and accepted by the Department in previous reviews. For the above reasons, we have concluded that adverse facts available should be used, but total adverse facts available is not warranted.

To apply adverse facts available to the weight-averaging problem, we calculated adjustments to the COM for CONNUMs for which we have detailed RPG data, and then applied those adjustment factors to the COMs for the rest of the CONNUMs in the COP and CV databases. For the CONNUMs for which we have detailed RPG detail, although we do not know POSCO's third country sales quantities, the company's POR home market and U.S. sales quantities are on the record. The combined sales of each CONNUM to the home market and the United States during the POR represents the minimum quantity produced by POSCO of that CONNUM. We assigned the most costly RPGs to the weighted-average cost calculation of each CONNUM to the extent of home market and U.S. sales quantities. We then re-weighted POSCO's costs with the other producers using POSCO's home market and U.S. sales quantity. The resulting adjusted COMs for those CONNUMs, compared to the reported COMs for them, result in adjustment factors that we applied to the COMs for the remaining CONNUMs in the COP and CV databases. See the March 8, 1999, Final Cost Calculation Memorandum from William Jones to Neal Halper.

Comment 17: Major Input Rule

Petitioners argue that the Department inappropriately failed to apply the major input rule (section 772(f)(3) of the Act) to transactions between POSCO and its affiliated parties. Petitioners state that the Department, in its antidumping duty questionnaire, asked POSCO to provide information on transfer price, cost of production, and fair value for major inputs transferred between affiliated parties. Petitioners note that two of POSCO's affiliates, POCOS and PSI, purchased major inputs from POSCO during the review period, and thus the major input rule must be applied to these transfers. Petitioners also argue that, since the POSCO Group failed to provide the requested information, the Department should use facts available to value transfers between POSCO and its affiliates.

The POSCO Group argues that, in this and the two prior reviews, the Department has already rejected petitioners' arguments to apply the major input rule. See, e.g., Korean Flat-Rolled 3rd Reviews Final. The POSCO Group states that the Department has ''collapsed'' POSCO, POCOS, and PSI into a single entity for the third successive review, indicating that it is now well-settled Department practice to not apply the major input rule to transactions within a single collapsed entity. The POSCO Group argues that, in such circumstances, it is consistent with the statute to not apply the major input rule because the statute requires application of the rule only to transactions between persons.

Department's Position: We agree with the POSCO Group. It is now well-settled Department practice not to apply section 773(f) to transfers within a collapsed entity. Rather, because we are treating POSCO and its affiliated producers as a single producer for purposes of the antidumping analysis, we find it appropriate to value the substrate inputs at issue according to POSCO Group-wide weighted-average costs, just as we attribute all POSCO Group home market and U.S. sales to the entity as a whole. As the Department stated in the third reviews, ''the decision to treat affiliated parties as a single entity necessitates that transactions among the parties also be valued based on the group as a whole and, as such, among collapsed entities the fair-value and major-input provisions are not controlling.'' Korean Flat-Rolled 3rd Reviews Final, 63 FR at 13185. See also Stainless Steel Wire Rod from Korea; Final Determination of Sales at Less Than Fair Value, 63 FR 40408, 40419–21 (July 29, 1998). The POSCO Group did not provide the data related to the major input issue in response to the Department's original generic questionnaire, and the Department did not request that information in its supplemental questionnaires, consistent with the Department's determination in Korean Flat-Rolled 3rd Reviews Final that such information was not needed. The CIT recently affirmed this practice, holding that ''Commerce reasonably determined that it should act consistently with its collapsing determination and not apply inconsistent solitary provisions, thereby arbitrarily increasing respondents' liability.'' *AK Steel Corp. et al.* v. *United States*, Slip Op. 98–159 (Ct. Int'l Trade Nov. 23, 1998), at 28.

Comment 18: Arm's Length Nature of Post-Sale Warehousing

The POSCO Group argues that the Department erred in reducing POSCO's post-sale warehousing expenses for certain home market sales. The POSCO Group states that the Department incorrectly concluded that the rental payments made to an affiliated party for use of a warehouse owned by that party were not at arm's length. The POSCO Group argues that it did provide specific evidence that said rental payments were at arm's length.

Petitioners argue that the Department appropriately reduced the POSCO Group's reported post-sale warehousing expense, as the POSCO Group never provided the underlying studies upon which its claim was based. Therefore, the Department had no choice but to adjust the submitted expense.

Department Position: We agree with petitioners that the POSCO Group did not establish that the payments in question were at arm's length. In its July 31, 1998 supplemental questionnaire

response, the POSCO Group stated that in establishing charges for the facility, the owner considered such factors as rental rates charged at similar facilities (as identified from government studies); however, the POSCO Group did not provide the information from those government studies. The POSCO Group also stated in that response that Exhibit S–11 contains internal documentation identifying the factors used to establish the rental rates for the facility, documentation supporting the relevant criteria considered, and the relevant pages of the written rental contract between POSCO and the affiliated party in question. However, it is not clear how the information in the exhibit relates to the establishment of arm's-length prices or what the relevant criteria are; furthermore, the POSCO Group failed to provide translations for large portions of the submitted contract. As a consequence, we sustain our preliminary determination that the POSCO Group has failed to adequately support its claim that the warehousing payments in question were at arm's length.

Comment 19: Adjustments to Costs for Coating Weight and Quality

The POSCO Group argues that the Department erred in adjusting its reported costs to account for differences in product coating weight and substrate quality. The POSCO Group claims that, consistent with its normal cost accounting system, POSCO submitted costs that reflect the average costs for products with different coating weights. Similarly, the POSCO Group states, POCOS submitted costs that reflect the average costs for products with different substrate qualitites, consistent with its normal accounting records. The POSCO Group argues that the Department should accept the averaging of coating weight and substrate quality costs since general and administrative costs are applied as an average and the labor and overhead costs for POCOS and PSI are calculated as an average, and these methodologies are accepted by the Department. The POSCO Group argues that the Department inappropriately applied facts available simply because POSCO and POCOS do not maintain records that account for the specific differences in coating weight and substrate quality, respectively. The POSCO Group cites a previous case in which the Department declined to penalize a company for failing to maintain its accounting records in a particular manner. See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada; Final Results of Antidumping Duty Administrative Reviews, 61 FR 13815, 13820 (March 28, 1996). In the cited case, the Department allowed the respondent to report costs for one production location as a proxy for costs at a different location. The POSCO Group argues that the same factors which led the Department to accept that respondent's costs, including that respondent's verified inability to determine specific costs, are present in the instant case. The POSCO Group argues that the Department has previously adjusted a respondent's submitted costs, based on its normal accounting practices, only where the Department has determined that such normal practices resulted in an unreasonable allocation of production costs. See DRAMs from Korea at 15472.

Petitioners argue that the Department properly adjusted the POSCO Group's submitted costs to account for differences in coating weight and substrate quality. Petitioners state that the POSCO Group's arguments regarding this issue are essentially identical to those raised in prior reviews. See Korean Flat-Rolled 3rd Reviews Final, 63 FR at 13201. Petitioners argue that, as in the prior reviews, the Department should reject the POSCO Group's claims and adjust the submitted costs to account for cost differences associated with these physical characteristics.

Department's Position: We agree with petitioners. It is appropriate for the Department to account for significant cost differences associated with differences in physical characteristics. The coating weight and quality characteristics are relatively high in the Department's model-matching hierarchy, and the POSCO Group companies distinguish these characteristics in their selling practices. Although the POSCO Group suggested an alternative methodology at verification, its submitted costs did not reflect the differences associated with these two characteristics. The adjustments made by the Department for coating weight and quality reflect a methodology comparable to that used in the final results of the second and third administrative reviews. Furthermore, regardless of the POSCO Group's characterization of this adjustment as adverse facts available, we have simply adjusted the POSCO Group's reported costs to more accurately reflect the costs of producing the products. As in the previous two reviews, the Department has relied upon the respondent's normal accounting systems, except to the extent that doing so would result in an unreasonable allocation of production costs and a possible distortion of the dumping margin. The non-adverse nature of these adjustments is demonstrated by the fact that the methodology results in a decrease in the costs of some products, while increasing the costs of other products. Furthermore, the use of POCOS data to adjust the costs of POSCO production for coating weight, and the use of POSCO data to adjust the costs of POCOS production for quality, is reasonable because they are sister companies within the same collapsed group.

We note that we have made a slight adjustment to our recalculations of these adjustments to reflect the fact that we are no longer using the matrix utilized to adjust POSCO costs. See the March 8, 1999, Final Cost Calculation Memorandum from William Jones to Neal Halper.

Comment 20: Startup Adjustment

The POSCO Group claims that the Department erroneously failed to grant, or even to consider, its requested startup adjustment because the Department claimed its effect was insignificant. The POSCO Group argues that the Department should address the merits of its startup adjustment claim and should grant its request. The POSCO Group argues that record evidence supports its assertion that it has satisfied the requirements for a startup adjustment, as defined in section 773(f)(1)(C)(ii) of the Act. Specifically, the POSCO Group claims that abnormally high production costs were incurred at a new facility during the review period due to startup operations, and that these higher costs resulted from production levels that were limited by technical factors associated with the initial phase of commercial production. The POSCO Group claims that establishing its new production line required substantial effort and investment, and that the new line was still in the startup phase from July through October 1996. The POSCO Group asserts that the new production line enabled it to produce merchandise in new dimensions, and alluded to the Department's alleged awareness of width as one of the most important characteristics of flat-rolled steel products. During this initial phase, the POSCO Group argues that it was necessary to carefully monitor and analyze the output from its new line to ensure that quality standards were met, before increasing to commercial production levels. The POSCO Group notes that it limited production well below the line's normal capacity during the startup period to permit such monitoring and to allow calibration of

the new equipment to avoid output variations. According to the POSCO Group, this limiting of production levels reflects the impact of technical factors as defined in the Act. The POSCO Group claims that record evidence also demonstrates that the new line's production levels were not limited by any factors other than startup, since demand for its products was strong, no chronic production difficulties were experienced, and operating performance on the new line improved steadily throughout and subsequent to the startup period. Finally, the POSCO Group argues that the effect of its requested startup adjustment was not ''insignificant,'' as characterized by the Department in its preliminary results. The POSCO Group argues that the Department's regulations define an insignificant adjustment as, ''any individual adjustment having an *ad valorem* effect of less than 0.33 percent* * *of the export price, constructed export price, or normal value, as the case may be.'' See 19 CFR 351.413. Therefore, the POSCO Group claims, the Department erred when it measured the startup adjustment's impact on the overall dumping margin. The POSCO Group points out that the Department's cost verification report indicates that the startup adjustment would reduce submitted normal values by more than 0.33 percent. The POSCO Group further notes that the Department allowed adjustments in this instant case with an even smaller impact than the requested startup adjustment.

Petitioners argue that the Department properly rejected the POSCO Group's startup adjustment claim in its preliminary results. Petitioners assert that the startup adjustment claim should continue to be rejected because the Department rejected the POSCO Group's startup adjustment claim in the prior review for the very same production line, finding that the startup adjustment requirements had not been met, and because the POSCO Group has not submitted any new evidence to support its claim in the instant review. Petitioners further argue that the POSCO Group has admitted to beginning commercial production before the current review period and that, according to the legislative history, the startup period ends when commercial production begins.

Department's Position: We have conducted an analysis of the POSCO Group's startup adjustment claim for the final results. In its preliminary results, the Department asserted that the startup claim would have an insignificant impact on the dumping margin and, therefore, it was not necessary to consider the startup adjustment claim. We agree with the POSCO Group that this conclusion was inappropriate because, as POSCO notes, our regulations define an insignificant adjustment as, ''having an *ad valorem* effect of less than 0.33 percent* * *of the export price, constructed export price, or normal value, as the case may be.'' *See* 19 CFR 351.413. Since the startup adjustment would, if granted, reduce the COM for certain products by more than 0.33 percent, we have considered the appropriateness of the POSCO Group's startup adjustment claim.

We have determined, however, that the statute's requirements for granting a startup adjustment have not been met by the POSCO Group, and we therefore have not applied the startup adjustment to calculate the POSCO Group's COP and CV. In this case, the POSCO Group has claimed that the installation of a new production line at one of its two works constitutes a new facility at which new products are manufactured, and that the claimed startup adjustment should be applied to products manufactured on this new line. The POSCO Group also claimed a startup adjustment for this same production line in the previous review. As in that review, we find that this new line does not produce a ''new product,'' and does not constitute a ''new production facility,'' as required by the startup adjustment provision. *See* section 773(f)(1)(C)(ii)(I) of the Act.

The line produces merchandise similar to that manufactured on numerous other lines by the POSCO Group. Contrary to the POSCO Group's claim that the Department is aware that width is one of the most important characteristics of flat-rolled steel products, width is not among the most important characteristics indicated in the Department's product characteristic hierarchy. More importantly, POSCO Group product brochures, submitted in Exhibit 8A in its October 10, 1997 Section A response, indicate a similar range of widths produced on other lines. Furthermore, virtually all of the alleged addition in width range provided by the new line falls within a single broader width range defined by the Department's product characteristic hierarchy and in which most of the overall width range of the lines in question fall. Finally, we disagree with the POSCO Group's assertion that the output of the line in question constitutes a new product even in the POSCO Group's narrow definition of the term, given that the POSCO Group already possessed the capability of slitting wider coils to the allegedly narrower widths that can be processed on the line in question.

As to a new production line constituting a new facility, the SAA sets a high standard for startup adjustment claims when it states that, ''New production facilities' includes the substantially complete retooling of an existing plant. Substantially complete retooling involves the replacement of *nearly all production machinery* or the equivalent rebuilding of existing machinery.'' SAA at 836 (emphasis added). The SAA clearly states, therefore, that the startup adjustment should only be applied when substantial modifications have been made to an entire production plant. When determining whether substantial modifications have been made the Department must consider, along with other factors, the extent to which the improvements relate to the total production process. In the instant case, the new line is but one of many processing steps necessary to produce corrosion-resistant products performed by the POSCO Group. We also note that, although the equipment in question is large and expensive, its relative size to the other production equipment involved in the production of corrosion-resistant products at the POSCO Group is small. Therefore, we do not believe that the installation of this equipment constitutes the substantial retooling of one of the POSCO Group's facilities and, therefore, does not meet the standard established in the SAA.

Regarding the second prong of the startup test (*see* section 773(f)(1)(C)(ii)(I) of the Act), we note that POSCO officials did, as revealed in the cost verification report, discuss alleged technical factors associated with the initial phase of commercial production. However, because the POSCO Group did not satisfy the first prong of the statutory test, we are precluded from granting the claimed startup adjustment.

Final Results of Reviews

As a result of these reviews, we have determined that the following margins exist for the period August 1, 1996 through July 31, 1997:

Producer/manufacturer/exporter	Weighted-average margin
Certain Cold-Rolled Carbon Steel Flat Products	
Dongbu	No U.S. entries in POR
POSCO	0.00

Producer/manufacturer/exporter	Weighted-average margin
Union	No U.S. entries in POR
Certain Corrosion-Resistant Carbon Steel Flat Products	
Dongbu	1.49
POSCO	0.16
Union	0.14

The Department shall determine, and the U. S. Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the same sales. The rate will be assessed uniformly on all entries of that particular company made during the POR. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements shall be effective upon publication of this notice of final results of review for all shipments of certain cold-rolled and corrosion-resistant carbon steel flat products from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies named above will be the rates for those firms as stated above, except for POSCO (and its collapsed affiliates) and Union, which had *de minimis* margins, and whose cash deposit rates are therefore zero; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, or the original LTFV investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these reviews, the cash deposit rate will continue to be 14.44 percent (for certain cold-rolled carbon steel flat products) and 17.70 percent (for certain corrosion-resistant carbon steel flat products), which were the ''all others'' rates in the LTFV investigations. See Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Korea, 58 FR 37176 (July 9, 1993), as amended by Amendment of Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Korea, 58 FR 41083 (August 2, 1993).

Article VI¶ 5 of the GATT (cited earlier) provides that ''[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization.'' This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies as determined in Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations; Certain Steel Products from Korea, 58 FR 37328, 37350 (July 9, 1993) will be subtracted from the cash deposit rate for deposit purposes.

The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 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 section 351.306 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 8, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–6279 Filed 3–15–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of the antidumping duty administrative review of certain corrosion-resistant carbon steel flat products from Japan.

SUMMARY: On September 8, 1998, the Department of Commerce (''the Department'') published the preliminary results of its administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. This review covers one manufacturer/exporter of the subject merchandise to the United States and the period August 1, 1996 through July 31, 1997. We gave interested parties an opportunity to comment on our preliminary results. As a result of these comments, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: March 16, 1999.

FOR FURTHER INFORMATION CONTACT: Contact Doreen Chen or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington,DC 20230; telephone: (202) 482–0408 or (202) 482–3818 respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (62 FR 27379, May 19, 1997).

Background

On September 8, 1998, the Department published in the **Federal Register** (63 FR 47465) the preliminary results of its administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan (''Preliminary Results''). We gave interested parties an opportunity to comment on our preliminary results. We received written comments from respondent Nippon Steel Corporation (NSC), and from petitioners (Bethlehem Steel Corporation and U.S. Steel Group (a unit of USX Corporation)) on October 8, and October 15, 1998, respectively. We have now completed this administrative review in accordance with section 751(a) of the Act.

Scope of Review

The product covered by this administrative review constitutes one ''class or kind'' of merchandise, certain corrosion-resistant steel.

Certain corrosion-resistant steel includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonizing Tariff Schedule of the United States (HTSUS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio. Also excluded from this review are certain corrosion-resistant carbon steel flat products meeting the following specifications: widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, and finally a layer consisting of silicate. These HTSUS item numbers are provided for convenience and Customs purposes. The Department's written description of the products covered by the scope of the instant order remains dispositive.

Fair Value Comparisons

To determine whether sales of subject merchandise from Japan to the United States were made at less than fair value, we compared the Export Price (EP) to the Normal Value (NV), as described in the ''Export Price'' and ''Normal Value'' sections of the preliminary results of review notice.

Interested Party Comments:

Comment 1: Petitioners argue that the Department should reject home market sales to a certain customer because the sales to this customer result in unfair and improper margin comparisons between EP and NV. Petitioners contend that, for a majority of respondent's home market (HM) sales that are matched to its U.S. sales, either the customer is the same for both markets or the U.S. and HM customers are related. Petitioners assert that for all such sales, the U.S. customer was also the importer of record. Thus, petitioners note that the customer would have been responsible for the dumping duties. Additionally, petitioners note that the Japanese parent company of the U.S. customer was involved in the price negotiations with NSC. Under these circumstances, petitioners argue, the potential for manipulation of the dumping margin was especially great.

Petitioners assert that a margin based on such comparisons violates the statutory requirement that the comparisons be ''fair,'' and on this basis alone, the Department should reject the HM sales to the particular customer because they result in ''unfair and improper'' comparisons. Petitioners argue that it is a fundamental principle of the antidumping law that ''in determining whether subject merchandise is being, or is likely to be, sold at less than fair value, a fair comparison shall be made between the export price or constructed export price and normal value.'' Petitioners argue that a ''fair comparison'' cannot exist where most of the U.S. sales are compared with sales to the same customer in the home market. Petitioners argue that such comparisons are inherently unreliable because the seller and buyer can simply agree to increase prices on merchandise destined for the U.S. and, at the same time, decrease prices on merchandise purchased in the home market. Petitioners assert that the antidumping statute and the Department's regulations and practice go to great lengths to ensure that the prices in the home market and the prices in the U.S. market are reliable and representative of sales in each market. To support this contention, petitioners refer to section 773(a)(1)(B) of the Act (19 U.S.C. 1677b(a)(1)(B)) (requiring that normal value be based on sales made in the ordinary course of trade); section 773(a)(2) of the Act (19 U.S.C. 1677b(a)(2)) (providing that sales intended to establish a fictitious market shall not be used in determining normal value); section 773(f)(2) and (3) of the Act (19 U.S.C. 1677b(f)(2) and (3) (ensuring that the cost of a major input not be valued at the transfer price if such price is below market value or less than cost); section 772(d) of the Act (19 U.S.C. 1677a(d)) (requiring certain adjustments to U.S. price where the

merchandise is sold through an affiliated U.S. supplier); and 19 CFR. § 351.403 (c) (providing that sales to affiliated parties that are not at arm's length prices not be used in determining normal value).

Petitioners further assert that it is not necessary for the Department to find evidence of price manipulation in order to conclude that the comparisons in the margin calculation are unfair and improper. Petitioners assert that a finding of a ''potential for price manipulation'' is sufficient to warrant a finding of an ''unfair and improper'' margin comparison, citing *Koening & Bauer-Albert AG, et al.* v. *United States,* No. 96–10–02298, Slip Op. 98–83 (CIT 1998) at 5–6 and *Koyo Seiko Co.* v. *United States,* 936 F. Supp. 1040, 1048 (CIT 1996). Thus, petitioners claim that under the present facts, the Department need not conduct any further investigation to determine whether price manipulation has occurred. Moreover, petitioners assert that in this case the Department has the authority to reject such comparisons. In support of this assertion, petitioners cite *Mistubishi Electric Corp.* v. *United States,* 700 F. Supp. 538, 555 (CIT 1988), *aff'd* 898 F.2d 1977 (Fed. Cir. 1990); *see also Koening & Bauer-Albert AG* v. *United States,* No. 96–10–02298, Slip Op. 98–83 (CIT 1998) at 6; and *Queen's Flowers de Columbia* v. *United States,* 981 F. Supp. 617, 622 (CIT 1997).

Respondent claims that petitioners' allegations concerning its sales to the customer at issue are untimely and unsubstantiated and should therefore be dismissed. First, respondent argues that petitioners first raised these claims in their case brief, and thus failed to raise these allegations until long after the deadline for submission of factual information in this review. Respondent cites 19 CFR § 351.302(d) and contends that the Department has refused to allow petitioners to dispute the validity of a NV calculation at such a late stage in the proceedings. Respondent claims that in previous cases, the Department rejected as untimely a fictitious market allegation which was first raised at the time of filing of case briefs following the preliminary results of the review, citing *Carbon Steel Wire Rope From Mexico: Final Results of Antidumping Duty Administrative Review,* 63 FR 46753, 46754–55 (September 2, 1998); and *Dynamic Random Access Memory Semiconductors of One Megabyte or Above from the Republic of Korea: Final Results of Antidumping Duty Administrative Review,* 62 FR 39809 (July 24,1997). Respondent argues that the prior Department decisions rejecting fictitious market claims based on untimeliness apply equally to petitioners' claims regarding ordinary course of trade and fair value comparisons. Respondent argues that all three of petitioners' claims relating to the customer at issue arise from section 773 of the Act (calculating normal value). Respondent further cites the preamble to the Department's regulations, arguing that a timely and adequately substantiated allegation is necessary, since an investigation of these types of claims requires information that is quantitatively and/or qualitatively different from the information normally gathered by the Department as part of its standard AD analysis. *See Antidumping Duties; Countervailing Duties: Final Rule,* 62 FR 27296, 27357 (May 19, 1997) (''*Final Rule*''). Consequently, respondent argues that a proper analysis of the allegations would require the gathering of information that is not currently in the administrative record for this review.

Second, respondent contends that the factual record does not support petitioners' assertions regarding a potential for price manipulation. Respondent argues that the challenged sales are comparable in terms of price to other sales. Respondent contends that the percentage difference between NSC's average home market net sales price to the customer at issue and NSC's average net price to other customers in the home market purchasing similar merchandise is minimal. Moreover, respondent argues that the allegation that NSC and the customer artificially lowered NSC's home market prices does not comport with commercial reality. In so arguing, respondent claims that NSC's U.S. sales to the customer at issue were very small in volume in relation to NSC's sales to the same customer in the home market. (Citing *Tubeless Steel Disc Wheels from Brazil,* 56 FR 14083, 14085 (April 5, 1991) (''[T]here is no commercial incentive for the respondent to suppress the prices of its comparatively higher volume home market sales to eliminate hypothetical margins in the much smaller U.S. market.))'' Thus, respondent argues that it would be impractical to manipulate the substantially larger set of sales in the home market in order to raise the price of the relatively small set of U.S. sales.

Respondent contends that the Department has acknowledged that ''the purpose of the antidumping duty statute is to offset the effect of discriminatory pricing between the U.S. and home markets. * * * Thus, while there is no statutory requirement that a firm must act to eliminate price discrimination, if it decides to do so, how it does so is within its own discretion. * * * A firm may also choose to increase its U.S. prices and lower its home market prices at the same time.'' *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products form the United Kingdom; Final Results of Antidumping Duty Administrative Review,* 60 FR 44009 (Aug 24, 1995). Respondent argues that the fact that NSC's U.S. and home market selling prices do not involve significant dumping margins is the intended result of the antidumping laws.

Respondent further objects to petitioners' interpretation of the term ''fair'' in the statute. Respondent claims that petitioners' interpretation of a ''fair'' comparison is inapposite, arguing that under section 773 of the Act, ''fair comparison'' is a term of art that refers solely to the technical calculations that produce the essential terms—EP or constructed export price (CEP) and NV—of such a comparison. Respondent argues that ''fair'' signifies that calculations were made according to the relevant statutory criteria set forth in sections 772 and 773. Thus, respondent contends that a challenge as to whether a comparison is ''fair'' must allege that the Department has not followed the methodological approach set forth under the Act.

Respondent argues that petitioners make no allegation that the Department has failed to follow the requirements set forth in sections 772 and 773. Respondent argues that petitioners instead referenced the Department's limited discretion under section 781, a section related to scope issues that respondent argues is not relevant to the calculation of NV. As stated above, respondent asserts that if petitioners seek to challenge the Department's fair comparison methodology, they must do so by citing a failure to carry out the calculations mandated by sections 772 and 773. Respondent submits that because petitioners have not done so, their challenge must fail.

Department's Position: We disagree with petitioners that the sales in question should be rejected as ''unfair comparisons'' under section 773 of the Act. Petitioners are correct that section 773(a) of the Act requires that a fair comparison shall be made between EP or CEP and NV. Petitioners are also correct that the Department has a certain amount of discretion to act ''with the purpose in mind of preventing the intentional evasion or circumvention of the antidumping duty law.'' *Dastech Int'l, Inc.* v. *ITC,* 963 F. Supp. 1220, 1229 (CIT 1997); *Mitsubishi Elec. Corp.* v. *United States,* 12 CIT 1025, 1046, 700 F. Supp. 538, 555 (1988).

However, the mere fact that the customer in question purchased NSC product in both the U.S. and home markets does not provide sufficient grounds to establish that the calculation based upon these sales is inappropriate. That the customer in question purchased the identical product in both markets is not, in itself, unusual, nor suggestive of an intentional evasion or circumvention of the antidumping duty law. Furthermore, as acknowledged by the Department in previous cases, it is permissible for a respondent to reduce or eliminate dumping either by raising its U.S. prices or by lowering its home market prices of merchandise subject to the order. *Furfuryl Alcohol from the Republic of South Africa: Final Results of Antidumping Duty Administrative Review,* 62 FR 61084, 61085 (November 14, 1997). (For further discussion involving proprietary information, see *Memorandum to the File: Analysis of Nippon Steel Corporation (''NSC'') in the Final Results of Corrosion Resistant Steel Flat Products from Japan* (January 6, 1998)(''Analysis Memo''). Therefore, we did not reject the sales in question on the basis that they would lead to ''unfair comparisons.''

We disagree with respondent's argument that petitioners' allegations are untimely. In order to address this claim, it is not necessary for the Department to seek new factual information and petitioners have not submitted new factual information in their allegation.

Comment 2: Petitioners claim that the sales made to the customer at issue should be rejected because they constitute sales that are outside the ordinary course of trade. Petitioners argue that both the statute and the Department's practice authorize the Department to disregard sales (1) that are below cost; (2) that are not made at arm's length; and (3) that are not ordinary when compared to sales generally made in the market, particularly where the use of such sales in the margin calculation would lead to irrational or unrepresentative results. Petitioners argue that the Department could disregard sales for these reasons even where those sales constitute a majority of respondent's home market sales. Further, as discussed in Comment 1, petitioners note that the U.S. sales are compared to sales to the same customer in the home market. Petitioners assert that the potential for price manipulation is enormous, given the economic incentive to minimize the dumping margin. (For further discussion involving proprietary information, see the Analysis Memo).

Petitioners assert that these circumstances are so extraordinary that NSC's home market sales to the customer at issue should be rejected as outside the ordinary course of trade. Additionally, petitioners charge that the inclusion of these sales in the home market would lead to ''irrational'' and ''unrepresentative'' results because of this great potential for manipulation of prices.

Petitioners submit that under the statute, the Department may reject various categories of home market sales because they are found to be outside the ordinary course of trade. Petitioners contend that although the Statement of Administrative Action (''SAA'') sets forth a variety of examples of sales that are outside the ordinary course of trade, the Department has the express authority to ''consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions generally made in the same market.'' *See* SAA, *reprinted* in 1994 U.S.C.C.A.N., 4040, 4171 (''SAA'').

Respondent refutes NSC's claim that the challenged sales were outside the ordinary course of trade. Respondent points out that the burden of proving that sales are outside the ordinary course of trade lies with the party making the assertion, citing *Final Rule,* at 27299. Respondent argues that petitioners make no allegation that NSC has engaged in any of the enumerated list of practices that are presumptively deemed to constitute conditions and practices outside the ordinary course of trade as prescribed in section 771 (15) of the Act, nor have petitioners alleged that the sales at issue are characterized by factors similar to those that have been found to constitute sales outside of the ordinary course of trade in other cases. *See, e.g., CEMEX, S.A.* v. *United States,* 133 F.3d at 901–2 (Fed. Cir. 1998); *Sulfur Dyes, Including Sulfur Vat Dyes, From the United Kingdom: Final Results of the Antidumping Administrative Review,* 58 FR 3253, 3256 (January 8, 1993); *Manganese Metal from the People's Republic of China: Final Results of the Antidumping Administrative Review,* 60 F.R. 56045, 56046 (November 6, 1995); *Color Television Receivers, Except for Video Monitors from Taiwan: Final Results of the Antidumping Duty Administrative Review (''Color Television Receivers''),* 55 FR 47093, 47100 (Nov. 9, 1990) (challenging the Department's comparison of sales to the United States and a third country, where, in some cases, the matching sales had the same customer order number, contract date, and sales price.) Respondent argues that petitioners have an obligation to point to specific evidence that the challenged sales are not normal when compared to NSC's other sales of corrosion-resistant steel during a reasonable period of time prior to the exportation of the subject merchandise. Respondent also argues that a mere potential for price manipulation is not enough to justify excluding home market sales. Respondent argues that the court in *Zenith Electronics* determined that there can be no basis for excluding home market sales without evidence of actual price manipulation. *See Zenith Electronics* v. *United States,* 865 F. Supp. 890 (CIT 1994). Respondent argues that petitioners rely on a series of vague assertions that do not meet the legal standard enunciated in the statute, regulations, and case law in support of their contention that the challenged sales were outside the ordinary course of trade.

Respondent asserts that the Department has, in fact, previously ruled that comparisons between sales to the same customer in two markets may be valid. *See Color Television Receivers,* 55 FR 47093, 47100 (November 9, 1990) (holding that ''nothing in the antidumping law or in the Department's regulations directs or authorizes the Department to ignore a valid third-country purchaser who is related to the U.S. purchaser'').

Respondent contends that the ''ordinary course of trade'' provision applies only to sales used in the calculation of NV under section 773. Thus, respondent argues that petitioners' claim that the sales are extraordinary because they comprise a great percentage of its U.S. sales, is inappropriate under section 773. Additionally, respondent cites *Chang Tieh Ind. Co.* v. *United States,* 840 F. Supp. 141, 145 (CIT 1993), for the proposition that it is unusual, if not improper, to refer to the entire corpus of a party's U.S. sales as ''unrepresentative,'' as they must be representative of that seller's behavior.

Department's Position: We agree with respondent. The statute and SAA are clear that a determination of whether sales (other than those specifically addressed in section 771(15)) of the Act are in the ordinary course of trade must be based on an analysis comparing the sales in question with sales of merchandise of the same class or kind generally made in the home market. An ordinary course of trade determination requires evaluation of sales in each review on ''an individual basis taking in to account all of the relevant facts of each case.'' *See Nachi-Fujikishi Corp.* v.

United States, 798 F. Supp. 716, 719 (CIT 1992). This means that the Department must review all circumstances particular to the sales in question. *See Gray Portland Cement and Clinker from Mexico: Final Results of the Antidumping Administrative Review,* 62 FR 17148, 17153 (April 9, 1997).

The particular facts of this case do not support a finding that the sales to the customer at issue were extraordinary transactions in relation to other sales transactions. There is no record evidence demonstrating any significant distinctions between the sales at issue and other home market sales. In particular, there is no evidence of a discernible pattern of lower sales prices to this customer as compared to NSC's other customers who purchased similar merchandise. Moreover, we agree with respondent that the small number of sales to the customer at issue in the U.S. in comparison to the number of sales to the same customer in the home market lessens any commercial incentive for the respondent to suppress the prices of its comparatively higher volume home market sales in order to eliminate hypothetical margins in the much smaller U.S. market. *See Tubeless Steel Disc Wheels from Brazil,* 56 FR 14083, 14085 (April 5, 1991) (''*Disc Wheels*''). In addition, the mere facts that the customer is the same for both the U.S. and home market sales and that the parent company of the customer was involved in the sales negotiations do not warrant a finding of extraordinary sales transactions. For the above reasons, we have determined that the home market sales in question were made in the ordinary course of trade.

With respect to respondent's argument regarding the timeliness of petitioners' allegations, as stated above, because no new factual information has been submitted, nor is new factual information necessary for the analysis of this claim, we find that this allegation is not untimely.

Comment 3: Petitioners allege that NSC's home market sales to the customer at issue should be rejected on the basis that such sales constitute a fictitious market under section 773(a)(2) of the Act. Petitioners note that as a general rule, the Department's practice in analyzing whether there is evidence of a fictitious market is to ''require evidence that {a} decrease in price of home market sales of the foreign like product was accompanied by an increase in the price of sales of ''different forms of the foreign like product'.'' *Furfuryl Alcohol from the Republic of South Africa: Final Results of the Antidumping Duty Administrative Review,* 62 FR 61084, 61085 (November 14, 1997). Petitioners assert that the Department has acknowledged, however, that the ''price movements within a foreign like product are {but} one example of a fictitious market,'' and that ''we may determine in the future that a fact pattern other than price movements within a foreign like product constitutes a fictitious market.'' *Id.* Petitioners note that in *Zenith Electronics Co.* v. *United States,* the CIT ordered a remand for the Department to investigate allegations of a fictitious market. *See Zenith,* 770 F. Supp. at 659, *appeal after remand,* 812 F. Supp. 228 (1993), *vacated in part on other grounds,* 865 F. Supp. 890 (CIT 1994). According to petitioners, the plaintiffs, in *Zenith,* claimed that the basis for the remand was a ''small proportion'' of sales where the purchaser in the U.S. market was affiliated with the purchaser in the comparison market. Petitioners argue that *Zenith* compels the Department to investigate a potential fictitious market where sales of the same merchandise within a close time frame are made to related purchasers in both the U.S. and home markets. (For further discussion involving proprietary information, see the *Analysis Memo.*) Petitioners claim that the court's finding of a potential fictitious market under such circumstances overruled the Department's previous holding in *Color Television Receivers* that ''nothing in the antidumping law or in the Department's regulations directs or authorizes the Department to ignore valid third-country sales for purposes of calculating FMV simply because those sales are made to a third-country purchaser who is related to the U.S. purchaser.'' *Color Television Receivers,* 55 FR 47093, 47100 (November 9, 1990). Petitioners also, however, distinguish *Zenith* from this case, claiming that no further investigation is warranted since the present record sufficiently supports a finding of a fictitious market. On this basis, petitioners claim that their allegation is timely.

Respondent argues that petitioners' fictitious market allegation should be rejected because NSC's home market sales to the customer at issue are ''*bona fide* arm's length transactions'' that reflect the ''actual market price.'' Respondent asserts that a fictitious market analysis is ''extraordinary'' and will be undertaken by the Department only upon receipt of a timely and adequately substantiated allegation, citing *Carbon Steel Wire Rope from Mexico: Final Results of the Antidumping Duty Administrative Review,* 63 FR 46753, 46755 (Sept. 2, 1998); *Preamble to Final Rule,* 62 FR at 27357.

Respondent argues that only sales which are not *bona fide* arm's length transactions are subject to the fictitious market provision, and that such sales must be ''pretended,'' citing *PQ Corp.* v. *United States,* 652 F. Supp. 724 (CIT 1987); *Furfuryl Alcohol,* 62 FR at 61085. Respondent asserts that in order to prove that NSC's home market sales to the customer at issue are ''pretended'' sales with ''artificial'' prices that ''do not reflect actual market price,'' petitioners would have to show that NSC ''artificially suppressed'' its home market prices to the customer at issue. Respondent contends that the Department has rejected fictitious market allegations where the petitioner has failed to submit information indicating that respondent's lower home market prices ''were other than actual market price,'' citing *Porcelain-on-Steel Cooking Ware from Mexico: Final Results of the Antidumping Administrative Review,* 58 FR 32096 (June 8, 1993). Respondent argues that petitioners failed to provide such data. Respondent argues that NSC's sales to the customer in question are ''bona fide arm's length transactions'' at prices that reflect ''actual market price.'' As discussed earlier, respondent claims that the average net sales price to the customer at issue is comparable to NSC's average net sales to other customers purchasing similar merchandise, differing by a minimal percentage.

Respondent further argues that petitioners' fictitious market allegation should be rejected because NSC had no commercial incentive to suppress prices, which respondent believes is evidenced by the fact that the home market sales volume to the customer at issue is significantly larger than U.S. sales volume to the same customer. *Disc Wheels,* 56 FR at 14085.

Respondent argues that even if NSC were to lower its prices in the home market, this does not constitute a fictitious market. Respondent asserts that the Department's general practice requires that a fictitious market allegation must be supported by evidence of ''different movements in the prices at which different forms of the subject merchandise have been sold in the home market.'' *Furfuryl Alcohol,* 62 FR at 61085; *Disc Wheels,* 56 FR at 14095. Respondent argues that petitioners have not identified any ''different forms,'' nor have they alleged any ''different movements'' in the prices of any such forms. Respondent notes that in *Furfuryl Alcohol,* the Department found that a claim ''centering around a

single supplier selling at low prices in the home market does not justify an expansion'' of the Department's ''normal practice of determining the existence of a fictitious market based on a comparison of prices of different forms of the foreign like product.'' *Furfuryl Alcohol,* 62 FR at 61085. Additionally, respondent notes that in *Furfuryl Alcohol,* the Department acknowledged a respondent's right to ''reduce or eliminate dumping by either raising its U.S. prices or by lowering its home market prices of merchandise subject to the order.'' *Id.*

Respondent also argues that a ''mere potential'' for price manipulation does not satisfy the legal standard for establishing a fictitious market. Rather, respondent contends that a finding of ''actual'' price manipulation must be shown in order for sales to be excluded. Respondent asserts that the court in *Zenith* acknowledged this requirement when it ordered the Department to determine whether manipulation ''had taken place,'' citing *Zenith,* 770 F. Supp. at 659.

Respondent further notes that petitioners' assertion about the challenged sales is based on the order date as the date of sale. Respondent argues that the Department must use the shipment date as the date of sale since it is the date when the material terms of sale were established. (*See* Comment 4 below for further details.) Respondent claims that the percentage of matched sales to the same customer in both markets is lower if the date of shipment is used as the date of sale.

Department's Position: An allegation involving fictitious markets requires investigation and analysis by the Department of factors that are not always considered during the ordinary course of a review. Petitioners failed to raise their fictitious market allegation until the filing of their case brief following the preliminary results of review. Therefore, petitioners' allegation was untimely filed and not adequate to warrant determining that NSC's home market sales constitute a fictitious market. As stated in prior determinations by the Department, a fictitious market analysis is extraordinary. In the Preamble to the Department's *Final Regulations* implementing the URAA, the Department explained that it typically does not engage in a fictitious market analysis under section 773(a)(2) of the Act, or a variety of other analyses called for by section 773, ''unless it receives a timely and adequately substantiated allegation from a party.'' *Antidumping Duties: Countervailing Duties; Final Rule,* 62 FR 27296, 27357 (May 19, 1997) (*Final Rule*) (citing *Disc Wheels,* 56 FR at 14083 (April 15, 1991)); and *Porcelain-on-Steel; Cooking Ware from Mexico: Final Results of the Antidumping Duty Administrative Review,* 58 FR 32095 (June 8, 1993). The various provisions of section 773, including section 773(a)(2) of the Act, ''call for analyses based on information that is quantitatively and/or qualitatively different from the information normally gathered by the Department as part of its standard antidumping analysis.'' *See Final Rule,* 62 FR at 27357. If a timely and adequately substantiated allegation is submitted in a future review, we will examine this issue in that review.

Comment 4: Respondent argues that the Department's preliminary decision to use date of order confirmation as date of sale is not in accordance with law and inconsistent with the Department's regulations on date of sale. Respondent argues that the Department should instead use shipment date as the date of sale. Respondent first argues that the intent of the date-of-sale regulation is to select the date that most accurately reflects the date on which the material terms of sale are established. Respondent argues that for that purpose, the regulation instructs the Department to use the invoice date unless there is evidence on the record indicating that another date more accurately reflects the date on which the material terms of sale are established, citing 19 CFR 351.401(i). Respondent notes that the Department has previously held that the reason for using a date other than the invoice date as the date of sale must be ''compelling,'' citing *Certain Cold Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews,* 63 FR 13170, 13194 (March 18, 1998).

Second, respondent argues that the Department's regulations state a preference for establishing a date of sale on the basis of data maintained by the respondent in the ordinary course of business. *See* 19 CFR 351.401(i). Respondent argues that these regulations establish a rebuttable presumption that the invoice date is the appropriate date of sale, because it: (1) most accurately reflects the date on which the material terms are set; and (2) is the date that is generally maintained in the ordinary course of business.

Respondent notes that in previous cases, the Department held that the date of invoice could not be used because the date of invoice was later than the shipment date. *See Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany: Final Results of Antidumping Duty Administrative Review,* 63 FR 13217, 13226 (March 18, 1998). Respondent contends that under no circumstances may a date *after* the date of shipment be used as the date of sale, regardless of when the material terms are set. Therefore, respondent argues that where the invoice date most accurately reflects the date on which the material terms of sale are established, but may not be used because it falls after the date of shipment, the Department must select a proxy for the invoice date. In this situation, respondent argues, the proxy date should be the shipment date, because it is the closest permissible ''date of sale'' to the invoice date.

Respondent further argues that the Department's use of the order confirmation date of NSC's sales of subject merchandise as the date of sale is not in accordance with the Department's regulations. Respondent asserts that the order confirmation date is an inappropriate date of sale because the order confirmation date does not accurately reflect the date on which the material terms of sale are ''finally established.'' Respondent contends that the order confirmation date occurs prior to the date of shipment of the subject merchandise, and that the material terms of sale can (and routinely do) change up to, and even after, the date of shipment.

Respondent contends that the use of the shipment date as date of sale fully accords with the Department's date-of-sale rules. Respondent argues that the invoice date is the date that most accurately reflects the date on which the material terms of sale are established. However, respondent asserts that NSC's invoice date always occurs on, or after, the shipment date. Therefore, the Department may not rely on invoice date since the Department's rules do not permit the use of any date after the shipment date as the ''date of sale.'' Respondent argues that because the shipment date is the closest permissible ''date of sale'' to the invoice date, the shipment date is the best proxy for the invoice date and, as such, is the date that reflects most accurately the date on which the material terms of sale are established.

Petitioners argue that the Department properly selected the order confirmation as the date of sale. Petitioners argue that if the record shows that the material terms of sale are usually established on a date other than the invoice date, the Department will select such other date as the date of sale. Petitioners assert that the Department prefers to use the invoice date as the date of sale because in many cases, ''price and quantity are

often subject to continued negotiation between the buyer and seller until a sale is invoiced.'' *See Final Rule,* at 27348. However, petitioners contend that the Department will not use the invoice date where the evidence shows that ''for a particular respondent, the material terms of sales usually are established on some date other than the invoice date,'' citing *Canned Pineapple Fruit from Thailand,* 63 FR 43661, 43668 (August 14, 1998), quoting *Final Rule,* at 27349. Petitioners assert that if the invoice date does not ''reasonably approximate the date on which the material terms of sale were made in either of the markets under consideration,'' the Department has determined that ''its blanket use as the date of sale in an antidumping analysis is untenable.'' *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea,* 63 FR 32833, 32835 (June 16, 1998).

Petitioners argue that the record fully supports the Department's finding that the order confirmation date, and not the invoice date or the shipment date, is the date that best reflects the date on which the material terms of sale are set. Petitioners point out that, as indicated by NSC's questionnaire response and also confirmed by the verification results, the order confirmation establishes all essential aspects of the sale, including the product specifications, price and quantity. Petitioners note that NSC produces merchandise to order. Petitioners assert that the Department confirmed at verification that in instances where the parties decide to modify the terms following the initial order confirmation, NSC either receives a revised order and issues a revised order confirmation, or it internally modifies the previously issued order confirmation. Petitioners argue that where these minor variations existed between the quantity ordered and the quantity shipped, such variances were immaterial and clearly attributable to NSC's practice of manufacturing the subject merchandise *to order,* as opposed to simply selling from inventory. Petitioners note that the sales traces conducted at verification showed that NSC made several shipments in order to supply the customer with the quantity specified in the order confirmation, and the sales traces demonstrated that the total quantity shipped in the multiple shipments conformed to the total quantity in the order confirmation. Petitioners conclude that these sales traces, in which several shipments satisfied the terms of a single order, constitute clear and concrete proof that it was the order confirmation date, and not the shipment date (or the invoice date), that best reflects when the ''material terms of sales usually are established.'' Petitioners contend that given NSC's practice of multiple shipping dates where the terms were consistent with the order confirmation, the use of the shipment date as the date of sale would be arbitrary and distort the calculations. Petitioners argue that it would result in two shipments, both of which were intended to satisfy the terms of a single order made on one day, having different dates of sale. Petitioners assert that the Department confirmed at verification that the terms of the revised order confirmation then supersede the terms initially established. Petitioners contend that it is the order confirmation, as originally agreed to or as modified—and not the invoice or the shipment—that establishes the material terms of the sale.

Petitioners argue that NSC's claim that the invoice/shipping date is the proper date of sales is based entirely on claims that the use of the order confirmation date is improper. Petitioners assert that NSC's claims that the order confirmation is not the correct date of sale are meritless. Petitioners claim that respondent's claim that the material terms of sales ''can—and routinely do—change up to and even after the date of shipment'' is not an accurate characterization of the record. Petitioners allege that the record clearly shows that to the extent NSC and its customer made a significant revision to any material term of sales, there is an established mechanism for accomplishing the revision; specifically, petitioners assert that NSC issues a new or revised order confirmation. Petitioners claim that the ''routine changes'' to the order confirmation referenced by respondents involve slight variances between the quantity ordered and the quantity shipped and are distinctly not material changes as evidenced by these sales traces. Petitioners contend that the Department has repeatedly refused to base date of sale determinations on these types of insignificant changes, citing *Circular Welded Non-Alloy Steel Pipe from Korea: Final Results of the Antidumping Administrative Review,* 63 FR 32833, 32836 (June 16, 1998).

Furthermore, petitioners assert that respondent's claim of a lag time between the date of the order confirmation to the date of shipment does not mandate that the date of shipment be used instead of the order confirmation date as the date of sale. Petitioners argue that the Department's requirement in the questionnaire that the invoice date not be used for the date of sale if there is an ''exceptionally long period of time between the date of the invoice and the date of the shipment'' refers to the discussion in the *Preamble* to the Department's regulations relating to manipulation of the invoice date and pertains solely to the length of time between the invoice date and shipping date. *See Final Rule,* at 27349. Petitioners argue that since the issue raised by NSC concerns the lag time between the order confirmation and the date of shipment, the requirement in the questionnaire and discussion in the *Preamble* are not relevant.

Petitioners charge that respondent mischaracterizes the record by its statement that the Department verified that the material terms of sales were not set until shipment, and the quantity shipped ''varied significantly'' from the quantity ordered. Petitioners note that the Department did not reach these findings. Further, petitioners assert that respondent's argument that it was untimely for the Department to reject NSC's reported date of sale for the first time in the preliminary results is misplaced. Petitioners argue that there was simply no opportunity for the Department, prior to verification, to examine the order confirmations for specific sales and compare terms in those orders to what was shipped and reported in the response. Petitioners argue that the *Preamble* explicitly recognizes that date of sale issues cannot always be resolved at an early stage in the proceedings. *Final Rule,* at 27349–50.

Department Position: As in the preliminary results, we have continued to use order confirmation date as the date of sale. The Department normally uses invoice date as the date of sale ''absent satisfactory evidence that the material terms of sale were finally established on a different date.'' *See Canned Pineapple Fruit from Thailand: Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 63 FR 43661, 43668, citing *Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27348 (May 19, 1997). Accordingly, ''[i]f the Department is presented with satisfactory evidence that the material terms of sale are finally established on [a] date other than the date of invoice, the Department will use that alternative date as the date of sale.'' *Id.* Verification results indicate that the material terms of sale were established on the date of order confirmation. Additionally, among the sales traces examined, we found no material changes to the order confirmation terms. As noted by petitioners, the sales verification results

showed that the total quantity shipped in the multiple shipments conformed to the quantity in the order confirmation. NSC also reported that if there were revisions in the sales terms, the revised order would be issued. Thus, the order confirmation date, and not the shipment date or the invoice date, best reflects when the material terms of sale usually are established. Accordingly, consistent with our current practice, we have determined that order confirmation date is the appropriate date of sale for NSC's sales, as it most accurately represents the date on which the essential terms of sale are established.

Comment 5: Petitioners argue that the Department should reject NSC's claimed adjustments for post-sale rebates where the rebate amounts were not fixed at the time of sale. Petitioners contend that it is the Department's long standing practice to require a respondent to show that the terms of a rebate were fixed at or before the time of the sale in order to be entitled to a rebate adjustment, citing, *e.g.,* Department's Antidumping Questionnaire at I–11; *Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Results of Antidumping Administrative Review,* 63 FR 12725, 12741 (March 16, 1998)(''*Canadian Steel*''). Petitioners contend that the purpose of this rule is to protect against manipulation of prices with the intent of minimizing or masking dumping, citing *Antifriction Bearings and Parts thereof from France: Final Results of Antidumping Administrative Review,* 60 FR 10900, 10930 (Feb. 28, 1995). Petitioners note that NSC reported rebates where the rebate amount was not fixed until after shipment. Petitioners argue that although the post-sale revisions to rebates might be part of NSC's normal business practices, this does not mitigate against the potential for manipulation. Petitioners argue that following shipment, the respondent has the ability to analyze the merchandise that it sold to United States, and then decide to alter the amount of the rebate based on which sales match to the U.S. shipments. Petitioners argue that where post-sale adjustments to the rebate are part of the respondent's normal business practice, the potential for manipulation is even greater because the very mechanism for manipulation is already in place.

Petitioners stress that it is not necessary for the Department to determine whether manipulation did or did not occur. Petitioners argue that the mere potential for manipulation is sufficient to warrant rejection of rebates, citing *Koening & Bauer,* No. 10 96–10–02298, Slip Op. 98–93 (CIT 1998) at 6 (stating that ''Commerce's decision to reject price amendments that present the potential for price manipulation was a permissible interpretation of the statute''). Petitioners argue that the fact that the Department did not find in this case any evidence of manipulation at verification is not determinative. Petitioners contend that if a respondent were permitted to adjust rebates after the sale, it would be virtually impossible to verify that manipulation would not occur, particularly if rebates are also granted on non-subject merchandise sold to the same customer.

Petitioners argue that the potential for manipulation in this case was great. Petitioners assert that NSC was in a position to eliminate or reduce rebates on non-subject merchandise sold to the same home market customers in return for higher rebates on home market subject merchandise. Petitioners stress that in this case, the Department's normal safeguards with respect to rebates-*i.e.,* that the terms be ''fixed at or before the time of sale''-be strictly enforced.

Petitioners rebut NSC's claim that if the Department decides to reject NSC's post sale price adjustments, it should only reject rebates where there is a difference between the amount of the ''initial rebate'' and the rebate that was ultimately paid. Petitioners argue that all sales where the rebate amount was not firmly established by the date of sale were subject to manipulation, whether the rebate amount changed or not. Petitioners find it unacceptable to substitute the amount of the initial rebate for the amount reported by NSC as the actual rebate paid. Petitioners point out that respondent acknowledged that such amounts did not represent the complete agreement between NSC and its customer. Petitioners conclude that the Department should disallow all home market rebates where the terms were not fixed at or before the time of the sale.

Respondent argues that the Department's decision to accept NSC's rebates, and the post-sale adjustments to those rebates, was consistent with Department practice where, as here, the Department has verified that the rebates were made in the normal course of business on a transaction-specific basis. Respondent argues that the Department's finding in the preliminary results that NSC had not engaged in the manipulation of dumping margins through the use of rebates is consistent with the Department's ''prior knowledge'' requirement. Respondent contends that in determining whether rebates have been improperly used by the respondent to manipulate the dumping margins, the Department considers whether ''the buyer {is} aware of the conditions to be fulfilled and the approximate amount of the rebates at the time of sale.'' *Canadian Steel,* 61 FR 13815, 13823 (March 28, 1996). Respondent argues that the record demonstrates, and the Department confirmed at verification, that NSC's customer had knowledge of the conditions of its ''rebate program'' at or before the time of sale, thus fulfilling the requirement that the buyer has ''prior knowledge'' of the conditions and the approximate amount of the rebates. Respondent asserts that in cases where the rebate agreement for the period was in the process of its negotiation at the time of sale, NSC granted the end user the rebate amount in the rebate agreement for the prior period with the understanding that this rebate would be adjusted to reflect the final outcome of the negotiations. Respondent argues that its customers were aware that the rebate amount based on the existing agreement would be adjusted depending on the final outcome of the final rebate negotiations for the new agreement.

Department's Position: We allowed the rebates in accordance with 19 CFR 351.401(c) and (g). The regulations collectively refer to rebates under the umbrella term ''price adjustment.'' *See* definition of ''Price Adjustment'' in 19 CFR 351.102(b). A ''price adjustment'' as defined by the regulations represents ''change[s] in the price charged for subject merchandise or the foreign like product . . . that are reflected in the purchaser's net outlay.'' *Id.* Where a change in the price meets this definition of a ''price adjustment,'' and is ''reasonably attributable'' to the subject merchandise or foreign like product, § 351.401(c) the Department's regulations state that the Department will use a price net of the price adjustment in calculating export price, constructed export price and normal value.

The Department allows post-sale price adjustments if they reflect the respondent's normal business practice and were made on a transaction-specific (or properly allocated) basis. *See Antifriction Bearings from France, et al. Final Results of Antidumping Administrative Review,* 60 FR 10900, 10930 (February 28, 1995); and *Canadian Steel,* 61 FR at 13815. The price adjustments in this review reflect NSC's normal business practice. Moreover, we verified the price adjustments given in the course of the sales traces, and traced them to the sales journal and supporting documentation. Information on the record of this review

indicates that these adjustments were made and reported on a transaction-specific basis. Therefore, we allowed the rebates since they meet the requirements for ''price adjustments'' under 19 CFR 351.401 (c) and (g).

Comment 6: Petitioners note the following errors in the model match program: (1) incorrect modification of values in the DIFFCODE field; (2) incorrect characteristic value in the ROLLU/H field; (3) incomplete assignment of values for the additional product characteristics reported by respondent for CWEIGHTU/H; (4) improper inclusion of home market credit expense in the calculation of net cost of production; (5) incorrect concatenation of the home market control numbers for certain resales; (6) multiple matches to U.S. product characteristics based upon the home sales source; and (7) failure to retain invoice field.

Petitioners noted the following errors in the margin program: (1) incorrect recalculation of credit expense; (2) incorrect conversion of U.S. packing expense; (3) failure to account for indirect expenses in offset for home market commission.

Respondent notes the following clerical errors: (1) incorrect inclusion of the inventory carrying cost date in the MOVECOP field; (2) incorrect linking of cost records to sales records for certain control numbers; and (3) incorrect assignment of certain variable costs to home market control numbers selected as matches. Respondent also notes a further correction to petitioners' proposed correction to the recalculation of credit expenses.

Department's Position: We agree with both petitioners and respondent and have modified the calculations for the final results of review accordingly.

Final Results of Review

As a result of our review, we determine that the following weighted-average dumping margin exists for the period June 30, 1996, through July 1, 1997:

Manufacturer/exporter	Margin (percent)
Nippon Steel Corporation	12.51

The Department will determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. We will calculate importer-specific duty assessment rates on a unit value per metric ton basis. To calculate the per metric ton unit value for assessment, we summed the dumping margins on U.S. sales, and then divided this sum by the total metric tons of all U.S. sales examined. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate listed above; (2) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 36.41 percent, the all others rate established in the LTFV investigation. These deposit requirements, when imposed, 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)(2) 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 the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1), that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 8, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–6290 Filed 3–15–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–816, A–475–826, A–580–836, A–560–805, A–533–817, A–588–847, A–894–801, A–851–801]

Initiation of Antidumping Duty Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate From the Czech Republic, France, India, Indonesia, Italy, Japan, the Republic of Korea, and the Former Yugoslav Republic of Macedonia

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

EFFECTIVE DATE: March 16, 1999.

FOR FURTHER INFORMATION CONTACT: James Terpstra (France, India, and the Republic of Korea) at (202) 482–3965; Wendy Frankel (Italy, Japan) at (202) 482–5849; David Goldberger (Indonesia) at (202) 482–4136, Irene Darzenta Tzafolias (Former Yugoslav Republic of Macedonia) at (202) 482–6320 and James Maeder (Czech Republic) at (202) 482–3330, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigations

The 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 references to the provisions codified at 19 CFR part 351 (1998).

The Petitions

On February 16, 1999, the Department of Commerce (the Department) received petitions filed in proper form by Bethlehem Steel Corporation, Gulf States Steel, Inc., IPSCO Steel Inc., Tuscaloosa Steel Corporation,[1] the United Steelworkers of America, and the U.S. Steel Group (a unit of USX

[1] **Note:** Tuscaloosa Steel Corporation is not a petitioner in the investigations involving the Czech Republic, France, and Italy.

Corporation) (collectively the petitioners). The Department received supplemental information to the petitions on February 25 and 26, 1999, and March 1, 1999.

In accordance with section 732(b) of the Act, the petitioners allege that imports of certain cut-to-length carbon steel plate (CTL plate) from the Czech Republic, France, India, Indonesia, Italy, Japan, the Republic of Korea (Korea), and the Former Yugoslav Republic of Macedonia (FYR Macedonia) are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioners filed these petitions on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (D) of the Act, and they have demonstrated sufficient industry support with respect to each of the antidumping investigations that they are requesting the Department to initiate (*see Determination of Industry Support for the Petitions* below).

Scope of Investigations

The products covered by this scope are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petitions, we discussed the scope with the petitioners to ensure that the scope in the petitions accurately reflects the merchandise for which the domestic industry is seeking relief. Moreover, as we discussed in the preamble to the Department's regulations (62 FR at 27323), we are setting aside a period for parties to raise issues regarding product coverage. In particular, we seek comments on the specific levels of alloying elements set out in the description above, the clarity of grades and specifications excluded from the scope, and the physical and chemical description of the product coverage. The Department encourages all parties to submit such comments by March 29, 1999. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of

time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigations.

In this case, ''the article subject to investigation'' includes certain products which have not previously been included within the scope of investigations involving cut-to-length carbon steel products. To this end, the Department has reviewed reasonably available information to determine whether the products within the scope of the investigations constitute one or more than one domestic like product(s).

Some steel products classified as alloy steels based on the HTSUS are recognized as carbon steels by the industry and/or the marketplace. For example, *The Book of Steel*, a 1996 publication by Sollac, a flat-rolled steel division of Usinor, one of the largest steel companies in the world, identifies HSLA as falling within categories of plain carbon sheet steels (*see* chapter 44). Also, *Carbon and Alloy Steels*, published in 1996 by ASM International, a major materials society, indicates that HSLA steels are not considered to be alloy steels, but are in fact similar to as-rolled mild-carbon steel and are generally priced by reference to the base price for carbon steels (*see* page 29). *Carbon and Alloy Steels* also distinguishes between carbon-boron and alloy-boron steels; the former may contain boron at levels which would classify it as alloy under the HTSUS, but would not classify it as an alloy steel commercially because, unlike the alloy-boron steels, higher levels of other alloying elements are not specified (*see e.g.*, pages 159 and 161).

The Department has considered that, with respect to certain steel products, such as HSLA, the petitioners indicate that these steel products are manufactured by similar processes, are priced from similar bases, are marketed in comparable ways, and are used for similar applications as carbon steels.

Further, we confirmed this description with product experts at the Department and the ITC. Other than the fact that the AISI technically defines alloy steels based on alloy levels comparable to those in the HTSUS, none of the individuals cited reasons why the products in question might be treated as distinct from cut-to-length carbon steels. For these reasons, the Department determines that for purposes of these investigations, the domestic like product definition is the single domestic like product defined in the *Scope of the Investigations* section above.

Based on our analysis of the information and arguments presented to the Department and the information independently obtained and reviewed by the Department, we have determined that there is a single domestic like product which is defined in the *Scope of Investigations* section above. Moreover, the Department has determined that the petitions (and subsequent amendments) contain adequate evidence of industry support and, therefore, polling is unnecessary (*see Import Administration Antidumping Investigation Initiation Checklist, Re: Industry Support*, March 3, 1999, hereinafter the *IA Initiation Checklist*, on file in the Central Records Unit (CRU) of the main Department of Commerce building). The Department received no opposition to the petitions. For all countries, the petitioners established industry support representing over 50 percent of total production of the domestic like product.

Accordingly, the Department determines that these petitions are filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which our decisions to initiate these investigations are based. A more detailed description of these allegations is provided in the *IA Initiation Checklist*. Should the need arise to use any of this information in our preliminary or final determinations for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

Czech Republic

The petitioners identified Nova Hut a.s. (Nova Hut), Vitkovice a.s. (Vitkovice), and ZDB a.s. (ZDB) as possible exporters of CTL plate from the Czech Republic. The petitioners further identified Nova Hut and Vitkovice as the primary producers of subject merchandise in the Czech Republic, and Vitkovice as the primary exporter of the subject merchandise to the United States.

The petitioners based export price (EP) on a U.S. price offering for CTL plate produced by Vitkovice. The petitioners made deductions from EP for U.S. port charges (from a U.S. port tariff schedule); CIF charges, including ocean freight and insurance (from official U.S. import statistics); and duties (from the HTSUS).

The petitioners note that the Department has never had occasion to determine whether the Czech Republic is a non-market economy country (NME) to the extent that sales or offers for sale of such or similar merchandise in the Czech Republic do not permit calculation of normal value (NV) under 19 CFR 351.404. In previous investigations, however, the Department has determined that Czechoslovakia, the predecessor of both the Czech Republic and the Slovak Republic, was a NME. *See e.g., Final Determination of Sales at Less Than Fair Value: Carbon Steel Wire Rod from Czechoslovakia*, 49 FR 19370 (May 7, 1984). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the Czech Republic has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product appropriately is based on factors of production valued in a surrogate market economy country, in accordance with section 773(c) of the Act. The petitioners constructed a NV based on the factors of production methodology pursuant to section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the Czech Republic's NME status and the granting of separate rates to individual exporters. *See e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC*, 59 FR 22585 (May 2, 1994).

With respect to NV, the petitioners based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor, energy and capital cost), for CTL plate on the quantities of

[2] *See Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

inputs used by a production facility of one of the petitioners, adjusted for known differences in production efficiencies on the basis of available information. The petitioners selected this particular facility claiming that its production process was similar to that of Vitkovice. The petitioners asserted that detailed information is not available regarding the quantities of inputs used by Vitkovice. Thus, they have assumed, for purposes of the petition, that Vitcovice uses the same inputs in the same quantities as the petitioners, except where a variance from their cost model can be justified on the basis of available information. Based on the information provided by the petitioners, we believe that their use of adjusted factors of production of one of their own facilities represents information reasonably available to the petitioners and is appropriate for purposes of the initiation of this investigation.

The petitioners selected Brazil as the primary surrogate, stating that the per-capita Gross National Product (GNP) of Brazil is similar to that of the Czech Republic.[3] Moreover, of the five countries that are most similar to the Czech Republic with regard to per-capita GNP, Brazil is the most significant producer of CTL plate. Brazil has two CTL plate producers with a combined annual production capacity of nearly two million metric tons. The only other surrogate candidate that produces CTL plate is Chile. The petitioners claim that Chile has one plate mill, but they do not know its annual capacity. However, the petitioners note that Chile's total 1997 hot-rolled flat steel production was 457,000 metric tons, only a portion of which was CTL plate. Thus, the petitioners maintain that Brazil is the most suitable surrogate among the potential surrogates, because, pursuant to section 773(c)(4) of the Act, it is at a comparable level of economic development and it is the most significant producer of comparable merchandise of any other potential surrogate. Based on the information provided by the petitioners, we believe that the petitioners' use of Brazil as a surrogate country is appropriate for purposes of the initiation of this investigation.

In accordance with section 773(c)(4) of the Act, the petitioners valued factors of production, where possible, using reasonably available, public surrogate country data. Specifically:

- **Coal** was valued based on Brazilian import values reported in U.S. dollars, as published in the October 1998 Brazilian edition of the World Trade Atlas.
- **Iron** ore was valued using the public price information of a Brazilian iron ore producer.
- **Scrap** was valued based on a July 3, 1997, report by Credit Suisse First Boston Corporation.
- **Labor** was valued using the regression-based wage rate for the Czech Republic provided by the Department, in accordance with 19 CFR 351.408(c)(3).
- **Electricity and natural gas** were valued using the rate for Brazil published in a quarterly report of the OECD's International Energy Agency from the third quarter of 1998.
- **Underfiring fuels and repair and maintenance materials** were valued using the costs of the petitioner whose production process is similar to Vitkovice's, because the petitioners were unable to find Brazilian values for them.
- **For selling, general, and administrative (SG&A) expenses, financial expenses, and profit,** the petitioners applied rates derived from the 1997 public financial statements of the two Brazilian producers of the subject merchandise, COSIPA and USIMINAS.
- **Depreciation** was valued using the product-specific depreciation rate of the petitioner whose production process is similar to Vitkovice's, explaining that the rate they could derive from the Brazilian producers' information would not be product specific.

Based on the information provided by the petitioners, we believe that their surrogate values represent information reasonably available to them and are acceptable for purposes of the initiation of this investigation.

Based on comparisons of EP to NV, the petitioners estimated the dumping margin for CTL plate from the Czech Republic to be 76.38 percent.

France

The petitioners identified Creusot Loire Industrie (CLI) and GTS Industries as possible exporters of CTL plate from France. The petitioners further identified these exporters as the primary producers of subject merchandise in France. The petitioners based EP on a U.S. price offering to an unaffiliated U.S. purchaser for two products. The petitioners made deductions from EP for CIF charges, including ocean freight and insurance (from official U.S. import statistics); and duties (from the HTSUS).

In addition, the petitioners provided, as a second basis for EP, the average unit value (AUV) for three of the HTSUS categories accounting for the largest volume of imports from France during the first eleven months of 1998, the most current data available. The petitioners maintain that the products within these categories, while representing a range of sizes, are nevertheless indicative of average pricing because the products within these categories represent the largest volume commercial products. The petitioners also maintain that the values for CTL plate in the IM–145 approximate the FOB price of the merchandise, packaged and ready for delivery at the foreign port (*see* 19 USC section 1401a and 19 CFR 152.101).

With respect to NV, the petitioners provided home market prices for common grades and sizes of CTL plate obtained from foreign market research. These products are comparable to the products exported to the United States, which serve as the basis for EP. The price used in the calculation of NV was an ex-factory price, exclusive of taxes.

In addition, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales of CTL plate in the home market were made at prices below the cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (COM), SG&A expenses, and packing expenses. To calculate COM, the petitioners relied upon their own production experience, adjusted for known differences between costs incurred to produce CTL plate in the United States and in France using publicly available data.

To calculate SG&A and financial expenses, the petitioners relied upon the 1997 financial statements of a French steel producer. Based upon the comparison of the adjusted price of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also based NV for sales in France on constructed value (CV). The petitioners calculated CV using the same COM, SG&A and financial expense figures

[3] The petitioners acknowledge that the Department's regulations indicate that GDP is the appropriate basis for determining comparability but argue that GNP is reasonable as a basis for initiating.

used to compute French home market costs. Consistent with section 773(e)(2) of the Act, the petitioners also added to CV an amount for profit. Profit was based upon the aforementioned French steel company's 1997 financial statements.

The petitioners provided estimated dumping margins in two ways: (1) CV compared to U.S. price offers (7.99 to 30.06 percent); and (2) CV compared to AUV (11.37 to 42.50 percent).

India

The petitioners identified Steel Authority of India Ltd. (SAIL) as an exporter of CTL plate from India. According to the petitioners, SAIL accounted for a large percentage of the subject merchandise exported to the United States during the January-November 1998 time period. The petitioners based EP on a U.S. price offering to unaffiliated purchasers. The petitioners made deductions from EP for CIF charges, including ocean freight and insurance (from official U.S. import statistics); and duties (from the HTSUS).

With respect to NV, the petitioners provided home market prices for common grades and sizes of CTL plate obtained from foreign market research. These products are comparable to the products exported to the United States which serve as the basis for EP. The price used in the calculation of NV was an ex-factory price, exclusive of taxes.

In addition, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales of certain CTL plate in the home market were made at prices below the COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A expenses, and packing expenses. To calculate COM, the petitioners relied upon their own production experience, adjusted for known differences between costs incurred to produce CTL plate in the United States and in India using market research and publicly available data.

To calculate SG&A and financial expenses, the petitioners relied upon the 1997 financial statements of an Indian steel producer. Based upon the comparison of the adjusted prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also based NV for sales in India on CV. The petitioners calculated CV using the same COM, SG&A and financial expense figures used to compute Indian home market costs. Consistent with section 773(e)(2) of the Act, the petitioners also added to CV an amount for profit. Profit was based on the aforementioned Indian steel company's 1997 financial statements.

The petitioners provided estimated dumping margins in two ways: (1) HMP compared to U.S. price offers (44.51 percent); and (2) CV compared to U.S. price offers (72.49 percent).

Indonesia

The petitioners identified PT Gunawan Dianjaya Steel (Gunawan), PT Jaya Pari Steel Corp., Ltd., Tbk.(Jaya Pari), and PT Krakatau Steel (Krakatau) as possible exporters of CTL plate from Indonesia. The petitioners based EP on a U.S. price offer for several products manufactured by Gunawan and sold to an unaffiliated U.S. purchaser. The petitioners made deductions from EP for foreign inland freight (based on foreign market research), U.S. port charges (from a U.S. port tariff schedule); CIF charges, including ocean freight and insurance (from official U.S. import statistics); duties (from the HTSUS); and U.S. movement expenses, including inland freight, based on the petitioners' experience.

With respect to NV, the petitioners used a delivered home market price, exclusive of taxes, for a common grade and size of CTL plate produced by Gunawan, obtained from foreign market research. This product is comparable to one of the products exported to the United States, which serves as the basis for EP. The petitioners deducted inland freight expenses based on information from foreign market research. The petitioners made a circumstance-of-sale adjustment for credit expenses based on information from foreign market research.

In addition, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales of CTL plate in the home market were made at prices below the COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A expenses, and packing expenses. To calculate COM, the petitioners relied upon their own production experience, adjusted for known differences between costs incurred to produce CTL plate in the United States and in Indonesia using publicly available data.

To calculate SG&A and financial expenses, the petitioners relied upon the 1997 financial statements of an Indonesian steel producer. Based upon the comparison of the adjusted price of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also based NV for sales in Indonesia on CV. The petitioners calculated CV using the same COM, SG&A and financial expense figures used to compute Indonesian home market costs. Consistent with section 773(e)(2) of the Act, the petitioners also added to CV an amount for profit. Profit was based upon an Indonesian steel producer's 1997 financial statements.

The petitioners provided estimated dumping margins in two ways: (1) HMP compared to U.S. price offers (17.59 percent); and (2) CV compared to U.S. price offers (52.42 percent).

Italy

The petitioners identified Ilva Laminati Piani SpA (ILP), Palini & Bertoli SpA (PB), Siderurgica Villalvernia SpA (SV), and Ferriera Siderscal SpA (FS) as possible exporters of CTL plate from Italy. The petitioners further identified these exporters as the primary producers of subject merchandise in Italy. The petitioners based EP on a U.S. price offering to an unaffiliated U.S. purchaser for two products. The delivery terms were FOB duty paid and Ex-Dock duty paid. The petitioners made deductions from EP for CIF charges, including ocean freight and insurance (from official U.S. import statistics).

In addition, the petitioners provided, as a second basis for EP, the AUV for the three HTSUS categories accounting for the largest volume of imports from Italy during the first eleven months of 1998. The petitioners maintain that the products within these categories, while representing a range of sizes, are nevertheless indicative of average pricing because the products within these categories represent the largest volume commercial products. The petitioners maintain that the values for CTL plate in the IM–145 approximate the FOB price of the merchandise,

packaged and ready for delivery at the foreign port (*see* 19 USC section 1401a and 19 CFR 152.101).

With respect to NV, the petitioners used an ex-factory home market price, exclusive of taxes, for a common grade and size of CTL plate obtained from foreign market research. This product is comparable to the products exported to the United States which serve as the basis for EP.

In addition, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales of CTL plate in the home market were made at prices below the COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A expenses, and packing expenses. To calculate COM, the petitioners relied upon their own production experience, adjusted for known differences between costs incurred to produce CTL plate in the United States and in Italy using market research and publicly available data.

To calculate SG&A and financial expenses, the petitioners relied upon the 1997 financial statements of an Italian steel producer. Based upon the comparison of the adjusted price of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also based NV for sales in Italy on CV. The petitioners calculated CV using the same COM, SG&A and financial expense figures used to compute Italian home market costs. Consistent with section 773(e)(2) of the Act, the petitioners also added to CV an amount for profit. Profit was based upon the aforementioned Italian producer's 1997 financial statements.

The petitioners provided estimated dumping margins in two ways: (1) CV compared to U.S. price offers (39.55 to 93.30 percent); and (2) CV compared to AUV (30.75 to 89.72 percent).

Japan

The petitioners identified Kawasaki Steel Corporation (Kawasaki), Kobe Steel, Ltd. (Kobe Steel), Nippon Steel Corporation (Nippon Steel), NKK Corporation (NKK), and Sumitomo Metal Industries, Ltd. (Sumitomo) as exporters of CTL plate from Japan. The petitioners further identified these exporters as the only Japanese producers known to the petitioners to have exported the subject merchandise from Japan. The petitioners based EP on a price offering to unaffiliated purchasers in the United States. The petitioners made deductions from EP for U.S. port charges (from a U.S. freight forwarder); CIF charges, including ocean freight and insurance (from official U.S. import statistics); duties (from the HTSUS), foreign movement charges (from foreign market research), and a Japanese trading company mark-up (from foreign market research).

With respect to NV, the petitioners obtained, from foreign market research, home market delivered prices from Nippon Steel, NKK, Kawasaki, and Sumitomo for a product similar to that for which the U.S. price quote was obtained. Based on the terms of the home market sales, the petitioners deducted foreign movement charges (obtained from foreign market research) from the home market prices. The petitioners also adjusted home market prices for differences in packing and credit expenses in the U.S. and Japanese markets (obtained from foreign market research), and for differences in the merchandise for which the U.S. and Japanese price quotes were obtained, based on their own production experience, adjusted for known differences between costs incurred to produce CTL plate in the United States and in Japan (obtained from market research and publicly available data).

In addition, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales of CTL plate in the home market were made at prices below the COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A expenses, and packing expenses. To calculate COM, the petitioners relied upon their own production experience, adjusted for known differences between costs incurred to produce CTL plate in the United States and in Japan using market research and publicly available data.

To calculate SG&A and financial expenses, the petitioners relied upon the 1997/1998 financial statements of the Japanese steel producers. Based upon the comparison of the adjusted prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also based NV for sales in Japan on CV. The petitioners calculated CV using the same COM, SG&A and financial expense figures used to compute Japanese home market costs. Consistent with section 773(e)(2) of the Act, the petitioners also added to CV an amount for profit. Profit was based upon the aforementioned Japanese producers' 1997/1998 financial statements.

The petitioners provided estimated dumping margins in two ways: (1) HMP compared to U.S. price offers (3.06 to 3.44 percent); and (2) CV compared to U.S. price (56.24 to 59.12 percent).

Republic of Korea

The petitioners identified Daekyung Corporation, Dongkuk Steel Mill Co., Ltd., Korea Iron & Steel (KISCO), and Pohang Iron and Steel Co Ltd. (POSCO) as possible exporters of CTL plate from Korea. The petitioners based EP on U.S. price offerings for the subject merchandise in the United States. The petitioners made deductions from EP for CIF charges, including ocean freight and insurance (from official U.S. import statistics); and duties (from the HTSUS).

In addition, the petitioners provided, as a second basis for EP, the AUV for three of the HTSUS categories accounting for the largest volume of imports from Korea during the first eleven months of 1998, the most current data available. The petitioners maintain that the products within these categories, while representing a range of sizes, are nevertheless indicative of average pricing because the products within these categories represent the largest volume commercial products. The petitioners also maintain that the values for CTL plate in the IM–145 approximate the FOB price of the merchandise, packaged and ready for delivery at the foreign port (*see* 19 USC section 1401a and 19 CFR 152.101).

With respect to NV, the petitioners provided home market prices for common grades and sizes of CTL plate obtained from foreign market research. These products are comparable to the products exported to the United States which serve as the basis for EP.

In addition, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales of CTL plate in the home market were made at prices below the COP, within the meaning of section 773(b) of the Act, and requested that the Department

conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A expenses, and packing. To calculate COM, the petitioners relied upon their own production experience, adjusted for known differences between costs incurred to produce CTL plate in the United States and in Korea using publicly available data.

To calculate SG&A and financial expenses, the petitioners relied upon the 1997 audited financial statements of a Korean steel producer. Based upon the comparison of the adjusted prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also based NV for sales in Korea on CV. The petitioners calculated CV using the same COM, SG&A and financial expense figures used to compute Korean home market costs. Consistent with section 773(e)(2) of the Act, the petitioners also added to CV an amount for profit. Profit was based upon the aforementioned Korean producer's 1997 financial statements.

The petitioners provided estimated dumping margins in two ways: (1) CV to U.S. price offers (14.57 to 63.00 percent); and (2) CV to AUV (1.26 to 34.91 percent).

The Former Yugoslav Republic of Macedonia

The petitioners identified Rudnici i Zelezara Skopje (Makstil) as the sole CTL plate producer in FYR Macedonia. The petitioners based EP on U.S. price offerings for the sale of the subject merchandise in the United States. The petitioners made deductions from EP for CIF charges, including ocean freight and insurance (from official U.S. import statistics); and duties (from official U.S. import statistics).

In addition, the petitioners provided, as a second basis for EP, the AUV for two of the HTSUS categories accounting for all imports of CTL plate from FYR Macedonia during the first eleven months of 1998, the most current data available. The petitioners maintain that the products within these categories, while representing a range of sizes, are nevertheless indicative of average pricing because the products within these categories represent the largest volume commercial products. The petitioners also maintain that the values for CTL plate in the IM–145 approximate the FOB price of the merchandise, packaged and ready for delivery at the foreign port (*see* 19 USC section 1401a and 19 CFR 152.101).

With respect to NV, the petitioners stated that despite significant efforts, they were unable to obtain any home market or third country market prices for sales of Macedonian CTL plate. The petitioners instead calculated the weighted-average CIF export price of CTL plate from FYR Macedonia to Germany, France and Italy, for the period January through August 1998, based on publicly available data. The petitioners identified these three European countries as likely to represent significant export markets for Macedonian CTL plate because they are three large, steel-consuming markets that are geographically proximate to FYR Macedonia. Because the petitioners had no information pertaining to international freight and insurance charges within Europe, no adjustment was made to the CIF export price for those charges.

In addition, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales of Macedonian CTL plate in the above-specified third-country markets were made at prices below the COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A, and packing expenses. To calculate COM, the petitioners relied upon their own production experience during the period January through September 1998, adjusted for known differences between the costs incurred to produce CTL plate in the United States and in FYR Macedonia using publicly available data.

To calculate SG&A and financial expenses, the petitioners stated that they conducted extensive research efforts to obtain the financial statements of the Macedonian CTL producer or any other steel-related producer in FYR Macedonia without success. Therefore, they relied upon their own experience during 1998 to calculate these expenses. While it is the Department's practice, under section 773(e)(2)(A) of the Act, to calculate general expenses (and profit) in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country (*i.e.*, country of manufacture), such information was not reasonably available to the petitioners or to the Department in this case. Therefore, we have accepted the petitioners' calculation methodology for purposes of initiating this investigation.

Based upon the comparison of the weighted-average export price of the foreign like product in third countries to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. We also note that in this case, making no adjustment to COP for general expenses would still result in sales below cost. Accordingly, the Department is initiating a country-wide cost investigation.

Because the third-country export price used in the petition was below the calculated COP, pursuant to sections 773(a)(4), 773(b), and 773(e) of the Act, the petitioners based NV on CV. The petitioners calculated CV using the same methodology as that described above for third country COP. Consistent with section 773(e)(2) of the Act, the petitioners also added to CV an amount for profit which they based on their own experience. As noted above, while it is the Department's practice, under section 773(e)(2)(A) of the Act, to calculate general expenses and profit in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country (i.e., country of manufacture), such information was not reasonably available to the petitioners or to the Department in this case. Therefore, we have accepted the petitioners' calculation methodology for purposes of initiating this investigation. We also note that in this case, making no adjustment to CV for general expenses and profit would still result in significant margins when CV is compared to EP.

The petitioners provided estimated dumping margins in two ways: (1) CV compared to U.S. price offers (44.24 to 119.42 percent); and (2) CV compared to AUV (22.95 to 34.97 percent).

Initiation of Cost Investigations

Pursuant to section 773(b) of the Act, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales in the home markets of France, India, Indonesia, Italy, Japan, Korea, and sales in third countries for FYR Macedonia were made at prices below the fully allocated COP and, accordingly, requested that the Department conduct country-wide sales-below-COP investigations in connection with the requested antidumping investigations in France, India, Indonesia, Italy, Japan, Korea, and FYR Macedonia. The Statement of

Administrative Action (SAA), submitted to the Congress in connection with the interpretation and application of the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H.R. Doc. No. 316 at 833 (1994). The SAA, at 833, states that ''Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.''

Further, the SAA provides that ''new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' . . . exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices.'' *Id*. Based upon the comparison of the adjusted prices from the petitions for the representative foreign like products to their costs of production, we find the existence of ''reasonable grounds to believe or suspect'' that sales of these foreign like products in France, India, Indonesia, Italy, Japan, Korea, and FYR Macedonia were made below their respective COPs within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigations (*see* country-specific sections above).

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of CTL plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and FYR Macedonia are being, or are likely to be, sold at less than fair value.

Critical Circumstances

The petitioners have alleged that critical circumstances exist with respect to imports of subject merchandise from the Czech Republic, Indonesia, Japan, and FYR Macedonia. The petitioners have supported their allegations with the following information. For the Czech Republic and FYR Macedonia, the petitioners state that there is a history of injurious dumping because Canada has imposed antidumping measures on CTL plate from these countries. For Indonesia and Japan, the petitioners made alternative claims that the importers knew, or should have known, that CTL plate was being sold at less than normal value and that there was likely to be material injury by reason of such sales. Specifically, for both countries, the petitioners allege that the margins calculated in the petitions exceed the 25 percent threshold used by the Department to impute importer knowledge of dumping and the likelihood of material injury due to that dumping.

The petitioners also have alleged that imports from the Czech Republic, Indonesia, Japan, and FYR Macedonia have been massive over a relatively short period. The petitioners allege that there was sufficient pre-filing notice of these antidumping petitions and that the Department should compare imports during June–August 1998 (base period) to imports during September–November 1998 (comparison period) for purposes of this determination. According to the import statistics contained in the petitions, for the periods June–August 1998 and September–November 1998, imports of CTL plate from the Czech Republic increased by 154 percent, imports from Indonesia increased by 15 percent, imports from Japan increased by 294 percent, and imports from FYR Macedonia increased by 129 percent. Taking into consideration the foregoing, we find that the petitioners have alleged the elements of critical circumstances and supported them with information reasonably available.

For these reasons, we are initiating critical circumstances investigations for the above-specified countries and will make preliminary determinations based on available information at the appropriate time, in accordance with section 733(e)(1) of the Act.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. The petitioners explained that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit-to-sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation (*see IA Initiation Checklist*).

Initiation of Antidumping Investigations

Based upon our examination of the petitions on certain cut-to-length carbon-quality steel plate and the petitioners' responses to our supplemental questionnaires clarifying the petitions, as well as our discussion with the authors of the foreign market research reports supporting the petitions on France, India, Indonesia, Italy, Japan, and Korea, and other measures undertaken to confirm the information contained in these reports (*see IA Initiation Checklist*), we have found that the petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of certain cut-to-length carbon-quality steel plate products from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and FYR Macedonia are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of this notice.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and FYR Macedonia. We will attempt to provide a copy of the public version of each petition to each exporter named in the petition (as appropriate).

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine, by April 2, 1999, whether there is a reasonable indication that imports of certain cut-to-length carbon-quality steel plate from the Czech Republic, France, India, Indonesia, Italy, Japan, Korea, and FYR Macedonia are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: March 8, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–6293 Filed 3–15–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–805]

Extruded Rubber Thread From Malaysia; Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On November 9, 1998, the Department of Commerce published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on extruded rubber thread from Malaysia. This review covers four manufacturers/exporters of the subject merchandise to the United States (Filati Lastex Elastofibre (Malaysia) (Filati), Heveafil Sdn. Bhd./Filmax Sdn. Bhd (collectively Heveafil), Rubberflex Sdn. Bhd. (Rubberflex), and Rubfil Sdn. Bhd. (Rubfil)). The period of review (POR) is October 1, 1996, through September 30, 1997.

We gave interested parties an opportunity to comment on our preliminary results. We have based our analysis on the comments received and have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: March 16, 1999.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson or Irina Itkin, AD/CVD Enforcement Group II, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1776 or (202) 482–0656, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 9, 1998, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of the 1996–1997 administrative review of the antidumping duty order on extruded rubber thread from Malaysia (63 FR 60295). The Department has now completed this administrative review, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The product covered by this review is extruded rubber thread. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classifiable under subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this review is dispositive.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1998).

Facts Available

A. Rubfil

In accordance with section 776(a)(2)(A) of the Act, we determine that the use of facts available is appropriate as the basis for Rubfil's dumping margin. Specifically, Rubfil failed to respond to the Department's questionnaire, issued in November 1997. Because Rubfil did not respond to the Department's questionnaire, we must use facts otherwise available to calculate Rubfil's dumping margin.

Section 776(b) of the Act provides that adverse inferences may be used with respect to a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, 103rd Cong., 2d Sess. 870 (SAA). The failure of Rubfil to reply to the Department's questionnaire demonstrates that it has failed to act to the best of its ability in this review and, therefore, an adverse inference is warranted.

As adverse facts available for Rubfil, we have used the highest rate calculated for any respondent in any segment of this proceeding. This rate is 54.31 percent.

B. Corroboration of Secondary Information

As facts available in this case, the Department has used information derived from a prior administrative review, which constitutes secondary information within the meaning of the SAA. *See* SAA at 870. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The SAA provides that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA, H.R. Doc. 316, Vol. 1, 103rd Cong., 2d Sess. 870 (1994).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from the same or a prior segment of this proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin may not be appropriate, the Department will attempt to find a more appropriate basis for facts available. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

For Rubfil, we examined the rate applicable to extruded rubber thread from Malaysia throughout the course of the proceeding. With regard to its probative value, the rate specified above is reliable and relevant because it is a calculated rate from the 1994–1995 administrative review. There is no information on the record that demonstrates that the rate selected is not an appropriate total adverse facts available rate for Rubfil. Thus, the Department considers this rate to be appropriate adverse facts available.

Normal Value Comparisons

To determine whether sales of extruded rubber thread from Malaysia to

the United States were made at less than normal value (NV), we compared the constructed export price (CEP) to the NV for Filati, Heveafil, and Rubberflex, as specified in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice.

When making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of the Review'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in sections B and C of our antidumping questionnaire.

Level of Trade and CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as export price (EP) or CEP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from the exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (Nov. 19, 1997).

Filati, Heveafil, and Rubberflex claimed that they made home market sales at only one level of trade (*i.e.*, sales to original equipment manufacturers). In order to determine whether NV was established at a level of trade which constituted a more advanced state of distribution than the level of trade of the CEP, we compared the selling functions performed for home market sales with those performed with respect to the CEP transactions which exclude economic activities occurring in the United States. We found that Filati, Heveafil, and Rubberflex performed essentially the same selling functions in their sales offices in Malaysia for both home market and U.S. sales. Therefore, the respondents' sales in Malaysia were not at a more advanced stage of marketing and distribution than the constructed U.S. level of trade, which represents an F.O.B. foreign port price after the deduction of expenses associated with U.S. selling activities. Because we find that no difference in level of trade exists between markets, we have not granted a CEP offset to any of the respondents. For a detailed explanation of this analysis, see the concurrence memorandum issued for the preliminary results of this review, dated November 2, 1998. *Also see Comment 2* in the ''Analysis of Comments Received'' section of this notice.

Constructed Export Price

For all sales by Filati, Heveafil, and Rubberflex, we based the starting price on CEP, in accordance with section 772(b) of the Act. For Filati, we have treated sales shipped directly from Malaysia to the U.S. customer as CEP sales because we find that the extent of the affiliate's activities performed in the United States in connection with these sales is significant. For further discussion, see *Comment 1* in the ''Analysis of Comments Received'' section of this notice.

In addition, for all three companies, we revised the reported data based on our findings at verification.

A. Filati

We calculated CEP based on the starting price to the first unaffiliated purchaser in the United States. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Malaysia. We made deductions from the starting price, where appropriate, for rebates. In addition, where appropriate, we made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. brokerage and handling expenses, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions to CEP, where appropriate, for commissions, credit expenses, U.S. indirect selling expenses, and U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. We disallowed an offset claimed by Filati relating to imputed costs associated with financing antidumping and countervailing duty deposits, in accordance with the Department's practice. *See Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review*, 63 FR 12752, 12754, 12758 (Mar. 16, 1998) (*Thread Fourth Review*); and *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*, 62 FR 54043, 54075 (Oct. 17, 1997) (*AFBs*). *Also see Comment 3* in the ''Analysis of Comments Received'' section of this notice, for further discussion.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Filati and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

B. Heveafil

In cases where Heveafil shipped merchandise directly from Malaysia to U.S. customers, we used the bill of lading date as the date of sale for these shipments, rather than the date of the U.S. invoice as reported. For these shipments, we find that there is a long lag time between the date of shipment to the customer and the date of invoice. Therefore, in accordance with our policy and consistent with the preliminary results, we used the bill of lading date as the date of sale. *See* the concurrence memorandum issued for the preliminary results of this review, dated November 2, 1998, for further discussion.

We calculated CEP based on the starting price to the first unaffiliated customer in the United States. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Malaysia.

We made deductions from the starting price, where appropriate, for rebates. We also made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. brokerage and handling expenses, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions to CEP, where appropriate, for credit expenses, repacking expenses, U.S. indirect selling expenses, and U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. Regarding indirect selling expenses, we disallowed an offset claimed by Heveafil relating to imputed costs associated with financing antidumping and countervailing duty deposits, in accordance the Department's practice. *See Thread Fourth Review* and *AFBs*.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Heveafil and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

C. Rubberflex

We calculated CEP based on the starting price to the first unaffiliated customer in the United States. We made deductions from the starting price, where appropriate, for rebates. We also made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions to CEP, where appropriate, for credit expenses, U.S. indirect selling expenses, and U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Rubberflex and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared the volume of each respondent's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that each respondent had a viable home market during the POR. Consequently, we based NV on home market sales.

Pursuant to section 773(b) of the Act, there were reasonable grounds to believe or suspect that Filati, Heveafil, and Rubberflex had made home market sales at prices below their COPs in this review because the Department had disregarded sales below the COP for these companies in the most recently completed administrative review. *See Thread Fourth Review*. As a result, the Department initiated an investigation to determine whether the respondents made home market sales during the POR at prices below their respective COPs.

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Act.

Except as follows, we used the respondents' reported COP amounts to compute weighted-average COPs during the POR:

Regarding the COP data reported by Filati, we found that in certain instances Filati reported multiple costs for a single control number. In those cases, we used the higher of the costs for purposes of the final results. In addition, we disallowed a portion of an offset claimed by Filati to its reported financing expenses because Filati was unable to demonstrate at verification that this offset was related to short-term income. *See Comment 8*.

Regarding the COP data reported by Heveafil, we reclassified certain variable overhead expenses as fixed overhead, based on our findings at verification. We also adjusted the company's financing expenses to reflect our findings at verification. Finally, as facts available we increased the material costs reported for one product by the percentage by which the reported costs differed from the standard costs observed at verification. *See Comment 10*.

Regarding the COP data reported by Rubberflex, we increased these costs to include a portion of the 1997 year-end adjustments made by the company's auditors. *See Comment 12*.

We compared the weighted-average COP figures to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges and discounts.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) in substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. *See* section 773(b)(1) of the Act.

Pursuant to section 773(b)(2) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product were at prices below the COP, we found that sales of that model were made in ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

In this review segment, we found that, for certain models of extruded rubber thread, more than 20 percent of each respondent's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Company-specific calculations are discussed below.

A. Filati

In all instances, NV for Filati was based on home market sales. Accordingly, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for rebates, where appropriate. We also made deductions, where appropriate, for foreign inland freight,

pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses and bank charges. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

B. Heveafil

In all instances, NV for Heveafil was based on home market sales. Accordingly, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for discounts, where appropriate. We also made deductions for foreign inland freight and foreign inland insurance, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) if the Act, we also made deductions for home market credit expenses and bank charges.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(c)(ii) of the Act and 19 CFR 351.411.

C. Rubberflex

In all instances, NV for Rubberflex was based on home market sales. Accordingly, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for foreign inland freight and foreign inland insurance, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(c)(ii) of the Act and 19 CFR 351.411.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark for the daily rate, in accordance with established practice.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from North American Rubber Thread (the petitioner), and two respondents, Filati and Rubberflex. We also received rebuttal comments from the petitioner, Filati, Heveafil, and Rubberflex.

A. Filati

Comment 1: Treatment of Direct Container Sales

During the POR, Filati shipped certain sales directly from the factory in Malaysia to its U.S. customers. The Department treated these ''direct container'' shipments as CEP sales for purposes of the preliminary results. Filati argues that this treatment was incorrect, based on the Department's criteria for determining whether a sale is an EP transaction (rather than a CEP sale). Filati relies in large part upon the Department's determination in *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review,* 61 FR 18547 (Apr. 26, 1996) (*Carbon Steel from Korea*) to support its position. Filati asserts that *Carbon Steel from Korea* identifies the factors the Department will consider when determining the classification of sales. *Id.* at 18551. Whenever sales are made prior to the date of importation through an affiliated sales agent in the United States, the Department concludes that EP is the most appropriate determinant of the U.S. price where all of the following factors are present:

- The merchandise in question is shipped directly from the manufacturer to the unaffiliated buyer without being introduced into the physical inventory of the selling agent;
- Direct shipment from the manufacturer to the unaffiliated buyer is the customary channel for sales of the subject merchandise between the parties involved; and
- The selling agent in the United States acts only as a processor of sales-related documentation and a communication link with the unaffiliated U.S. buyer. *Id.*

Filati contends that each of these criteria is met with respect to its direct container sales. Specifically, Filati states that, because the bill of lading date was reported as the date of sale and this date was prior to entry, the direct container sales were made prior to importation. In addition, Filati asserts that the first and second criteria are met, since: (1) the subject merchandise was shipped directly to the U.S. customer without being introduced into the physical inventory of Filati USA; and (2) direct shipments have been a normal commercial channel for the customer involved.

Regarding the third criterion, Filati argues that the Department erroneously found in the preliminary results that the activities carried out by Filati USA exceeded those of a document processor and communication link. Filati contends that the selling activities performed by Filati USA are within the range of activities previously determined by the Department to be consistent with EP classification.

Filati acknowledges that Filati USA takes title to the merchandise, invoices the customer, and in some cases, arranges and pays for delivery from the port of entry. However, Filati contends that Filati USA has only limited authority to set prices in the United States. As support for this assertion, Filati cites to the Filati USA verification report, where the Department noted that prices are quoted in accordance with a window that is set based on consultations with the parent company.

In addition, Filati asserts that the Department has accorded EP treatment to sales by respondents who performed selling functions that were more significant than those performed by Filati USA. Filati cites to *Carbon Steel from Korea* and *AK Steel Corp.* v. *United States,* Slip Op. 98–159 at 10–12 (Court of International Trade (CIT), Nov. 23, 1998) (*AK Steel*) in support of its position. In the former, the Department found that sales were properly classified as purchase price (the old-law equivalent of EP) transactions when the U.S. affiliate: (1) extended credit to certain customers by permitting them to

delay payment for subject merchandise, (2) identified customers; (3) negotiated prices; (4) provided some warranty-related services; (5) engaged in marketing activities that included development of downstream applications for subject merchandise; and (6) posted cash deposits of antidumping and countervailing duties on behalf of its U.S. customers. Filati argues that the activities performed by Filati USA are less significant than those performed by the respondent in *Carbon Steel from Korea,* because Filati USA is not involved in advanced marketing or product development. Consequently, Filati contends that there is even more justification for classifying its direct container shipments as EP transactions than there was in *Carbon Steel from Korea*.

Filati states that, in AK Steel, the CIT upheld the Department's EP classification of ''back-to-back'' sales where the U.S. affiliate: (1) took title to the shipment; (2) acted as importer of record; (3) made initial contact with the direct shipment customer; (4) negotiated price based upon predetermined factors; (5) received purchase orders from the customer and forwarded them to the exporter/producer for confirmation; (6) invoiced the customer; (7) conducted market research and economic planning; (8) ''found'' (and possibly solicited) direct container customers; (9) arranged and paid for post-sale warehousing, transportation, U.S. Customs duties, brokerage, handling, and other expenses; and (10) extended credit to and accepted payment from direct container customers. Regarding the instant case, Filati argues that, because there is no evidence that Filati USA ''found'' direct container customers or conducted market research and economic planning, Filati's activities relating to direct container sales were also less significant than those performed by the respondent in *AK Steel*.

Finally, Filati notes that the Department found that Filati's direct container shipments were PP/EP transactions in the second and third reviews of this proceeding. Filati contends that, because its method of making these shipments has not changed since the time of those reviews, the Department should continue to treat direct container sales as EP transactions in the instant review.

According to the petitioner, the Department correctly treated Filati's direct container shipments as CEP transactions. As support for its position, the petitioner cites to the Filati USA verification report at page 4, where the Department stated that Filati USA determines the prices for direct container sales. The petitioner also cites to the *Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China,* 62 FR 9160, 9171 (Feb. 28, 1997) and *Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany: Preliminary Results of Antidumping Duty Administrative Review,* 63 FR 13217 (Mar. 18, 1998). In those cases, the Department determined that the respondents' sales were CEP transactions because it concluded that, in the former case, the U.S. affiliate was instrumental in determining the terms of sale, while in the latter, the selling functions of the U.S. affiliate extended beyond those of a processor of documents or a communications link.

DOC Position

We agree with the petitioner. In our preliminary results of review, we examined the facts of this case in light of the statutory definitions of EP and CEP sales. Section 772(b) of the Act, as amended, defines CEP as ''the price at which the subject merchandise is first sold (or agreed to be sold) *in the United States* before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted'' (emphasis added). Section 772(a) of the Act defines EP as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise *outside of the United States* to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States, as adjusted'' (emphasis added).

As the statutory definitions state, sales before importation can be classified as either EP or CEP sales. The decisive factor for sales prior to importation is where the selling activity takes place (*i.e.,* in or outside the United States). Distinguishing EP and CEP transactions based on where selling activity takes place is consistent with the purpose of ensuring that, where appropriate, expenses related to selling activity in the United States are deducted to reach a constructed ''export'' price.

It is the Department's practice to examine several criteria to determine whether sales made prior to importation through a sales agent to an unaffiliated customer in the United States are EP sales, including: (1) Whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent was limited to that of a ''processor of sales-related documentation'' and a ''communications link'' with the unaffiliated U.S. buyer. Where all three criteria are met, indicating that the activities of the U.S. selling agent are ancillary to the sale, the Department has determined the sales to be EP sales. Where one or more of these conditions are not met the Department has classified the sales in question as CEP sales. (*See, e.g., Viscose Rayon Staple Fiber from Finland: Final Results of Antidumping Duty Administrative Review,* 63 FR 32820, 32821 (June 16 1998) (*Viscose Rayon from Finland); Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews,* 63 FR 13170 (Mar. 18, 1998).)

The crucial distinction between EP and CEP treatment lies in the last factor (*i.e.,* whether the entity in the United States acted only as a processor of documentation and a communication link). This factor entails a fact-based analysis to determine whether the entity in the United States is actually engaged in significant selling activities, in which case CEP applies, or is merely performing ancillary functions for a foreign seller, in which case EP is appropriate. The classification of sales as EP or CEP is not confined to tallying up the various functions of the U.S. selling agent. In *Industrial Nitrocellulose From the United Kingdom: Notice of Final Results of Antidumping Duty Administrative Review,* 64 FR 6609, 6611 (Feb. 10, 1999), we observed that ''[t]he Department looks at the totality of the evidence to determine whether an agent's role in the sales process is beyond the ancillary role.'' As noted above, in cases where the U.S. affiliate or sales agent has a significant role in making U.S. sales (including setting the price in the United States and providing after-sale support), we generally find that CEP treatment is appropriate. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Spain,* 63 FR 40391, 40395 (July 29, 1998) (*SSWR from Spain*); and *Viscose Rayon from Finland*.

Our analysis of the facts in this case indicates that during the POR Filati USA's role in making direct container sales was extensive. Specifically, Filati

USA: (1) Made initial contact with the customer; (2) transmitted the order to Filati in Malaysia; (3) quoted prices without consulting the parent company on a sale-by-sale basis; (4) took title to the merchandise; (5) invoiced, and received payment from, the customer; and (6) arranged and paid for delivery from the U.S. port to the customer. *See* the Filati USA verification report at page 4. Thus, the record shows that Filati USA was significantly involved in every aspect of the sales to U.S. direct container customers, except for arranging for shipment of the subject merchandise from Malaysia to the U.S. port of entry.

Filati USA's role in negotiating the terms of the sales in question is more significant than that of a conduit of information between the U.S. customer and the Malaysia parent. Specifically, Filati USA had the authority to contact U.S. customers directly, and then to negotiate and accept sales terms on a case-by-case basis without Filati's approval. Both of these functions contradict Filati's claim that the U.S. subsidiary's role is ancillary. The record of this case shows Filati USA's involvement in the U.S. sales process is extensive, as evidenced by the selling functions described herein. Based on these facts, we determine that Filati USA's role in making direct container sales exceeds that of a mere processor of sales-related documentation and communication link between the parent company and U.S. customer.

Filati argues that its sales should be classified as EP sales because its selling activities fall within a range of activities previously determined to be EP sales. However, as discussed above, this determination must be based on the facts as a whole. The facts here demonstrate that Filati is substantially involved in the selling of the subject merchandise. Therefore, CEP treatment is required.

We also find unpersuasive Filati's claim that Filati USA had limited authority to set prices because it did so only within parameters set by Filati. In similar circumstances, we have found the U.S. subsidiary's role in making the sales at issue to be significant enough to warrant their treatment as CEP sales. For example, in *SSWR from Spain,* we found that the U.S. subsidiary's ability to negotiate prices within the parameters set by the parent company, in conjunction with other sale related activities, was sufficient to warrant classification of those sales as CEP sales. In addition, in *U.S. Steel Group* v. *United States* Slip Op. 98–96 at 26 (CIT July 7, 1998), the CIT upheld the Department's classification of U.S. sales as CEP transactions, based in part on the U.S. subsidiary's ability to negotiate prices above the minimum set by the parent company.

We also find that Filati's reliance upon *Carbon Steel from Korea* is misplaced. The record on which that determination was based demonstrated that the U.S. subsidiary performed limited liaison functions in the processing of sales-related documentation and a limited role as a communication link. Moreover, in the most recent administrative review conducted on carbon steel from Korea, the Department reclassified the respondents' U.S. sales as CEP transactions based on record evidence establishing that the U.S. subsidiary was, in fact, substantially involved in selling the subject merchandise. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review,* 63 FR 13170, 13177 (Mar. 18, 1998) (*Carbon Steel from Korea II*) (the respondents' selling agent played a key role in the sales negotiation process by writing and signing sales contracts and a central role in all sales activities after the merchandise arrived in the United States).

We similarly find Filati's cite to *AK Steel* to be inapposite. In *AK Steel,* the CIT affirmed the Department's initial classification of direct container sales as EP transactions based on the fact that there was no evidence on the record to indicate that the U.S. subsidiary had the freedom to negotiate prices. More importantly, the CIT in *AK Steel* expressly distinguished its holding in that case from its prior holding in *U.S. Steel Group,* citing to this factual distinction as the basis for reconciling the decisions.

Consequently, consistent with the final results of the fourth review of this proceeding (*see Thread Fourth Review*) and the Department's current practice, we have continued to treat these transactions as CEP sales for purposes of the final results.

Comment 2: CEP Offset

Filati argues that the Department erroneously denied it a CEP offset in the preliminary results. First, Filati contends that the Department's finding that U.S. sales are made at the same level of trade as home market sales is inconsistent with its finding that the U.S. subsidiary performs significant selling functions. Specifically, Filati argues that, because the selling functions performed by the U.S. subsidiary are not taken into account when determining the selling functions in the CEP channel, it would be impossible to find that home market sales, which include all selling functions, are made at the same level of trade as CEP sales.

In addition, the respondent claims that, with respect to U.S. sales from inventory, Filati USA undertakes additional selling functions (*i.e.,* inventory maintenance, addressing of customer complaints, and handling of returns and refunds related to merchandise quality problems) which are excluded from the LOT analysis for the CEP channel, but are performed by Filati for home market sales. Consequently, Filati contends that a CEP offset is warranted because its home market sales are made at a more advanced level of trade than its CEP sales.

According to the petitioner, the Department correctly denied a CEP offset to Filati because Filati failed to develop the record to support its CEP offset claim. Specifically, the petitioner claims that Filati has failed to demonstrate that its level of trade in the home market is different from its level of trade in the United States. The petitioner argues that Filati's claim that a CEP offset is warranted is based solely on the fact that the U.S. subsidiary has involvement in making U.S. sales and on the fact that those sales are determined to be CEP sales. As support for its position, the petitioner cites to the legislative history of the URAA, which emphasizes that CEP offsets are not automatically provided, but rather are granted when respondents demonstrate that certain stated conditions are true.

DOC Position

We agree with the petitioner. In accordance with section 773(a)(7)(B) of the Act, the Department grants a CEP offset where a respondent demonstrates that its home market sales are made at a more advanced state of distribution that its U.S. sales. In this case, we conducted an analysis in order to determine whether Filati's normal values were established at a level of trade which constituted a more advanced state of distribution than the level of trade of the CEP. *See* the ''Level of Trade and CEP Offset'' section of this notice, above. After performing this analysis, the Department found that Filati performed essentially the same selling functions in its sales offices in Malaysia for both home market and U.S. sales.

We disagree with Filati that this finding is inconsistent with a finding that Filati's U.S. subsidiary performs significant selling functions. We note

that Filati's U.S. sales initially are at a more advanced level of distribution than its home market sales. After the deduction of the selling expenses associated with selling activities occurring in the United States, however, the levels of trade in both markets become the same. At this point, the relevant U.S. transaction becomes the constructed sale between the exporter (*i.e.*, Filati) and the importer (*i.e.*, Filati USA). Consequently, based on the information on the record, we have continued to deny a CEP offset to Filati for these final results.

Comment 3: Offset for Imputed Costs Associated With AD/CVD Duty Deposits

In its questionnaire response, Filati reported the opportunity costs associated with financing its cash deposits of antidumping and countervailing duties as an offset to U.S. indirect selling expenses. Filati concedes that the Department's decision to deny this offset for purposes of the preliminary results is consistent with the recent practice articulated in *AFBs*. However, Filati contends that the Department's change in policy conflicts with prior decisions both by the Department and the CIT. *See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081, 2104 (Jan. 15, 1997 (*1994–1995 AFBs Reviews*); and *Federal-Mogul* v. *United States*, 950 F. Supp. 1179 (CIT 1996).

Specifically, Filati asserts that the reasoning in *AFBs* was flawed in two respects. First, Filati asserts that *AFBs* was based on the premise that money is fungible. According to Filati, however, this point is irrelevant because the company has incurred a real expense which it would not have incurred but for the existence of the antidumping duty order. Second, Filati asserts that *AFBs* was based on the premise that there is no ''real'' opportunity cost associated with the duty deposits. Filati maintains that this point is also incorrect, because respondents making cash deposits are required to divert funds from more profitable ventures.

In addition, Filati contends that the CIT has taken a consistent position which approves of the offset. Filati cites to *Timken Co.* v. *United States*, 16 F. Supp. 2d 1102, 1105 (CIT 1998) (*Timken*), which lists the cases in which the court has upheld the Department's decisions to grant the adjustment and the cases in which it has remanded decisions to deny the offset.

Finally, according to Filati, the Department has correctly held that the costs associated with antidumping or countervailing duty deposits are not ''selling expenses.'' Consequently, Filati maintains that the antidumping law does not allow their deduction from CEP.

Based on the above arguments, Filati contends that the Department should allow its offset to indirect selling expenses for the imputed cost of financing its cash deposits of antidumping and countervailing duties for purposes of the final results.

DOC Position

We disagree. For these final results, we have continued to deny an offset to Filati's U.S. indirect selling expenses for expenses which Filati claims are related to financing of antidumping and countervailing duty cash deposits.

As the Department explained in *AFBs*, the statute does not contain a precise definition of what constitutes a selling expense. Instead, Congress gave the administering authority discretion in this area. It is a matter of policy whether we consider there to be any financing expenses associated with cash deposits. We recognize that we have, to a limited extent in other proceedings, removed such expenses from indirect selling expenses. However, we have reconsidered our position on this matter and have now concluded that this practice is inappropriate.

We have long maintained, and continue to maintain, that antidumping duties, and cash deposits of antidumping duties, are not expenses that we should deduct from CEP. 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., 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 63860, 63865 (Nov. 17, 1998); *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, 2571 (Jan. 15, 1998); *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 (June 24, 1992). We have also declined to deduct legal fees associated with participation in an antidumping case, reasoning that such expenses are incurred solely as a result of the existence of the antidumping duty order. *Id.* Underlying our logic in both 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 the dumping order.

Financial expenses associated with cash deposits are not a direct, inevitable consequence of an antidumping order. As noted in *AFBs*, 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 AFBs* at 54079. Companies may choose to meet obligations for cash deposits in a variety of ways that rely on existing capital resources or that require raising new resources through debt or equity. For example, companies may choose to pay deposits by using cash on hand, obtaining loans, increasing sales revenues, or raising capital through the sale of equity shares. In fact, companies face these choices every day regarding all their expenses and financial obligations. There is nothing inevitable about a company's 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. Indeed, in this case the record evidence demonstrates that Filati did not borrow funds in the United States, either to finance its cash deposits or to fund other business expenses.

In a different context, we have made similar observations. For example, we stated that ''debt is fungible and corporations can shift debt and its related expenses toward or away from subsidiaries in order to manage profit.'' *See Ferrosilicon From Brazil; Final Results of Antidumping Duty Administrative Review*, 61 FR 59407, 59412 (Nov. 22, 1996) (regarding whether the Department should allocate debt to specific divisions of a corporation).

Thus, while it is appropriate to exclude from CEP deductions cash deposits themselves and legal fees associated with participation in dumping cases, we do not see a sound basis for extending this practice to expenses allegedly associated with financing cash deposits. By the same

token, for the reasons stated above, we would not allow an offset for financing the payment of legal fees associated with participation in a dumping case.

We see no merit to the argument that, since we do not deduct cash deposits from CEP, we should also not deduct financing expenses that are arbitrarily associated with cash deposits. Our treatment of these financing expenses is consistent with out treatment of other expenses, such as taxes. Although we do not deduct corporate taxes from CEP, we would not reduce selling expenses to reflect financing costs alleged to be associated with payment of such taxes.

We also determine that we should not use an imputed amount that would theoretically be associated with financing of cash deposits. 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. Like taxes, rent, and salaries, cash deposits are simply a financial obligation of doing business. Companies cannot choose not to pay cash deposits if they want to import, nor can they dictate the terms, conditions, or timing of such payments. By contrast, we impute credit and inventory carrying costs when companies do not show an actual expense in their records because companies have it within their discretion to provide different payment terms to different customers and to hold different inventory balances for different markets. We impute costs in these circumstances as a means of comparing different conditions of sale in different markets. Thus, our policy on imputed expenses is consistent; under this policy, the imputation of financing costs to actual expenses is inappropriate.

Regarding Filati's cite to *Timken,* we note that in this decision the CIT acknowledged that it is the Department's current practice to deny the offset to indirect selling expenses for financing cash deposits related to antidumping or countervailing duties. However, the CIT recognized that it has upheld the Department when it has decided to grant the offset to indirect selling expenses. Consistent with the CIT's prior decisions, it sustained the Department's determination to grant the offset. While we concede that *Timken* references a number of cases which were remanded to the Department after denying the offset, we note that these cases were decided according to the Department's prior practice regarding the offset.

Moreover, even were we to reverse our stated practice and allow an offset, we would not do so in this case because Filati did not incur any financing costs in the United States. Further, as we noted above, it would be inappropriate to impute an amount which would be associated with financing cash deposits in theory only, since the record shows that Filati did not finance its cash deposits.

Finally, we disagree with Filati's argument that: it incurred a real expense that it would not have incurred but for the existence of the antidumping duty order. The only expenses relevant to this question are U.S. financing expenses. Because the record shows no evidence of financing activity in the United States, we find that Filati incurred no ''real'' expense, despite its assertions to the contrary.

Therefore, in accordance with our current practice, we have continued to deny an offset to Filati's indirect selling expenses for purposes of the final results.

Comment 4: Foreign Movement Expenses on U.S. Sales

During the POR, Filati sold certain products from its U.S. inventory which were imported prior to the POR. Because Filati did not incur any foreign movement expenses during the POR for these products, Filati based the movement expenses for these products on the average of the expenses incurred for similar products imported during the POR, rather than on the actual expenses incurred. At verification, Filati provided the actual (*i.e.*, pre-POR) movement expenses associated with these sales.

According to Filati, the Department should accept its reported movement expenses, rather than using the pre-POR data obtained at verification. Filati argues that using the reported data is the most reasonable method for Commerce to employ because that methodology uses the data that is most current.

DOC Position

We disagree. It is the Department's preference to use actual data over estimates when calculating price adjustments. The fact that the actual movement expenses in question were incurred prior to the POR makes them neither inaccurate nor unacceptable. Rather, this data is more accurate than the reported data because it represents the amounts that Filati actually incurred to transport the merchandise sold during the POR. Therefore, we have used the actual movement expenses incurred on these sales for purposes of the final results.

Comment 5: Conversion of Movement Charges Into Per-Pound Amounts

Filati asserts that the Department failed to convert certain U.S. movement expenses which were reported on per-kilogram basis to a per-pound basis before performing its margin calculations. Filati argues that the Department should correct this error for purposes of the final results.

DOC Position

We agree. Although Filati stated in its questionnaire response that these expenses were reported on a per-pound basis, we found at verification that they were actually reported as amounts per kilogram. Consequently, we have treated them as such for purposes of the final results.

Comment 6: Inclusion of Uncollected Duties in COP

During the POR, the government of Malaysia allowed Filati to import rubber thread inputs duty free; however, when Filati sold extruded rubber thread in the home market, the government charged it a duty equal to three percent of the sales price. In the preliminary results, the Department treated these amounts as uncollected import duties and added them to the U.S. starting price and to COP.

According to Filati, the Department should not add these uncollected duties to COP because they are not recorded as raw materials costs in Filati's accounting system. Filati notes that section 773(f)(1)(A) of the Act and 19 U.S.C. section 1677b(f)(1)(A) require respondents to base their reported production costs on the actual costs recorded in their normal accounting records.

However, Filati contends that, if the Department finds that Filati's cost of production should be adjusted for these amounts, then: (1) the percentage should be applied only to raw material costs, since the duties are based on imported raw materials only; and (2) the Department should use the weighted-average of the amounts paid during the POR, rather than transaction-specific amounts, since the questionnaire instructs respondents to report costs on a weighted-average basis. Filati notes that the use of POR figures would be consistent with the Department's treatment of these figures in the fourth administrative review of this proceeding.

Although this issue was not raised by Heveafil, we note that it applies to this company as well because Heveafil also paid the same type of duties.

DOC Position

We disagree with Filati, in part. Section 773(f)(1)(A) of the Act requires the Department to depart from the records of the producer if: (1) Those

records are not in accordance with the general accepted accounting principles (GAAP) of the exporting country; and (2) such costs do not reasonably reflect the costs associated with the production and sale of the merchandise. In this case, we acknowledge that Filati's treatment of these duties is in accordance with Malaysian GAAP. However, we find that this treatment is contrary to the requirements of section 773(f)(1)(A) of the Act, as it does not reasonably reflect Filati's cost of production. Specifically, we find that, because the amounts in question are charged by the Malaysian government in place of import duties on raw materials, they appropriately form part of Filati's cost of production. Accordingly, we have included these duties in the calculation of COP and CV.

We also disagree that we should apply the three percent duty to Filati's raw materials costs. Because these duties are assessed as a percentage of home market price, we have continued to calculate them in this manner. To do otherwise would result in our not capturing the full amount of the duty, which would consequently understate the amount of duty included in COP and CV.

However, we agree with Filati that we should use weight-averaged figures when applying the uncollected duty to the COP because we calculate a weight-averaged COP. We have revised our calculations to use weight-averaged amounts for purposes of the final results.

Because Heveafil also reported uncollected duties in its questionnaire response, we have also calculated Heveafil's duties in the same manner.

Comment 7: G&A Expenses of Filati's Parent Company

According to the petitioner, the Department should include the G&A expenses of MYCOM, Filati's parent company, in the calculation of Filati's COP. The petitioner notes that MYCOM provides management services to Filati.

According to Filati, its reported G&A expenses include all expenses associated with the services provided by MYCOM. Filati contends that there is no basis for including any other portion of MYCOM's expenses in G&A, because these expenses relate to activities not associated with the production or sale of extruded rubber thread.

DOC Position

We agree with Filati. Filati included in its G&A expense calculation the amount its parent charges Filati for the services the parent provides. We reviewed this calculation at verification and found it to be reflective of the cost incurred for the types of services that MYCOM performed. Therefore, we have made no adjustment to Filati's G&A rate calculation for additional MYCOM expenses.

Comment 8: Offset to Financial Expenses

Filati reported its financing expenses based on the consolidated financial statements of its holding company. Filati offset these expenses with the interest income shown on these financial statements. At verification, Filati was not able to demonstrate that the full amount of this offset was generated from short-term sources. (*See* the Filati cost verification report at page 17.)

Filati argues that the Department should grant the full amount of interest income as an offset to financing expenses because Filati demonstrated at verification that interest income is generated from only two sources, both of which are short-term in nature. In addition, Filati asserts that, should the Department determine that only a partial offset is reasonable, it should: (1) base the offset amount on both short-term deposits and cash-in-bank balances; and (2) use the average balances for these accounts, rather than the year-end balances, because interest is earned over time. In addition, Filati argues that, should the Department exclude short-term deposits from the calculation of the offset, it should use the average of the cash-in-bank balances for 1996 and 1997 for the same reason.

DOC Position

We agree, in part. At verification, Filati was able to demonstrate that one of the two sources mentioned above, cash in bank, generated short-term interest income. Contrary to its assertions, Filati was not able to demonstrate that the other source, short-term deposits, generated any income at all. *See* the Filati cost verification report at page 17. For this reason, we granted a partial offset to financing expenses based on the cash-in-bank balance.

We also agree that it is appropriate to use average balances for 1996 and 1997 in our calculation of the offset. We have calculated the offset accordingly for purposes of the final results.

B. Heveafil

Comment 9: Errors in Heveafil's Sales Responses

According to the petitioner, the Department discovered at verification that Heveafil's home market and U.S. sales data contained significant errors. Specifically, the petitioner claims that Heveafil: (1) reported incorrect dates of shipment and payment for home market sales, resulting in overstated home market credit expenses; (2) reported Malaysian customs duties on home market sales for which there were no duties; and (3) understated a number of adjustments related to U.S. sales. The petitioner asserts that the Department should adjust Heveafil's sales data using facts available in order to ensure that Heveafil's dumping margin is not understated.

Heveafil concedes that the Department found errors at verification but maintains that these errors were small and inadvertent. Heveafil notes that most of the errors in dates of shipment were provided at the beginning of verification and that the Department found only a single instance of overstated customs duties. Regarding the U.S. adjustments referenced by the petitioner, Heveafil asserts that the Department found the reported data to be incorrect in only five instances and that some of these errors were not in Heveafil's favor. Therefore, Heveafil asserts that the Department should accept the corrections provided at verification, rather than applying facts available.

DOC Position

We agree with Heveafil. The errors in question were neither significant nor pervasive. Because it is the Department's practice to accept minor corrections at verification, we have accepted these corrections for purposes of the final results.

Comment 10: Errors in Heveafil's Cost Responses

According to the petitioner, the Department discovered at verification that Heveafil misreported its costs. Specifically, the petitioner claims that Heveafil understated certain material costs, misstated yield rates, and misclassified certain variable overhead costs as fixed. The petitioner asserts that the Department should correct these problems by applying adverse inferences.

Heveafil disagrees, stating that its cost response is accurate and acceptable. According to Heveafil, the Department found at verification that Heveafil actually overstated its total costs. Heveafil notes that its costs would be understated only if the Department were to correct them for errors found at verification (*e.g.*, the double-counting of certain variable overhead expenses, etc.).

Regarding its yield rates, Heveafil maintains that these rates were correct and reconcilable to the standard yield rates used in the normal course of the

company's business. Heveafil argues that standard yields, by definition, differ from actual yields due to factors such as downtime. Heveafil asserts that, because it accounted for the differences between its standard and actual yields through the application of a variance, the Department should accept its yields as reported.

Finally, Heveafil maintains that its classification of its overhead expenses as variable or fixed in this administrative review is consistent with its classification of these expenses in previous administrative reviews. Heveafil asserts that, if the Department disagrees with Heveafil's classification, it should reclassify these expenses rather than reject them in their entirety.

DOC Position

We agree with Heveafil, in part. Although we found at verification that the manufacturing costs in Heveafil's questionnaire response contained certain errors, we noted that these errors generally resulted in the overstatement of the company's costs. Moreover, we find that none of these errors was so significant as to warrant the rejection of Heveafil's data. Consequently, we have continued to rely on it for purposes of the final results.

In general, when the Department deems a respondent's data to be acceptable, our practice has been to correct it for errors found at verification. However, we have not done so in this case (except as noted below), because: (1) although Heveafil was able to identify the total amount of certain errors at verification, it was unable to provide corrections on a product-specific level; and (2) correcting only some errors without correcting others would result in a net understatement of Heveafil's COM.

Regarding the issue of whether Heveafil misclassified certain fixed overhead costs as variable, we agree with the petitioner. Because we can reclassify these costs as fixed overhead without changing the total COM reported, we have done so for purposes of the final results.

Finally, we have corrected two additional errors found at verification which are unrelated to the items noted above. First, we found that the standard material costs were understated for one product. Consequently, we have increased the material costs reported for this product by the percentage by which the reported costs differed from the correct standard costs, as facts available. We also revised Heveafil's reported financing expenses, in order to: (1) Include an amount for foreign exchange losses related to accounts payable transactions during the POR; and (2) exclude an amount for bank charges which had also been reported as selling expenses.

C. Rubberflex

Comment 11: Calculation of U.S. Indirect Selling Expenses

The petitioner argues that Rubberflex understated the indirect selling expenses of its U.S. subsidiary, Flexfil, because it allocated a certain portion of these expenses to Canadian sales which were not invoiced by Flexfil. According to the petitioner, the Department should reallocate these expenses using only the sales made by the subsidiary and recorded in the subsidiary's books. In support of its position, the petitioner cites to the *Final Determination of Sales at Less Than Fair Value; Certain Welded Stainless Steel Pipes from Taiwan*, 57 FR 53705, 53718 (Nov. 12, 1992) (*WSSP from Taiwan*), where the Department found that the indirect selling expenses of a U.S. subsidiary may not be allocated over sales which do not appear on its books.

Rubberflex contends that it properly allocated the indirect selling expenses in question. Rubberflex notes that Flexfil is actively involved in making Canadian sales, because Flexfil conducts all activities associated with procuring, maintaining, and servicing Rubberflex's Canadian accounts. Rubberflex asserts that the only difference between Flexfil's role in making Canadian and U.S. sales is in the area of billing; there, Rubberflex invoices the Canadian customers directly, whereas Flexfil invoices its U.S. customers. According to Rubberflex, this difference exists so that Rubberflex can take advantage of certain financing options in Malaysia that would not be available were Flexfil the purchaser of record.

Rubberflex argues that this case is distinguishable from *WSSP from Taiwan*, in that the respondent in that case only maintained correspondence records related to its off-the-books sales. Rubberflex contends that Flexfil's involvement meets a much higher standard, as noted above. For this reason, Rubberflex asserts that Flexfil's indirect selling expenses were appropriately allocated to Canadian sales.

DOC Position

We agree with Rubberflex. At verification, we confirmed that Flexfil was actively involved in making sales to Canada. Therefore, because the indirect selling expenses incurred by Flexfil related, in part, to sales to Canada, we find that it is appropriate to allocate a portion of these expenses to Canadian sales. Accordingly, we have accepted Flexfil's indirect selling expenses for purposes of the final results.

Comment 12: Calculation of the Cost of Production

According to the petitioner, the Department found at verification that Rubberflex understated its production costs. Specifically, the petitioner maintains that Rubberflex failed to include in its costs: (1) certain year-end adjustments related to the POR; and (2) bank charges. The petitioner asserts that the Department should increase the costs reported by the amounts found at verification.

Rubberflex states that it defers to the Department's judgement on this issue.

DOC Position

We agree with the petitioner, in part. We have increased the costs reported by Rubberflex to incorporate the portion of the year-end adjustments related to the POR, based on our findings at verification. We have made no additional adjustment to Rubberflex's costs for bank charges, however, because Rubberflex correctly included the amount of these charges in the indirect selling expenses reported in its most recent home market sales listing.

Final Results of Review

As a result of comments received we have revised our analysis and determine that the following margins exist for the period October 1, 1996, through September 30, 1997:

Manufacturer/exporter	Percent margin
Filati Lastex Elastofibre (Malaysia)	2.07
Heveafil Sdn. Bhd./Filmax Sdn. Bhd.	4.78
Rubberflex Sdn. Bhd	1.22
Rubfil Sdn. Bhd	54.31

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. These rates will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective for all shipments of extruded rubber thread from Malaysia entered, or withdrawn

from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates for those firms as stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 15.16 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 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 the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), section 777(i) of the Act (19 U.S.C. 1677f(i)), and 19 CFR 351.210(c).

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–6280 Filed 3–15–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

[A–570–848]

International Trade Administration

Freshwater Crawfish Tail Meat From the People's Republic of China: Extension of Preliminary Results of a New-Shipper Antidumping Review

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

ACTION: Notice of extension of time limits for preliminary results of a new-shipper antidumping duty review.

EFFECTIVE DATE: March 16, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Laurel LaCivita, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0648 and (202) 482–4236, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1998).

Extension of Time Limits for Preliminary Results

On September 30, 1998, the Department of Commerce received a request from Yancheng Baolong Biochemical Products Co., Ltd. to conduct a new-shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China. On October 30, 1998 (63 FR 59762 published November 5, 1998), the Department initiated this new-shipper antidumping review covering the period March 26, 1997 through August 31, 1998.

The Department has determined that it is not practicable to complete this review within the time limits mandated by section 751(a)(2)(B) of the Act. Therefore, in accordance with that section, the Department is extending the time limits for the preliminary results to July 17, 1999. This extension of time limits is in accordance with section 751(a)(2)(B) of the Act.

Dated: March 5, 1999.

Joseph A Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 99–6289 Filed 3–15–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–814]

Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order in Part

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

ACTION: Notice of final results of administrative review and determination not to revoke order in part.

SUMMARY: On May 12, 1998, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on pure magnesium from Canada and its notice of intent not to revoke the order with respect to pure magnesium produced by Norsk Hydro Canada Inc. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have made certain changes for the final results.

This review covers one producer/exporter of pure magnesium to the United States during the period August 1, 1996, through July 31, 1997. The review indicates no dumping margins during the review period.

EFFECTIVE DATE: March 16, 1999.

FOR FURTHER INFORMATION CONTACT: Zak Smith or Stephanie Hoffman, Import Administration, AD/CVD Enforcement Group I, Office 1, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–0189 or 482–4198, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

The Department of Commerce (''the Department'') is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930 (''the Act''), as amended. 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 Act

by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to those codified at 19 CFR part 351 (April 1998).

Background

On May 12, 1998, the Department published the preliminary results of the administrative review of the antidumping duty order on pure magnesium from Canada and notice of the intent not to revoke the order in part (63 FR 26147) (''Preliminary Results''). The producer/exporter in this review is Norsk Hydro Canada Inc. (''NHCI''). We received comments and rebuttal comments from NHCI and petitioner, Magnesium Corporation of America (''Magcorp'') (*see Interested Party Comments,* below). A hearing was held on July 29, 1998. The time limit for the final results of this administrative review was extended on both September 16, and November 18, 1998.

Subsequent to the Department's decision in Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Review and Determination To Revoke in Part (64 FR 2173, (January 13, 1999) (''Corrosion-Resistant Steel from Canada''), NHCI made a submission commenting upon the position taken by the Department in that case. Although the deadline for submission of argumentation had passed, given the length of time (more than six months) that has elapsed since our formal comment period and in light of the potential relevance of the Department's determination in Corrosion-Resistant Steel from Canada, we decided to place NHCI's submission on the record and take it into account in these final results. We also permitted petitioner to comment upon Corrosion-Resistant Steel from Canada and respondent's submission concerning that determination.

Scope of the Review

The product covered by this review is pure magnesium. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope of this review. Pure magnesium is currently classified under subheading 8104.11.0000 of the Harmonized Tariff Schedule (''HTS''). The HTS item number is provided for convenience and for customs purposes. The written description remains dispositive.

Determination Not To Revoke Order in Part

The Department ''may revoke, in whole or in part'' an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia,* that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than normal value (''NV'') in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities; and (3) an agreement to reinstatement in the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department may revoke an order, in part, if it concludes that (1) the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) it is not likely that the company will in the future sell the subject merchandise at less than NV; and (3) the company has agreed to its immediate reinstatement in the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(b)(2).

In our Preliminary Results, we determined that ''based on the evidence on the record, we cannot reasonably conclude that NHCI is not likely to dump in the future if the order were revoked'' (*see* Memorandum to Gary Taverman, dated May 4, 1998).

After consideration of the various comments that were submitted in response to the preliminary results, we have concluded that we must determine, as a threshold matter, in accordance with 19 CFR 351.222, whether the company requesting revocation sold the subject merchandise in commercial quantities in each of the three years forming the basis of the request. As stated in Corrosion-Resistant Steel from Canada (at 2189), ''respondents must meet the threshold criterion of three consecutive years of sales in commercial quantities at not less than [normal value] in order to be eligible for revocation.''

We determine that NHCI did not sell the subject merchandise in the United States in commercial quantities in any of the three years cited by NHCI to support its request for revocation. Specifically, NHCI made one sale in two of the relevant years and two sales in the other. One or two sales to the United States during a one year period is not consistent with NHCI's selling activity prior to the order nor is it consistent with NHCI's selling activity in the home market (*see* Memorandum from Team to Susan Kuhbach, ''Commercial Quantities,'' dated March 8, 1999, for a discussion of NHCI's selling activity). Furthermore, we found that, for each year, the volume of merchandise sold was less than one-half of one percent of the volume of merchandise sold in the last completed fiscal year prior to the order. These sales and volume figures are so small, both in absolute terms and in comparison with the period of investigation, that we cannot reasonably conclude that the zero margins NHCI received are reflective of the company's normal commercial experience. More specifically, the abnormally low level of sales activity does not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping. Therefore, we find that NHCI does not qualify for revocation of the order on pure magnesium under 19 CFR 351.222(b) and (e)(1)(ii).

Comparisons

We calculated export price and normal value based on the same methodology used in the Preliminary Results, with the following exceptions:

Based upon comments received from respondent, when determining the appropriate home market sales to use for comparison purposes the Department is now matching to identical sales. Also, based upon comments received from respondent, we have made the necessary changes such that home market freight charges are being converted appropriately.

Interested Party Comments

In accordance with 19 CFR 351.309, we invited interested parties to comment on our Preliminary Results. On June 11 and June 16, 1998, petitioner and respondent submitted case briefs and rebuttal briefs, respectively. At the request of respondent, a public hearing was held on July 29, 1998. In addition, we received interested party comments from Chicago White Metal Casting, Inc., Magnesium Products of America, Inc., Reynolds Metals Company, and Alcan Aluminum Corporation.

Comment 1: Commercial Quantities

Petitioner opposes revocation of the antidumping duty order in part, arguing that respondent has not met the requirements for revocation. Specifically, petitioner points to 19 CFR 351.222(e)(1)(ii) which requires respondents to certify that they have sold the subject merchandise in commercial quantities to the United States during each of the three consecutive years. Petitioner argues that NHCI's sales to the United States during the last three review periods were far too small to be considered commercial quantities. In petitioner's view, these were merely token sales whose only purpose was to obtain three years of zero antidumping margins and qualify for revocation.

Petitioner contends that the concept of commercial quantities refers to the aggregate volume of sales made by a respondent over the course of the entire period of review (''POR'') and not to the size of a single sale used in the calculation of an antidumping margin. In support for this argument, petitioner claims that there would be no reason for the requirement of commercial quantities in 19 CFR 351.222(e)(1)(ii) if the term merely referred to the existence of any sale recognizable as a U.S. sale for calculating an antidumping margin because there would be no reason for the Department to ask a respondent to certify a fact that has already been established.

Petitioner further argues that only if a respondent's sales are sufficiently large will a zero antidumping margin offer any valid indication that the respondent can continue to export the subject merchandise to the United States at normal prices if the antidumping duty order were revoked. As an example, petitioner points to the Department's decision not to revoke the antidumping duty order in Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 61 FR 49727 (September 23, 1996) (''German Brass Sheet'') due to the small volume of shipments. Petitioner also refers to the preamble of the final regulations in which the Department states that a revocation based on the absence of dumping is based on the fact that when a respondent sells in commercial quantities without dumping it has demonstrated that it will not resume dumping if the order is revoked (*see* Antidumping Duties; Countervailing Duties; Final Rule (''Final Regulations''), 62 FR 27296, 27326 (May 19, 1997)).

Respondent argues that the term ''commercial quantities'' refers not to the number or volume of sales, but to whether any individual sale was a normal size transaction for the industry. In support for this argument, respondent points to the proposed regulations in which the Department states that it will ''establish whether sales were made in commercial quantities based upon examination of the normal sizes of sales by the producer/exporter and other producers of subject merchandise.'' (*See* Antidumping Duties; Countervailing Duties, Proposed Rule (''Proposed Regulations''), 61 FR 7308, 7320 (February 27, 1996)). Respondent believes that the Department never intended to consider the aggregate volume of sales made throughout the POR. Rather, NHCI argues, the concept of commercial quantities was included in the regulations to ensure that individual sales made during an intervening year were of sufficient size to permit the Department to conduct a review had one been requested (as opposed to sales of samples or prototypes and sales so small that they could not be regarded as *bona fide* commercial transactions). Respondent further argues that the Department's application of the criterion in Corrosion-Resistant Steel from Canada inappropriately disqualifies respondents from revocation, even when reviews are conducted in all three years.

Department's Position: NHCI has requested revocation based on the absence of dumping. As explained above, to consider such a request we must determine, as a threshold matter, whether the company requesting revocation sold the subject merchandise in commercial quantities in each of the three years forming the basis of the request. *See* 19 CFR 351.222(e)(1)(i)–(iii); *see also,* 19 CFR 351.222(d)(1).

We disagree with NHCI's argument that the commercial quantities criterion requires only that there be a *bona fide* commercial transaction during a given period. As the Department recently explained, ''sales during the POR which, in the aggregate, are an abnormally small quantity do not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping'' (*see* Corrosion-Resistant Steel from Canada at 2175). As the record of this case demonstrates, NHCI did not sell the subject merchandise in the United States in commercial quantities in any of the three years cited by NHCI to support its request for revocation. Regardless of the *bona fide* nature of each transaction, these sales, in the aggregate, are abnormally small in quantity and do not provide the Department with a reasonable basis to make a revocation determination (*see* Memorandum from Team to Susan Kuhbach, ''Commercial Quantities,'' dated March 8, 1999).

We also note that while the regulation requiring sales in commercial quantities may have developed from the unreviewed intervening year regulation, its application in all revocation cases based on an absence of dumping is reasonable and mandated by the regulations. The application of this requirement to all such cases is reflected not only in the provision for unreviewed intervening years (*see* 19 CFR 351.222(d)(1)), but also in the new general requirement that parties seeking revocation certify to sales in commercial quantities in each of the years on which revocation is to be based. *See* 19 CFR 351.222(e)(1)(ii). This requirement ensures that the Department's revocation determination is based upon a sufficient breadth of information regarding a company's normal commercial practice. As in Corrosion-Resistant Steel from Canada (at 2175), in this case the number of sales and the total sales volumes are so small, both in absolute terms and in comparison with the period of investigation and other review periods, that these sales do not provide sufficient information on a company's normal commercial experience to make a revocation decision. If sales are not reflective of a company's normal commercial activities, they can offer no basis upon which to make a revocation determination, regardless of whether we conducted a review or the sales took place in an intervening year.

Comment 2: Sales Drop-Off

Petitioner argues that NHCI's withdrawal from the U.S. market in the two first review periods after imposition of the antidumping duty order and the company's insignificant U.S. sales in the subsequent three review periods demonstrates that NHCI cannot sell commercially significant quantities without resorting to dumping. Petitioner points to the Statement of Administrative Action (''SAA'') accompanying the Uruguay Round Trade Agreements which states that ''. . . the cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping'' (*see* H.R. Doc. 316, Vol. 1, 103d Cong., 2d Sess. 870 (1994) p. 889). Petitioner argues that although this statement was made in the context of sunset reviews, it provides guidance on how a respondent would act in the absence of an antidumping order.

Respondent states that it made no sales to the United States in the first and second review periods because of the prohibitively high antidumping and countervailing duty cash deposit rates. This lack of sales activity is irrelevant, according to NHCI, since NHCI made sales to the United States during the third, fourth, and fifth review periods which constituted a significant increase in sales compared to the first two review periods.

Moreover, respondent argues that it would be incorrect to use the original period of investigation as a benchmark for NHCI's normal commercial behavior because at that time, the company was still in the process of ramping up production and establishing its customer base. Respondent explains that after the imposition of the antidumping duty order, it redirected its marketing strategy toward other export markets and developed a strong home market for pure magnesium. NHCI, along with other interested parties, notes that it also increased its production and sales of alloy magnesium to the extent that by 1997, it had become primarily a producer of alloy magnesium.

Regarding petitioner's reference to the SAA, respondent argues that the cited portion deals with sunset and changed circumstances reviews and, therefore, does not apply to revocation reviews based on the absence of dumping. In sunset reviews, it is presumed that a drop-off in exports after the imposition of an antidumping duty order indicates increased likelihood of continued or resumed dumping if the order were revoked, but such presumption does not exist in the context of a revocation based on the absence of dumping, according to respondent.

Department's Position: We have considered the parties' arguments regarding the post-order sales drop-off in a different context for these final results, which rely on the absence of sales in commercial quantities rather than the likelihood of future dumping. Regarding respondent's claim that it would be incorrect to use the original period of investigation as a benchmark for NHCI's normal commercial behavior, we disagree. Assessment of the threshold regulatory requirement that there be sales in commercial quantities during each of the three years of review cannot take place in a vacuum. The period of investigation is a logical and reasonable benchmark for this assessment, especially given that it is the only time period for which we have evidence concerning NHCI's commercial behavior with respect to exports to the United States without the discipline of an antidumping duty order. While we recognize that NHCI was a relatively new company at the time of the original investigation, logically this would tend to support the argument that their sales should have increased, rather than decreased.

In addition to examining NHCI's commercial activity during the period of investigation, the Department also examined information regarding NHCI's sales of pure magnesium to other markets for the three years in question. Examination of the number and volume of sales made in these markets further supports our determination that the sales to the United States were not made in commercial quantities. Moreover, this very evidence indicates that NHCI has not completely redirected its market focus toward alloy magnesium but, in fact, maintains significant pure magnesium sales volumes in other pure magnesium markets, all of which are markedly smaller and more distant than the U.S. market.

Comment 3: Alleged Creation of New Revocation Requirement and Deviation from Normal Practice

NHCI objects to the application by the Department of a new requirement in its Preliminary Results; namely, that a company must ''participate meaningfully in the U.S. market'' to qualify for revocation. In support of its argument, NHCI points to the Department's statements in its Proposed Regulations and in the Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part: Dynamic Random Access Memory Semiconductors of One Megabyte or Above From the Republic of Korea, 62 FR 39809 (July 24, 1997) (''DRAMS from Korea'') where it said that the Final Regulations did not change the previous revocation requirements. Furthermore, respondent refers to past cases (*e.g.*, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Italy, 60 FR 10959 (February 28, 1995) and Industrial Phosphoric Acid from Israel, 57 FR 10008 (March 23, 1992)) in which the Department decided to revoke antidumping duty orders although the exporters' U.S. sales were small.

Respondent and other interested parties further argue that although the Department's regulations require a finding that respondent is unlikely to sell the subject merchandise below normal value in the future, the Department has generally agreed to revocation based on two criteria: three consecutive years of zero dumping margins; and an agreement by respondent to immediate reinstatement of the order if it resumes dumping in the future. According to NHCI, the Department has consistently found that these two criteria are dispositive of the ''not likely'' analysis and that the Department generally does not conduct such an analysis. Thus, NHCI claims that by not revoking the antidumping duty order based on these two criteria, the Department has deviated from its normal practice.

Petitioner argues that, contrary to respondent's contention, there is no ''normal practice'' of revoking orders based on three years of zero deposit rates and certain certifications by respondent. Petitioner states that when determining the likelihood of resumed dumping in past cases (*e.g.*, German Brass Sheet, Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan, 56 FR 8741 (March 1, 1991), and DRAMs from Korea), the Department has considered factors other than the respondent's most recent dumping margins and its certification that it will not resume dumping.

Department's Position: While the Department's substantive revocation criteria have not changed, the new regulations added a threshold criterion for revocation proceedings. Specifically, the Department now requires the company requesting revocation to have sold the subject merchandise in commercial quantities in each of the three years forming the basis of the request. *See* 19 CFR 351.222(e)(1)(ii). Because the threshold requirement of sales in commercial quantities has not been met in this case, the analysis in these final results does not address the likelihood issue.

Comment 4: Failure to Revoke the Order Would be in Conflict With the WTO Agreement

Respondent argues that a revocation of the order is mandated by the 1994 WTO Antidumping Agreement because Article 11.1 of this agreement states that an antidumping duty ''shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.'' Respondent supports this position by noting that in DRAMS from Korea a WTO panel found that the ''continued imposition [of an antidumping duty] must . . . be essentially dependent on, and therefore assignable to, a foundation of positive evidence that circumstances demand it'' (*see* United States—Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabit or Above From Korea, WTO Doc. WT/DS99/R (January 29, 1999)) (''DRAMS Panel''). Respondent further argues that the Department's decision in

Corrosion-Resistant Steel from Canada is inconsistent with this panel finding because it automatically disqualified a respondent from obtaining revocation without a foundation of positive evidence for doing so.

Department's Position: The Department's revocation procedures are fully consistent with Article 11.1. Parties need only demonstrate that they are no longer dumping while commercially engaged in the U.S. market over a three year period. The requirement to which respondent objects merely establishes a reasonable evidentiary threshold. Absent commercially meaningful sales activity we do not have a sufficient record to make a reasoned judgement as to revocation. Thus, the threshold requirement of commercial quantities is necessary, appropriate, and consistent with our WTO obligations and the DRAMS Panel decision, because it is an objective condition by which the Department can make a reasonable determination based on positive evidence.

Comment 5: Failure To Revoke the Order Would Be Punitive

Respondent argues that failure to revoke would improperly punish NHCI in light of the Department's determinations that the company has not been dumping. Moreover, NHCI states that the order and the review process have imposed a substantial burden on the company.

Department's Position: Application of the regulatory requirements for revocation is not punitive; rather, these requirements reflect the Department's view that the actual revocation of an order can only occur after the collection and analysis of all the relevant information. While NHCI raised concerns during the proceeding that certain requests for information were burdensome, we note that NHCI was able to meet all such requests.

Comment 6: Market Conditions and Trends

Petitioner claims that conditions in the U.S. magnesium market make dumping more likely because magnesium is a homogenous commodity product which consumers buy from the seller offering the lowest price. Petitioner cites to statements by an NHCI official to the effect that the future magnesium market can be characterized as one of declining real prices and oversupply. These trends, according to petitioner, increase the likelihood that NHCI would revert to dumping in order to boost its sales of the subject merchandise. Petitioner contends that the magnesium prices quoted by respondent are list prices to which discounts are applied before the actual transaction price is reached. In petitioner's view, such list prices have little meaning as indicators of the actual price level in the market.

Petitioner claims that plans are underway to expand the production capacity of pure and alloy magnesium, both in Canada and other countries, and that this increased production will intensify competition and lead to a continuation of the drop in magnesium prices. Petitioner also contends that NHCI's new capacity will be utilized for the production of pure magnesium and it will be directed toward the U.S. market. Finally, petitioner asserts that it is very likely that NHCI will have to switch significant production capacity from alloy to pure magnesium.

Respondent, along with other interested parties, disagrees with petitioner's description of pricing practices in the magnesium market. First, respondent says, customers do not always buy from the supplier offering the lowest price because other factors are also important. Second, magnesium is not a homogenous product and NHCI competes by offering high-quality products. Third, respondent disputes petitioner's allegation that it would have to undercut the prices of other producers by pointing to the sales it has made in the United States at market prices in the last three review periods.

According to respondent, U.S. market prices have increased since the antidumping investigation. While conceding that there have been moderate adjustments in market prices, respondent argues that in real terms, magnesium prices increased significantly between 1990 and 1996. Thus, in respondent's opinion, prices will remain well above the level where dumping would be inevitable. Respondent further claims that petitioner has provided the prices of imported Russian and Chinese magnesium and, according to other interested parties as well, the pricing practices of these non-Western producers are inappropriate for comparison to a Western producer like NHCI. Finally, respondent contends that the price trends provided by petitioner are inconsistent with those of the U.S. Geological Survey.

Respondent also disputes the notion that there is an oversupply of pure magnesium, stating that petitioner focuses on the demand/supply situation in 1996. According to respondent and other interested parties, the situation changed significantly in 1997 and current supply conditions are tight with inventories below normal levels. Respondent further states that demand for pure and alloy magnesium is expected to increase in both the United States and Canada. Respondent argues that it is, therefore, not at all certain that a major portion of NHCI's new capacity will be sold as pure magnesium.

With respect to its expansion plans, respondent maintains that it has not made a final decision about expanding its magnesium-producing plant and that petitioner's allegation about a doubling of NHCI's production capacity, therefore, is wrong. Furthermore, petitioner's assertion that an expansion by NHCI would lead to a resumption of dumping is mere speculation, according to respondent.

Respondent dismisses petitioner's allegations regarding other producers' expansion plans and states that some of these companies have not yet decided to build new magnesium plants. Finally, respondent argues, even if all the proposed new plants were built, there is no basis for petitioner's allegation that this increased competition would result in dumping because dumping does not occur as a result of lower prices, but as a result of price discrimination. In this context, respondent emphasizes that it has signed a certification that it will not engage in dumping in the future.

Respondent and other interested parties also dispute petitioner's assertion that NHCI could easily switch its production from alloy to pure magnesium. Among other things, respondent points to its long-term supply contracts for alloy as evidence that it cannot easily switch production to pure magnesium.

Department's Position: Because we have determined that NHCI is not eligible for revocation, we do not reach the likelihood of future dumping issue.

Comment 7: Case Precedents Used in the Preliminary Results

Respondent argues that the case precedents on revocation cited by the Department in its Preliminary Results do not apply to the present case because the factual situation is different and because the Department considered mainly negative revocation decisions while it ignored an affirmative decision.

Department's Position: As explained above, given the Department's finding that NHCI did not sell in commercial quantities, we do not reach the likelihood issue.

Comment 8: The Department Can Grant Revocation Over Petitioner's Objection

Respondent argues that petitioner, Magcorp, cannot purport to represent the U.S. industry because the

Department determined in the investigation that petitioner represented only 22 percent of U.S. magnesium producers. Respondent contends that Magcorp is merely one producer objecting to the revocation of the order and that the Department has revoked orders in the past over the objections of a single producer.

Department's Position: NHCI contested Magcorp's authority to represent the US industry in its challenge to the original less than fair value determination but did not prevail. (*See* Magnesium from Canada, No. USA–92–1904–03 (August 16, 1993).) Nothing has changed which would warrant a different conclusion in this proceeding. Because Magcorp is an interested party, it is entitled to participate and comment on revocation. Finally, our determination is based on the fact that NHCI has not met the revocation requirements, not on Magcorp's objection.

Final Results of Review

As a result of this review, we find that the following margin exists for the period August 1, 1996, through July 31, 1997:

Manufacturer/exporter	Period	Margin (percent)
Norsk Hydro Canada Inc.	8/1/96–7/31/97	0

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. The results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the review and for future deposits of estimated duties for the manufacturers/exporters subject to this review. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this new shipper administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate indicated above; (2) for companies not covered in this review, but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the most recent rate established for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original investigation, the cash deposit rate will be the ''all others'' rate of 21 percent established in the amended final determination of sales at less than fair value (58 FR 62643 (November 29, 1993)).

These deposit requirements will 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 orders (''APOs'') 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/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 771(i)(1) of the Act.

Dated: March 8, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–6281 Filed 3–15–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–423–806]

Cut-to-Length Carbon Steel Plate From Belgium; Final Results of Countervailing Duty Administrative Review

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

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On September 9, 1998, the Department of Commerce (the Department) published in the **Federal Register** its Preliminary Results of administrative review of the countervailing duty order on cut-to-length carbon steel plate from Belgium for the period January 1, 1996 through December 31, 1996 (63 FR 48188). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, please see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: March 16, 1999.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Eva Temkin, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers Fabrique de Fer de Charleroi, S.A. (Fafer). This review also covers the period January 1, 1996 through December 31, 1996 and 28 programs.

Since the publication of the Preliminary Results on September 9, 1998 (63 FR 48188), the following events have occurred. We invited interested parties to comment on the Preliminary Results. On October 9, 1998, case briefs were submitted by Fafer, which exported cut-to-length carbon steel plate to the United States during the review period (respondent), and Bethlehem Steel Corporation, U.S.

Steel Group, and Inland Steel Industries, Inc. (petitioners). On October 16, 1998, rebuttal briefs were submitted by petitioners and respondent.

In November 1998, the Department conducted verification of the government and company questionnaire responses. For additional information on verification, see the *Verification* section of this notice. Interested parties submitted comments to the Department's verification reports on February 8, 1999 and rebuttal comments on February 12, 1999.

On December 17, 1998, we extended the period for completion of the Final Results to 180 days from the date on which the Preliminary Results were published pursuant to section 351.221(h)(1) of the Department's regulations. *See Cut-to-Length Carbon Steel Plate from Belgium; Extension of Time Limit for Countervailing Duty Administrative Review* (63 FR 69612). At the request of petitioners, the Department held a public hearing on February 19, 1999.

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). The Department is conducting this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 CFR part 351 (1998).

Scope of the Review

The products covered by this review are certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under subheadings 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from these investigations is grade X–70 plate. The HTS subheadings are provided for convenience and U.S. Customs Service (Customs) purposes. The written description of the scope remains dispositive.

Allocation Methodology

In *British Steel plc.* v. *United States,* 879 F.Supp. 1254 (February 9, 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) ruled against the allocation period methodology for non-recurring subsidies that the Department had employed for the past decade, a methodology that was articulated in the *General Issues Appendix* (58 FR 37227) appended to *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria;* 58 FR 37217 (July 9, 1993) (*GIA*). In accordance with the Court's decision on remand, the Department determined that the most reasonable method of deriving the allocation period for nonrecurring subsidies is a company-specific average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *British Steel plc.* v. *United States,* 929 F.Supp 426, 439 (CIT 1996) (*British Steel II*). Accordingly, the Department has applied this methodology to those non-recurring subsidies that have not yet been countervailed.

Fafer submitted an AUL calculation based on depreciation and asset values of productive assets reported in its financial statements. Fafer's AUL was derived by adding depreciation charges for ten years, and dividing these charges by the sum of average gross book value of depreciable fixed assets for the related periods. We found this calculation to be reasonable and consistent with our company-specific AUL objective. Fafer's calculation resulted in an average useful life of 26 years. For non-recurring subsidies received prior to the POR and which have already been countervailed based on an allocation period established in an earlier segment of the proceeding, it is not reasonable or practicable to reallocate those subsidies over a different period of time. Since the countervailing duty rate in earlier segments of the proceeding was calculated based on a certain allocation period and the resulting benefit stream, redefining the allocation period in later segments of the proceeding would entail taking the original grant amount and creating an entirely new benefit stream for that grant. Therefore, for purposes of these Final Results, the Department is using the original allocation period assigned to each nonrecurring subsidy received prior to the POR, which has already been countervailed. *See Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review,* 62 FR 16549 (April 7, 1997) (*Carbon Steel Products from Sweden*).

Verification

As provided in section 782(i) of the Act, we verified information submitted by the Government of Belgium (GOB), the Government of Wallonia (GOW), and Fafer, except as discussed in the ''Facts Available'' section of this notice below. We followed standard verification procedures, including meetings with government and company officials and examination of relevant accounting and financial records and other original source documents. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (CRU) (Room B–099 of the Main Commerce Building).

Facts Available

Section 776(a)(2) of the Act requires the Department to use facts available if an interested party or any other person fails to provide information that has been requested by the deadlines for submission of the information. In this review, we found at verification that Fafer did not report to the Department a loan provided for the purpose of producing an audio-visual calling card for foreign businessmen. This information was unreported in the questionnaire responses. We used information that we obtained at verification about the loan to determine the countervailable benefits provided by this program. For additional information about the loan, see the *New Programs Determined to Confer Subsidies* section of this notice.

Moreover, in the *Preliminary Results,* the Department did not countervail cash grants received by Parachevement et Finitions de Metaux (PFM) and S.A.

Chaleroi Deroulage (CD) CD and PFM (Fafer's subsidiaries) under the Law of 1970, because Fafer claimed that these subsidiaries do not produce the subject merchandise. At verification, company officials again stated that the Fafer's subsidiaries CD and PFM did not manufacture the subject merchandise. However, the company inferred in its February 12, 1999 submission that CD and PFM could possibly produce merchandise subject to the order, but that this had not occurred during the POR. Moreover, at the public hearing held on February 19, 1999, respondent's counsel also clarified that there was no technical reason that the equipment owned by CD and PFM could not be used to transform downstream, non-subject merchandise into subject merchandise. *See Transcript of Public Hearing on Cut-to-Length Carbon Steel Plate from Belgium* dated February 19, 1999 at 55–57.

On the basis of the fact that CD and PFM can, in their down-stream processing, produce merchandise which is covered by the scope of the order, we determine that the cash grants under the Law of 1970, a program previously found countervailable by the Department, are attributable to the total sales of Fafer, including its subsidiaries and thus benefitted the subject merchandise during the POR. This approach is consistent with our practice to attribute subsidies received by one company to the sales of another related company that also produces the subject merchandise. Accordingly, we are attributing benefits received by CD and PFM to the consolidated group in these Final Results. (*See Certain Pasta From Italy: Final Results of Countervailing Duty Administrative Review* 63 FR 43905–43912 (August 17, 1998.) This also conforms with section 351.525(b)(6)(ii) of the Department's final countervailing duty regulations, which explicitly states that ''if two (or more) corporations with cross-ownership produce the subject merchandise, the Secretary will attribute the subsidies received by either or both corporations to the products produced by both corporations.'' While these regulations do not govern this proceeding, they articulate the Department's practice and application of the statute. Cross-ownership clearly exists between CD and PFM and the parent company, Fafer; record evidence also shows that all companies could produce the merchandise subject to the countervailing duty order.

In our questionnaires, we asked the respondent to provide subsidy information for those affiliates that are involved in the production of the subject merchandise. If Fafer had accurately reported the activities of its affiliates CD and PFM, the Department would have asked CD and PFM to respond to the questionnaires with respect to particular subsidies. As a result, grants received by affiliated companies under the Law of 1970 during the POR were not reported in the questionnaire responses. At verification, we found that CD and PFM received grants under the Law of 1970 in 1993 and 1996, respectively and collected information on these grants. Moreover, Fafer did not provide total sales data for CD and PFM.

Although other subsidies provided under the Law of 1970, such as research and development (R&D) assistance, have been found not specific after 1988 (*see Programs Found Not to Confer Subsidies*), we have no information on industry specificity for the cash grants program in the Walloon region of Belgium after 1988. Therefore, we are using adverse facts available and countervailing these grants in these Final Results. Section 776(b) of the Act provides that the administering authority may use an inference that is adverse to the interests of an interested party in selecting from among the facts otherwise available. Such adverse inference may include reliance on information derived from (1) the petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753, or (4) any other information placed on the record.

We used information that we obtained at verification about the grants provided to affiliated companies to determine the countervailable benefits provided by these programs. For additional information about these grants to CD and PFM, see the *Programs Previously Determined to Confer Subsidies* sections of this notice. In addition, we used facts available to calculate Fafer's consolidated sales for the POR, which includes sales of CD and PFM, because sales information for these subsidiaries during the POR was not placed on the record. An explanation of our calculation is provided in *Comment 9* below.

Analysis of Programs

Based upon the responses to our questionnaires, the results of verification, and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

A. Program Previously Determined to Confer Subsidies

1. Cash Grants and Interest Subsidies Under the Economic Expansion Law of 1970

In the Preliminary Results, we found that cash grants and interest subsidies under the 1970 Law conferred countervailable subsidies on the subject merchandise (*see Cut-to-Length Carbon Steel Plate From Belgium Preliminary Results of Countervailing Duty Review* 63 FR 48188; 48189 (September 9, 1998) (*Preliminary Results*)). Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has led us to change our preliminary calculations. At verification, we obtained more detailed information with which to calculate the difference between benefits provided to Fafer in 1982, 1984, and 1985 under the 1970 Law and the 1959 Law than that used in our preliminary calculations.

In the *Preliminary Results*, we found this program to be regionally specific. As discussed in greater detail below, other subsidies provided under the 1970 Law for R&D assistance have been found not specific after 1988. (*See Research and Development Loan Provided Under the Economic Expansion Law of 1970* under the section titled ''*Programs Found Not to Confer Subsidies*'' of this notice. All cash grants and interest subsidies provided to Fafer were provided prior to 1988, however at verification we found that subsidiaries of Fafer received cash grants after 1988. Because we have no specificity information for these years and for the reasons outlined in the facts available section above, we are treating these grants as regionally specific. Therefore, for these Final Results, we are countervailing grants provided after 1988 to Fafer's affiliates.

To calculate the benefit in this review for grants received by CD and PFM, we employed the standard grant methodology outlined in the allocation section of the GIA (58 FR 37227). We allocated the benefit from each grant received by CD and PFM over 26 years, Fafer's AUL. As the discount rate for grants received by CD and PFM, we used the long-term prime rates for each year in which grants were provided. (For information on the benchmark, *see Comment 1* below). We summed the benefit amounts attributable to the POR and divided the result by Fafer's total consolidated sales during the POR. Accordingly, the net subsidy for this program has changed and the subsidy rate is 0.35 percent *ad valorem*.

B. New Programs Determined to Confer Subsidies

1. Promotion Brochure

In the Preliminary Results, we found this program did not confer subsidies because the loan interest rate was higher than the benchmark rate in the year the loan was approved. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has led us to modify our findings from the *Preliminary Results* for this program.

The Walloon Export Agency (AWEX) administers this program and provides assistance to companies in the Walloon region to make advertising brochures for international markets. Under this program, loans are extended for a five-year period with a fixed annual interest rate. However, the company is not required to make interest payments on the loan until the five-year period has ended. At the end of this period, if the company has met certain targeted sales and profit goals generated from exports, as established under the program, the loan must be repaid. Fafer received a loan under this program in 1996, the POR. We confirmed at verification that Fafer paid no interest on this outstanding loan during the POR.

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 determine this program to be an export subsidy pursuant to section 771(5A)(B) of the Act. In addition, by waiving the interest fees on the loan, the actions of the Walloon government conferred a benefit in accordance with section 771(5)(E)(ii) of the Act. Therefore, we determine this program to be countervailable.

To calculate the benefit from this long-term fixed-rate loan, the repayment of which is contingent upon subsequent events, we treated the balance on the outstanding loan during the 1996 review period as a short-term loan. We measured the interest savings on this outstanding loan during the 1996 review period using the long-term prime rate as the benchmark (see *Comment 1,* below.) We then divided the benefit for the POR by Fafer's total export sales during the POR. On this basis, we determine the net subsidies for this program to be less than 0.005 percent *ad valorem*. Our analysis of the comments on this program submitted by the interested parties are summarized in *Comment 7,* below.

2. Audio-Visual Calling Card

At verification, we found a new program under which Fafer received in 1990 a fixed-rate long-term loan to produce an audio-visual calling card to present to foreign businessmen. Under the terms of the loan, if a company meets targeted sales and profit goals generated from exports, it must repay the loan. In addition, companies are not obligated to pay interest during the five-year term of the loan. At verification, we found that Fafer had not made any interest payments on this outstanding loan during the POR.

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 determine this program to be an export subsidy pursuant to section 771(5A)(B) of the Act. In addition, by waiving the interest fees on the loan, the actions of the Walloon government conferred a benefit in accordance with section 771(5)(E)(ii) of the Act. Therefore, we determine this program to be countervailable.

To calculate the benefit on this loan, the repayment of which is contingent upon subsequent events, we treated the balance on the outstanding loan during the 1996 review period as a short-term loan. We measured the interest savings on this outstanding loan during the 1996 review period using the long-term prime rate as the benchmark (*see Comment 1,* below.) We then divided the amount allocated to the POR by Fafer's total export sales during the POR. On this basis, we determine the net subsidy for this program to be less than 0.005 percent *ad valorem*. Our analysis of the comments on this program submitted by the interested parties are summarized in *Comment 8,* below.

II. Programs Found Not to Confer Subsidies

A. Societe Nationale de Credite a l'Industrie (SNCI) Loans

In the *Preliminary Results,* we found that this program did not confer subsidies during the POR. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the *Preliminary Results.*

B. Exhibition Stands

In the *Preliminary Results,* we found this program did not confer subsidies during the POR. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the *Preliminary Results.*

C. Research and Development Loan Provided Under the Economic Expansion Law of 1970

In the *Preliminary Results,* we found that this program conferred subsidies during the POR based on our finding in the *Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Belgium (Final Determination)* 58 FR 37273; 37275 (July 9, 1993) that the 1970 Economic Expansion Law was regionally specific. However, at verification, we found that the authority for administering the law of 1970 has devolved to the regional governments. This new information led us to examine the specificity of R&D assistance provided under the 1970 Law in the context of the Walloon region rather than Belgium. On the basis of this analysis, we determine that this program is not specific in fact or in law. (*See* Memorandum to Holly A. Kuga from David Mueller dated March 8, 1999, *Decision Memorandum Re: Specificity of the Research and Development (R&D) Aid in the 1996 Countervailing Duty Administrative Review of Certain Cut-to-Length Carbon Steel Products from Belgium,* public version on file in room B–099 of the main Commerce Building.) Our analysis of the comments on this program, submitted by the interested parties, are summarized in *Comment 10* below.

III. Programs Found to be Not Used

In the Preliminary Results we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

A. Resider Program
B. European Commission-approved Grants
C. Early Retirement
D. The ''Invests'
E. SNSN
F. FSNW
G. Belgian Industrial Finance Company (Belfin) Loans
H. Government-Guaranteed Loans issued pursuant to the Economic Expansion Laws of 1959 and 1970
I. Programs under the 1970 Law
  1. Exemption of the Corporate Income Tax for Grants
  2. Accelerated Depreciation Under Article 15
  3. Exemption from Real Estate Taxes
  4. Exemption from the Capital Registration
J. ECSC Article 54 Loans and Loan Guarantees
K. ECSC Redeployment Aid
L. European Social Funds Grants
M. Interest Rate Subsidies Provided by Copromex
N. Employment Premiums
O. Short-term Export Credit

P. New Community Instrument Loans
Q. European Regional Development Fund Aid
R. ECSC Interest Rebates under Article 54
S. ECSC Conversion Loans under Article 56
T. ECSC Interest Rebates under Article 56

Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the *Preliminary Results.*

Analysis of Comments

Comment 1: Kreditbank Interest Rates vs. the IMF Rates

Petitioners argue that in the *Preliminary Results,* the Department used an incorrect benchmark interest rate for SNCI Loan 3. According to petitioners, the Department used as its benchmark, the 1988 annual Kreditbank interest rate instead of the Kreditbank interest rate for the month in which the loan was approved. Petitioners assert that the monthly Kreditbank interest rate is the correct rate and that by adding an appropriate spread to this base rate, the Department will find that the loan was provided on favorable terms. Petitioners assert that during the summer of 1988, interest rates fluctuated significantly, and that this justifies the use of the monthly Kreditbank interest rate rather than an annual average interest rate.

Petitioners argue that between June and September 1988, the Belgian prime interest rate reported by the International Monetary Fund (IMF) rose substantially. According to petitioners, the IMF prime rate represents the maximum rate charged by deposit money banks to prime borrowers. Petitioners assert that the Kreditbank interest rates used in the *Preliminary Results* contradict the IMF rates because: (1) The basis points added to loans extended to firms that the Department labels as uncreditworthy is substantially lower than the IMF prime rate for September 1988; and (2) during the three month period in 1988 when the IMF rates rose 125 basis points, the Kreditbank rate rose by only 23 basis points.

Petitioners argue that there are two explanations for the discrepancies between the Kreditbank rates and those reported by the IMF. First, Kreditbank interest rates could be for longer terms than the IMF prime rate, which covers short-term and medium-term loans. Petitioners maintain that this explanation is not likely because long-term interest rates are usually higher than short-term rates, and a comparison of Belgian government bond rates of differing maturities supports this relationship during 1988. Second, Kreditbank loans could be secured by collateral or have other features that make them lower risk loans than the loans upon which the IMF prime rate is based. In either case, the petitioners reiterate their assertion that the Kreditbank rate is an inappropriate benchmark.

Moreover, petitioners argue that information collected at verification demonstrates that the benchmark rate used in the *Preliminary Results* understates the cost of borrowing in Belgium because: (1) The average margin for a Kreditbank loan is 70 basis points while the benchmark rate used in the *Preliminary Results* includes only a margin of 15 basis points; and (2) the benchmark rate does not include upfront fees that several of the bankers indicate are commonly used. Petitioners maintain that the IMF reports the maximum prime rate to eliminate the effect of the upfront fees indicated in the banking verification report. (*See Verification Report for Private Commercial Banks* dated January 22, 1999, public versions on file in room B–099 of the main Commerce Building at 1). Petitioners also assert that Fafer does not have any type of customer relationship with Kreditbank because it had no long-term commercial debt and there is no evidence on the record that demonstrates that Fafer has ever borrowed from Kreditbank. Petitioners argue that Fafer probably borrowed from SNCI because it could not procure funds elsewhere.

Petitioners further argue that the verification reports show that the IMF rates submitted to the Department for use as the benchmark rates are reliable. Petitioners maintain that they have demonstrated that the IMF data accurately reflects the Belgian market at a particular point in time, September 1988. Moreover, petitioners claim that if the Department uses the IMF benchmark, it will, in the case of Fafer's SNCI loans, find that the benchmark rate is higher than the program interest rates. Thus, the Department will make the correct determination that SNCI loans were provided at rates that were inconsistent with commercial considerations. Since these loans are specific and provided at favorable preferential rates, petitioners maintain that the Department should countervail Fafer's SNCI loans in these Final Results.

Petitioners argue that the Department can not use Kreditbank rates as a benchmark, because at the time Fafer borrowed from SNCI, Kreditbank rates were not available to Fafer. Petitioners further argue that Kreditbank interest rates are inappropriate in this case for a national average benchmark because they are a single bank's interest rate.

As another alternative for the IMF rates, petitioners suggest using LIBOR plus 70 basis points. Petitioners maintain that the commercial bankers cited in the verification reports identified LIBOR as a common basis of lending in Belgium and the 70 basis points is the mid-point of the spreads cited by the bankers. In conclusion, petitioners maintain than no matter which benchmark rate the Department selects, it should use a monthly rate rather than an average annual rate, in light of the fluctuations noted above.

Fafer argues that petitioners did not understand the source for the Kreditbank interest rate used in the Department's calculation. Fafer maintains that this interest rate was derived by averaging Kreditbank's four published rates for 1988 and adding a 15 basis point spread to obtain the national average to the year. Fafer claims that the base interest rate used to determine benefits for this loan was not a specific rate in Kreditbank's schedule, but the average of 1988 published rates. Thus, petitioners' concerns are moot because the Department has incorporated the 15 point spread in its national average rate for 1988. In response to petitioners' claim that the bank verification report indicates that the average margin for a Kreditbank loan is 70 basis points, Fafer asserts that the same bankers who cited the 70 average basis points also noted that the number of basis points can fluctuate depending on the circumstances and in some cases could be zero. Moreover, Fafer claims that these bankers do not indicate that for the year in question the average of 70 basis points was applicable.

Respondent also argues that the Department has selected the Kreditbank rates in accordance with it's hierarchy for selecting comparable benchmark rates as stated in the *Final Determination* 58 FR 37273 (July 9, 1993). In compliance with its hierarchy of selecting a benchmark for the long-term loan, the Department first sought company-specific information on lending. Because this information was not available for Fafer, the Department went to the next level of its hierarchy, and used a national, average long-term rate. Respondent asserts that the Department's decision to use Kreditbank rates as the national long-term interest rates are consistent with its practice for long-term variable rate loans as described in the *1997 Proposed Regulations.* (*See Notice of Proposed Rulemaking and Request for Public Comments,* 62 FR 8818 (February 26,

1997)). Respondent asserts that under section 351.504(a)(1) of the *1997 Proposed Regulations* the Department uses comparable commercial loans to determine the benefit on a government-provided loan. According to respondent, the Department states in proposed section 351.504(a)(5) that for long-term loans the Department will use a comparable long-term loan. If the firm has no comparable commercial loans, as in Fafer's case, respondent asserts that the Department will use an average interest rate for comparable commercial loans, which it did in this review by applying the Kreditbank rates.

In response to petitioners' argument that the benchmark rate does not include ''upfront fees'' and is therefore unreasonable, Fafer maintains that only one of the bankers interviewed stated in his explanation of the Belgian banking system that up-front fees exist and could affect the interest rate. Fafer further asserts that this banker did not state that it was the normal banking practice in Belgium and that Fafer would be required to pay such fees.

In response to petitioners' claim that the IMF prime rate should be the benchmark, Fafer argues that the IMF prime rate is a short-term rate which should not be applied as a benchmark for Fafer's long-term variable interest rate loan. According to Fafer, the company received SNCI loan 3 on June 10, 1983 and was able to renegotiate the interest rate periodically. Fafer claims that although the Department's practice may be to treat long-term, variable rate loans as a series of short-term loans, the loan was not initially negotiated and received in 1988. Fafer asserts that in 1988, it was not possible to withdraw from the 1983 loan it was repaying and negotiate for a new loan with other commercial banks for a lower rate as petitioners suggest. With regard to this loan, Fafer maintains that its only option was to renegotiate the interest rate, which it did at the time short-term interest rates began to fall. Moreover, Fafer supports the Department's application of the average of Kreditbank rates for 1988 as the appropriate national average long-term variable interest rate.

In reply to petitioners' claim that the benchmark is not reliable because Fafer has no lending history and thus, did not have a special relationship with Kreditbank, Fafer reasserts that it has no long-term loans during the years in question; therefore, no bank is likely to have a better lending history with the company. Fafer argues that petitioners are incorrectly interpreting the verification report and maintains that the bankers in the verification report only indicate that a bank's relationship with its customer can influence the interest rate. Fafer argues that nowhere in the verification report or in the record does it state that a company without such a relationship with the bank would not be able to obtain the average rate, which is the benchmark.

Moreover, Fafer contends that, at verification in this review, the Department found that there was no support for using the IMF rate as a benchmark because it does not reflect the realities of banking in Belgium. Fafer further argues that the verification report shows that the Kreditbank rate is the correct benchmark because it is a specific country rate that takes into account the actual and highly competitive Belgian bank lending environment.

Fafer argues that, at the time the loan was renegotiated in 1988, fifteen years of repayment remained, and that comparing a 15-year loan to a short-term loan would not be appropriate.

Moreover, Fafer maintains that because the company has been completely responsible for repayment of the 1983 SNCI loan since 1990, and the commercial loan rates applicable to such a long-term loan have fallen below the rate still applicable to the SNCI loan, the Department does not have a basis for determining the government-provided loan provided a benefit to Fafer in these Final Results.

Department's Position: Petitioners suggest that the Department compare the SNCI loan, a government-provided long-term loan, to a monthly benchmark, using the month in which the SNCI loan agreement was renegotiated. In making the comparison of long-term government-provided loans to comparable commercial loans, the Department's practice is to use an annual average interest rate during the year in which the loan was received. (*See Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod From Italy* 63 FR 40474 (July 29, 1998)). We do not agree with petitioners argument that fluctuations in the IMF interest rates for Belgium for a few months during 1988 warrants the use of a monthly benchmark instead of an annual benchmark for all loans during the POR. Therefore, we are continuing to use an average annual rate as the benchmark and discount rates in these Final Results.

Petitioners also assert that the Department should use IMF rates as the benchmark for long-term lending in these Final Results. At verification, we discussed this possibility with commercial bankers, and none supported the IMF rates as a reasonable reflection of commercial market interest rates. (*See Verification Report for Commercial Banks* dated January 22, 1999). In fact, the bankers strongly indicated that these rates would not serve as an appropriate benchmark for long-term lending in Belgium. Bank officials also indicated that with regard to long-term lending, there is much competition among Belgian banks which puts a downward pressure on commercial interest rates. During the POR, bankers indicated that Belgian long-term interest rates were based on the Belgian prime rate. (*See Verification Report for Commercial Banks* dated January 22, 1999).

We agree with the respondent that IMF rates should not be used because they do not reflect market rates on long-term lending. As stated in the *Final Determination,* where the respondent did not have long-term loans from commercial banks during or before the year in which the terms of the government-provided loan were established, we used a national, average long-term rate. *See* 58 FR 37273; 37288–37289 (July 8, 1993). Consistent with our approach in the *Final Determination,* the Department has chosen the Kreditbank benchmark as a national average interest rate because these rates apply to long-term commercial loans in Belgian currency. In the *Final Determination,* we explained that the verified Kreditbank rates can have a margin between 0 to 30 basis points, and we used the average estimate of this spread, 15 basis points, in our calculations. Accordingly, in these Final Results, we are using as our benchmark the same rates as in the *Final Determination,* the fixed long-term rates provided by Kreditbank, to determine the benefit for non-recurring cash grants under the Law of 1970 that we have previously allocated in the original investigation, and the SNCI long-term loan renegotiated prior to 1992. Moreover, with regard to SNCI Loan 3, we will continue to use the annual average benchmark that was established in the original investigation.

With regard to benchmark rates for the period since the investigation (1992 through the 1996 POR), at verification we determined that the most appropriate benchmark rate would be based on the prime rates of the major commercial banks. We collected information on commercial long-term lending rates in Belgium from KBC (the bank resulting from the merger of Kreditbank with Cera Bank). Bank officials provided the prime rates which are the base rate of commercial banks in Belgium for credits with a term of five years or more. These prime rates are

based on the banks' cost of funding, the interest rate swap (IRS) and include a 40 to 50 basis points spread. Consequently, we have used 45 basis points as the average point spread above the IRS rate which is included in these prime rates. Bank officials also indicated at verification that the margin on long-term loans is, on average, 70 basis points above the IRS rate. Because we verified that the average spread was 70 basis points above the IRS rate, we added 25 basis points to the prime rate in our calculations to obtain our benchmark.

Comment 2: The Use of Varying Levels of Benefit Analysis to Countervail Benefits Received Under the Economic Expansion Law of 1970

In the *Preliminary Results,* the Department countervailed the benefits received from the cash grants under the 1970 Law only to the extent that they exceeded the benefits available under the July 17, 1959 Law (1959 Law) which had been found generally available. Petitioners maintain that this methodology is not consistent with section 355.44(n) of the Department's *1989 Proposed Regulations* and past practice in applying the tiered benefits analysis only to benefits under a single program. Petitioners claim that the Department departed from its prior practice in the original investigation and applied the tiered benefits analysis to the 1959 Law and the 1970 Law which are two separate programs. (*See 1989 Proposed Regulations,* 54 FR at 23382). Petitioners argue that the record evidence does not support the use of a varying levels of benefit analysis.

According to petitioners, the Department only analyzes two separate programs together in the context of an ''integral linkage'' analysis, in which the specificity of the two programs are examined as one. Petitioners cite the *1997 Proposed Regulations* (62 FR 8825) and state that the circumstances that lead to analyzing two programs as a single program include circumstances ''where two or more programs have the same particular purpose, bestow the same type of benefits, and confer similar levels of benefits on similarly situated firms.'' (*See Notice of Proposed Rulemaking and Request for Public Comments,* 62 FR 8818 (February 26, 1997).

Petitioners argue that in this case the 1959 Law and the 1970 Law provide different types and levels of benefits, and can not be considered a single program. For instance, the 1970 Law provides accelerated depreciation, income tax exemption for cash grants, and assistance for research and development, commercial program, and management studies. More importantly, petitioners argue, record evidence in this review suggests that the 1959 Law no longer exists. Petitioners assert that by 1980, the 1959 Law had been repealed for the Brussels-Capital region and the Flemish region. Petitioners assert that even if the 1959 Law continued to exist through 1991, the record indicates it was specific to the Walloon region after 1980 and can not be the basis for a varying levels of benefit analysis. Accordingly, in the Final Results, the Department should at a minimum countervail fully the cash grants received under the Law of 1970 after August 31, 1991, when the 1959 Law ceased to exist.

Petitioners further assert that the GOB's verification report in the original investigation indicates that the July 18, 1959 law (a separate 1959 Law) was repealed on December 30, 1970. Petitioners maintain that to the extent that this 1959 law is used in the Department's varying level of benefits methodology, there is no basis for the tiered levels of benefit analysis with regard to both previous and new countervailable subsidies.

In rebuttal, Fafer argues that the Department's tiered-benefits analysis for the same cash grants under consideration in this review was upheld by the U.S. Court of International Trade in *Geneva Steel et al.* V *United States,* 914 F. Supp. 563 (CIT 1996) (*Geneva Steel*). Fafer asserts that in *Geneva Steel,* the Court held that, the Department's regulations do not limit the tiered-benefit analysis to a single program. Fafer claims that petitioners' assertion, that these programs can not be deemed a single program because there are certain differences in the benefits received under the 1959 and 1970 Laws, contradicts the Court's holding in *Geneva Steel,* in which the Court ruled that the tiered-benefits analysis is not limited to a single program. Furthermore, Fafer maintains that the verification reports of the GOB and the GOW in this review indicate that these laws joined to form a part of a larger whole of GOB's programs to support Belgian economic development policy. According to Fafer, this treatment of the 1959 and 1970 laws supports the Department's findings in the *Final Determination* and the *Preliminary Results* that the noncountervailability of the 1959 law limits the countervailability of the 1970 law.

Furthermore, Fafer argues that contrary to petitioners claims, there is neither new factual information nor legal circumstances that warrant re-examination of the two-tiered benefits analysis in this review. Fafer argues that petitioners do not provide the proper evidence to substantiate their claim that the 1959 Law was repealed in 1980. Rather, the information cited by petitioners indicates that the 1959 Law was repealed for the Brussels-Capital region and the Flemish region in 1991. Fafer contends that the July 17, 1959 Law is the legal basis for its cash grants received in the early 1980s, not the July 18, 1959 Law, as petitioners suggest. Moreover, Fafer asserts that the Department's verification reports in this review indicate that, contrary to petitioners assertions, the 1959 Law continued past the years Fafer received benefits.

In addition, Fafer maintains that the record evidence in this review indicates that only the level of subsidies differed between the 1959 and 1970 Laws, even after the administration of the program was transferred to the GOW. Fafer claims that because it has not received any new benefits under the 1970 law from the time of the original investigation, to abandon the two-tiered analysis in this review would be an usurpation of the Court's decision in *Geneva Steel.* Thus, the Department does not have a basis for departing from its tiered-benefits analysis in these

Department's Position: In the *Final Determination* we found cash grants and interest subsidies under the Law of 1970 to be specific because eligibility was limited to firms located in certain regions. However, because the same benefits were provided under the 1959 Law, which was found to be generally available (*see Certain Steel Products from Belgium* 47 FR 39304; 39305 (September 7, 1982,) we countervailed benefits under the 1970 Law only to the extent that they exceeded benefits available under the 1959 Law. Based on the evidence in the record of that case, we determined that this treatment was in accordance with tiered levels of benefits in *Final Negative Countervailing Duty Determination: Certain Granite Products from Italy,* 53 FR 27197 (July 19, 1988). In *Geneva Steel,* the CIT affirmed the Department's decision on this issue, noting that it was consistent with prior practice.

At verification in this review, we confirmed that the 1959 Law was in effect in the Flanders and the Brussels-Capital regions of Belgium prior to 1992, the period covered in the investigation. Therefore, benefits under the 1959 Law were generally available in Belgium at the time Fafer received its cash grants and interest rate subsidies examined in the *Final Determination.* Moreover, there is no new evidence on the record in this review that warrants a change in

this review of our finding in the *Final Determination,* that firms qualifying for benefits under the 1970 Law would also qualify for benefits under the 1959 Law. Therefore, we are not changing our treatment of these subsidies received by Fafer prior to 1988 in these Final Results.

Comment 3: Amortization of Countervailable Grants Using the Mid-Year Convention

Petitioners argue that instead of using its standard amortization method, the ''annuity due'' method, the Department should use the ''mid-year convention'' method to countervail the cash grants. According to petitioners, the ''mid-year convention'' method of amortizing subsidies is more accurate with respect to the commercial reality of a company's ongoing production and sales activity because it presumes that benefits are being used throughout the year and that generally subsidies are being received in the middle of the year of benefit. In contrast, the ''annuity due'' method is inconsistent with commercial reality because it presumes that subsidies are always received at the beginning of the year and that the subsidy benefits allocated to that year are immediately expensed at that time. Moreover, petitioners maintain that the mid-year convention method is consistent with other allocation methods that the Department uses. For example, in the remand determination in *British Steel I,* the Department reaffirmed that financial events that occur sometime within a specific year should be deemed to have occurred at the mid-point of the year to eliminate any bias. (*See Final Results of Redetermination Pursuant to Court Remand on General Issue of Allocation,* Case No. C–100–004 at 42 n.5 (June 30, 1995.) Petitioners assert that the Department's current allocation method is not consistent with *British Steel I* because it does not eliminate bias by taking into account events that occur at the mid-point of the year.

In addition, petitioners claim that the mid-year convention is consistent with the Department's view that a subsidy is deemed received by a company on the actual date of receipt. Petitioners claim that this method would, on average, more accurately reflect the date of receipt across all programs.

Fafer argues that the Department has chosen to use the annuity due method, and that the application of a different allocation methodology is equivalent to a reallocation of subsidies for which the Department has established benefit streams. Fafer maintains that the Department has stated that in cases where an allocation period has been established in an earlier segment of a proceeding, it will not reallocate subsidies over a different period of time. In conclusion, Fafer argues that the Department should continue to apply its standard amortization methodologies in these Final Results.

Department's Position: The formula for allocating non-recurring benefits over time, which was used in this review, has been a part of the Department's longstanding practice since it appeared in the Subsidies Appendix to *Certain Cold-Rolled Carbon Steel Flat Products from Argentina,* 49 FR 18006 (April 26, 1984). As explained in the *Preamble to Countervailing Duties; Final Rule,* 19 CFR Part 351, at 205 (November 25, 1998), we examined several alternative methodologies, including the mid-year methodology and found these methodologies unduly complicated. Our current methodology, which was applied in this case, has been uncontroversial and worked well in past cases. Therefore, we see no compelling need to change our methodology in this review and have continued to apply our long-standing allocation methodology for non-recurring grants in these Final Results.

Comment 4: Amortization Period Based on the IRS Class Asset Life Tables

Petitioners claim that the Department's company-specific average useful life (AUL) methodology is flawed as is demonstrated by Fafer's resulting calculation of an AUL that exceeds the period over which the company actually depreciates its assets. Petitioners assert that Fafer's calculated 26-year AUL is not acceptable given Fafer's admission that no assets are depreciated for more than 20 years and most assets are depreciated over 15 years or less. Moreover, petitioners argue that the Department's company-specific AUL methodology will provide inconsistent results when two companies with similar asset bases use different depreciation methods. According to petitioners, the Department's company-specific AUL methodology has not been mandated by a Court or reviewing body, and is not required by any international agreement. Therefore, petitioners contend that the Department should return to the 15 year AUL period based on the Internal Revenue Service (IRS) class asset life tables in these Final Results.

In rebuttal, Fafer asserts that petitioners recognize that Fafer derived its 26-year company-specific average useful life according to the Department's instructions which were based on the CIT's decision in *British Steel I* and upheld by the Court in *British Steel II.* Fafer maintains that in *British Steel I,* the Court ruled against using the IRS Class Asset Life Table to derive the allocation for non-recurring subsidies. Fafer contends that as a result, the Department determined ''the most reasonable method of deriving the allocation period for the nonrecurring subsidies is a company-specific average useful life of non-renewable physical assets.'' *See* 63 FR at 48189.

In addition, Fafer contends that using the 15-year IRS amortization rule would be in conflict with the tenets of the URAA that give deference to the standards and generally accepted accounting principles of the country and the company under investigation or review. Fafer asserts that the company-specific AUL determined by the Department was derived from questionnaire responses based on Fafer's own data. Therefore, Fafer argues that a factually derived AUL should not be altered for the convenience of the IRS rule, which does not sufficiently address the actual allocation and accounting methods in this review.

Department's Position: As stated in our *Preliminary Results,* we have applied in this administrative review the methodology affirmed in the remand determination *British Steel II* 929 F.Supp. 426, 439 (CIT 1996). With regard to petitioners' claim that the Department's methodology is flawed because Fafer's calculated AUL does not correspond to the company's reported maximum depreciation rate of 20 years, a company's asset depreciation schedule for accounting purposes does not always correspond to the productive life of these assets. We explain in the *Preamble* to the Department's *1997 Regulations* that assets that are in service, even if they have been fully depreciated, are included in the AUL calculation. *See* 62 FR 8818; 8828 (February 26, 1997). In Fafer's case for example, several assets in use since the 1960s that had been fully depreciated in accordance with the company's accounting policy, such as the electric arc furnace, the four high rolling mill, and the continuous caster, have been included in the AUL calculation. Therefore, Fafer's depreciable lives for accounting purposes are not commensurate with the AUL calculation which includes the values of fully depreciated assets while they are still in service. Accordingly, we are using Fafer's company-specific AUL of 26 years to allocate non-recurring grants that were not previously allocated in the original investigation.

Comment 5: The Countervailability of Grants Received by Fafer's Consolidated Subsidiaries

Petitioners argue that in the *Preliminary Results,* the Department failed to countervail grants provided since the original investigation to two of Fafer's affiliates, PFM and CD. Petitioners assert that PFM and CD are almost wholly-owned by Fafer and are fully consolidated with Fafer. Moreover, both of these companies are located within Fafer's production facilities. Petitioners maintain that at verification, the Department found that PFM and CD received cash grant subsidies under the Law of 1970. In addition, petitioners contend that the verification proves that these grants benefitted subject merchandise. Therefore, petitioners argue that the Department should countervail these grants in the Final Results of this review.

Petitioners note that at verification in this review, the Department found that the two grants received by PFM in 1996 were for sheet metal finishing and painting and for sand blasting and painting of flat, steel or nonferrous products, prior to their production. The grant received by CD in 1993 was for an uncoiling machine. Petitioners dispute company officials claims made at verification that the steel coils that CD and PFM decoil, which are produced on a STECKEL mill, were too thin to be cut-to-length carbon steel plate and that PFM's processing equipment was not related to the production of the subject merchandise because the subject merchandise was not painted, sand blasted, or otherwise treated. Petitioners acknowledge that coils produced on the STECKEL mill which are sold in coils could be outside the scope of this countervailing duty order on cut-to-length carbon steel plate. However, petitioners assert that if these same coils are decoiled and cut, they are within the scope of this order. Petitioners contend that at verification, the Department observed that decoiling and slitting of steel in coils occurs at CD and PFM's facilities. Moreover, petitioners argue that the Fafer verification report indicates that coils made on the STECKEL mill are less than 10 mm thick, while the scope of the order covers plate as thin as 4 mm. Finally, petitioners note that at verification of the 1995–1996 administrative review of the antidumping duty order on cut-to-length carbon steel plate, the Department found that PFM's production line ''is used mainly for carbon steel products, both structural and pressure vessel'' and that CD ''is used to process carbon, alloy, and stainless steel coils.'' [1]

Petitioners contend that Fafer has not demonstrated that the grants to CD and PFM are tied to products other than the subject merchandise. Petitioners further argue that the evidence on the record indicates that the decoiling machine is used to produce cut-to-length plate, or at least can be used to produce the subject merchandise. Moreover, petitioners argue that contrary to the official's claim at verification (that PFM's grant to purchase sand blasting and painting equipment was unrelated to the subject merchandise because ''the subject merchandise did not have any of these finishings,'' (*see* Fafer's Verification Report at 6)) the countervailing duty order includes all plate products ''whether or not painted, varnished, or coated with plastics or other nonmetallic substances.'' *See Preliminary Results,* 63 FR 48189. Petitioners further claim that according to the publication *Iron and Steel Works of the World,* plates up to 3,000mm wide produced by the STECKEL mill have been available since 1994 from Fafer. *See Iron and Steel Works of the World* at 25 (Metal Bulletin Books 12th ed.) (1997).

Petitioners also dispute Fafer's claim that CD and PFM did not engage in any financial transactions with Fafer, noting that the company does not cite any record evidence to support this assertion. Petitioners contend that subsidies to CD's and PFM's should be included in the numerator because the production services that they perform for Fafer-produced and sold products is included in the denominator (*i.e.,* Fafer's total sales). Thus, petitioners claim, CD's and PFM's value-added is a part of Fafer's reported total sales and grants these companies received must be included in the numerator.

In response, Fafer argues that there is no evidence on the record that indicates that Fafer's subsidiaries, CD and PFM, produced the subject merchandise during the POR. According to Fafer, petitioners acknowledge that coils made on a STECKEL mill are potentially outside the scope of the countervailing duty order. Then, Fafer asserts, further finished coils should also be outside the scope. Moreover, in support of its assertion that subsidies to CD and PFM in any case would not be attributable to Fafer, the company cites section 351.524(b)(6) of the Department's 1997 proposed regulations, which state that ''[t]he Secretary normally will attribute a subsidy to the products produced by the corporation that received the subsidy.''

Fafer claims that the company's sales of subject merchandise to the U.S. during the POR did not include any of the processing described by petitioners at either of the two subsidiaries. Fafer further maintains that the company verification report indicates that CD and PFM own their own facilities and do not have the production equipment that Fafer does. Fafer contends that although petitioners argue that the machinery at CD and PFM could be used to process subject merchandise, in fact, Fafer's shipment of the subject merchandise to the U.S. during the POR did not have any processing done at CD or PFM. Therefore, Fafer argues the issue is whether it produced subject merchandise that was exported to the U.S. which benefitted from the further processing at CD and PFM.

Fafer contends that countervailing CD and PFM's grants in these final results would contradict the Court of International Trade's rulings in *Aimcor et. al.* v. *U.S.* 18 CIT 1117; 871 F. Supp 447, (1994), and *Armco, Inc.* v. *U.S.* (*Armco*), 14 CIT 211; 733 F. Supp. 1514 (1990). Specifically, Fafer asserts that under these Court decisions, a subsidy received by a subsidiary may not be countervailed against products exported by the parent company, unless the subsidy was tied to the subject merchandise exported by the parent.

Department's Position: We reject respondent's assertion that in order for subsidies to CD and PFM to be countervailable, the exports of the subject merchandise to the United States during the POR must have been processed by CD or PFM. Initially, such an approach is not required by the countervailing duty statute, which specifically states that ''the administering authority is not required to consider the effect of the subsidy in determining a subsidy exists.'' Section 771(5)(C) of the Act. Under Fafer's approach, however, the Department would be required to examine specific sales from subsidized subsidiaries that are capable of producing subject merchandise to determine, on a sale by sale basis, whether the merchandise exported to the U.S. ''passed-through'' the subsidiary. Then, and only then, under respondent's approach, would a subsidiary's countervailable subsidies be attributable to the subject merchandise. Presumably, this approach could lead the Department to countervail such non-recurring subsidies in one review, but not in another. Such an approach leads to absurd results and is simply not

[1] (*See Verification of Cost of Production and Constructed Value Data* dated March 24, 1997, public version on file in CRU).

required under law or practice. Again, as stated in the *GIA*, ''nothing in the statute directs the Department to consider the use to which subsidies are put or their effect on the recipient's subsequent performance * * *. nothing in the statute conditions countervailability on the use or effect of a subsidy. Rather, the statute requires the Department to countervail an allocated share of the subsidies received by producers, regardless of their effect.'' 58 FR at 37260; *see also British Steel* v. *United States*, 879 F. Supp. 1254, 1298 (CIT 1995) (*British Steel*), *appeals docketed*, Nos. 96–1401 to –06 (Fed. Cir. June 21, 1996); *British Steel Corp* v. *United States*, 9 CIT 85, 95–96, 605 F. Supp. 286, 294–95 (1985) (''[I]t is unnecessary to trace the use'' of funds), *citing Michelin Tire Corp.* v. *United States*, 4 CIT 252, 255 (1982), vacated on agreed statement of facts, 9 CIT 38 (1985).

As outlined above, in the *Facts Available* section of this notice because of the level of affiliation and the fact that both subsidiaries are capable of producing subject merchandise, it is appropriate to attribute CD and PFM's cash grants to Fafer's total sales including sales of the subsidiaries.

We also disagree with respondent's assertion that the Court's decisions in *Aimcor* and *Armco* do not permit the attribution of CD and PFM's benefits to Fafer. Respondent reliance on these cases for the proposition that the Department may not attribute countervailable benefits to subsidiary companies to sales of the parent company, unless the parent's shipment of the subject merchandise exported to the U.S. during the POR was processed by the subsidiaries, is misplaced. The facts in *Aimcor* and *Armco* are substantially different from those in the instant review. In *Aimcor*, the relationship between parent and subsidiary was the critical factor in determining whether subsidies to the subsidiary are attributable to the parent company. Moreover, the issue in *Aimcor* was whether a subsidy had been bestowed at all. The issue was not whether countervailable subsidies that had been bestowed on a wholly-owned subsidiary were attributable to the parent company.

Furthermore, the Court's ruling in *Armco* does not support Fafer's position. As we noted in *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review* 62 FR 53306 (October 14, 1997) the court understood that attribution decisions in the Department's cases ''turn[ed] essentially upon the Department's findings in particular cases.'' (*See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review* 63 FR 18367; 18371 (April 15, 1998). The court also recognized that ''the Department has attributed benefits received by one company to a related company.'' *Id.* (emphasis in original). Accordingly, we do not agree that *Armco* represents an endorsement of respondent's position of not attributing subsidies received by a subsidiary to the parent company.

Comment 6: Tax Subsidies Under the Law of 1970

According to petitioners, in *Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Plate in Coils from Belgium* (*Stainless Steel*), the Department found additional tax subsidies under Articles 15 and 16 of the Law of 1970. *See Stainless Steel*, 63 FR 47239 at 47242 (September 4, 1998). Under Article 15, firms can declare twice the standard depreciation for assets acquired using grants received under the 1970 Law, and under Article 16, assets obtained with 1970 Law grants can be exempted from real estate taxes for up to five years. Petitioners assert that the Department preliminarily found both of these programs countervailable and calculated the subsidy rate from the accelerated depreciation program and the real estate tax exemption program to be 0.49 percent *ad valorem* and 0.04 percent *ad valorem*, respectively.

Petitioners contend that at verification Fafer and the GOW maintained that Fafer had not received any benefits under these programs, however, they failed to include the use of these programs by CD and PFM, Fafer's affiliates. Petitioners argue that the verification exhibits show that PFM may have benefitted from these programs. Moreover, petitioners assert that because Fafer failed to disclose benefits under these programs, the Department should use facts available and apply the rates calculated in *Stainless Steel* to calculate the benefits received by Fafer in these Final Results.

In rebuttal to petitioners' assertion that PFM's double depreciation should be applied to Fafer, respondent maintains that PFM was not involved in the production, processing, or export of the subject merchandise to the U.S. during the POR. Fafer contends that the verification reports indicate that it did not receive these tax subsidies and that such benefits were not attached to its exports. In conclusion, Fafer asserts that PFM's supposed benefits from accelerated depreciation should not be included in the calculation of Fafer's net subsidy rate in these Final Results.

Department's Position: Although PFM's verification exhibits indicate that it was approved to receive assistance under additional tax programs under the Law of 1970, we have no evidence on the record that PFM actually received these benefits during the POR. With respect to real estate taxes, information collected at verification indicates that CD and PFM did not use these grants to purchase real estate. Moreover, with regard to benefits from accelerated depreciation, Fafer's consolidated financial statement, which includes PFM, indicates that the consolidated group did not use accelerated depreciation for financial reporting purposes during the POR. Therefore, we are not including benefits to PFM from these programs in the calculation of Fafer's net subsidy rate in these Final Results. We will, however, examine benefits under these programs provided to Fafer's affiliates, CD and PFM in future administrative reviews.

Comment 7: Promotion Brochure Loan

Petitioners argue that in the Preliminary Results, the Department incorrectly found that the fixed-rate, long-term loan Fafer received for the publication of the promotion brochure did not provide countervailable benefits, because the Department compared the interest rate paid on the loan to (an inaccurate) benchmark rate, that was lower than the program rate. Petitioners also assert that the Department confirmed at verification that no interest was paid on this loan during the POR. Furthermore, petitioners argue that the verification reports indicate that Fafer does not anticipate paying any interest on the loan which is granted on a contingent basis. The loan agreement indicates that the company does not have to make any payments on this loan until after five years, at which time the firm is required to pay only if the targeted export sales volume and profit level has been obtained during the five year period. Petitioners maintain that the likelihood of Fafer meeting the contingent export sales and profit target levels is unlikely. Therefore, the Department should treat this loan as a grant pursuant to section 351.505(d)(2) of the Department's regulations in these Final Results. If not, petitioners assert that this loan should at a minimum be treated as an interest-free contingent liability loan under

section 351.505(d)(1) of the Department's regulations.

In rebuttal, Fafer argues that the Department should not countervail the export promotion brochure loan. Fafer maintains that although the loan was received in 1996, the end result of the loan will not be known until it matures. According to Fafer, there is no information pertaining to whether this loan will be forgiven or whether it will be repaid at the fixed rate specified in the agreement. Fafer argues that until the loan matures and it is known whether it will be repaid and at what rate of interest it is repaid, there may be no benefit. On the other hand, if at maturity the total amount of the loan is not repaid, Fafer contends that the portion of the loan that is unpaid would be treated as a grant in the year the loan is forgiven. Further, Fafer argues that even assuming the loan is not repaid, the only amount to be considered during the POR would be the annual amount of interest for part of 1996. Fafer maintains that the benefit from this scenario is less than 0.00015 percent and should not be included in the countervailing duty rate in these Final Results.

Department's Position: We agree with petitioners that this loan provides countervailable benefits during the POR. However, at verification we found that the assistance provided under this program was an outstanding loan during the POR, and that this loan had not yet been forgiven. Moreover, the respondent had no knowledge of whether it would meet the targeted export goals which would result in repayment of the loan. Because the loan under this program has not yet been converted into a grant, we are treating this assistance as a contingent liability loan in these Final Results. *See New Programs Determined to Confer Subsidies* section above for a detailed description of the calculation of this subsidy.

Comment 8: Promotion Audio-Visual Loan

Petitioners argue that at verification, the Department found that Fafer had received an interest-free loan in 1990 to produce an audio-visual calling card. Petitioners assert that the agreement for this loan indicates that the company must repay the loan only if it obtains the minimum volume and profit increases in export sales required within the five year time period which begins at the closing of the first fiscal year in which the loan is received. Petitioners also maintain that although the loan agreement indicates that the loan was interest-free for only five years, there is no indication that Fafer paid any interest or made any repayment on the principle. Moreover, petitioners contend that on April 7, 1997, the GOW converted the loan into a grant, and Fafer subsequently wrote the loan off its books and amortized the amount.

Petitioners argue that this loan, which was forgiven in 1997, should be countervailed as a grant during the POR because Fafer knew that the contingency, the minimum threshold level increase in exports and profits, would not be met in 1996, the POR. Moreover, petitioners maintain that the Department should further countervail the portion of the subsidy which was an interest free loan until the time of forgiveness.

Department's Position: We agree with petitioners that the loan for an audio-visual calling card found at verification conferred benefits during the POR. Our calculation of the benefit from this program is described above under the section titled ''*New Programs Determined to Confer Subsidies.*'' We found at verification that this loan was outstanding during the POR and became a grant in 1997, subsequent to the POR. Therefore, we have treated this assistance as a contingent liability interest-free loan in these Final Results and calculated the benefit using information collected at verification as discussed in the *Facts Available* section of this notice.

Comment 9: Fafer's Consolidated Sales Value

Petitioners argue that since two of Fafer's consolidated subsidiaries received countervailable subsidies during the POR, the Department should use Fafer's consolidated sales value as the denominator instead of the unconsolidated sales value used in the Preliminary Results. Petitioners maintain that the Department sought data on consolidated sales at verification and Fafer claimed that it was unable to calculate consolidated sales on a calendar year basis. Accordingly, petitioners argue that the Department should use facts available to calculate the consolidated sales value and use this information as the denominator in these Final Results.

In rebuttal, Fafer argues that it has provided sufficient information regarding the fiscal/calendar year and that the company also submitted half-year data to assist in tracking company records. Fafer contests petitioners' suggestion of constructing consolidated sales based on percentage factors, especially since the sales of Fafer's subsidiaries are not at issue. Fafer asserts that the verification report supports the Preliminary Results in which the Department used Fafer's unconsolidated sales. Accordingly, Fafer argues unconsolidated sales should be used in the Department's calculations of these Final Results.

Department's Position: Because we are finding that grants provided under the 1970 Law to Fafer's subsidiaries, CD and PFM, conferred countervailable benefits on the subject merchandise during the POR (*see Comment 5* above), we must include their sales in the denominator to determine the subsidy rate. Fafer's consolidated sales for the POR have not been submitted in this review, notwithstanding Department requests for this information, and we were not able to obtain this information at verification. Therefore, in accordance with Section 776(a) of the Act, we have used facts available to derive Fafer's consolidated sales. To calculate Fafer's consolidated sales, we reduced Fafer's unconsolidated sales for the POR, by the same percentage difference between Fafer's 1995/96 fiscal year consolidated and unconsolidated sales in the company's financial statements. We applied this ratio to Fafer's reported unconsolidated 1996 sales to obtain an estimated denominator for the POR. We are using this calculated consolidated sales figure in these Final Results.

Comment 10: Green Light Treatment for the Research and Development Loan (R&D Loan) Under the Law of 1970

Fafer first maintains that the Department did not provide any substantive reason for denying its green light claim for the Research and Development Loan (R&D Loan) in the preliminary results, and that the claim should be considered for these final results. According to Fafer, the R&D Loan meets the greenlight criteria of section 771(5B)(B) of the Act.

According to petitioners, the Department correctly rejected Fafer's claim that the interest-free R&D loan should be treated as a green light subsidy in the preliminary results. Petitioners assert that the Department properly rejected Fafer's claim on both a procedural and substantive grounds. Moreover, petitioners argue that Fafer has not demonstrated that the R&D loan meets the statutory criteria for green light claims under the conditions of the SCM Agreement.

Petitioners also argue that because interest subsidies under the 1970 Law are specific, the interest-free loan is countervailable. Petitioners contend that the Department stated in its preliminary results that this program was specific because it provides incentives to promote economic development in designated development zones.

Petitioners assert that this determination is consistent with the final determination in which the Department found all grants and interest subsidies provided under the 1970 Law to be specific and countervailable.

Petitioners contend that subsequent to the preliminary results of this review, the GOB made a new specificity claim. Specifically, petitioners maintain that the GOB claims that the first part of the 1970 Law deals with aid to development zones and is regionally specific, while the second part of the 1970 Law involves research and development programs and is generally available. Petitioners argue that the record does not support this claim.

Petitioners assert that Article 25 of the 1970 law, under which this subsidy was granted, does not indicate that assistance under this Article is generally available. Petitioners argue that at verification, the Department found that this subsidy was provided under Article 25 of the 1970 Law and that equivalent benefits were not available to firms outside of the development zone areas. Thus, petitioners contend, benefits bestowed under this program were regionally specific at the time Fafer received its benefits.

Further, petitioners argue that to the extent Article 25 subsidies were changed by later amendments to the 1970 Law, these amendments do not affect the specificity of Fafer's loan. Petitioners contend that at verification the Department found that Article 25 had been replaced by the Walloon Decree of July 5, 1990. However, petitioners argue this change was not implemented until September 29, 1994. Petitioners assert that Fafer applied for its loan in 1988, was approved for the loan in 1989, and received all payments by 1992, years before changes to this program took place. Therefore, petitioners argue that Fafer has not demonstrated that this program is not specific.

Department's Position: As noted above, in the section titled *Programs Found Not to Confer Subsidies,* on the basis of our findings at verification, we find this program to be not specific in these final results. *See* (*See* Memorandum to Holly A. Kuga from David Mueller dated March 8, 1999, *Decision Memorandum Re: Specificity of the Research and Development (R&D) Aid in the 1996 Countervailing Duty Administrative Review of Certain Cut-to-Length Carbon Steel Products From Belgium,* public version on file in room B–099 of the main Commerce Building.) Accordingly, we have not addressed Fafer's claim for green light status.

Final Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1996 through December 31, 1996, we determine the net subsidy for Fafer to be 0.35 percent *ad valorem*.

As provided for in the Act, any rate less than 0.5 percent *ad valorem* in an administrative review is *de minimis.* Accordingly, the Department intends to instruct Customs to liquidate, without regard to countervailing duties, shipments of the subject merchandise from Fafer exported on or after January 1, 1996, and on or before December 31, 1996. Also, the cash deposits required for these companies will be zero.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States,* 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States,* 822 F.Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Final Determination.* These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1996 through December 31, 1996, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice 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 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(7)).

Dated: March 8, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–6288 Filed 3–15–99; 8:45 am]

BILLING CODE 3510–DS–PZ

DEPARTMENT OF COMMERCE

International Trade Administration

[C–894–802]

Notice of Initiation of Countervailing Duty Investigation: Certain Cut-To-Length Carbon-Quality Steel Plate From the Former Yugoslav Republic of Macedonia

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

EFFECTIVE DATE: March 16, 1999.

FOR FURTHER INFORMATION CONTACT: Eva Temkin, at (202) 482–1167, Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigation

The 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 regulations codified at 19 CFR Part 351 (1998) and to the substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998 (63 FR 65348).

The Petition

On February 16, 1999, the Department of Commerce (the Department) received a petition filed in proper form on behalf of U.S. Steel Group, a Unit of USX Corporation, Bethlehem Steel Corporation, Gulf States, Inc., IPSCO Steel Inc., Tuscaloosa Steel Corporation, and the United Steelworkers of America (the petitioners). Supplements to the petition were filed on February 26 and March 2, 1999.

In accordance with section 702(b)(1) of the Act, petitioners allege that manufacturers, producers, or exporters of certain cut-to-length carbon-quality steel plate (CTL plate or subject merchandise) in the Former Yugoslav Republic of Macedonia receive countervailable subsidies within the meaning of section 701 of the Act.

The Department finds that petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined under sections 771(9)(C) and (D) of the Act. The petitioners have demonstrated sufficient industry support (*see Determination of Industry Support for the Petition* below).

Scope of the Investigation

The products covered by this scope are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of this investigation unless otherwise specifically excluded. The following products are specifically excluded from this investigation: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to this investigation is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that the scope in the petition accurately reflects the merchandise for which the domestic industry is seeking relief. Moreover, as we discussed in the preamble to the Department's regulations (62 FR at 27323), we are setting aside a period for parties to raise issues regarding product coverage. In particular, we seek comments on the specific levels of alloying elements set out in the description above, the clarity of grades and specifications excluded from the scope, and the physical and chemical description of the product coverage. The Department encourages all parties to submit such comments by March 29, 1999. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Consultations

Pursuant to 19 CFR 351.202(i)(2), the Department invited representatives of the Government of the Former Yugoslav Republic of Macedonia for consultations with respect to the petition filed. On March 3, 1999, the Department held consultations with a representative of the Former Yugoslav Republic of Macedonia. *See* the March 8, 1999, memoranda to the file regarding these consultations (public documents on file in the Central Records Unit of the Department of Commerce, Room B–099).

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing

support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. Section 771(10) of the Act defines domestic like product as ''a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigation.

In this case, ''the article subject to investigation'' includes certain products which have not previously been included within the scope of investigation involving cut-to-length carbon steel products. To this end, the Department has reviewed reasonably available information to determine whether the products within the scope of the investigation constitutes one or more than one domestic like product(s).

Some steel products classified as alloy steels based on the HTSUS are recognized as carbon steels by the industry and/or the marketplace. For example, *The Book of Steel*, a 1996 publication by Sollac, a flat-rolled steel division of Usinor, one of the largest steel companies in the world, identifies HSLA as falling within categories of plain carbon sheet steels (*see* chapter 44). Also, *Carbon and Alloy Steels*, published in 1996 by ASM International, a major materials society, indicates that HSLA steels are not considered to be alloy steels, but are in fact similar to as-rolled mild-carbon steel and are generally priced by reference to the base price for carbon steels (*see* page 29). *Carbon and Alloy Steels* also distinguishes between carbon-boron and alloy-boron steels; the former may contain boron at levels which would classify it as alloy under the HTSUS, but would not classify it as an alloy steel commercially because, unlike the alloy-boron steels, higher levels of other alloying elements are not specified (*see, e.g.*, pages 159 and 161).

The Department has considered that, with respect to certain steel products, such as HSLA, the petitioners indicate that these steel products are manufactured by similar processes, are priced from similar bases, are marketed in comparable ways, and are used for similar applications as carbon steels.

Further, we confirmed this description with product experts at the Department and the International Trade Commission (ITC). Other than the fact that the AISI technically defines alloy steels based on alloy levels comparable to those in the HTSUS, none of the individuals cited reasons why the products in question might be treated as distinct from cut-to-length carbon steels. For these reasons, the Department determines that for purposes of this investigation, the domestic like product definition is the single domestic like product defined in the ''Scope of the Investigation'' section above.

Based on our analysis of the information and arguments presented to the Department and the information independently obtained and reviewed by the Department, we have determined that there is a single domestic like product which is defined in the ''Scope of the Investigation'' section above. Moreover, the Department has determined that the petition (and subsequent amendments to the petition) and supplemental information obtained through Department research contain adequate evidence of industry support and, therefore, polling is unnecessary. The Department received no opposition to the petition. The petitioners established industry support representing over 50 percent of total production of the domestic like product.

Therefore, for this investigation, petitioners have established a level of support for the petition commensurate with the statutory requirements. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See* the March 8, 1999, memoranda to the file regarding the initiation of this investigation (public documents on file in the Central Records Unit of the Department of Commerce, Room B–099).

Injury Test

The Former Yugoslav Republic of Macedonia is not a ''Subsidies Agreement country'' within the meaning of section 701(b) of the Act. Therefore, the International Trade Commission (ITC) is not required to determine whether imports of the subject merchandise from the Former Yugoslav Republic of Macedonia materially injure or threaten material injury to a U.S. industry.

Initiation of Countervailing Duty Investigation

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to petitioners supporting the allegations. Because the Former Yugoslav Republic of Macedonia is not a Subsidies Agreement country, the requirements of section 701(a)(2), which relate to injury, do not apply to this proceeding.

The Department has examined the petition on CTL plate from the Former Yugoslav Republic of Macedonia and has found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of CTL plate from the Former Yugoslav Republic of Macedonia received countervailable subsidies during the period of investigation (POI), January 1, 1998 through December 31, 1998. *See* the March 8, 1999, memoranda to the file regarding the initiation of this investigation (public documents on file in the Central Records Unit of the Department of Commerce, Room B–099).

Company History

Petitioners have made specific subsidy allegations with respect to one CLT producer: Rudnici i Zelezara, known as ''Makstil.'' Makstil is the spun-off entity from Skopje Steel Works (''Skopje''), a state-owned steel company. During 1996, the Government of the Former Yugoslav Republic of Macedonia spun-off Skopje into thirteen companies to prepare for privatization. Makstil received Skopje's CTL plate production. In 1997, Makstil was privatized when a Swiss-Italian trading company, Duferco, purchased a majority interest in Makstil with the remaining shares sold to other private investors.

Programs

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in the Former Yugoslav Republic of Macedonia:

Government of Yugoslavia Programs (Prior to July 1991)

1. *''Gains on Money'':* We will investigate whether the producer/exporter of subject merchandise received loans that were still outstanding during 1998, at negative real interest rates, or whether the producer/exporter had debt forgiven in order to prevent financial losses.

2. *''Quasi-subsidies'':* We will investigate whether non-recurring subsidies were provided through the Yugoslavian system of income redistribution, which appears to be a complex system of inflationary accounting methods and involuntary transfers of funds between profitable and unprofitable enterprises.

Government of the Former Yugoslav Republic of Macedonia Programs (After July 1991)

1. Subsidies Provided to Enterprises That Are ''Restructuring''

With respect to this allegation, we will investigate whether countervailable subsidies were provided to Makstil or Skopje Steel in conjunction with the government's economic restructuring and privatization program. Petitioners have also alleged that Makstil and Skopje Steel were unequityworthy and uncreditworthy. They have submitted sufficient information to provide a reasonable basis to believe or suspect that the companies were unequityworthy and uncreditworthy. Therefore, we will investigate whether the producer Makstil or the predecessor company Skopje Steel was unequityworthy from 1994 through 1998. In addition, we will investigate whether Skopje/Makstil was uncreditworthy during those years.

2. Export Subsidies From the Export-Import Bank

We will investigate whether countervailable benefits were provided by the Former Yugoslav Republic of Macedonia's newly developed Export-Import Bank in the form of: (1) Loans provided at subsidized rates; (2) rediscounted export loans; or (3) loan guarantees for export loans. With regard to export insurance, according to section 351.520(a)(1) of the Department's regulations, export insurance confers a benefit, ''if the premium rates charged are inadequate to cover the long-term operating costs and losses of the program.'' The petition provides no information to indicate that the rates may be insufficient to cover long-term operating costs and losses. Therefore, we will not investigate this subsidy allegation.

We are also not including in our investigation the following programs alleged to be benefitting producers and exporters of the subject merchandise in the Former Yugoslav Republic of Macedonia:

1. ''Formal Subsidies''

Petitioners allege that formal subsidies, *i.e.*, direct grants from the Government of Yugoslavia given to companies to ''prevent or lessen financial losses'' continue to confer benefits in the POI. Petitioners rely solely on a World Bank study as evidence of these direct subsidy programs. However, the same World Bank study specifically states that there was a ''virtual absence of direct government subsidies to firms'' and that ''such subsidies have been virtually nonexistent in the Yugoslav economy for more than two decades.'' In addition, this World Bank study indicates that no ''formal subsidies'' were provided to the Macedonian region. Because the information submitted by petitioner does not support their allegation that direct subsidies were conferred by the Government of Yugoslavia, we are not initiating an investigation of this program.

2. The National Bank's Division for Export and Export Stimulation

The petitioners allege that producers and exporters may be receiving export-based benefits from the National Bank of the Republic of Macedonia Division for Export and Export Stimulation. Because petitioners provided no information to indicate that this division of the National Bank provides subsidies, we are not initiating an investigation of this program.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, copies of the public version of the petition have been provided to representatives of the Former Yugoslav Republic of Macedonia. We will attempt to provide copies of the public version of the petition to all of the exporters named in the petition, as provided for under § 351.203(c)(2) of the Department's regulations.

ITC Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of this initiation. However, according to section 701(c) of the Act, the ITC will not make an injury determination with respect to the Former Yugoslav Republic of Macedonia.

This notice is published pursuant to section 777(i) of the Act.

Dated: March 8, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–6294 Filed 3–15–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–817, C–533–818, C–560–806, C–475–827, C–580–837]

Notice of Initiation of Countervailing Duty Investigations: Certain Cut-To-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, and the Republic of Korea

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

EFFECTIVE DATE: March 16, 1999.

FOR FURTHER INFORMATION CONTACT: Eric Greynolds (France), at (202) 482–6071; Robert Copyak (India), at (202) 482–2209; Kathleen Lockard (Indonesia), at (202) 482–1168; Kristen Johnson (Italy), at (202) 482–4406; and Stephanie Moore (Republic of Korea), at (202) 482–3692, Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigations

The 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 regulations codified at 19 CFR part 351 (1998) and to the substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998 (63 FR 65348).

The Petitions

On February 16, 1999, the Department of Commerce (the Department) received petitions filed in proper form on behalf of U.S. Steel Group, a Unit of USX Corporation, Bethlehem Steel Corporation, Gulf States, Inc., IPSCO Steel Inc., Tuscaloosa Steel Corporation, and the United Steelworkers of America (the petitioners). Tuscaloosa Steel Corporation is not a petitioner to the countervailing duty investigations involving France and Italy. Supplements to the petitions were filed

on February 22, 24, 25, 26, March 2, and 4, 1999.

In accordance with section 702(b)(1) of the Act, petitioners allege that manufacturers, producers, or exporters of certain cut-to-length carbon-quality steel plate (CTL plate or subject merchandise) in France, India, Indonesia, Italy, and Republic of Korea (Korea) receive countervailable subsidies within the meaning of section 701 of the Act.

The Department finds that petitioners filed the petitions on behalf of the domestic industry because they are interested parties as defined under sections 771(9)(C) and (D) of the Act. The petitioners have demonstrated sufficient industry support with respect to each of the countervailing duty investigations, which they are requesting the Department to initiate (*see Determination of Industry Support for the Petitions* below).

Scope of the Investigations

The products covered by this scope are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of these investigations unless otherwise specifically excluded. The following products are specifically excluded from these investigations: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to these investigations is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petitions, we discussed the scope with the petitioners to ensure that the scope in the petitions accurately reflects the merchandise for which the domestic industry is seeking relief. Moreover, as we discussed in the preamble to the Department's regulations (62 FR at 27323), we are setting aside a period for parties to raise issues regarding product coverage. In particular, we seek comments on the specific levels of alloying elements set out in the description above, the clarity of grades and specifications excluded from the scope, and the physical and chemical description of the product coverage. The Department encourages all parties to submit such comments by March 29, 1999. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the relevant foreign governments for consultations with respect to the petitions filed. On February 26, 1999, the Department held consultations with representatives of the governments of France, Italy, and the Delegation of the European Commission (EC). On March 2, 1999, consultations were held with representatives of the government of India. On March 8, 1999, consultations were held with representatives of the government of Indonesia. *See* the March 8, 1999, memoranda to the file regarding these consultations (public documents on file in the Central Records Unit of the Department of Commerce, Room B–099).

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the

requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines domestic like product as ''a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigations.

In this case, ''the article subject to investigation'' includes certain products which have not previously been included within the scope of investigations involving cut-to-length carbon steel products. To this end, the Department has reviewed reasonably available information to determine whether the products within the scope of the investigations constitute one or more than one domestic like product(s).

Some steel products classified as alloy steels based on the HTSUS are recognized as carbon steels by the industry and/or the marketplace. For example, *The Book of Steel*, a 1996 publication by Sollac, a flat-rolled steel division of Usinor, one of the largest steel companies in the world, identifies HSLA as falling within categories of plain carbon sheet steels (*see* chapter 44). Also, *Carbon and Alloy Steels*, published in 1996 by ASM International, a major materials society, indicates that HSLA steels are not considered to be alloy steels, but are in fact similar to as-rolled mild-carbon steel and are generally priced by reference to the base price for carbon steels (*see* page 29). *Carbon and Alloy Steels* also distinguishes between carbon-boron and alloy-boron steels; the former may contain boron at levels which would classify it as alloy under the HTSUS, but would not classify it as an alloy steel commercially because, unlike the alloy-boron steels, higher levels of other alloying elements are not specified (*see, e.g.*, pages 159 and 161).

The Department has considered that, with respect to certain steel products, such as HSLA, the petitioners indicate that these steel products are manufactured by similar processes, are priced from similar bases, are marketed in comparable ways, and are used for similar applications as carbon steels.

Further, we confirmed this description with product experts at the Department and the ITC. Other than the fact that the AISI technically defines alloy steels based on alloy levels comparable to those in the HTSUS, none of the individuals cited reasons why the products in question might be treated as distinct from cut-to-length carbon steels. For these reasons, the Department determines that for purposes of these investigations, the domestic like product definition is the single domestic like product defined in the ''Scope of the Investigations'' section above.

Based on our analysis of the information and arguments presented to the Department and the information independently obtained and reviewed by the Department, we have determined that there is a single domestic like product which is defined in the ''Scope of Investigations'' section above. Moreover, the Department has determined that the petitions (and subsequent amendments to the petitions) and supplemental information obtained through Department research contain adequate evidence of industry support and, therefore, polling is unnecessary. The Department received no opposition to the petitions. For all countries, the petitioners established industry support representing over 50 percent of total production of the domestic like product.

Therefore, for these investigations, petitioners have established a level of support for the petitions commensurate with the statutory requirements. Accordingly, the Department determines that the petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See* the March 8, 1999, memoranda to the file (for each country) regarding the initiation of each investigation (public documents on file in the Central Records Unit of the Department of Commerce, Room B–099).

Injury Test

Because France, India, Indonesia, Italy, and Korea are ''Subsidies Agreement Countries'' within the meaning of section 701(b) of the Act, section 701(a)(2) applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from these countries materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the individual and cumulated subsidized imports of the subject merchandise. Petitioners explained that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit-to-sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including business proprietary data from the petitioning firms and U.S. Customs import data. The Department assessed the allegations and supporting evidence regarding material injury and causation, and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See* the March 8, 1999, memoranda to the file (for each country) regarding the initiation of each investigation (public documents on file in the Central Records Unit of the Department of Commerce, Room B–099).

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to petitioners supporting the allegations.

Initiation of Countervailing Duty Investigations

The Department has examined the petitions on CTL plate from France, India, Indonesia, Italy, and Korea and found that they comply with the

[1] *See Algoma Steel Corp., Ltd.* v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters of CTL plate from these countries receive subsidies. *See* the March 8, 1999, memoranda to the file (for each country) regarding the initiation of each investigation (public documents on file in the Central Records Unit of the Department of Commerce, Room B–099).

A. France

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in France:

Government of France Programs

1. 1986 Write-off of Steel Amortization Fund Debts (PACs)
2. 1986 Write-off of Steel Intervention Fund (FIS) Bonds
3. 1988 Write-off of Steel Intervention Fund (FIS) Bonds
4. 1986 Write-off of Shareholder's Advances
5. 1994 Purchase of Power Plant for Excessive Remuneration
6. Investment Operating Subsidies
7. Soft Loans from Credit Lyonnais
8. Grants for Funding of Myosotis Project
9. Advances for Electric Arc Furnace Technology
10. Caisse Francaise de Developpement Industriel (CFDI) Loans
11. Shareholder Guarantees
12. Subsidies Provided Directly to GTS Industries

European Commission Programs

1. ECSC Loans under Article 54
2. ECSC Article 56 Funding
3. European Regional Development Fund
4. Resider and Resider II
5. European Social Fund

Petitioners allege that Usinor was uncreditworthy in each year 1980 through 1995. In the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from France*, 58 FR 37304 (July 9, 1993) (*Certain Steel 1993*), Usinor was found uncreditworthy in years 1982 through 1988, and creditworthy 1989 through 1991. Petitioners provided sufficient information to believe or suspect that Usinor was uncreditworthy in years 1992 through 1995. Thus for the years 1982 through 1988, and 1992 through 1995, we will investigate whether Usinor was uncreditworthy in the years in which petitioners have alleged non-recurring countervailable subsidies.

We are not including in our investigation the following programs alleged to be benefitting producers and exporters of the subject merchandise in France:

1. 1991 Infusion Via Credit Lyonnais

In 1991, the state-owned Credit Lyonnais (CL) purchased a 20 percent share of Usinor for FF 2.5 billion. In (*Certain Steel 1993*) and the *Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from France*, 58 FR 6221 (January 27, 1993) (*Lead and Bismuth*), the Department determined that Usinor was equityworthy and found the investment not countervailable. The Department determined not to initiate in the *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) (*Stainless Steel*). Although petitioners claim to submit new information on this program, the information is the same as submitted in *Stainless Steel*. Petitioners also argue that the holding in *Aimcor Alabama* v. *United States*, 871 F. Supp. 447 (CIT 1994), which is incorporated into the new CVD regulations, compels us to initiate on this program. Though *Stainless Steel* preceded the new regulations, *Aimcor* was considered when we declined to initiate. Therefore, we are not including this program in our investigation.

2. 1991 PACs Write-Off

In 1991, Usinor converted FF 2.8 billion of PAC liabilities into common stock held by the Government of France (GOF). Petitioners allege that this constituted a countervailable benefit in the form of debt forgiveness. In *Certain Steel 1993* and *Lead and Bismuth*, we determined that this transaction was a debt-to-equity swap, and because we found Usinor equityworthy in 1991, this program was not countervailable. Thus, we declined to initiate in *Stainless Steel*. Again, petitioners contest the 1991 equityworthy finding but, aside from citing press reports of the poor financial state of Usinor at the time, they do not supply sufficient new information or evidence of changed circumstances to warrant reinvestigating this program. Therefore, we are not including this program in our investigation.

3. 1995 Capital Infusion

Petitioners allege that the GOF forewent revenue otherwise due when it allowed Usinor to keep FF 5 billion resulting from the issuance of additional Usinor shares to private investors prior to its partial privatization. Petitioners argue that, at the time of the sale, Usinor was 100 percent government-owned and, therefore, all of the revenue resulting from the sale should have remained with the GOF. Petitioners argue that this sale constituted a financial contribution in the form of a direct cash grant or failure to collect revenue otherwise due in which the purchase by Stable Shareholders (*i.e.* the GOF) of shares at about the same time played a meaningful, but ancillary, role in the private investors' decision to purchase Usinor shares. Petitioners further argue that, in the event that the Department does not deem this program to be a grant, it can be viewed as an infusion by private parties acting at the behest of the GOF at a time when Usinor was unequityworthy. In *Stainless Steel*, we declined to initiate on these purchases of Usinor shares by the Stable Shareholders. No new information has been provided in this petition to warrant a reexamination of our decision not to initiate in *Stainless Steel*. Therefore, we are not including this program in our investigation.

4. GOF Advances for SODIs

Regional development subsidiaries (SODIs) were established by Usinor and Sacilor in 1983, to assist in the retraining of laid-off personnel. Petitioners allege that the SODI advances to Usinor from 1991 through 1994 are countervailable. In *Certain Steel 1993*, we determined that the program was not tied to steel production and that it did not relieve Usinor of any obligations that it would otherwise incur with respect to the retraining of laid-off personnel and thus, it was not countervailable. As new evidence, petitioners cite to the 1997 European Union (EU) notification to the WTO of the SODI program for 1995, claiming that it represents the EU's confirmation that SODI constitutes a subsidy program under the SCM agreement. However, we note that the EU's report to the WTO states that none of the GOF's SODI advances went to Usinor. Therefore, we are not including this program in our investigation.

5. 1987 through 1990 Write-off of Shareholder's Advances

Petitioners allege that Usinor received additional shareholder advances during the years 1987 through 1990. They further allege that these advances were written off in 1991, and thus constitute countervailable debt forgiveness. We note that this allegation is the same as

the allegation under the GOF Advances for SODIs program (discussed above) and that these two allegations concern the same program; petitioners own source documentation indicates that these two programs are, in fact, one program. Furthermore, in the *Preliminary Affirmative Countervailing Duty Determination: Certain Steel Products from France and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determinations: Certain Steel Products from France*, (57 FR 57785) (December 7, 1992), the Department referred to this program as Shareholder Advances After 1986 and classified it as a program for which more information was needed. In *Certain Steel 1993*, this program was determined to be not countervailable under the name Regional Development Subsidiaries (SODIs). Therefore, we are not including this program in our investigation.

6. Credit National Loans

Petitioners allege that the GOF's Credit National (CN) selectively funnels subsidized loans to the steel industry, and that any CN loans outstanding during the POI are countervailable. In *Certain Steel 1993*, we found that the loans were not provided on either a *de jure* or *de facto* specific basis. Petitioners claim that new evidence indicates that CN loan terms vary depending on the recipient and thus, we should investigate whether Usinor or the French steel industry received subsidized loans on a specific basis. The information that petitioners have submitted is not sufficient to revisit the Department's previous determination on this program because it does not indicate that CN offered subsidized loans to the steel industry on a specific basis. Therefore, we are not including this program in our investigation.

7. Fonds de Developpement Economique et Social (FDES) Loans

Petitioners allege that in 1991, Usinor received subsidized loans from the GOF under the FDES program. In *Certain Steel 1993*, the Department found that, although the loans were specifically provided to the steel industry, after comparing interest actually paid to interest that would have been paid at the benchmark interest rate, the 1991 loans conferred no benefit. Thus, we declined to initiate in *Stainless Steel*. Petitioners provide no new information or evidence of changed circumstances indicating that Usinor has obtained any new loans or to prompt a reexamination of the loans and benchmark from the previous investigation.

B. India

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in India:

1. *Passbook Scheme*
2. *Duty Entitlement Passbook Scheme*
3. *Import Licenses*
   a. Advance Licenses
   b. Advanced Intermediate Licenses
   c. Special Imprest Licenses
4. *Special Import Licenses*
   a. Special Import License for Quality
   b. Special Import License for Star Trading Houses
5. *Export Promotion Capital Goods Scheme*
6. *Pre-shipment and Post-shipment Export Financing*
7. *Government of India (GOI) Loans through the Steel Development Fund*
8. *Loan Guarantees from the GOI*
9. *Tax Exemption for Export Profits*

We are not including in our investigation the following program alleged to be benefitting producers and exporters of the subject merchandise in India:

Possible Conversion of Steel Development Fund Loans into Equity in the Steel Authority of India Limited (SAIL)

The petition contains a news article dated December 1998, which indicates that India's steel ministry favors a proposal by SAIL to convert SAIL's Steel Development Fund loans into equity. The petition does not contain information as to whether such an agreement has been finalized. Absent information that any agreement occurred during the period of investigation (1998), this is not an issue for purposes of this investigation.

C. Indonesia

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Indonesia:

1. *Bank of Indonesia Rediscount Loans*
2. *Corporate Income Tax Holidays*
3. *Reduction in Electricity Tariffs*
4. *1995 Equity Infusion into Krakatau*

We are also investigating whether Krakatau was uncreditworthy in 1995, the year in which the company received the alleged equity infusion.

D. Italy

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Italy:

Government of Italy Programs

1. *Equity Infusions into Italsider/Nuova Italsider*
2. *Equity Infusions into ILVA*
3. *Debt Forgiveness in Connection with the 1981 Restructuring Plan*
4. *Debt Forgiveness in Connection with the 1988 Restructuring Plan*
5. *Debt Forgiveness Given in the Course of Privatization in Connection with the 1993–1994 Restructuring Plan*
6. *Additional Debt Forgiveness in Course of Privatization*
7. *Unpaid Portion of Payment Price for ILP*
8. *Grants to ILVA*
9. *Working Capital Grants to ILVA in 1993*
10. *Grants to ILVA to Cover Closure and Liquidation Expenses as Part of the 1993–1994 Privatization Plan*
11. *Grants to Riva/ILP*
12. *Interest Grants for ''Indirect Debts'' under Law 750/81*
13. *Lending from the Ministry of Industry under Law 675/77*
14. *Loans with Interest Contributions under Law 675/77*
15. *Capital Grants to Nuova Italsider under Law 675/77*
16. *Personnel Retraining under Law 675/77*
17. *VAT Reductions under Law 675/77*
18. *Closure Payments under Law 481/94 and its Predecessor Law*
19. *Closure Grants under Laws 46 and 706*
20. *Early Retirement Benefits*
21. *Decree Law 120/89*

Regional Programs

22. *Capital Grants*
23. *Law 488/92*
24. *Law 341/95 Tax Concessions*
25. *Exemptions from Taxes*
26. *Interest Rate Reductions under Law 902*
27. *Interest Contributions under the Sabatini Law*
28. *Urban Redevelopment Packages under Law 181/89*
29. *Exchange Rate Guarantees under Law 796/76*
30. *Export Marketing Grants under Law 394/81*

European Commission Programs

1. *ECSC Loans under Article 54*
2. *Interest Rebates on ECSC Article 54 Loans*
3. *ECSC Conversion Loans, Interest Rebates, Restructuring Grants, and Traditional and Social Aid under Article 56*

4. *ERDF Aid*
5. *Resider and Resider II*
6. *European Social Fund*

We are also investigating whether ILVA/ILP and their predecessor companies were uncreditworthy in the years 1977 through 1994. In the *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy*, 58 FR 37327 (July 9, 1993), (*Certain Steel from Italy*), we found that ILVA and its corporate predecessors were uncreditworthy in each year 1977 through 1991. In the *Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel From Italy*, 59 FR 18357 (April 18, 1994), (*Electrical Steel*), we found that ILVA and its corporate predecessors were uncreditworthy in each year 1978 through 1992. In the *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy*, 63 FR 40,474 (July 29, 1998), (*Wire Rod*), we found that ILVA and its corporate predecessors were uncreditworthy in each year 1985 through 1993. Thus, for the years 1977 through 1994, we will investigate whether the companies were uncreditworthy in the years in which petitioners have alleged non-recurring countervailable subsidies.

We are not including in our investigation the following program alleged to be benefitting producers and exporters of the subject merchandise in Italy:

Social Security Exemptions

Petitioners allege that employers in the southern Mezzogiorno region were entitled to a full or partial exemption from social security contributions for workers that represented an addition to the company's labor force. Petitioners provide documentation that producers of the subject merchandise had their eligibility for the program suspended in 1986. Petitioners also point out that social security benefits were to be phased out by December 1997. In *Certain Steel Italy*, we treated social security exemptions as non-recurring benefits. However, in the *Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy*, 61 FR 30288, 30293 (June 14, 1996) (*Pasta*), a subsequent determination to *Certain Steel Italy*, we determined that social security exemptions are recurring benefits. Because our methodology treats these benefits as recurring, along with the fact that producers of the subject merchandise had their eligibility for the program suspended in 1986, and these benefits were to be phased out before the period of investigation (1998) began, no benefit to producers of the subject merchandise would have been conferred during the period of investigation. Therefore, we are not including this program in our investigation.

E. Korea

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Korea:

1. *POSCO's Two-Tiered Pricing Structure to Domestic Customers*
2. *GOK Directed Credit Programs*
   a. Pre-1992 Directed Credit
   b. Post-1991 Directed Credit
3. *Private Capital Investment Act (PCIA)*
4. *Kwangyang Bay*
   a. GOK Infrastructure Investments at Kwangyang Bay Pre-1992
   b. GOK Infrastructure Investments at Kwangyang Bay Post-1991
5. *Tax Programs Under the Tax Reduction and Exemption Control Act (TERCL)*
   a. Technical Development Reserve Funds (Article 8)
   b. Tax Credit for Technology and Manpower Development Expenses (Article 9)
   c. Tax Credit for Investment in Equipment to Develop Technology and Manpower/Investment Tax Credit (Article 10)
   d. Tax Credits for Vocational Training (Article 18)
   e. Tax Credit for Investment in Productivity Improvement Facilities (Article 25)
   f. Tax Credits for Investment in Specific Facilities (Article 26)
   g. Tax Credits for Temporary Investments (Article 27)
   h. Tax Credits for Specific Investments (Article 71)
   i. Reserve for Export Loss (Article 16)
   j. Reserve for Overseas Market Development (Article 17)
   k. Exemption of Corporation Tax on Dividend Income from Overseas Resources Development Investment (Article 24)
   l. Social Indirect Capital Investment Reserve Funds (Article 28)
   m. Energy-Saving Facilities Investment Reserve Funds (Article 29)
   n. Mining Investment Reserve Funds (Article 95)
6. *Asset Revaluation Pursuant to TERCL Article 56(2)*
7. *Special Cases of Tax for Balanced Development among Areas (TERCL Articles 41, 42, 43, 44, and 45)*
8. *Industry Promotion and Research and Development Subsidies*
   a. Promotion Fund for Science and Technology
   b. Highly Advanced National Project Fund
   c. Steel Campaign for the 21st Century
9. *Overseas Resource Development (Loans and Grants) Programs*
10. *Free Trade Zones (FTZs) at Pusan and Kwangyang*
11. *Excessive Duty Drawback*
12. *Dockyard Fees (Port Facility Fees)*
13. *Preferential Utility Rates*
14. *Scrap Reserve Fund*
15. *Export Insurance Rates By The Korean Export Insurance Corporation*
16. *Short-Term Export Financing*
17. *Korean Export-Import Bank Loans*
18. *Export Industry Facility Loans (EIFL) and Specialty Facility Loans*
19. *Loans from the Energy Savings Fund*

We are not including in our investigation the following programs alleged to be benefitting producers and exporters of the subject merchandise in Korea:

1. *Infrastructure at Asan Bay and Regional Tax Subsidies for Industries Located at Asan Bay*

Petitioners allege that the GOK is providing various infrastructure benefits to steel companies that relocate to Asan Bay, and that Dongkuk Steel Mill Co., Ltd. (Dongkuk Steel), a producer/exporter of the subject merchandise, is reportedly relocating to Asan Bay. In addition, petitioners allege that companies located in the Posung Industrial Complex located in Asan Bay are eligible for numerous tax subsidies. Petitioners cite a July 1998 report which states that Asan Bay ''is now emerging as Korea's steel mecca'' attracting companies such as Dongkuk Steel. However, press reports submitted in the petition, state that Dongkuk Steel shut down its plant in Pusan in December 1998, and plans to shift production to its Pohang and Inchon plants. Thus, the information provided in the petition does not indicate that Dongkuk Steel has moved, built or shifted production facilities to Asan Bay. Therefore, we are not initiating an investigation on programs specifically related to Asan Bay.

2. *Overseas Investment Loss Reserve Funds (Article 23)*

Petitioners note that Article 23 permits a company to include the reserve for overseas business losses in the general losses in the current taxable year. Petitioners allege that this program is an export incentive, as the amount of the allowable loss is limited to a set percentage of foreign exchange receipts from overseas business. In the *Final Affirmative Countervailing Duty*

Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea, 58 FR 37338 (July 9, 1993), the Department determined that this program was not countervailable. Petitioners have not provided any new information or evidence of changed circumstances that warrants reconsideration of that final determination. Therefore, we are not initiating an investigation on this program.

3. *Industry Promotion and Research and Development Subsidies*

a. Environmental Engineering and Technology Development.

b. Industrial Development Fund.

Petitioners allege that POSCO and Dongkuk Steel are benefitting from industrial promotion funds and research and development subsidies. Petitioners' allegations regarding these two programs are based on the importance of the steel industry to the Korean economy, rather than on information regarding the eligibility criteria or usage of these two programs. The information provided in the petition does not indicate that the programs are *de jure* or *de facto* specific to the steel sector. Therefore, we are not initiating an investigation on these programs.

4. *Special Depreciation for Energy Saving and Productivity Promotion*

Petitioners state that this program allows Korean exporters to claim a special depreciation charge for energy-savings facilities. Petitioners state that POSCO's 1994 SEC Prospectus recorded ''special depreciation charges'' for energy-saving and productivity promotion facilities and equipment. Note (4) of POSCO's 1994 SEC Prospectus specifically states that pursuant to a change in Korean GAAP (General Accounting Principles), ''special depreciation will no longer be allowed for financial reporting purposes, commencing in 1994.'' Moreover, petitioners have not provided any evidence indicating POSCO took special depreciation after 1993. Therefore, we are not investigating this program.

5. *Tax Credit for Equipment Investment to Promote Workers' Welfare—Article 88 (Article 72–2 and 90, prior to 1995)*

Petitioners allege that Korean steel producers are benefitting from several tax programs, including Articles 72–2 and 90. In support of their allegation, petitioners note that in the *1997 Stainless Steel Plate* verification report for POSCO dated January 27, 1999, the Department reported that POSCO used tax credits under Articles 72–2 and 90.

However, the Department has not previously found these articles to be countervailable. Furthermore, petitioners did not make any allegations regarding the specificity of these articles, nor did they provide any supporting information. Therefore, we are not initiating an investigation on this program.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A)(i) of the Act, copies of the public version of the petition have been provided to the representatives of France, India, Indonesia, Italy, and Korea. We will attempt to provide copies of the public version of the petition to all the exporters named in the petition, as provided for under § 351.203(c)(2) of the Department's regulations.

ITC Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of these initiations.

Preliminary Determination by the ITC

The ITC will determine by April 2, 1999, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of certain cut-to-length carbon-quality steel plate from France, India, Indonesia, Italy, and Korea. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: March 8, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–6295 Filed 3–15–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application to Amend Certificate.

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

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

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104, Washington, DC 20230. Business confidential information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 85–8A018.''

U.S. Shippers Association's (''USSA'') original Certificate was issued on June 3, 1986 (51 FR 20873, June 9, 1986) and subsequently amended on January 16, 1990 (55 FR 2543, January 25, 1990); November 13, 1990 (55 FR 48664, November 21, 1990); September 22, 1993 (58 FR 51061, September 30,

1993); June 28, 1994 (59 FR 34411, July 5, 1994); April 10, 1997 (62 FR 18586, April 16, 1997); and November 23, 1998 (63 FR 65752, November 30, 1998).

Summary of the Application

Applicant: U.S. Shippers Association, 1209 Orange Street, Wilmington, Delaware 19801.

Contact: Cara E. Maggioni, Legal Counsel, Telephone: (202) 662–5162.

Application No.: 85–8A018.

Date Deemed Submitted: March 1, 1999.

Proposed Amendment: USSA seeks to amend its Certificate to:

1. Add Lyondell Chemical Worldwide, Inc., Newtown Square, PA; and Arch Chemicals, Inc., Norwalk, CT as new ''Members'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 C.F.R. 325.2(1)); and

2. Delete ARCO Chemical Company, Newtown Square, PA; and Olin Corporation, Norwalk, CT as ''Members'' of the Certificate.

Dated: March 11, 1999.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 99–6354 Filed 3–15–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030599D]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico and South Atlantic Fishery Management Councils will convene a joint meeting of their Mackerel Stock Assessment Panel (MSAP).

DATES: This meeting will begin at 1:00 p.m. on Monday, March 29, and conclude by on Thursday, April 1, 1999.

ADDRESSES: The meeting will be held at NMFS Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Leard, Senior Fishery Biologist; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico and South Atlantic Fishery Management Councils will convene their joint MSAP to review stock assessment updates for the Gulf and Atlantic migratory groups of king and Spanish mackerel. The MSAP will consider available information, including but not limited to, commercial and recreational catches, natural and fishing mortality estimates, recruitment, fishery-dependent and fishery-independent data, and data needs. These analyses will be used to determine the condition of the stocks and the levels of acceptable biological catch (ABC) for the 1999–2000 fishing year. The MSAP may also review estimates of stock size (biomass at maximum sustainable yield [Bmsy]) and minimum stock size thresholds (MSST) for each species.

Although other issues not on the agenda may come before the Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by March 22, 1999.

Dated: March 10, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–6379 Filed 3–15–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031099A]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Enforcement Oversight Committee and Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Monday, March 29, 1999. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Saugus, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, Massachusetts 01906–1097; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Monday, March 29, 1999, 9:30 a.m.—Enforcement Oversight Committee with Advisory Panel

Location: Council offices, 5 Broadway, Saugus, MA 01906; telephone (781) 231–0422.

Agenda: The Enforcement Oversight Committee and Advisory Panel will review scallop dredge access to Closed Area II and develop recommendations to the Council to improve enforcement.

Although other issues not contained in this agenda may come before the Enforcement Oversight Committee and Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: March 10, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–6332 Filed 3–11–99; 2:38 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030199A]

Marine Mammals; File No. 930–1486, 732–1487, and 545–1488

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

ACTION: Receipt of applications.

SUMMARY: Notice is hereby given that: (1) U.S. Geological Survey (USGS), Western Ecological Research Center, Dixon Field Station 6924 Tremont Road, Dixon, CA 95620; (2) Dr. Paul Ponganis, Associate Research Physiologist, University of California, San Diego, Center for Marine Biotechnology and Biomedicine, Scripps Institution of Oceanography, Scholander Hall, 0204, 9500 Gilman Drive, La Jolla, CA 92093–0204; and 3) The North Gulf Oceanic Society (NGOS), SPWS Bldg., 3776 Lake Ave., Suite 204, P.O. Box 15244, Homer AK 9960; have applied in due form for permits to take various cetacean and pinniped species for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before April 15, 1999.

ADDRESSES: The applications 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 13130, Silver Spring, MD 20910 (301/713–2289); and

(1) For File No. 930–1486 (USGS) and File No. 732–1487 (Dr. Ponganis): Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001); and

(2) For File No. 545–1488 (NGOS): Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

(1) USGS (File No. 930–1486) requests authorization to conduct low altitude aerial surveys of marine mammals in the Southern California Bight and adjacent waters; (2) Dr. Ponganis (File No. 732–1487) requests authorization to continue pinniped physiological studies on Northern elephant seals (*Mirounga angustirostris*), Pacific harbor seals (*Phoca vitulina*), and California sea lions (*Zalophus californianus*) on animals that have been rescued from the wild and are undergoing captive rehabilitation; and (3) NGOS (File No. 545–1488) requests authorization to photo-identify, biopsy sample, and inadvertently harass killer whales (*Orcinus orca*), and inadvertently harass other marine mammal species on the South coast of Alaska.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 3, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–6377 Filed 3–15–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 981214305–9052–02]

RIN 0651–AB02

Official Insignia of Native American Tribes; Statutorily Required Study

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of inquiry; request for comments.

SUMMARY: This notice requests comments on the specific areas of inquiry included in Public Law 105–330, which requires that the Patent and Trademark Office (PTO) study a variety of issues surrounding trademark protection for the official insignia of federally and/or State recognized Native American Tribes.

DATES: To ensure consideration, comments must be received no later than April 30, 1999.

ADDRESSES: Comments must be submitted to: Eleanor K. Meltzer, Attorney-Advisor, Office of Legislative and International Affairs, U.S. Patent and Trademark Office, 2121 Crystal Drive, Suite 902, Arlington, VA 22202. Comments may also be submitted by e-mail to: *NAFedRegNotice@uspto.gov*.

FOR FURTHER INFORMATION CONTACT: Eleanor K. Meltzer; Telephone: 703–306–2960; E-mail: *eleanor.meltzer@uspto.gov*; facsimile transmission: 703–305–8885. Public Law 105–330 may be viewed via the Library of Congress website at: *www.thomas.loc.gov*.

SUPPLEMENTARY INFORMATION: On October 30, 1998, President Clinton signed Public Law 105–330. Title III of this law requires the PTO to study how such official insignia of Native American Tribes may better be protected under trademark law. The new law requires that the Commissioner complete the study and submit a report to the chairman of the Committee on the Judiciary of the Senate and to the chairman of the Committee on the Judiciary of the House of Representatives not later than September 30, 1999. The final study must address a variety of issues, including the impact of any changes on the international legal obligations of the United States, the definition of ''official insignia'' of a federally and/or State recognized Native American Tribe, and the administrative feasibility, including the cost, of changing current law or policy in light of any recommendations.

On December 29, 1998, a **Federal Register** notice was published (63 FR

71619–71620) requesting comments on how best to conduct the study, where public hearings should be held, and who should be consulted during the study process. The present **Federal Register** notice is a follow-up to the December 29, 1998 notice.

Request for Public Comment

The PTO is interested in the public's views concerning all aspects of trademark protection for the official insignia of Native American Tribes, including the following.

(1) The Definition of ''Official Insignia''

For example, how should the PTO define ''official insignia'' of a federally or state recognized Native American Tribe?

(2) Establishing and Maintaining a List of Official Insignia

For example, how might the PTO establish a list of the official insignia of federally and/or state recognized Native American Tribes? How might the PTO maintain such a list?

(3) Impact of Changes In Current Law or Policy

For example, how might any change in law or policy with respect to prohibiting the Federal registration of trademarks identical to the official insignia of Native American Tribes, or of prohibiting any new use of the official insignia of Native American Tribes, affect Native American Tribes? How might such changes affect trademark owners? How might such changes affect the Patent and Trademark Office? How would such changes affect any other interested party? What impact might any such changes have on the international legal obligations of the United States?

(4) Impact of Prohibition on Federal Registration and New Uses of Official Insignia

For example, how might prohibiting Federal registration of trademarks identical to the official insignia of Native American Tribes affect any/all of the above-mentioned entities? How might prohibiting any new use of the official insignia of Native American Tribes affect any/all of the above-mentioned entities? What effect might such prohibitions have on the international legal obligations of the United States? What defenses, including fair use, might be raised against any claims of infringement?

(5) Administrative Feasibility

For example, what might be the administrative feasibility, including the cost, of changing the current law or policy to prohibit the registration? What might be the administrative feasibility, including the cost, of prohibiting any new uses of the official insignia of State or federally recognized Native American Tribes? What might be the administrative feasibility, including the cost, of otherwise providing additional protection to the official insignia of federally and State recognized Native American Tribes?

(6) Timing of Changes in Protection

For example, should changes in the scope of protection for official tribal insignia be offered prospectively? Retrospectively? What might be the impact of such protection (e.g., the cost to business and the public if applied retroactively)?

(7) Statutory Changes

What statutory changes might be necessary in order to provide such protection?

(8) Other Relevant Factors

What other factors, not mentioned above, might be relevant to this issue?

Persons interested in commenting on the issues outlined above, or any other topics related to the statutory study, should submit their comments in writing to the above address. All comments received in response to this notice will become part of the public record and will be available for inspection and copying at Suite 902Q, Crystal Park 2, 2121 Crystal Drive, Arlington, Virginia.

Authority: Pub. L. No. 105–330.

Dated: March 9, 1999.

Q. Todd Dickinson,

Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.

[FR Doc. 99–6347 Filed 3–15–99; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

March 9, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing guaranteed access levels.

EFFECTIVE DATE: March 18, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, 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, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. 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.

Upon the request of the Government of the Dominican Republic, the U.S. Government has agreed to increase the current Guaranteed Access Levels for textile products in Categories 339/639, 433 and 633.

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 63 FR 71096, published on December 23, 1998). Also see 63 FR 63297, published on November 12, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 9, 1999.

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 5, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on March 18, 1999, you are directed to increase the Guaranteed Access Levels for the categories listed below for the period beginning on January 1, 1999 and extending through December 31, 1999.

Category	Guaranteed access level
339/639	2,150,000 dozen.
433	41,000 dozen.
633	80,000 dozen.

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,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–6356 Filed 3–15–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Tuesday, March 30, 1999.

PLACE: 1155 21st St., N.W., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–6448 Filed 3–12–99; 11:40 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Tuesday, March 30, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–6449 Filed 3–12–99; 11:40 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0101]

Submission for OMB Review; Comment Request Entitled Drug-Free Workplace

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Drug-Free Workplace. A request for public comments was published at 63 FR 71097, December 23, 1998. No comments were received.

DATES: Comments may be submitted on or before April 15, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0101, Drug-Free Workplace, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Federal Acquisition Policy Division, GSA (202) 501–1757.

SUPPLEMENTARY INFORMATION:

A. Purpose

The contract clause at FAR 52.223–6 requires (1) contract employees to notify their employer of any criminal drug statute conviction for a violation occurring in the workplace; and (2) Government contractors, after receiving notice of such conviction, to notify the contracting officer.

The information provided to the Government is used to determine contractor compliance with the statutory requirements to maintain a drug-free workplace.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.17* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *600*; responses per respondent, *1*; total annual responses, *600*; preparation hours per response, *.17*; and total response burden hours, *102*.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0101, Drug-Free Workplace, in all correspondence.

Dated: March 8, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–6328 Filed 3–15–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0091]

Submission for OMB Review; Comment Request Entitled Anti-Kickback Procedures

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Anti-Kickback Procedures. A request for public comments was published at 63 FR 71097, December 23, 1998. No comments were received.

DATES: Comments may be submitted on or before April 15, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of

this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0091, Anti-Kickback Procedures, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Federal Acquisition Policy Division, GSA (202) 501–1757.

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal Acquisition Regulation (FAR) 52.203–7, Anti-Kickback Procedures, requires that all contractors have in place and follow reasonable procedures designed to prevent and detect in its own operations and direct business relationships, violations of section 3 of the Anti-Kickback Act of 1986 (41 U.S.C. 51–58). Whenever prime contractors or subcontractors have reasonable grounds to believe that a violation of section 3 of the Act may have occurred, they are required to report the possible violation in writing to the contracting agency or the Department of Justice. The information is used to determine if any violations of section 3 of the Act have occurred.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 1 hour per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *100*; responses per respondent, *1*; total annual responses, *100*; preparation hours per response, *1*; and total response burden hours, *100*.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0091, Anti-Kickback Procedures, in all correspondence.

Dated: March 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–6329 Filed 3–15–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board Advisory Committee

AGENCY: Defense Policy Board Advisory Committee, Department of Defense.

ACTION: Notice.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session at the Pentagon on March 24, 1999, from 0900 to 1730.

The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters on defense policy. The Board will hold classified discussions on national security matters.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended [5 U.S.C. App II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B(c)(1)(1982), and that accordingly this meeting will be closed to the public.

FOR FURTHER INFORMATION: Contact CDR Randall Lovdahl, USN, 703–697–4557.

Dated: March 9, 1999

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 99–6338 Filed 3–15–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Threat Reduction Advisory Committee

AGENCY: Office of the Undersecretary of Defense (Acquisition and Technology) Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Threat Reduction Advisory Commiteee will meet in a closed session on March 25 and 26, 1999. The Committee advises the Under Secretary of Defense (Acquisition and Technology) on technology security, counterproliferation, chemical and biological defense, sustainment of the nuclear weapons stockpile, and other matters related to the Defense Threat Reduction Agency's mission.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended 5 U.S.C., Appendix II, it has been determined that matters affecting national security, as covered by 5 U.S.C. 552(c)(1)(1988), will be presented throughout the meeting, and that, accordingly, the meeting will be closed to the public.

DATES: Thursday, March 25, 1999 (8:00 a.m. to 4:00 p.m.) and Friday, March 26, 1999 (8:00 a.m. to 12:00 noon).

ADDRESS: Room 3E869, The Pentagon, Washington DC 20301.

FOR FURTHER INFORMATION CONTACT: Major Joseph D. Pierce, Defense Threat Reduction Agency/AS, 45045 Aviation Drive, Dulles, VA 20166–7517. Phone: (703) 810–4064.

Dated: March 10, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–6337 Filed 3–15–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Intelligence Operations Mission Panel Meeting in support of the HQ USAF Scientific Advisory Board will meet in San Antonio, TX on April 6–7, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings in support of the Scientific Advisory Board.

The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–6342 Filed 3–15–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 17, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat—Sherrill@ed.gov,* or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 10, 1999.

Patrick J. Sherrill,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Integrated Postsecondary Education Data System (IPEDS), including Web-Based Collection on Pricing of Postsecondary Education.

Frequency: On occasion.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 10,200.

Burden Hours: 280,764.

Abstract: IPEDS is a system of surveys designed to collect basic data from approximately 10,000 postsecondary institutions in the United States. The IPEDS provides information on numbers of student enrolled, degrees completed, other awards earned, dollars expended, and staff employed at postsecondary institutions. The amendments to the Higher Education Act of 1998, Part C, Sec. 131, require the National Center for Education Statistics to provide cost and pricing information from postsecondary institutions. As a consequence in 1999 the IPEDS is proposing piloting a web-based data collection for this information.

[FR Doc. 99–6297 Filed 3–15–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by March 19, 1999. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before May 17, 1999.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503. Comments regarding the regular clearance and requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat Sherrill@ed.gov,* or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection.

Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment

addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: March 11, 1999.

Patrick J. Sherrill,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Chief Information Officer

Type of Review: New.

Title: Year 2000 Assessment Survey of K–12 School Districts.

Frequency: As required by OMB, The President's Council on Year 2000 conversion and other Year 2000 oversight authorities.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden:
Responses: 2,884.
Burden Hours: 18,746.

Abstract: ED is actively participating on the President's Council on Year 2000 Conversion and this Year 2000 Assessment Survey is a departmental, as well as, a Council initiative. ED is taking a proactive approach in requesting elementary and secondary schools report on their Year 2000 readiness. ED needs to survey the progress of our nation's elementary and secondary schools in order to ensure the successful operation of its programs and to report to OMB. The President's Council on Year 2000 Conversion and other Year 2000 oversight authorities.

Additional Information: Given the impending time constraints on achieving Year 2000 compliance, ED is requesting an emergency review of the attached survey. Reporting on a 60-day or 30-day Federal Register notice would not give ED enough time to assist local education agencies with corrective action via education and awareness of Year 2000 issues.

Due to the critical nature of the survey and the time constraints for meeting Year 2000 compliance, ED will require respondents to complete the electronic survey in less than 30-days from the time of receipt. The estimated survey launch date will be March 19, 1999 and the estimated survey completion date will be April 9, 1999.

Frequency: As required by OMB, The President's Council on Year 2000 conversion and other Year 2000 oversight authorities.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden:
Responses: 2,884.
Burden Hours: 18,746.

[FR Doc. 99–6424 Filed 3–12–99; 9:19 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.116D]

Fund for the Improvement of Postsecondary Education—Congressional Priorities for Postsecondary Education Notice of Final Priorities and Invitation for Applications for New Awards for Fiscal Year (FY) 1999

Purpose of Program: To implement the Department of Education Appropriations Act, 1999, as enacted in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law 105–277. The law requires that $9.5 million of the funds allocated to Title VII, Part B of the Higher Education Act be used to conduct a grant competition consistent with the subject areas outlined in the House Report 105–635, p. 188, Senate Report 105–300, pp. 241–243, and House Report 105–825, pp. 384, 1304–1305. Further, the law states that the competition be conducted in a manner consistent with current departmental practices and policies.

The Secretary funds only projects that focus on the subject areas contained in the House and Senate appropriations reports and the statement of the managers, as summarized in the absolute priorities section of this notice.

EFFECTIVE DATE: The priorities in this notice take effect April 15, 1999.

Eligible Applicants: Institutions of higher education, other public and private nonprofit institutions and agencies, or combinations of those institutions or agencies.

Requested Deadline for Receipt of Statements of Intent to Apply: April 16, 1999.

Deadline for Transmittal of Applications: April 30, 1999.

Deadline for Intergovernmental Review: June 29, 1999.

Applications Available: March 16, 1999.

Available Funds: $9,500,000.

Estimated Range of Awards: $20,000 to $1,500,000.

Project Period: Up to 36 months.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86.

Absolute Priorities

Under 34 CFR 75.105(c)(3) and P.L. 105–277, the Secretary gives absolute preference to applications that meet one or more of the following priorities. The Secretary funds under this competition only applications that meet one or more of these absolute priorities.

Absolute Priority 1—Demonstration programs to encourage underrepresented groups, such as women and minorities, to enter careers in technology and business.

Absolute Priority 2—A project to endow a Contracts Chair-of-Excellence program to be administered in cooperation with a consortium of Historically Black Colleges and Universities and Hispanic-Serving Institutions with environmental science and engineering capabilities.

Absolute Priority 3—Demonstration programs to establish a state-of-the-art science and technology program that will explore the application of novel electronic materials that are used in the development of high temperature supercomputers.

Absolute Priority 4—Enhanced distance education and teacher-training activities.

Absolute Priority 5—Applications for conversion of library catalogs to electronic format.

Absolute Priority 6—For assistance with critical infrastructure needs, such as fiberoptic cabling, hardware, and communications equipment, and classroom renovations, in conjunction with a program specifically tailored to the needs of students with part-time employment with a goal of fully preparing participants for the skilled job opportunities of the future.

Absolute Priority 7—To support a university-based advanced mathematics teacher-student training program.

Absolute Priority 8—To establish off-campus and community-based delivery of educational programs and services to improve rural access.

Absolute Priority 9—To improve the skills of physical science teachers.

Absolute Priority 10—For an inter- and intravideo conferencing project.

Absolute Priority 11—For a demonstration project that establishes a center for technical education to serve young people who do not intend to go on to college.

Absolute Priority 12—To support innovative approaches to connecting community colleges to four-year institutions through a cooperative

curriculum, shared student services, and faculty collaborations.

Absolute Priority 13—A project of interinstitutional efforts dedicated to improving the scientific expertise and interest of undergraduate students.

Absolute Priority 14—Educational programs to train students for careers in the hospitality and tourism industry.

Selection Criteria

In evaluating an application for a new grant under this competition, the Secretary uses selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. Under 34 CFR 75.201 of EDGAR, the Secretary announces in the application package the selection criteria and factors, if any, for this competition and the maximum weight assigned to each criterion.

FOR FURTHER INFORMATION OR APPLICATIONS: The Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 400 Maryland Avenue, SW, Room 3100, ROB–3, Washington, DC 20202–5175. Telephone: (202) 358–3041 to order applications; or (202) 708–5750, between the hours of 8 a.m. and 5 p.m., Eastern time, Monday through Friday, for information. Individuals may also request applications by submitting the name of the competition, their name, and postal mailing address to the e-mail address fipse@ed.gov. Individuals may obtain the application text from the Internet address http://www.ed.gov/offices/OPE/FIPSE/.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact office listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that office. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register,** in text or portable document format (pdf) via the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512-1530 or, toll free, at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1138–1128b and Public Law 105–277.

Dated: March 12, 1999.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 99–6484 Filed 3–15–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Nevada Operations Office; Notice of Solicitation for Research and Development of a Hydrogen Reformer, Fuel Cell Generator, and Vehicle Refueling System

AGENCY: Nevada Operations Office, Department of Energy.

ACTION: Notice of issuance of a research cooperative agreement solicitation for a Hydrogen Reformer, Fuel Cell Generator, and Vehicle Refueling System.

SUMMARY: The Nevada Operations Office of the Department of Energy plans to electronically issue a Financial Assistance solicitation for the cost-shared development and validation of an integrated reformer technology, 50 kW proton exchange membrane (PEM) fuel cell electrical generating system and vehicle refueling system under Solicitation Number DE–SC08–99NV13578. Through this solicitation, the awardee will provide a 50kW fuel cell system, a reformer for hydrogen production, and a vehicle refueling facility. The vehicle refueling system will be multipurpose and capable of dispensing hydrogen, hydrogen enriched natural gas, and compressed natural gas (CNG).

DATES: All applications for Solicitation Number DE–SC08–99NV13578 should be received according to the solicitation's Due Date for Applications. This solicitation is expected to be released electronically on or about March 18, 1999.

ADDRESSES: Applications should be submitted to the U.S. Department of Energy, Nevada Operations Office, Contracts Management Division, ATTN: Darby A. Dieterich, P.O. Box 98518, Las Vegas, Nevada 89158.

FOR FURTHER INFORMATION CONTACT: All questions should be addressed to Darby A. Dieterich, Contracts Management Division, at (702) 295–1560 or via E-mail at dieterich@nv.doe.gov.

SUPPLEMENTARY INFORMATION: A copy of the solicitation will be accessible via Internet at: http://www.nv.doe.gov/business/procurement/solicit.htm. There will be no printed or hard copies of the solicitation mailed. If you do not have access to the Internet, there is a public reading room available for viewing the document at DOE/NV's facility in North Las Vegas, Nevada. Additionally, most public libraries have resources available to electronically access and download the solicitation. CAUTION: This solicitation will be issued electronically as well as any amendments thereto. Because of this, the Government is under no obligation and is in fact unable to maintain a COMPLETE bidders mailing list. It is therefore incumbent upon interested parties to periodically access the above Internet address in order to obtain any amendments which may be issued. Failure to obtain any said amendments and to respond to them prior to the date and time set for receipt of applications may render your application nonresponsive and result in rejection of same. This solicitation is being conducted under the authority of Section 2026 of the Energy Policy Act of 1992, Public Law 102–486, and Title I, Section 103 of the Hydrogen Futures Act of 1996, Public Law 104–271. As a result, cost sharing requirements will be at least 50 percent of the total estimated cost of the project. In addition, it is a requirement for the awardee to be a United States-owned entity or that the foreign country in which the parent company is located meets certain conditions of reciprocity in the treatment of investments, access to research and development programs, and protection of intellectual property. The economic benefits of co-generation of hydrogen and electricity (from stationary fuel cells) has been studied by Directed Technologies, Inc. A synopsis of this evaluation can be obtained via the Internet at www:directedtechnologies.com. The period of performance for this action may be up to five years with total

estimated DOE funds of $3–4 million. Award is subject to the availability of funds. The issuance of a solicitation will not obligate DOE to make an award. All responsible sources, as indicated above, may submit an application which will be considered by the Government. All interested organizations are invited to submit applications.

Issued in North Las Vegas, Nevada, on March 8, 1999.

Dated: March 8, 1999.

G.W. Johnson,

Head of Contracting Activity.

[FR Doc. 99–6327 Filed 3–15–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments on the proposed extension to the EIA–882T, ''Generic Clearance for Questionnaire Testing, Evaluation and Research.''

DATES: Written comments must be submitted on or before May 17, 1999. If you anticipate difficulty in submitting comments within the 60 days, contact the person identified below as soon as possible.

ADDRESSES: Send comments to Herbert Miller, Statistics and Methods Group, EI–70, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585. Alternatively, Mr. Miller may be reached by phone at 202–426–1103, by e-mail (herbert.miller@eia.doe.gov), or by FAX (202–426–1083).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Mr. Miller at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the Department of Energy Organization Act (Pub. L. No. 94–91, 42 U.S.C. 7101 *et seq.*) requires the Energy Information Administration (EIA) to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under Section 3507(h) of the Paperwork Reduction Act of 1995.

On June 21, 1993, the EIA–882T, ''Generic Clearance of Questionnaire Testing, Evaluation and Research'' (OMB No. 1905–0185) was approved by the Office of Management and Budget (OMB) for three years. Eleven studies were conducted (or proposed to be conducted). The testing activities included several methods: focus group, mail questionnaire, telephone questionnaires, and personal interviews. The main focus of these efforts was pretesting activities to improve questionnaires. A survey was conducted to pretest activities on a new data collection to improve the collection of data on solar thermal collectors and photovoltaic devices. A follow-up study was conducted to see why energy supplies completed most of the questionnaires, after the due date on an energy consumption survey. Another energy consumption survey conducted a pilot study to assess the methodological and performance aspects of the effectiveness of random-digit-dialing (RDD) and computer-assisted telephone interviewing (CATI). Also, a telephone survey for evaluating the effectiveness of an effort to improve response on a natural gas survey was conducted. As agreed to between EIA and OMB, OMB was provided a summary of the results of the activities conducted under this generic clearance.

The EIA–882T approval was extended for three years on July 12, 1996, and expires July 31, 1999. During the past three years, another 8 surveys were conducted under the generic clearance. As requested by OMB, two surveys were conducted that collected information to assess recent changes in electric industry structure and operations and to determine what electric power data the states collect, and the confidentiality provisions of the data collected by the states. EIA conducted roundtable meetings with groups of EIA customers to solicit input on the main themes that should be pursued in our analysis agenda. A study was completed to test the effectiveness of a computer-assisted personal interviewing (CAPI) field activities for a residential survey that was previously conducted through personal interviews. Selected natural gas questions were pretested on a manufacturing survey. A telephone survey was conducted to see if detailed building characteristics can be collected using CATI techniques, and whether energy consumption expenditures can be collected from building owners, managers, or tenants, rather than from the building's energy suppliers. A related telephone survey was conducted to verify whether data provided by the building owners, managers, or tenants was accurate.

A wide variety of uses were made of the data obtained through this generic clearance. These projects represent significant strides in our efforts to improve the pretesting of EIA surveys. As EIA gains more experience, we hope to broaden involvement in testing, evaluation, and research that meet the criteria for the clearance.

II. Current Actions

EIA plans to request a 3-year extension of the OMB approval for this collection. For each study that EIA intends to undertake under this generic clearance, OMB will be notified, at least two weeks in advance, and provided with an information copy of the questionnaire (if one is used), and all other materials describing the testing activity.

III. Request for Comments

Prospective respondents and other interested persons are invited to comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of

information to or for any agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Public reporting burden for collections under the generic clearance are estimated to average 25 minutes per response. The range for burden varies significantly depending on the particular type of testing activity undertaken. The estimated burden for each response includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose and provide the information.

Please comment on (1) the accuracy of the agency's estimate and (2) how the agency could minimize the burden of collecting this information, including the use of information technology.

B. The agency estimates respondents will incur no additional costs for reporting other than the hours required to complete the collection. What is estimated: (1) total dollar amount annualized for capital and start-up costs; and (2) recurring annual costs of operation and maintenance, and purchase of services associated with these data collections?

C. Does any other Federal, state, or local agency collect similar information? If so, specify the agency, the data element(s), and the method of collection.

As a Potential User

A. Are there alternate sources for the information and are they useful? If so, what are their deficiencies and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, D.C. March 9, 1999.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc 99–6326 Filed 3–15–99; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–235–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

March 10, 1999.

Take notice that on March 3, 1999, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP99–235–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate the facilities necessary to establish an additional point of delivery to an existing customer, under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

Columbia states that the estimated cost to establish the new point of delivery is approximately $150 and will be treated as an O&M expense. The name of the customer is Mountaineer Gas Company (MGC). The location of the new point of delivery is in Wetzel County, West Virginia. The estimated quantities of natural gas to be delivered at the new point of delivery is 1.5 Dth/Day–150 Dth/Annually. The end use of the gas is residential.

Columbia states that the new point of delivery will have no effect on its peak day and annual deliveries, that its existing tariff does not prohibit the addition of new delivery points, and that deliveries will be accomplished without detriment or disadvantage to its other customers and that the total volumes delivered will not exceed total volumes authorized prior to this request.

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. 99–6284 Filed 3–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. Docket No. EL99–43–00]

New York Power Pool; Notice of Filing of Petition for Waiver

March 5, 1999.

Take notice that on February 26, 1999, the Member Systems of the New York Power Pool (NYPP) filed a petition for a waiver of compliance with Version 1.3 of the OASIS Standards and Communications Protocols (S&CP Document), due to be implemented by March 1, 1999.[1]

NYPP argues that it is engaged in efforts to: (1) Convert its entire computer based system (including OASIS) to the requirements for a New York Independent System Operator (NY ISO); (2) implement its locational based marginal pricing proposals; and (3) prepare for Y2K problems. NYPP argues that it should be given a waiver from the requirement to comply with Version 1.3 of the OASIS S&CP Document until the NY ISO becomes operational and an OASIS specific to its restructuring process can be brought on line.

Any person desiring to be heard or to protest such 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 385.214). All such motions and protests should be filed on or before March 22, 1999. 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. This filing may also be viewed on the Internet at http://

[1] Open Access Same-Time Information System and Standards of Conduct, 84 FERC ¶61,329 at 62,474 (1998).

www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–6336 Filed 3–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–239–000]

Williams Gas Pipelines Central, Inc.; Notice of Request Under Blanket Authorization

March 10, 1999.

Take notice that on March 5, 1999, Williams Gas Pipelines Central, Inc. (Williams), One Williams Center, P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP99–239–000 a request pursuant to Sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216(b)) for authorization to abandon by reclaim facilities used for the receipt of transportation gas from Williams Energy Services Company (WESCO) (Meter #16375), formerly known as Williams Field Services, at the New Castle/Dunning setting located in Grady County, Oklahoma, under the blanket certificate issued in Docket No. CP82–479–000, pursuant to Section 7(b) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http:///www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Williams seeks reauthorization to reclaim the tap, metering and appurtenant facilities at Meter #16375, which were originally installed in 1995 to receive transportation gas from WESCO. Williams included in its application a copy of WESCO's letter advising Williams that it abandoned and reclaimed its facilities at New Castle/Dunning. Williams owns the measurement setting and WESCO owned the dehydration equipment. Williams will sell the measurement site to the landowner after the reclaim has been approved. Williams estimates that the reclaim cost will be approximately $1,200. Williams states that it is sending a copy of this request to the Oklahoma Corporation Commission.

Any persons 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 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. 99–6285 Filed 3–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 710–014]

wisconsin Power & Light Company; Notice Establishing Comment Period For Complaint

March 10, 1999.

On February 24, 1999, the U.S. Department of the Interior and the Menominee Indian Tribe of Wisconsin jointly filed, pursuant to the Commission's regulations, 18 CFR 385.206, a complaint ''Requesting Commission Enforcement of Article 408.'' The complainants argue that Wisconsin Power & Light Company has failed to comply with Article 408 of its license because it did not file a fishery enhancement plan required pursuant to that article. The complainants request that the Commission require immediate compliance with Article 408.

Any person may file an answer, comments, protests, or a motion to intervene with respect to the complaint in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.213, and 385.214. In determining the appropriate action to take with respect to the complaint, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any answers, comments, protests, or motions to intervene must be received no later than 30 days after publication of this notice in the **Federal Register**.[1]

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–6286 Filed 3–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Draft License Application and Preliminary Draft Environmental Assessment (PDEA) and Request for Preliminary Terms and Conditions

March 10, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2077–000.

c. *Applicant:* U.S. Generating Company, New England, Inc.

d. *Name of Project:* Fifteen Mile Falls.

e. *Location:* On the Connecticut River, in Grafton County, New Hampshire, and Caledonia County, Vermont.

f. *Applicant Contact:* Cleve Kapala, USGen, New England, Inc., 46 Centarra Parkway, Suite 100, Lebanon, NH 03766.

g. *FERC Contact:* William Guey-Lee (202) 219–2808, Email: william.gueylee@ferc.fed.us.

h. USGen, New England, Inc. mailed a copy of the PDEA to interested parties on March 3, 1999. The Commission received a copy of the PDEA on March 4, 1999. For the remaining components of the draft license application, exhibits A, B, C, D, F, G, and H, USGen is requesting a waiver of the 90-day review period. USGen proposes to mail to the interested parties and submit to the Commission, the remaining above exhibits, on or before May 1, 1999. Copies of the documents are available from USGen at the above address.

i. With this notice we are soliciting preliminary terms, conditions, and recommendations on the PDEA and draft license application. All comments on the PDEA and draft license application should be sent to the address above in item (f) with one copy filed with the Commission at the following address: Federal Energy Regulatory Commission, David P. Boergers, Secretary, 888 First St. NE, Washington, DC 20426. All comments must include the project name and

[1] *See* 18 CFR 385.213(d). *See also* 18 CFR 385.202.

number, and bear the heading ''Preliminary Comments,'' ''Preliminary Recommendations,'' ''Preliminary Terms and Conditions,'' or ''Preliminary Prescriptions.'' Any party interested in commenting on the PDEA, and those draft license application exhibits to be mailed to the parties and filed with the Commission by May 1, 1999, must do so on or before June 1, 1999.

j. With this notice, we are initiating consultation with the STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–6287 Filed 3–15–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6311–5]

Extension of the Comment Period for the Draft Memorandum of Agreement Between the Environmental Protection Agency, Fish and Wildlife Service, and National Marine Fisheries Service Regarding Enhanced Coordination Under the Clean Water Act and the Endangered Species Act

AGENCY: Environmental Protection Agency.

ACTION: Notice, extension of public comment period.

SUMMARY: EPA is extending the public comment period on the Draft Memorandum of Agreement Between the Environmental Protection Agency, Fish and Wildlife Service, and National Marine Fisheries Service Regarding Enhanced Coordination Under the Clean Water Act and the Endangered Species Act. The notice and request for comments was jointly published by EPA, the Fish and Wildlife Service and the National Marine Fisheries Service in the **Federal Register** on January 15, 1999.

DATES: Comments on all issues regarding the notice will be accepted until April 15, 1999. Comments postmarked after this date may not be considered.

ADDRESSES: An original and 4 copies of written comments should be submitted to W–98–32, ESA Comment Clerk, Water Docket (MC4101), USEPA 401 M Street SW, Washington, DC, 20460. Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to ow-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by docket number W–98–32. Comments will also be accepted on disks in WP 5.1, WP 6.1, or ASCII file format.

The record for this draft Memorandum of Agreement has been established under docket number W–98–32, and includes supporting documentation as well as printed, paper versions of electronic comments. The record is available for inspection from 9 to 4 p.m., Monday through Friday, excluding legal holidays at the Water Docket, EB 57, USEPA Headquarters, 401 M Street, Washington, D.C. For access to docket materials, call 202–260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Barbara McLeod, Office of Water, Environmental Protection Agency (telephone 202–260–5681); Margaret Lorenz, Endangered Species Division, National Marine Fisheries Services (telephone 301–713–1401); or Richard Hannan, Division of Endangered Species, Fish and Wildlife Service (telephone 703–358–2171).

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency (EPA), and the Fish and Wildlife Service and the National Marine Fisheries Service have developed a draft Memorandum of Agreement (MOA) describing how we will cooperate in implementing our respective responsibilities under the Clean Water Act (CWA) and the Endangered Species Act (ESA). The notice and request for comments on the draft MOA appeared in the **Federal Register** on January 15, 1999 (64 FR 2741) and provided for a 60 day public comment period, ending on March 16, 1999. EPA has received requests from several interested parties for additional time to comment.

Dated: March 12, 1999.

J. Charles Fox,

Assistant Administrator for Water.

[FR Doc. 99–6485 Filed 3–15–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority 5 CFR 1320 Authority

March 10, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 17, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0243.

Title: Section 74.551 Equipment Changes.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1.

Estimated time per response: 0.5 hours.

Total Annual Burden: 0.5 hours.

Total Annual Cost: $100.

Needs and Uses: Section 74.551(b) requires licensees of aural broadcast studio transmitter links (STL) or intercity relay stations to notify the Commission in writing of minor equipment changes that can be made without prior Commission authorization upon completion of such changes. The data are used by FCC staff to assure that the changes made comply with the rules and regulations.

OMB Control Number: 3060–0245.

Title: Section 74.537, Temporary Authorizations.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 12.

Estimated time per response: 1.5 hours.

Total Annual Burden: 18 hour.

Total Annual Cost: $600.

Needs and Uses: Section 74.537 requires licensees of an aural broadcast studio transmitter link (STL) or intercity relay station to file an informal request for special temporary authorization for operations of a temporary nature. The data are used by FCC staff to insure that the temporary operation of an STL or intercity relay station will not cause interference to existing stations.

Federal Communications Commission

William F. Caton,

Deputy Secretary.

[FR Doc. 99–6325 Filed 3–15–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

March 4, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 15, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0540.

Title: Tariff Filing Requirements for Nondominant Common Carriers.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 2,000.

Estimated Time per Response: 10.5 hours (avg.).

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 21,000 hours.

Total Annual Costs: $1,260,000.

Needs and Uses: Domestic nondominant carriers must file tariffs pursuant to 4 USC Section 203; implementing regulations are found at 47 CFR Sections 61.20–61.23. The information collected pursuant to the nondominant tariff filing rules is used to comply with Section 203 of the Communications Act of 1934, as amended, which requires that carriers file schedules indicating the rates, terms, and conditions of their service offerings. The information collected pursuant to the tariff filing requirements is used by the Commission to determine whether the rates, terms, and conditions of service offered are just and reasonable as the Act requires. These tariff filing requirements enable the Commission and the public to ensure that the service offerings of communications common carriers comply with the requirements of the Act.

OMB Control Number: 3060–0853.

Title: Receipt of Service Confirmation Form—Universal Service for Schools and Libraries.

Form Number: FCC Form 486.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 30,000.

Estimated Time per Response: 1.5 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 45,000 hours.

Total Annual Costs: None.

Needs and Uses: The Commission adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. To participate in the program, schools and libraries must confirm that they are actually receiving the services eligible for support. FCC Form 486, Receipt of Service Confirmation Form, is used by all billed entities who filed an FCC Form 471 on behalf of an eligible school, library, library consortium, or consortium of multiple entities, to inform the SCL when they begin receiving or have received service from the service provider. The FCC Form 486 is also used to confirm that technology plans of entities receiving universal service support pursuant to an SLC-approved funding commitment have been approved, indicating that the eligible entities applying for universal service support have a plan in place to utilize the services for which they have contracted, and to indicate the name of the authorized reviewing body, contact name, and contact telephone number. The FCC Form 486 is used to implement the Congressional mandate for universal service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–6324 Filed 3–15–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

March 11, 1999.

Open Commission Meeting, Thursday, March 19, 1999

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, March 18, 1999, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, S.W., Washington, D.C.

Item No.	Bureau	Subject
1	Common Carrier	Title: Policy and Rules Concerning the Interstate, Interexchange Marketplace; and Implementation of Section 254(g) of the Communications Act of 1934; as amended (CC Docket No. 96–61). Summary: The Commission will consider action concerning disclosure to the public of information on the rates, terms, and conditions of all interstate, interexchange services.
2	Common Carrier	Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147). Summary: The Commission will consider action concerning the availability and deployment of advanced services.
3	Common Carrier	Title: Federal-State Joint Board on Universal Service (CC Docket No. 96–45). Summary: The Commission will consider action concerning: (1) the limited exemption from competitive bidding for the 1998–99 funding year in the schools and libraries and rural health care universal service support mechanisms; and (2) the period during which schools and libraries may apply discounts for nonrecurring services.
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 its funding rules for the schools and libraries universal service support mechanism.
5	International	Title: The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band (RM–9328). Summary: The Commission will consider action concerning the authorization of mobile satellite service in the 2 GHz frequency band.
6	International	Title: 1998 Biennial Regulatory Review—Review of International Common Carrier Regulations (IB Docket No. 98–118). Summary: The Commission will consider action concerning rules to streamline and simplify the authorization of carriers to provide international telecommunications services and to remove regulatory restrictions on the provision of international telecommunications services.

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.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–6523 Filed 3–12–99; 3:47 pm]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing 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.: 202–011528–008

Title: Japan-U.S. Eastbound Freight Conference

Parties:

American President Lines, Ltd.
Hapag-Lloyd Container Line GmbH
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
A.P. Moller-Maersk Line
Nippon Yusen Kaisha
Orient Overseas Container Line, Inc.
P&O Nedlloyd B.V.
P&O Nedlloyd Limited
Sea-Land Service, Inc.
Wilhelmsen Lines AS.

Synopsis: The proposed modification revises Article 5(d) of the Agreement to authorize the members of the Conference to use common, joint and/or individual rate and/or rules tariffs. In addition, Article 5(e) is amended to permit the Conference to open rules, as well as rates, for members to separately establish.

Agreement No.: 202–011579–005

Title: Inland Shipping Services Association

Parties:
Crowley American Transport, Inc.
Dole Ocean Liner Express
King Ocean
A.P. Moller-Maersk Line
Sea-Land Service, Inc.
Seaboard Marine, Ltd.
Seaboard Marine of Florida, Inc.
Synopsis: The proposed agreement modification would allow the parties to negotiate with non-ocean carriers, would reduce the notice period for taking independent action to five calendar days, and would have counsel act as the agent for each party for filing amendments to the agreement.

Agreement No.: 217–011652
Title: Iceland Steamship/Samskip Slot Charter Agreement
Parties:
Iceland Steamship Co., Ltd.
Samskip hf.
Synopsis: Under proposed agreement, Iceland Steamship will provide container space to Samskip in the trade between the ports of Everett, MA; Brooklyn, NY; and Norfolk, VA; and the port of Reykjavik, Iceland.

Agreement No.: 217–011653
Title: CSAV/CCNI/COLUMBUS Space Charter Agreement
Parties:
Compania Sud Americana de Vapores (''CSAV'')
Compania Chilena de Navegacion Interoceanica S.A. (''CCNI'')
Columbus Line
Synopsis: The proposed Agreement would permit CSAV and CCNI to charter space to Columbus Line in the trade between the United States East Coast and Puerto Rico ports, and inland points via such ports, and ports and points in the Caribbean, Colombia, Panama, Ecuador, Chile, and Peru (including points in Bolivia and Argentina). The parties have requested expedited review.

Agreement No.: 202–011654
Title: Middle East Indian Subcontinent Agreement
Parties:
A.P. Moller-Maersk Line
CMA–CGM (America)
The National Shipping Company of Saudi Arabia
Sea-Land Service, Inc.
United Arab Shipping Company
Synopsis: The proposed Agreement would permit the parties to discuss and agree upon rates, terms and conditions of service, and to negotiate and enter into service contracts in the trade between all United States ports, and inland points via such ports and ports and points in Southwestern and Southern Asia in the Saudi Arabia/Bangladesh range.

Agreement No.: 224–201049–002
Title: Wharfage Incentive Agreement
Parties:
Tampa Port Authority
Tampa Bay International Terminals, Inc.
Synopsis: The proposed agreement modification would extend the term of the agreement through March 31, 2000.

Dated: March 10, 1999.

By order of Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 99–6292 Filed 3–15–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

International Freight Services, Inc., 10125 N.W. 116th Way, Suite 18, Medley, FL 33178. Officers: Margaret Mouttet, President, Kirk Camacho, Vice President

Logistics Worldwide International Inc., 21234 Catawa Ave., Cornelius, N.C. 20831. Officer: Mark Corneau, President

A Olympic Forwarder, Inc., 6605 202nd Street, SW, Lynnwood, WA 98036. Officer: Jerry Effenberger, Owner

Dated: March 11, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–6391 Filed 3–15–99; 8:45 am]

BILLING CODE 6730–01–M

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 April 9, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Community Commercial Bancshares, Inc., Germantown, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Community Commercial Bank, Germantown, Tennessee (in organization).

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Belvedere Capital Partners LLC, San Francisco, California; to become a bank holding company by acquiring 100 percent of the voting shares of Belvedere Capital Partners, Inc., San Francisco, California, California Community Financial Institutions Fund, L.P., San Francisco, California, and California Financial Bancorp, Newport Beach, California, and thereby indirectly acquire Security First Bank, Fullerton, California, The Bank of Orange County, Fountain Valley, California, Downey National Bank, Downey, California, and National Business Bank, Torrance, California.

Board of Governors of the Federal Reserve System, March 10, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–6282 Filed 3–15–99; 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 April 9, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. USAccess Holdings, Inc., Louisville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of USAccess Bank, Inc., Louisville, Kentucky (formerly known as The Central Bank USA, Inc., Jeffersontown, Kentucky).

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Horizon Financial Corp., Bellingham, Washington; to merge with Bellingham Bancorporation, Bellingham, Washington, and thereby indirectly acquire Bank of Bellingham, Bellingham, Washington.

Board of Governors of the Federal Reserve System, March 11, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–6357 Filed 3–15–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 9, 1999.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Classic Bancshares, Inc., Ashland, Kentucky; to acquire Classic Interim Bank, Ashland, Kentucky (a Federal Savings Bank, in organization), and thereby engage in the operation of a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, March 10, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–6283 Filed 3–15–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 99-5985) published on page 12170 of the issue for March 11, 1999.

Under the Federal Reserve Bank of San Francisco heading, the entry for Wells Fargo & Company, San Francisco, California; and Norwest Mortgage, Inc., Des Moines, Iowa; and Norwest Ventures, LLC, Des Moines, Iowa, is revised to read as follows:

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo & Company, San Francisco, California; and Norwest Mortgage, Inc., Des Moines, Iowa; and Norwest Ventures, LLC, Des Moines, Iowa; to engage *de novo* through its subsidiary, Vintage Capital, San Jose, California, through a joint venture, in residential mortgage lending activities, pursuant to § 225.28(b)(1) of Regulation Y

Comments on this application must be received by March 25, 1999.

Board of Governors of the Federal Reserve System, March 11, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–6358 Filed 3–15–99; 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, March 22, 1999.

PLACE: Marriner S. Eccles Federal Reserve Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: 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: March 12, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–6522 Filed 3–12–99; 3:47 pm]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99047]

Human Immunodeficiency Virus Community-Based Prevention Projects for the Commonwealth of Puerto Rico and the United States Virgin Islands; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds to support cooperative agreements for HIV prevention projects with community-based organizations (CBOs) serving populations at increased risk of acquiring or transmitting HIV infection in the Commonwealth of Puerto Rico (the Commonwealth) or the United States Virgin Islands (The USVI). This program addresses the ''Healthy People 2000'' priority areas of Educational and Community-Based Programs, HIV Infection, and Sexually Transmitted Diseases. It also addresses the HIV Prevention Comprehensive Plan developed by the Commonwealth's Community Planning Group (CPG) and the Epidemiological Profile developed by the USVI Department of Health, by providing support for primary prevention for persons at increased risk for HIV infection and by increasing the availability and coordination of prevention and early intervention services for HIV-infected persons. A copy of the Commonwealth's Comprehensive plan, the USVI Epidemiological Profile and the Healthy People 2000 Objectives are included in the application kit.

The purpose of this program is to (1) develop and implement effective community-based HIV prevention programs that reflect the Commonwealth's or the USVI HIV prevention priorities outlined in their comprehensive HIV prevention plan and Epidemiological profile developed through HIV Prevention Community Planning; and (2) promote collaboration and coordination of HIV prevention efforts among CBOs, Health Departments, and private agencies such as substance abuse agencies, educational agencies, criminal justice systems, and national and regional organizations.

B. Eligible Applicants

Assistance will be provided only to nonprofit community-based organizations (CBOs) providing services in the Commonwealth or the USVI. To be eligible, CBOs must meet the following criteria:

1. Be a non-governmental organization (non-profit corporation or association) established in the geographic area where the services will be provided, whose net earnings in no part accrue to the benefit of private shareholders or individuals. You must include a written Statement of Good Standing and a Certificate of Incorporation from the Commonwealth State Department or the USVI State Department as acceptable evidence of nonprofit status and experience in operating and centrally administering a community-based organization to be eligible to apply.

2. Document that the majority of its programmatic and administrative staff involved in the project are representative of the population to be served.

Successful applicants will be required to apply for an Internal Revenue Service (IRS) determination of 501(c)3 status during the first three months of funding. CDC will provide technical assistance and support in submitting this request.

Applicants must submit (1) a Statement of Good Standing and (2) a Certificate of Incorporation issued by the State department as proof of nonprofit and ''Good Standing'' status with the application for determination of eligibility. No application will be accepted without these two documents.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

1. The Commonwealth

An annualized amount of approximately $1.1 million is available in FY 1999 to fund approximately 15 awards in the Commonwealth. It is expected that the average award will be $125,000, ranging from $85,000 to $150,000.

2. The USVI

Approximately $400,000 is available in FY 1999 to fund approximately 3 awards in the USVI. It is expected that the average award will be $125,000, ranging from $85,000 to $150,000.

It is expected that the awards will begin on or about July 1, 1999, and will be made for a 12-month budget period within a project period of up to 4 years. Applications from CBOs in the Commonwealth requesting more than $180,000 per year, including direct and indirect costs, or from CBOs in the USVI requesting more than $200,000 per year, including direct and indirect costs, will be deemed ineligible and will not be accepted by CDC.

Funding estimates may change based on the following: the availability of funds; the scope and the quality of applications received; distribution of the HIV epidemic in the Commonwealth and the USVI; the appropriateness and reasonableness of the budget request; and the proposed use of project funds.

Noncompeting continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports, CDC site visits, and the availability of funds.

Use of Funds

Funds available under this announcement must support activities directly related to primary HIV prevention. However, intervention activities which involve preventing other Sexually Transmitted Diseases (STDs) and drug use as a means of reducing or eliminating the risk of HIV infection may be supported. No funds will be provided for direct patient medical care (including substances abuse treatment, medical prophylaxis or drugs).

These funds may not be used to supplant or duplicate existing funding. Although applicants may contract with other organizations under these cooperative agreements, applicants must perform a substantial portion of the activities (including program management and operations and delivery of prevention services) for which funds are requested.

Funding Priority

1. The Commonwealth

Priority will be given to funding activities and interventions identified through the Commonwealth's HIV

Prevention Comprehensive Plan and epidemiological profile. Please refer to the Commonwealth's HIV Prevention Comprehensive Plan for the recommended HIV Prevention interventions for each priority population.

2. The USVI

Priority will be given to funding activities and interventions identified through the USVI STD/HIV/AIDS epidemiological profile or comprehensive HIV prevention plan if available; and to CBOs with proven records of reaching their target populations.

To maximize the effective use of CDC funds, each applicant must conduct at least one of the priority Health Education and Risk Reduction (HERR) interventions described in the attachment. Although activities may cross from one intervention type to another (e.g., individual or group level interventions may be a part of a community-level intervention), each applicant must indicate which one of the four interventions is the primary focus. Because of the resources, special expertise, and organizational capacities needed for success, applicants are discouraged from undertaking more than two of the priority interventions previously listed.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for activities under 2. (CDC Activities).

1. Recipient Activities

a. Conduct a health education and risk reduction interventions (HERR) for individuals, groups or communities at high risk of becoming infected or transmitting HIV to others. The following four HERR interventions will be funded in FY 1999: Individual Level, Group Level, Community Level, and Street and Community Outreach. Each recipient must conduct at least one of these priority HERR interventions.

b. As needed, refer high risk clients, both HIV negative and HIV positive, and assist them in gaining access to HIV antibody counseling and testing; HIV medical care or early medical intervention; STD screening, testing, and treatment; psycho-social support; mental health services; substance abuse treatment; TB prevention and treatment; reproductive health; and other supportive services.

c. Coordinate and collaborate with the Commonwealth's or the USVI Health Department, community planning group, and other organizations and agencies involved in HIV prevention activities, especially those serving the target population(s) in the local area. This may include participation in the HIV Prevention Community Planning Process. Participation may include involvement in workshops; attending meetings; if nominated and selected, membership on the group; reporting on program activities; or commenting on plans.

d. Conduct process and outcome evaluations of all major program activities and services supported with CDC HIV prevention funds.

Further guidance on these recipient activities is available in the application kit.

2. CDC Activities

a. Provide consultation and technical assistance in planning, operating, and evaluating prevention activities. CDC will provide consultation and technical assistance both directly and indirectly through prevention partners such as health departments, national and regional minority organizations (NRMOs), contractors, and other national organizations.

b. Provide up-to-date scientific information on the risk factors for HIV infection, prevention measures, and program strategies for prevention of HIV infection.

c. Assist in the evaluation of program activities and services.

d. Assist recipients in collaborating with health departments, community planning groups, and other federally-supported HIV/AIDS recipients.

e. Facilitate the transfer of successful prevention interventions and program models to other areas through convening meetings of grantees, workshops, conferences, newsletters, and communications with project officers.

f. Monitor the recipient's performance of program activities, protection of client confidentiality, and compliance with other requirements.

g. Facilitate exchange of program information and technical assistance between community organizations, health departments, and national and regional organizations.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

You must prepare your application in English. The narrative should be no more than 35 double-spaced pages. Number each page clearly, and provide a complete index to the application and its appendices. Please begin each separate section of the application on a new page. The original and each copy of the application set must be submitted unstapled and unbound. All material must be typewritten, in 12 point font type, on 8½″ by 11″ paper, with at least 1″ margins, headings and footers, and printed on one side only. Materials which should be part of the basic plan will not be accepted if placed in the appendices.

In developing the application, you must follow the format and instructions below.

Format

1. Abstract
2. Assessment of Need and Justification for Proposed Activities
3. Organizational History and Capacity
4. Program Plan
5. Evaluation Plan
6. Communications/Dissemination Plan
7. Plan for Acquiring Additional or Matching Resources
8. Budget/Staffing Breakdown and Justification
9. Training and Technical Assistance Plan
10. Attachments

Instructions

1. Abstract (not to exceed 3 pages): Summarize your proposed activities. Include the following:

a. Summary of the need for the proposed activities;

b. Long-term goals;

c. Summary of proposed plan of operation, including the primary population(s) to be served and their risk behavior, activities to be conducted, and services to be provided;

d. Summary of plans for evaluating the activities of this project; and

e. Brief summary of future year activities.

2. Assessment of Need and Justification for Proposed Activities (not to exceed 6 pages).

a. Clearly describe the population(s) for which your proposed program will provide services.

b. Clearly identify the need that will be addressed by your proposed program, and describe how you assessed the need. Include epidemiologic and other data that were used to identify the need. Include a description of existing HIV prevention and risk-reduction efforts provided by other organizations to address the needs of the target population(s), and an analysis of the gap

between the identified need and the resources currently available to address the need (i.e., How will the proposed activities or program address an important unmet HIV prevention need?).

c. Describe the impact of the AIDS epidemic on the priority population and their community and any specific environmental, social, cultural, or linguistic characteristics of the priority population(s) which you have considered and addressed in developing prevention strategies, such as:

(1) HIV prevalence and incidence (if available), reported AIDS cases, and risk behaviors (sexual behaviors, substance use, etc.) in the target population;

(2) HIV/AIDS-related baseline knowledge, attitudes, beliefs, and behaviors;

(3) Patterns of substance use and rates of STDs and tuberculosis (TB); and

(4) Other relevant information. (Specify)

d. Describe the specific behaviors and practices that the proposed interventions are designed to promote and prevent (e.g., increases in correct and consistent condom use, knowledge of serological status, not sharing needles, and enrollment in drug treatment and other preventive programs).

e. Describe how your proposed program complements the HIV prevention priorities identified in the HIV Prevention Comprehensive Plan developed by the Commonwealth's Community Planning Group or the Epidemiological Profile developed by the USVI Department of Health. If the plan does not adequately provide the necessary information, justify the need and the priority of your proposed program activities and summarize how the activities address prevention gaps and complement ongoing prevention efforts. State why the funds requested in this application are necessary to address the need.

f. Explain any specific barriers to the implementation of your proposed program and how you will overcome these barriers.

3. Organizational History and Capacity (not to exceed 5 pages): Describe the following:

a. Organizational structure, including the role, responsibilities, and racial/ethnic composition of board of directors; committee structure of board of directors; organizational management, administrative and program components; constituent or affiliate organizations or networks; how the organizational structure will support the proposed program activities; and how the structure offers the capacity to reach targeted populations.

b. Past and current experience in developing and implementing effective HIV prevention strategies and activities, and in developing and implementing programs similar to the one(s) proposed in this application. Your discussion should include a description of programs provided in the past, both HIV prevention and general services and education programs.

c. The decision-making process in your organization.

d. Mechanism used by your organization to monitor program performance and quality assurance.

e. Demonstrated ability (1) to work with governmental and non-governmental organizations, including State, municipal and local health departments, local and State non-governmental organizations, national agencies or organizations, community planning groups, and other groups that provide HIV prevention services; and (2) to coordinate program joint program activities with existing governmental and private prevention efforts.

f. Capacity to provide the proposed HERR interventions which are culturally competent and linguistically appropriate, and which respond effectively to the gender, environmental, and social characteristics of the target populations.

g. For any of the above areas in which you do not have direct experience or current capacity, describe how you will ensure that the proposed program has that capacity (e.g., through staff development, collaboration with other organizations, or a subcontract).

4. Program Plan (not to exceed 11 pages): Use this section to describe your proposed program.

a. Behaviors and Practices the Interventions will Promote: Describe the specific behaviors and practices that the interventions are designed to promote and prevent (i.e., increases in correct and consistent condom use, knowledge of serological status, not sharing needles, and enrollment in drug treatment and other preventive programs).

b. Scientific, Theoretical, Conceptual, or Program Experience Foundation for Proposed Activities: Provide a detailed description of the scientific, theoretical, conceptual, or program experience foundation on which the proposed activities are based and which support the potential effectiveness of these activities for addressing the stated need.

c. Involvement of the target population: Describe the involvement of the target population in planning, implementing, and evaluating activities and services throughout the project period.

d. Appropriateness of Interventions: Describe how the proposed priority interventions and services are culturally competent, sensitive to issues of sexual identity, developmentally appropriate, linguistically-specific, and educationally appropriate. (Please reference the appendix for definitions of these terms.)

e. Intervention goals and objectives: Describe the broad HIV prevention goals that your proposed program aims to achieve over the course of the project period. Develop objectives that are specific, measurable, time-phased, realistic, related to the proposed activities (Reference Appendix for additional guidance on writing objectives), and if applicable, how it relates to the prevention priorities outlined in the jurisdiction's comprehensive HIV prevention plan. Describe the expected results of program activities on its priority population(s). Describe potential barriers to or facilitators for reaching these objectives.

f. Plan of Operation:

(1) Describe the specific activities to be conducted to accomplish the objectives.

(2) Describe the services to be provided to accomplish the objectives.

(3) Specify the approximate dates when activities will be accomplished and staff responsible for conducting activities.

(4) Describe the potential for volunteer involvement in your program. If volunteers will be involved, describe plans to recruit, train, place, and retain volunteers.

(5) Describe how you will collaborate with State, municipal and local health departments, community planning groups, members of the target population, and other appropriate service groups or organizations in the development and implementation of your program.

(6) Describe your mechanism for soliciting program participants.

(7) Describe how you will promote your program in the community.

(8) Describe the mechanism to assure client satisfaction.

(9) Provide the following as attachments: (a) a list of major community resources and health care providers to which referrals will be made; (b) a plan for ongoing training to ensure that staff are knowledgeable about HIV and STD risks and prevention measures; (c) a plan to assess the performance of staff to ensure that they are providing information and services accurately and effectively; (d) a mechanism to initiate and verify

referrals; and (e) protocols to guide and document training, activities, services, and referrals (e.g., applicants seeking funds for Street and Community Outreach Interventions must provide a description of the policies and procedures that will be followed to assure the safety of outreach staff).

g. Coordination/Collaboration:

(1) Specify the organizations and agencies with which you will establish linkages and coordinate activities in the process of developing and implementing your project. These must include State, municipal, and local health departments, the appropriate HIV prevention community planning group, and should include, as appropriate, the following:

(a) Community groups and organizations, including churches and faith groups;

(b) HIV/AIDS service organizations;

(c) Ryan White CARE Title I and Title II planning bodes;

(d) Schools, boards of education, and other State or local education agencies;

(e) State and local substance abuse agencies, community-based and other drug treatment or detoxification programs;

(f) Federally funded community projects, such as those funded by the Center for Substance Abuse Treatment (CSAT), Center for Substance Abuse Prevention (CSAP), Health Resource Services Administration (HRSA), Office of Minority Health (OMH), and other federal agencies;

(g) Providers of services to youth in high risk situations (e.g., youth in shelters);

(h) State or local departments of mental health;

(i) Juvenile and adult criminal justice, correctional or parole systems and programs;

(j) Family planning and women's health agencies; and

(k) STD and TB clinics and programs.

(2) Describe the activities that will be coordinated with each organization.

(3) Submit and include as attachments memoranda of understanding or agreement as evidence of these established or agreed-upon collaborative relationships. Memoranda of agreement should specifically describe the proposed collaborative activities. Evidence of continuing collaboration must be submitted each year to ensure that the collaborative relationships are still in place. Memoranda of agreement from health departments should include a statement that your application has been reviewed.

5. Evaluation Plan (not to exceed 6 pages): Describe how you will monitor progress to determine if the objectives are being achieved (process evaluation), and determine if the methods used to deliver the proposed activities are effective. Describe how data will be collected, analyzed, and used to improve the program.

a. *Evaluation Questions.* Specify the questions to be answered through the evaluation activities that are being proposed. These questions should guide the evaluation process and be directly linked to the objectives stated above.

b. *Evaluation Data.* Specify the information (data) that will be collected to answer the Evaluation Questions stated above. This data should enable you to measure quantity (i.e., the number of activities conducted or people served) and quality (i.e., the effectiveness of the activities conducted and services provided from the program participant's point of view).

c. *Sources of Data.* Specify the sources of information (data) to be collected. Data sources may include program documentation records (i.e., client registration forms, participant evaluation forms, referral forms, field notes, etc.), information from other service providers or institutions (i.e., HIV testing clinics, STD clinics, drug treatment centers, schools, etc.), and feedback from staff and clients (i.e., client and staff satisfaction forms, etc.). Also specify at what points during delivery of the interventions(s), that data will be collected.

d. *Collection Method.* Specify the methods for data collection. For example, data should be collected routinely as a part of program services using data collection tools such as sign-in logs, registration forms, activity documentation forms, etc. Specify additional methods for collecting data such as the use of questionnaires, surveys, other data collection instruments, interviews and focus groups, etc.

e. *Baseline Data.* Since this evaluation is designed to measure change as a result of the intervention, specify the baseline against which the change is being measured. Baseline data, such as existing attitudes, beliefs, behaviors, and knowledge of participants, is established by collecting information prior to the intervention.

f. *Evaluator.* Specify the person(s) responsible for designing and implementing evaluation activities, collecting and analyzing data, and reporting findings.

g. *Use of Data.* Explain how the data resulting from the evaluation will be used to improve or expand the program.

h. *Dissemination plan.* Discuss how the results of the evaluation will be reported and who will receive the results.

Note: Include samples of data collection tools in the attachments, if available.

Your process evaluation plan should:

a. Provide a detailed description of:

(1) Each program activity and the documented need for that activity; and

(2) Progress toward achieving each stated objective in the cooperative agreement;

b. Provide detailed information for:

(1) The specific service or intervention that was provided and how it differed from the planned services;

(2) the description and the number of persons who received the service, including demographics such as age, race and ethnicity, gender, and if appropriate and available, sexual orientation and risk exposure, and how the persons actually served differed from those the program intended to serve;

(3) When and how often the service or intervention was provided and how this differed from program plans; and,

(4) Where the service or intervention was provided (e.g., Counseling, Testing, Referral, and Partner Notification (CTRPN) site, STD clinic, street corner, housing project) and a comparison of these data to the expected locations of service delivery.

c. Document and describe program successes, unmet needs, barriers and problems encountered in planning, implementing, or providing services, or in coordinating services with other organizations and agencies serving target populations.

d. Document and describe the success of referral systems, including the numbers of persons referred and the number actually receiving services by site, and how well the system functions in identifying sources of services and in assisting persons in obtaining and receiving them.

e. Document and describe problems that affect planning or implementing program activities (e.g., recruiting, hiring, or retaining staff; training or ensuring quality staff performance; establishing or maintaining contracts with other CBOs or ensuring the quality of their performance), and

f. Describe client satisfaction with HIV prevention services. Client satisfaction should be assessed periodically via quantitative or qualitative methods (e.g., periodic focus groups with current or former clients).

You are encouraged to conduct outcome evaluation. However, due to the additional cost and need for scientific support beyond the scope of these cooperative agreements, you

cannot conduct impact evaluations with cooperative agreement funds (e.g., long-term effects of the program in terms of changes in behavior). CDC will continue to support special projects to evaluate the behavioral and other outcomes of interventions commonly used by CBOs and other organizations, and disseminate information and lessons learned from this research to CBOs, health departments, community planning groups, and other organizations and agencies involved in HIV prevention programs. If funds become available, CDC may supplement these cooperative agreements for outcome evaluation. Indicate which members of the staff will be responsible for developing and implementing the evaluation plan.

6. Communications/Dissemination Plan (not to exceed 2 pages): Describe how you will share successful approaches and ''lessons learned'' with other organizations.

7. Plan for Acquiring Additional or Matching Resources (not to exceed 1 page): Describe your plan for obtaining additional resources from other (non-CDC) sources to supplement the program conducted through this cooperative agreement and to increase the likelihood of its continuation after the end of the project period.

2. Budget/Staffing Breakdown and Justification:

a. Detailed Budget: Provide a detailed, separate budget for each HERR intervention proposed (i.e., individual level, group level, community level, or street and community outreach) to be undertaken, with accompanying justification of all operating expenses that is consistent with the stated objectives and planned priority activities. CDC may not approve or fund all proposed activities. Be precise about the program purpose of each budget item and itemize calculations wherever appropriate.

In the personnel section, specify the job title, annual salary/rate of pay, and percentage of time spent on this program. If the identity of any key personnel who will fill a position is known, his or her name and resume should be attached. Experience and training related to the proposed project should be noted.

For contracts, applicants should name the contractor, if known; describe the services to be performed which justifies the use of a the contractor; provide a breakdown of and justification for the estimated costs of the contracts; the period of performance; the method of selection; and method of monitoring the contract.

Note: If indirect costs are requested, you must provide a copy of your organization's current negotiated Federal indirect cost rate agreement.

b. Staffing Plan: Provide a job description for each position for this program that specifies job title, function, general duties, activities, and salary range. Include the level of effort and allocation of time for each project activity by staff positions. If the identity of any key personnel who will fill a position is known, her/his name and resume should be attached. Experience and training related to the proposed project should be attached. Experience and training related to the proposed project should be noted. If the identity of staff is not known, describe your recruitment plan. If volunteers are involved in the project, provide job descriptions.

3. Training and Technical Assistance Plan (not to exceed 2 pages): Describe areas in which you anticipate needing technical assistance in designing, implementing, and evaluating your program and how you will obtain this technical assistance. Describe anticipated staff training needs related to the proposed program and how these needs will be met.

10. Attachments:

Provide the following as attachments:

a. Statement of Good Standing issued by the State department;

b. Certificate of Incorporation issued by the State department;

c. A list of the members of its governing body along with their positions on the board, their expertise in working with or providing services to the proposed target population, and their racial/ethnic backgrounds (Submission of information regarding the HIV status or other confidential information regarding any individual is optional);

d. An organizational chart of existing and proposed staff, including the board of directors, volunteer staff, and their racial/ethnic backgrounds;

e. A description of funds received from any source to conduct HIV/AIDS programs and other similar programs targeting the population proposed in the program plan. This summary must include: the name of the sponsoring organization/source of income, amount of funding, a description of how the funds have been used, and the budget period. In addition, identify proposed personnel devoted to this project who are supported by other funding sources and the activities they are supporting;

f. A summary of the objectives and activities of the funded program(s);

g. An assurance that the funds being requested will not duplicate or supplant funds received from any other Federal or non-Federal source. CDC awarded funds can be used to expand or enhance services supported with other Federal or non-Federal funds;

h. Independently audited financial statements from a Certified Public Accountant (CPA) for the previous 2 years written in English;

i. Affiliates of national organizations must include with the application an original, signed letter from the chief executive officer of the national organization assuring their understanding of the intent of this program announcement and the responsibilities of recipients; and

j. Memoranda of Agreement with collaborative organizations which describes nature and duration of the relationship and specific joint activities to be conducted.

Note: Materials submitted as attachments should be printed on one side of 8½x11 paper. Please do not attach bound materials such as booklets or pamphlets. Rather, submit copies of the materials printed on one side of 8½x11 paper. Bound materials will not be reviewed.

F. Submission and Deadline

Submit the original and two copies of the PHS 5161 (OMB Number 0937–0189). forms are in the application kit. On or before May 7, 1999, submit the application written in English to: Patrick Smith, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Announcement Number 99047, 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for orderly processing. (applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks are not acceptable proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Abstract (not scored).

2. Assessment of Need and Justification for the Proposed Activities (20 points):

a. The extent to which the applicant soundly documents a substantial need for the proposed program and activities. (10 points)

b. The quality of the applicant's plan to ensure consistency with applicable State and local comprehensive HIV prevention plans and, if applicable, the adequacy with which the applicant demonstrates the rational for deviating from the jurisdiction's comprehensive HIV prevention plan. (10 points)

3. Organizational History and Capacity (15 points): The extent to which the applicant's documents having at least 12 months experience in operating and centrally administering a community-based organization targeting priority populations as described in the Commonwealth's HIV Prevention Comprehensive Plan and the USVI Epidemiological Profile; and demonstrates experience, capacity, and ability to address the identified needs and implement the proposed activities, including:

a. How the applicant's organizational structure and planned collaborations (including constituent or affiliated organizations or networks) will support the proposed program activities, and how the proposed program will have the capacity to reach targeted populations; (3 points)

b. Applicant's past and current experience in developing and implementing effective HIV prevention strategies and activities, and in developing and implementing programs similar to those proposed in this application; (3 points)

c. Applicant's capacity to provide culturally competent and appropriate services which respond effectively to the cultural, gender, environmental, social and multilingual character of the target audiences, including documentation of any history of providing such services; (3 points)

d. Applicant's experience and ability in collaborating with governmental and non-governmental organizations, including other national agencies or organizations, State and local health departments, community planning groups, and State and local non-governmental organizations that provide HIV prevention services; (3 points) and

e. Plans to ensure capacity to implement proposed program where no direct experience or capacity currently exists within the applicant organization. (3 points)

4. Program Plan (45 total points):

a. Behaviors and Practices the Interventions will Promote (5 points): The degree to which the applicant describes the specific behaviors and practices that the interventions are designed to promote and prevent (i.e., increases in correct and consistent condom use, knowledge of serological status, not sharing needles, and enrollment in drug treatment and other preventive programs).

b. Scientific, Theoretical, Conceptual, or Program Experience Foundation for Proposed Activities (5 points): The degree to which the applicant provides a detailed description of the scientific, theoretical, conceptual, or program experience foundation on which the proposed activities are based and which support the potential effectiveness of these activities for addressing the stated need.

c. Involvement of the target population (5 points): The degree to which the applicant describes the involvement of the target population in planning, implementing, and evaluating activities and services throughout the project period.

d. Appropriateness of Interventions (5 points): The degree to which the applicant describes how the proposed priority interventions and services are culturally competent, sensitive to issues of sexual identity, developmentally appropriate, linguistically-specific, and educationally appropriate. (Please reference the appendix for definitions of these terms.)

e. Goals and Objectives (10 points): Degree to which the proposed objectives are specific, measurable, time-phased, related to the proposed activities, and consistent with the program's long-term goals; the extent to which the applicant identifies possible barriers to or facilitators for reaching these objectives.

f. Plan of Operations (10 points): The quality of the applicant's plan for conducting program activities, and the potential effectiveness of the proposed activities in meeting objectives.

g. Coordination/Collaboration (5 points): Appropriateness of collaboration and coordination with other organizations serving the same priority population(s). At minimum, the applicant provides a description of the collaboration and a signed memoranda of agreement for each agency with which collaborative activities are proposed, and other evidence of collaboration that describe previous, current, as well as future areas of collaboration.

5. Evaluation Plan (10 points): The potential of the evaluation plan to measure the effectiveness of program implementation, achievement of program objectives, and facilitate program improvement.

6. Communications/Dissemination Plan (5 points): The degree to which the applicant describes how successful approaches and ''lessons learned'' will be shared with other organizations.

7. Plan for Acquiring Additional or Matching Resources (5 points): The degree to which the applicant describes the plan for obtaining additional resources from other (non-CDC) sources to supplement the program conducted through this cooperative agreement and to increase the likelihood of its continuation after the end of the project period.

8. Budget/Staffing Breakdown and Justification (not scored):

a. Personnel (not scored) Appropriateness of the staffing pattern for the proposed project.

b. Budget (not scored) Appropriateness of the budget for the proposed project.

9. Training and Technical Assistance Plan (not scored): The extent to which the applicant describes areas in which technical assistance is anticipated in designing, implementing, and evaluating the proposed program and how the applicant will obtain this technical assistance. The extent to which the applicant describes anticipated staff training needs related to the proposed program and how these needs will be met.

Before final award decisions are made, CDC will either make predecisional site visits to CBOs whose applications are highly ranked or review the items below with the local or State health department and applicant's board of education.

a. The organizational and financial capability of the applicant to implement the proposed program.

b. The application and program plans for priority HERR interventions, compliance with the jurisdictional's HIV prevention priorities as outlined in the comprehensive plan or, if the proposed program varies from the jurisdiction's comprehensive plan, evaluate the rationale for the variance.

c. The special programmatic conditions and technical assistance requirements of the applicant.

A business management and fiscal recipient capability assessment may be required of some applicants prior to the award of funds.

H. Other Requirements

Technical Reporting Requirement

Provide CDC with the original plus two copies of:

1. Progress reports quarterly;

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to: Patrick Smith, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application package.

AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301 and 317 of the Public Health Service Act, [42 U.S.C. Sections 241 and 247B], as amended. The Catalog of Federal Domestic Assistance Number is 93.939.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Patrick Smith, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement Number 99047, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146, telephone (770) 488–2731, Email address: phs3@cdc.gov

For program technical assistance, contact Samuel Martinez, Project Officer at (404) 639–5219, Email address: sbm5@cdc.gov or Samuel Taveras, Team Leader, at (404) 639–5230, Email address: syt2@cdc.gov.

See also the CDC homepage on the Internet: http://www.cdc.gov

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–6298 Filed 3–15–99; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99055]

Extramural Grants for Violence-Related Injury Evaluation Research; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces that grant applications are being accepted for Injury Prevention and Control Research Grants for fiscal year (FY) 1999.

This program addresses the priority area of injuries as a result of Violent and Abusive Behavior.

The purposes of this program are to:

1. Evaluate current interventions, policies and strategies for the prevention of violence-related injuries.
2. Identify effective strategies to prevent violence-related injuries.
3. Build the scientific base for the prevention of injuries, disabilities, and deaths due to violence in the following four priority areas: suicidal behavior, firearm-related injury, sexual violence, and intimate partner violence as delineated in Healthy People 2000.
4. Encourage professionals from a wide spectrum of disciplines such as public health, health care, medicine, criminal justice, and behavioral and social sciences, to work together and undertake research to prevent and control injuries from suicidal behavior, firearm-related injury, sexual violence, and intimate partner violence.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents, including small, minority and/or women-owned businesses and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Applicant requirements:

1. A principal investigator who has conducted research, published the findings in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.
2. Demonstrated experience in conducting, evaluating, and publishing in peer-reviewed journals injury control research pertaining to violence on the applicant's project team.
3. Effective and well-defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed activities.
4. The ability to carry out injury control research projects as defined under Addendum 2, (2.a–c).
5. The overall match between the applicant's proposed theme and research objectives, and the program interests as described under the heading, ''Programmatic Interests.''

C. Availability of Funds

Approximately $1.0 million is available for FY 1999 injury research grants that evaluate the effectiveness and/or cost effectiveness of interventions and policies designed to reduce morbidity, mortality, and disabilities caused by suicidal behavior, firearm-related injury, sexual violence, or intimate partner violence. Approximately, 3–4 awards will be made. It is expected that the awards will begin on or about September 1, 1999. Awards will be made for a 12-month budget period within a project period not to exceed three years. The maximum funding level per year will not exceed $300,000 (including both direct and indirect costs). Applications that exceed the funding cap of $300,000 will be excluded from the competition and returned to the applicant. The availability of Federal funding may vary and is subject to change.

Note: Grant funds will not be made available to support the provision of direct care. Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated April 1, 1994), as necessary to meet the requirements of the program and strengthen the overall application.

Note: Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

Programmatic Interests

There is programmatic interest in research projects designed to rigorously assess the effectiveness (i.e., the impact of a specific intervention or policy on reducing violence-related morbidity or

mortality or violent behavior) and/or cost effectiveness (i.e., an economic analysis to assess the cost per health outcome—''cost per life saved'' or ''cost per case prevented'') of interventions to prevent suicidal behavior, firearm-related injury, sexual violence, or intimate partner violence. Cost effectiveness analyses should only be applied to those interventions or policies for which there is already strong evidence of effectiveness.

1. In the area of suicide, there is particular interest in projects to evaluate suicide prevention interventions for general or high risk populations and projects to evaluate services provided in various settings such as a managed care setting.

2. In the area of firearm injuries, there is particular interest in projects evaluating prevention programs and policies that offer promise in preventing firearm injuries among children and adolescents (e.g., safe storage of firearms in homes, safe gun technology, curricula to promote gun safety for children and adolescents).

3. In the areas of sexual violence and intimate partner violence, there is particular interest in evaluation research to determine the effectiveness of: 1. Prevention programs for adolescent males at risk for perpetration of sexual violence or intimate partner violence; or 2. Intervention programs for perpetrators of sexual violence or intimate partner violence.

D. Application Content

Applications should follow the PHS–398 (Rev. 5/95) application and Errata sheet, and should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, disability, and economic losses. This focus should be based on recommendations in Healthy People 2000 and should seek creative approaches that will contribute to a national program for injury control.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan describing the methods by which the objectives will be achieved and evaluated, including their sequence. (A comprehensive evaluation plan is an essential component of the application.)

4. A description of the grant's principal investigator's role and responsibilities.

5. A description of all the project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by the grant.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

8. A detailed first year's budget for the grant with future annual projections, if relevant. (Awards will be made for a project period of up to three years.)

9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by violence-related injuries within 3–5 years.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups. To exercise this option: on the original and five copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; the subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

E. Submission and Deadline

Submit the original and five copies of PHS 398 (OMB Number 0925–0001 and adhere to the instructions on the Errata Instruction sheet for PHS 398). Forms are in the application kit.

On or before April 30, 1999, submit to:

Anne Foglesong, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement #99055, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341.

Applications shall be considered as meeting the deadline if they are received at the above address on or before the deadline date; or sent on or before the deadline date, and received in time for the review process. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.

Late Applications: applications which do not meet the above criteria are considered late applications, will not be considered, and will be returned to the applicant.

F. Evaluation Criteria

(Please take special notice as elements of this section have changed since the last announcement. A more complete description of the grant award selection process policy can be obtained by calling the phone number found under ''Where to Obtain Additional Information'' in the application package.)

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under Eligible Applicants, subtitle, Applicant Requirements (Items 1–5). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the proposal.

Applications which are complete and responsive will be subjected to a preliminary evaluation (triage) by a peer review committee, the Injury Research Grant Review Committee (IRGRC), to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

Awards will be determined by the Director of the National Center for Injury Prevention and Control (NCIPC) based on priority scores assigned to applications by the primary review committee, recommendations by the secondary review committee, consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the IRGRC. All proposals will be reviewed for scientific merit by a committee of no less than three reviewers with appropriate expertise using current National Institutes of Health (NIH) criteria to evaluate the methods and scientific quality of the proposal. Factors to be considered will include:

a. The specific aims of the research project, i.e., the broad long-term objectives, the intended accomplishment of the specific research

proposal, and the hypothesis to be tested.

b. The background of the proposal, i.e., the basis for the present proposal, the critical evaluation of existing knowledge, and specific identification of the injury control knowledge gaps which the proposal is intended to fill.

c. The significance and originality from a scientific or technical standpoint of the specific aims of the proposed research, including the adequacy of the theoretical and conceptual framework for the research.

d. For competitive renewal applications, the progress made during the prior project period. For new applications, (optional) the progress of preliminary studies pertinent to the application.

e. The adequacy of the proposed research design, approaches, and methodology to carry out the research, including quality assurance procedures, plan for data management, and statistical analysis plan.

f. The extent to which the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by violence-related injuries.

g. The extent to which the evaluation plan will allow the measurement of progress toward the achievement of the stated objectives.

h. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.

i. The degree of commitment and cooperation of other interested parties (as evidenced by letters detailing the nature and extent of the involvement).

j. Gender and minority issues-Are plans to include both sexes and minorities and their subgroups adequately developed (as appropriate for the scientific goals of the project)? Are strategies included for the recruitment and retention of human subjects?

k. Human Subjects—Are the procedures proposed adequate for the protection of human subjects and are they fully documented? Are all procedures in compliance with applicable published regulations?

l. The reasonableness of the proposed budget to the proposed research and demonstration program.

m. Adequacy of existing and proposed facilities and resources.

2. The secondary review will be conducted by the Science and Program Review Work Group (SPRWG) from the Advisory Committee for Injury Prevention and Control (ACIPC). At the SPRWG's request, Federal ex officio members may be invited to attend the secondary review. The Federal ex officio members will be responsible for identifying proposals in overlapping areas of research interest so that unwarranted duplication in federally-funded research can be avoided. At the SPRWG's request, NCIPC Division Associate Directors for Science (ADS) may be invited to attend the secondary review to assure that research priorities of the announcement are understood and to provide background regarding current research activities. The SPRWG may reach over better ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the proposal's priority score as the primary factor in the selection process.

b. The match between the proposal and the program announcement's programmatic interests and funding preferences.

c. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

d. The significance of the proposed activities in relation to the priorities and objectives stated in Healthy People 2000, Injury in America, Injury Prevention, Meeting the Challenge, and Cost of Injury.

e. Budgetary considerations.

Only SPRWG members will vote on funding recommendations. These recommendations will be carried to the entire ACIPC in the form of a report. The ACIPC may vote to approve, disapprove, or modify the recommendations for funding. These recommendations will then be presented to the NCIPC Director for final decision.

3. Continued Funding: Continuation awards made after FY 1999, but within the project period, will be made on the basis of the availability of funds and the following criteria:

a. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual workplan and satisfactory progress demonstrated through presentations at work-in-progress monitoring workshops.

b. The objectives for the new budget period are realistic, specific, and measurable.

c. The methods described will clearly lead to achievement of these objectives.

d. The evaluation plan will allow management to monitor whether the methods are effective.

e. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

G. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of:

1. An annual progress report annually,

2. A financial status report, no more than 90 days after the end of the budget period, and

3. A final financial report and performance report, no more than 90 days after the end of the project period.

Send all reports to: Anne Foglesong, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341.

The following additional requirements are applicable to this program. For a complete description of each see Addendum 1 in the application package.

AR–1 Human Subjects Certification
AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirement
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities
AR–20 Conference Activities within Grants/Cooperative Agreement

H. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301(a)[42 U.S.C. 241(a)] of the Public Health Service Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

I. Where To Obtain Additional Information

Please refer to Program Announcement 99055 when you request information. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Anne Foglesong, Grants Management Specialist, Grants Management Branch,

Procurement and Grants Office, Program Announcement #99055, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341, Telephone (770) 488–2724, Internet address: anf3@cdc.gov.

For program technical assistance, contact: Ted Jones, Program Manager, Office of Research Grants, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop K–5, Atlanta, GA 30341–3724, Telephone (770) 488–4824, Internet address: tmj1@cdc.gov.

This and other CDC announcements are available through the CDC homepage on the Internet. The address for the CDC homepage is <http://www.cdc.gov>.

Interested applicants may receive a draft copy of the ''Policy for Solicitation and Selection of Injury Research Grant Proposals'' by calling 770/488–4265.

Dated: March 10, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–6311 Filed 3–15–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Childhood Lead Poisoning Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee on Childhood Lead Poisoning Prevention.

Times and Dates: 8:30 a.m.–5 p.m., April 12, 1999; 8:30 a.m.–12 p.m., April 13, 1999.

Place: Atlanta Marriott Gwinnett Place, 1775 Pleasant Hill Hill Road, Duluth, Georgia 30136, telephone 770/925–2340.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The Committee shall provide advice and guidance to the Secretary; the Assistant Secretary for Health; and the Director, CDC, regarding new scientific knowledge and technological developments and their practical implications for childhood lead poisoning prevention efforts. The Committee shall also review and report regularly on childhood lead poisoning prevention practices and recommend improvements in national childhood lead poisoning prevention efforts.

Matters to Be Discussed: Agenda items include: Childhood Lead Poisoning Prevention activities update, HCFA's Medicaid lead screening policy, Screening and Case Management Working Group updates, HUD lead program update, global dimensions of the lead problem, USAID update, and emerging issues involving foreign-born children.

Agenda items are subject to change as priorities dictate.

Opportunities will be provided during the meeting for oral comments. Depending on the time available and the number of requests, it may be necessary to limit the time of each presenter.

Contact Person for More Information: Barbara Nelson, Program Analyst, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F–42, Atlanta, Georgia 30341–3724, telephone 770/488–7272, fax 770/488–7335.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–6310 Filed 3–15–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project

Title: Developmental Disabilities Council State Plan.

OMB No.: 0980–0162.

Description: Developmental Disabilities Councils (DD Councils) in each State are required under the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000 et seq.) to develop plans on a triennial basis and to review those plans at least annually. Each Council develops its plan as a basis for promoting systems change and capacity building in service systems for persons with developmental disabilities in the State. The State plan must be made available for public comment in the State and must be approved by the Governor of the State. After that it is submitted to the Department of Health and Human Services, which will use the information to ensure compliance of the State with requirements in the Act. The information in the State plan is also used as one basis for providing technical assistance, such as during site visits. The burden statement of 130 hours per State for preparing this plan is annualized over the three-year period of the plan. This requirement was recently redesigned with significant involvement of State Developmental Disabilities Councils.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Three Year State Plan	55	1	130	7,150

Estimated Total Annual Burden Hours: 7,150.

In compliance with the requirements of Section 3506(c)(2)(A) The Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed

collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 9, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–6291 Filed 3–15–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93N–0445]

Agency Information Collection Activities; Announcement of OMB Approval; Financial Disclosure by Clinical Investigators

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Financial Disclosure by Clinical Investigators'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

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 December 31, 1998 (63 FR 72171), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 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 0910–0396. The approval expires on March 31, 2002. A copy of the supporting statement for this information collection is available on the Internet at ''http://www.fda.gov/ohrms/dockets''.

Dated: March 9, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–6339 Filed 3–15–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0362]

Site Specific Stability Data for Drug and Biologic Applications; Public Meeting; Request for Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comment.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting on site specific stability data for drug and biologic applications. The agency has scheduled the public meeting to discuss scientific issues related to a section of the draft guidance entitled ''Draft Guidance for Industry—Stability Testing of Drug Substances and Drug Products.'' Specifically, the agency will discuss the section of the draft guidance entitled ''Site-Specific Stability Data for Drug and Biologic Applications.'' The agency invites comments on issues related to the meeting.

DATES: The public meeting will be held on March 31, 1999, from 9 a.m. to 2 p.m. Submit written notices of participation by March 24, 1999. Submit written comments on the specific issues of the meeting by June 14, 1999.

ADDRESSES: The public meeting will be held at the Holiday Inn Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814. Submit written notices of participation to Kimberly L. Topper or Angie Whitacre (addresses below). Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Kimberly L. Topper or Angie Whitacre, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or e-mail topperk@cder.fda.gov.

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 24, 1999. Oral presentations from the public will be scheduled. Time allotted for each presentation may be limited. Those persons desiring to make formal oral presentations should notify the contact person before March 24, 1999 (providing name, firm name, address, and telephone number), and submit a brief statement of the general nature of the evidence or arguments they wish to present, and an indication of the approximate time requested to make their presentation.

Dated: March 9, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–6301 Filed 3–15–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Phase II of the National Evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program

(OMB No. 0930–0192, Revision)—SAMHSA's Center for Mental Health Services (CMHS) is conducting Phase II of this national evaluation project. To address the research questions in the national evaluation, a longitudinal quasi-experimental design is being used that includes data collection in all grantee sites and comparison sites over a five year period. Data collection methods include interviews with caregivers and youth, site visits, case record reviews, service diaries, and provider surveys. Phase II collects data on child mental health outcomes, family life, and service system development and performance. Child and family outcomes of interest include the following: child symptomatology and functioning, family functioning and material resources, and caregiver strain. The length of time that families will participate in the study ranges from 18 to 36 months depending on when they enter the evaluation. Service system variables of interest include the following: maturity of system of care development, adherence to system of care principles, coordination and linkages among agencies, and congruence between family services planned versus those received.

This revision to the currently approved information collection activities involves: (1) two additional grantee sites added to Phase II after the original OMB package was approved, and (2) the addition of a strengths-based measure of child behaviors. This measure is closely aligned with the strengths-based focus of the grant program and will assess the effects of the initiative on child strengths and resiliency; no additional burden is imposed by addition of the strengths-based measurement in the previously approved sites because it has been determined that the burden associated with the new instrument is offset for shorted times of administration by two of the currently approved instruments. Automated collection techniques are not cost-effective for this study. The average annual respondent burden is estimated below.

Respondents	Number of respondents	Responses/ respondent	Burden/ response (Hours)	Total burden hours (Annualized)
Currently approved				18, 458
New Sites: Caregivers	506	1.16	1.96	1,150
Youth	304	1.10	.88	294
Providers	56	.80	.75	34
Sub-Total				1,478
New Total				19,936

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 9, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–6312 Filed 3–15–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Phase I of the National Evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program

(OMB No. 0930–0171, Extension, no change)—The Center for Mental Health Services (CMHS) is seeking OMB approval for a 1-year extension of this evaluation of integrated child mental health service systems. The core and comparison studies of the evaluation collect information on child and family demographics, child mental health status, and service system development. In the core study, data are collected from children and families at intake into services, six months later, and every 12 months thereafter while the children remain in services. In the comparison study component, information is collected at intake, 6 months, 12 months, 24 months, and annually thereafter. In both studies, data were collected annually from grantees' administrators and providers. This request is to extend OMB clearance to allow: (1) continued data collection in two core study sites for two months, and (2) completion, by the end of the approval period, of data collection in the comparison study component sites. The response burden for this extension is as follows:

Respondent	Number of respondents	Average number of responses	Average burden/response (hrs.)	Total burden
Currently approved				26,604
Case managers	50	7.0	.25	88
Caregivers (Descriptive Study)	1,980	.27	.075	40
Caregivers (Outcome Study)	1,792	.54	1.16	1,123
Youth	1,075	.54	1.05	610
Administrators/providers	0	0	0	0
Total				1,861

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 9, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–6313 Filed 3–15–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Comprehensive Conservation Plan for Lostwood National Wildlife Refuge, Kenmare, ND

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the Refuge Improvement Act of 1997, the U.S. Fish and Wildlife Service has published the Lostwood National Wildlife Refuge Comprehensive Conservation Plan. This Plan describes how the FWS intends to manage the Lostwood NWR for the next 10–15 years.

ADDRESSES: A copy of the Plan may be obtained by writing to U.S. Fish and Wildlife Service, Lostwood NWR, 8315 Highway 8, Kenmare, ND 58746.

FOR FURTHER INFORMATION CONTACT: Carol Taylor, U.S. Fish and Wildlife Service, P.O. Box 25486 DFC, Denver, CO 80225, 303/236–8145, extension 661; fax 303/236–4792.

SUPPLEMENTARY INFORMATION: Lostwood NWR is located in northwest North Dakota. Implementation of the Plan will focus on adaptive resources management of upland and mixed-grass prairie and increased opportunities for compatible wildlife-dependent recreation. The Plan calls for management of upland habitats in accordance with the 1994 Environmental Assessment entitled ''Management of Upland Habitats on Lostwood NWR.'' Upland habitat monitoring and evaluation will be emphasized as the Plan is implemented. Opportunities for compatible wildlife-dependent recreation will be provided.

Dated: March 10, 1999.

Wilbur N. Ladd, Jr.,

Regional Director, Denver, Colorado.

[FR Doc. 99–6315 Filed 3–15–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–060–1990–01; N63–99–001P]

Intent To Prepare an Environmental Impact Statement To Consider the Battle Mountain Gold Company Phoenix Project Plan of Operations for Mining in Lander County, Nevada, and Notice of Scoping Period and Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: On February 9, 1995, pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 as amended, and to 43 CFR Part 3809, the Bureau of Land Management (BLM), Battle Mountain Field Office published a Notice of Intent to prepare an environmental impact statement (EIS) with respect to Battle Mountain Gold Company's (BMG's) proposed Phoenix Project Plan of Operations. At that time, the Plan of Operations proposed developing a new mill facility and expanding the existing heap leaching facilities, tailings impoundment, and ancillary facilities. Since the Notice of Intent was published, BMG has conducted additional development and exploration operations at the project property. Based on the information gained from these activities, BMG has revised the Plan of Operations for the Phoenix Project. The BLM is publishing this supplemental Notice of Intent to advise the public of the revised Plan of Operations and to seek any additional comments or concerns to be addressed in preparing the EIS.

This notice re-initiates public scoping for the Phoenix Project EIS. An open house format scoping meeting will be held on March 24, 1999, at the BLM, Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, Nevada from 7:00 to 9:00 p.m. During this meeting, representatives of the BLM and BMG will summarize the Plan of Operations. Federal, state, and local agencies and other organizations or individuals who may be interested in or affected by the BLM's decision on this Plan of Operations are invited to participate in the scoping process by attending the public meeting and to provide comments on issues to be analyzed in the EIS.

Comments on issues to be addressed in the EIS may be submitted at the scoping meeting or may be submitted in writing to the BLM until April 15, 1999. A draft EIS is expected to be completed by Fall 1999, at which time the document will be made available for public review and comment.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Ricci, Phoenix Project EIS Project Manager (775) 635–4163, BLM, Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, Nevada 89820.

SUPPLEMENTARY INFORMATION: In 1994, BMG submitted a Plan of Operations to develop the Phoenix Project at the southern end of the Battle Mountain Range in Lander County, Nevada, approximately 15 miles southwest of Battle Mountain, Nevada. Virtually all of the existing and proposed facilities are located in the Buffalo Valley water basin. Mining has been conducted in this area since the mid-1800s; bulk-scale surface mining operations at the site date from the early 1960s. BMG has been conducting mining operations at the site since the mid-1980s.

The Phoenix Project, as proposed in 1994, involved continuing and expanding BMG's development of the property. The project included open-pit mining of gold and silver-bearing ore, construction of a new mill to recover the

gold and silver, expansion of the existing heap leach and tailings facilities, and continued use of existing and development of new ancillary mining facilities. Dewatering was proposed in order to mine several of the proposed open pits. The BLM conducted scoping with respect to BMG's proposed Plan of Operations in 1995. Based on the scoping comments, the BLM identified the following issues to be addressed in the EIS: air quality, hydrology and water quality, surface and ground water resources, geochemistry, reclamation, social and economic values, and cumulative impacts.

Since the original Plan of Operations was submitted and scoping was conducted, BMG has continued to conduct development operations at the property. Through exploration, BMG has identified additional gold and silver ore beyond the extent of the mine plan on which the Plan of Operations was based. Exploration also has identified ore containing gold, silver, and copper that BMG intends to mine and mill using a modified milling and beneficiation process that makes more ore amenable to gold, silver, and copper recovery.

Based on this additional information, BMG has revised the Plan of Operations to include additional disturbance on private and public land that might occur if the gold, silver, and copper deposits identified by exploration to date are fully developed. The Plan of Operations includes expanding the development of three existing open pits and one new open pit, expanding the existing heap leach and tailings facilities, constructing a new mill, and further developing existing waste rock disposal areas. Dewatering (approximately 1,000 gallons per minute) would be necessary to mine three of the proposed pits. BMG proposes to use all of the water produced by open pit dewatering in its mining and beneficiation operations. BMG proposes to place a substantial portion of the mined waste rock over existing copper leach and waste rock facilities. Approximately two-thirds of the disturbance described by the Plan of Operations would occur on private land. The Plan of Operations also proposes to schedule mine development so that waste rock mined from active open pits would be used to backfill previously mined open pits. Under the proposed Plan of Operations all open pits that would be mined below existing ground water elevations would be backfilled above post-mining groundwater levels, and; as a result, no pit lakes would form.

Total existing disturbance at the project site is 2,704 acres, (2,224 acres of private land and 480 acres of public land). Under the Plan of Operations, an additional 4,387 acres of land (1,914 acres of private land and 2,473 acres of public land) would be disturbed.

Dated: March 8, 1999.

Leonard F. Brouse,

Acting Battle Mountain Field Manager.

[FR Doc. 99–6349 Filed 3–15–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–09–1220–00: GP9–0130]

Notice of Meeting of the Oregon Trail Interpretive Center Advisory Board

AGENCY: National Historic Oregon Trail Interpretive Center, Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given that a meeting of the Advisory Board for the National Historic Oregon Trail Interpretive Center will be held on Thursday, April 1, 1999 from 7:00 a.m. to 3:00 p.m. at the Best Western Sunridge Inn, One Sunridge Lane, Baker City, Oregon 97814.

At an appropriate time, the Board will recess for approximately one hour for lunch. Public comments will be received from 12:00 p.m. to 12:15 p.m., April 1, 1999. Topics to be discussed are the Re-chartering the Advisory Board and Staggering Board Members' Terms and reports from Coordinators of Subcommittees.

DATES: The meeting will begin at 7:00 a.m. and run to 3:00 p.m. April 1, 1999.

FOR FURTHER INFORMATION CONTACT: David B. Hunsaker, Bureau of Land Management, National Historic Oregon Trail Interpretive Center, P.O. Box 987, Baker City, OR 97814, (Telephone 541–523–1845).

Lynn P. Findley,

ADM Operations/Field Support.

[FR Doc. 99–6341 Filed 3–15–99; 8:45 am]

BILLING CODE 4310–33–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 March 6, 1999. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by March 31, 1999.

Patrick Andrus,

Acting Keeper of the National Register.

CONNECTICUT

Litchfield County

Moore Jr., William, House, 5 Mountain Rd., Barkhamsted vicinity, 99000406

New London County

Ashland Mill Bridge, Over Pachaug R., near Ashland St., Griswold, 99000407

Windham County

Glen Falls Bridge, Brunswick Ave. over Moosup R., Plainfield, 99000408

FLORIDA

Columbia County

Goodbread—Black Farm Historic District, Off Corinth Rd., S of Suwannee R., E of US 41, W of US 44, Lake City vicinity, 99000409

Pinellas County

Anclote Key Lighthouse, Southern end of Anclote Key Island, Anclote Key Island, 99000410

GEORGIA

Bartow County

Smith and Douglas Family Houses, MacJohnson Rd., Cassville, 99000412

Colquitt County

Mother Easter Baptist Church and Parsonage, 400 Second Ave., NW, Moultrie, 99000413

Troup County

West Point Public School, Jct. of Ave. F and E. 8th St., West Point, 99000411

IDAHO

Ada County

Lilyquist—Christianson Building, 459 W. Third, Kuna, 99000415

Bear Lake County

Scofield, Anna Nielsen, House, 2788 US 89, Fish Haven, 99000417

Bonner County

Settlement School, Settlement Rd., 0.5 E of jct. with E. Side Rd., Priest River vicinity, 99000418

Latah County

Kirby, Thomas, House, 102 N. 9th St., Kendrick, 99000414

Shoshone County

St. Andrew's Episcopal Church, 104 Hunter Ave., Mullan, 99000419

Valley County

North Fork Payette River Bridge, ID 55, Approx. 2.5 mi. N of Smiths Ferry, Smiths Ferry vicinity, 99000416

KANSAS

Johnson County

Turner, William Thomas, Barn, 19805 S. Moonlight Rd., Gardner vicinity, 99000420

MARYLAND

Anne Arundel County

Chance Boatyard, 222 Seventh Ave., Annapolis, 99000421

Prince George's County

Hazelwood, 18611 Queen Anne Rd., Upper Marlboro vicinity, 99000422

NEBRASKA

Douglas County

Simon Brothers Company, 1024 Dodge St., Omaha, 99000423

NORTH CAROLINA

Anson County

Wadesboro Downtown Historic District, Roughly bounded by Martin, Rutherford, Morgan, Lee, and Brent Sts., Wadesboro, 99000425

Beaufort County

Bowers—Tripp House, 1040 N. Market St., Washington, 99000424

OKLAHOMA

Oklahoma County

Merchants Transfer and Storage, 19 E. California Oklahoma City, 83004655

PENNSYLVANIA

Blair County

Roosevelt, F. D., Grade School—Greenfield High School, Bedford St., Greenfield Township, 99000426

TENNESSEE

Bradley County

Blue Springs Encampments and Fortifications (Civil War Historic and Historic Archeological Resources in Tennessee MPS) Address Restricted, Cleveland, 99000427

WISCONSIN

Dane County

Bedrud—Olson Farmstead, 996 E. Church Rd., Christiana, 99000429

A Request for REMOVAL has been made for:

INDIANA

Spencer County

Brown-Kercheval House, 315 S. 2nd St., Rockport, 73000045

[FR Doc. 99–6305 Filed 3–15–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Ness City and Rawlins County, KS in the Possession of the Kansas State Historical Society, Topeka, KS

AGENCY: National Park Service

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 Kansas State Historical Society, Topeka, KS.

A detailed assessment of the human remains was made by Kansas State Historical Society (KSHS) professional staff in consultation with representatives of the Cheyenne-Arapaho Tribes of Oklahoma, and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.

During the 1890s, human remains representing two individuals from site 14NS320 along Walnut Creek southeast of Ness City, KS were placed as part of an indefinite loan to the Fort Hays State University (FHSU) by the Maranville family, owners of the site. In 1990, these individuals were transferred to KSHS by Fort Hays University as required by the Kansas Unmarked Burials Sites Preservation Act. Efforts to contact the Maranville family regarding this loan have been unsuccessful. No known individuals were identified. The 401 associated funerary objects include a mirror, two knives, two files, a bell, a comb, 44 glass and metal buttons, eleven brass circlets, three metal cone clusters, three metal buckles, on length of brass wire, one silver plaque, 39 silver conchos, five metal arrowheads, and 287 glass beads.

According to the FHSU museum exhibit label, the grave of these individuals was lined with cedar poles. In a written 1973 statement, a member of the Maranville family described the burial as an ''Indian grave'' consisting of two seated skeletons. Based on the associated funerary objects and reported manner of interment, these individuals have been identified as Native American. The FHSU museum exhibit label also states that local legend indicates these were Cheyenne individuals killed in the Sand Creek Massacre in 1864 and brought to Walnut Creek for burial.

In 1912, human remains representing one individual were donated to KSHS by R. K. Farrar. No known individual was identified. No associated funerary objects are present.

Donor information indicates this individual was removed from the 1875 Cheyenne Massacre site derived from the Cheyenne Hole or Sappa Creek Battle on the Middle Fork of Sappa Creek, Rawlins County, KS and identified by the donor as Cheyenne. In 1980, archeological investigations identified not only the 1875 component, but also a precontact habitation site dating to the Great Bend Aspect (1400—1600 A.D.). Based upon condition of the human remains and donor information, this individual has been identified as Cheyenne.

Based on the above mentioned information, officials of the Kansas State Historical Society have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the Kansas State Historical Society have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 401 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 Kansas State Historical Society 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 Cheyenne-Arapaho Tribes of Oklahoma.

This notice has been sent to officials of the Cheyenne-Arapaho Tribes of Oklahoma, and the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Randall Thies, Archeologist, Kansas State Historical Society, 6425 SW Sixth Avenue, Topeka, KS 66606-1099; telephone: (913) 272-8681, ext. 267, before April 15, 1999. Repatriation of the human remains and associated funerary objects to the Cheyenne-Arapaho Tribes of Oklahoma may begin

after that date if no additional claimants come forward.

Dated: March 9, 1999.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 99–6308 Filed 3–15–99; 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 from the Little Bighorn Battlefield National Monument, MT in the Possession of the Little Bighorn Battlefield National Monument, National Park Service, Crow Agency, MT

AGENCY: National Park Service

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 Little Bighorn Battlefield National Monument, National Park Service, Crow Agency, MT.

A detailed assessment of the human remains was made by the National Park Service professional staff in consultation with representatives of the Arapaho Tribe of the Wind River Reservation, Wyoming; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne-Arapaho Tribes of Oklahoma; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Tribe of Montana; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and Upper Sioux Indian Community of the Upper Sioux Indian Reservation, Minnesota.

At an unknown date, human remains representing one individual were illegally removed from a grave on federal and/or Crow tribal lands at Little Bighorn Battlefield National Monument by George Scott of Billings, Montana. In the spring of 1991, Scott transferred the human remains to Richard Maniscalco, of Rappahannock Academy, Virginia. Additionally, Scott provided Maniscalco with approximately 59 other illegally obtained objects from federal and/or Crow tribal lands at Little Bighorn Battlefield National Monument. No known individual was identified. The 15 associated funerary objects include one 45/70 slug, 12 glass seed beads, a scalping knife blade, and a buffalo tooth.

On January 19, 1994, Maniscalco sold the human remains, purported to have been a Cheyenne rib bone, to an undercover federal agent. During this transaction, Maniscalco also sold the agent archaeological resources said to have originated from the Little Bighorn National Monument. Following the sale, special agents from the National Park Service, Federal Bureau of Investigation, and the Bureau of Land Management confronted Maniscalco with the illegal acts that had transpired. In addition to the human remains and archaeological resources Maniscalco sold to the federal agent, it was discovered that he possessed 15 objects that had been bagged together and separately labeled by Scott as having been removed from a Cheyenne grave. These objects included a 45/70 slug (labeled: from grave), 12 glass seed beads (labeled: from Cheyenne grave), a metal item (labeled: Cheyenne scalp knife), and a buffalo tooth (labeled: from Cheyenne grave).

The United States Attorney for the Eastern District of Virginia prosecuted Maniscalco, following a referral by the United States Attorney for the District of Montana and the Bureau of Land Management. In the case of United States v. Maniscalco, the defendant, Maniscalco, entered a guilty plea in the United States District Court of Eastern Virginia to trafficking in American Indian human remains, in violation NAGPRA's illegal trafficking provisions under Title 18, United States Code, Section 1170(a). Furthermore, Maniscalco pled guilty to the illicit sale of archeological resources obtained from public and/or Indian lands, in violation of the Archaeological Resources Protection Act (ARPA) Title 16, United States Code, Sections 470ee (a) and (b).

On April 17, 1996, the human remains and associated funerary objects were officially transferred from the Department of Justice to the Little Bighorn Battlefield National Monument, National Park Service.

The result of a professionally administered, non-destructive analysis conducted on the above mentioned Native American human remains indicates the bone fragment's morphology as being consistent with that of a human tibia, or leg bone. Further, the size of the bone suggests that it represents the remains of a female.

Based on the above mentioned information, officials of the National Park Service have determined that, pursuant to 43 CFR 10.2 (d)(l), the human remains listed above represent the physical remains of a minimum of one individual of Native American ancestry. Officials of the National Park Service have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 15 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 a death rite or ceremony. Lastly, officials of the National Park Service have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identify which can be reasonably traced between the Native American human remains and the associated funerary objects and the Northern Cheyenne Tribe of the Northern Cheyenne Reservation, Montana, and the Cheyenne-Arapaho Tribes of Oklahoma.

This notice has been sent to officials of the Arapaho Tribe of the Wind River Reservation, Wyoming; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne-Arapaho Tribes of Oklahoma; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Tribe of Montana; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and Upper Sioux Indian Community of the Upper Sioux Indian Reservation, Minnesota. Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects, should contact Neil C. Mangum, Superintendent, Little Bighorn Battlefield National Monument, P.O. Box 39, Crow Agency, MT 59022; telephone: (406) 638-2621, before April 15, 1999. Repatriation of the human remains and associated grave goods to the Northern Cheyenne Tribe of the Northern Cheyenne Reservation, Montana, and the Cheyenne-Arapaho Tribes of Oklahoma will begin after that

date if no additional claimants come forward.

Dated: March 9, 1999.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 99–6306 Filed 3–15–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains, Associated Funerary Objects, and Unassociated Funerary Objects in the Possession of the Museum of Anthropology, University of Missouri-Columbia, Columbia, MO

AGENCY: National Park Service

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, associated funerary objects, and unassociated funerary objects in the possession of Museum of Anthropology, University of Missouri-Columbia, Columbia, MO.

A detailed assessment of the human remains was made by Museum of Anthropology professional staff in consultation with representatives of the Iowa Tribe of Oklahoma on behalf and as authorized NAGPRA representatives of the Otoe-Missouria Tribe of Indians.

Between 1939-1950, human remains representing a minimum of six individuals were recovered from the Gumbo Point site south of the Missouri River in Van Meter State Park, Saline County, MO during archeological excavations conducted by the Missouri Archaeological Society. No known individuals were identified. The eleven associated funerary objects include pieces of brass, copper, iron, hematite; fragments of wood, cloth, glass; and soil samples from burial matrices.

The five cultural items are a small ceramic pot, a necklace of shell and glass beads, a necklace of small blue trade beads, cloth fragments, and soil samples from unidentified burials.

Based on oral tradition, types of associated funerary objects, and historical documents, these individuals have been identified as Native American. Based on the trade objects and historical documentation of this site, these burials are estimated to date to the eighteenth century, c. 1727–1777 A.D. Records indicate the five cultural items were recovered from burials, however, the human remains with these objects cannot be identified. Oral tradition and historical documentation further indicate this site was a village site of the Missouria during the eighteenth century.

Based on the above mentioned information, officials of the University of Missouri-Columbia have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of six individuals of Native American ancestry. Officials of the University of Missouri-Columbia have also determined that, pursuant to 43 CFR 10.2 (d)(2), the eleven 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. Officials of the University of Missouri-Columbia have also determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these five cultural items 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 and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Lastly, officials of the University of Missouri-Columbia 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, associated funerary objects, and unassociated funerary objects and the the Otoe-Missouria Tribe of Indians.

This notice has been sent to officials of the Iowa Tribe of Oklahoma, the Iowa Tribe of Kansas and Nebraska, and the Otoe-Missouria Tribe of Indians. Representatives of any other Indian Tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Michael J. O'Brien, Director, Museum of Anthropology, 317 Lowry Hall, University of Missouri, Columbia, MO 65211; telephone: (573) 882-4421, before April 15, 1999. Repatriation of the human remains, associated funerary objects, and unassociated funerary objects to the Iowa Tribe of Oklahoma on behalf and as authorized representatives of the Otoe-Missouria Tribe of Indians may begin after that date if no additional claimants come forward.

Dated: March 9, 1999.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 99–6307 Filed 3–15–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

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

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval to continue the collections of information under 30 CFR Parts 740 and 745 which relate to surface coal mining and reclamation operations on Federal lands and State-Federal cooperative agreements, respectively, These information collection activities were previously approved by the Office of Management and Budget (OMB), and assigned them clearance number 1029–0027 and –0092.

DATES: Comments on the proposed information collection must be received by May 17, 1999, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d)). This notice identified information collections that OSM will

be submitting to OMB for approval. These collections are contained in (1) 30 CFR Part 740, General requirements for surface coal mining and reclamation operations on Federal lands (1029–0027); and (2) 30 CFR Part 745, State-Federal cooperative agreements (1029–0092). OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) the need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for the information collection: (1) title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: 30 CFR Part 740—General requirements for surface coal mining and reclamation operations on Federal lands.

OMB Control Number: 1029–0027.

Summary: Section 523 of SMCRA requires that a Federal lands program be established to govern surface coal mining and reclamation operations on Federal lands. The information requested is needed to assist the regulatory authority determine the eligibility of an applicant to conduct surface coal mining operations on Federal lands.

Frequency of Collection: Once.

Description of Respondents: Coal mine operators on Federal lands.

Total Annual Responses: 31.

Total Annual Burden Hours: 1,582.

Title: State-Federal cooperative agreements—30 CFR 745.

OMB Control Number: 1029–0092.

Summary: 30 CFR 745 requires that States submit information when entering into a cooperative agreement with the Secretary of the Interior. OSM uses the information to make findings that the State has an approved program and will carry out the responsibilities mandated in the Surface Mining Control and Reclamation Act to regulate surface coal mining and reclamation activities.

Bureau Form Number: None.

Frequency of Collection: Annually.

Description of Respondents: State governments which regulate coal.

Total Annual Responses: 12.

Total Annual Burden Hours: 12,304.

Dated: March 11, 1999.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 99–6351 Filed 3–15–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Extension of a currently approved collection; Application for Employment/Federal Bureau of Investigation.

The Department of Justice, Federal Bureau of Investigation, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until April 15, 1999. If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patrick M. Maloy, 202–324–4960, Bureau Applicant Employment Unit, Administrative Services Division, Federal Bureau of Investigation, U.S. Department of Justice, 935 Pennsylvania Avenue, NW., Washington, DC 20535.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Application for Employment/Federal Bureau of Investigation.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form code and number is FD–140, and the agency is the Federal Bureau of Investigation, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The Application for Employment, FD–140, is utilized to collect pertinent background information on all applicants for FBI positions. The FD–140 is issued in lieu of Standard Form 86, Questionnaire for National Security Positions, to address suitability and security concerns beyond the scope of the SF–86. The Authority to Release Information, FD–406, is also incorporated into the FD–140 to obtain necessary records.

Other: None

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 50,000 respondents will complete the FD–140.

(6) An estimate of the total public burden (in hours) associated with the collection: The total hour burden to complete the FD–140 is 400,000 annual burden hours. If additional information is required contact: Mr. Robert Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: March 11, 1999.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 99–6380 Filed 3–15–99; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35, 102 AND NAFTA–02669]

Mitchell Manufacturing Group, a Lamont Group Company, Clare, MI; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of January 8, 1999 the petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance, applicable to petition number TA–W–34,896 and NAFTA–02669, respectively. The denial notice was signed on December 18, 1998 and published in the **Federal Register** on January 25, 1999 (64 FR 3720 and 3721, respectively).

The petitioner requested Administrative Reconsideration and provided new information which warrants the reopening of the investigation.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 2nd day of March 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–6366 Filed 3–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34–645–and TA–W–34–645 A]

Celanese Acetate Celco Plant, Narrows, Virginia and Rock Hill South Carolina; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 12, 1998, applicable to workers of Celanese Acetate, Celco Plant, Narrows, Virginia engaged in the production of acetate filament. The notice was published in the **Federal Register**on September 10, 1998 (63 FR 48524).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations have occurred at the subject firm's Rock Hill, South Carolina facility. The Workers are engaged in employment related to the production of acetate filament. Accordingly, the Department is amending the certification to cover workers of Celanese Acetate, Rock Hill, South Carolina.

The intent of the Department's certification is to include all workers of Celanese Acetate adversely affected by increased imports.

The amended notice applicable to TA–W–34, 645 is hereby issued as follows:

All workers of Celanese Acetate, Celco Plant, Narrows, Virginia (TA–W–34,645) and Rock Hill, South Carolina (TA–W–34,645A) engaged in employment related to the production of acetate filament who become totally or partially separated from employment on or after June 2, 1997 through August 12, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC this 4th day of March, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–6371 Filed 3–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,696]

F.W.A.-J.S.M. Drilling Company, Midland, Texas; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 22, 1999 in response to a worker petition which was filed on January 29, 1999 on behalf of workers at F.W.A.-J.S.M. Drilling Company, Midland, Texas.

An active certification covering the petitioning group of workers remains in effect (TA–W–34,550). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 23rd day of February, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–6372 Filed 3–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,607]

FCI Electronics, RF Division (Formerly Known as Berg Electronics Group, Inc., RF Division, A/K/A/ Specialty Connector), Franklin, Indiana; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 27, 1998, applicable to workers of Berg Electronics Group, Inc., RF Division, Franklin, Indiana. The notice was published in the **Federal Register** on August 7, 1998 (63 FR 42434).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of radio frequency (RF) connectors. The company reports that in October, 1998 Berg Electronics Group, Inc., RF Div., A/K/A Specialty Connector, Franklin, Indiana was purchased by FCI Electronics. The Department is amending the certification determination to correctly identify the new title name to read ''FCI Electronics, RF Division, Franklin, Indiana'' (formerly known as Berg Electronics Group, Inc., RF Division, A/K/A Specialty Connector), Franklin, Indiana.

The amended notice applicable to TA–W–34,607 is hereby issued as follows:

All workers of FCI Electronics, RF Division (formerly known as Berg Electronics Group, Inc., RF Division, also known as Specialty Connector), Franklin, Indiana who became totally or partially separated from employment on or after May 27, 1997 through July 27, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 26th day of February, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–6362 Filed 3–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,056 et al]

Halliburton Energy Services, Headquartered in Houston, Texas and Operating in the Following States, Colorado, Montana, Utah, West Virginia; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 28, 1998, applicable to all workers of Halliburton Energy Services headquartered in Houston, Texas. The notice was published in the **Federal Register** on December 4, 1998 (63 FR 67140).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations have occurred at Halliburton Energy Services operating at various locations in Colorado, Montana, Utah and West Virginia. The workers are engaged in activities related to exploration and drilling for unaffiliated firms in the oil industry.

The intent of the Department's certification is to include all workers of Halliburton Energy Services adversely affected by increased imports. Accordingly, the Department is amending the certification to cover workers of Halliburton Energy Services operating at various locations in Colorado, Montana, Utah and West Virginia.

The amended notice applicable to TA–W–35,056 is hereby issued as follows:

All workers of Halliburton Energy Services, headquartered in Houston, Texas (TA–W–35,056), operating at various locations in Colorado (TA–W–35,056T), Montana (TA–W–35,056U), Utah (TA–W–35,056V) and West Virginia (TA–W–35,056W) who became totally or partially separated from employment on or after September 4, 1997 through October 28, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 26th day of February, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–6361 Filed 3–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,552]

IEC Edinburg, A/K/A Calidad Electronics, Inc., Edinburg, Texas; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 22, 1998, applicable to all workers of IEC Edinburg, Edinburg, Texas. The notice was published in the **Federal Register** on October 9, 1998 (63 FR 54495).

At the request of the company and the State agency, the Department reviewed the certification for workers of this subject firm. The workers were engaged in the production of printed circuit boards. Findings show that some workers separated from employment at IEC Edinburg had their wages reported under a separate unemployment insurance (UI) tax account for Calidad Electronics, Inc., Edinburg, Texas.

The intent of the Department's certification is to include all workers of IEC Edinburg who were adversely affected by increased imports. Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to TA–W–34,552 is hereby issued as follows:

All workers of IEC Edinburg, also known as Calidad Electronics, Inc., Edinburg, Texas who became totally or partially separated from employment on or after May 7, 1997 through September 22, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 26th day of February, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–6364 Filed 3–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,398 and TA–W–35,398A]

Koppel Steel Corporation, Koppel, Pennsylvania and Ambridge, Pennsylvania; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 19, 1999, applicable to all workers of Koppel Steel Corporation, Koppel, Pennsylvania. The notice will be published soon in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of steel tube and bar products. New information provided by the company shows that worker separations have occurred at the subject firm's Ambridge, Pennsylvania facility. The workers are engaged in employment related to the production of steel tube products. Accordingly, the Department is amending the certification to cover workers of Koppel Steel Corporation, Ambridge, Pennsylvania.

The intent of the Department's certification is to include all workers of Koppel Steel Corporation adversely affected by increased imports.

The amended notice applicable to TA–W–35,398 is hereby issued as follows:

All workers of Koppel Steel Corporation, Koppel, Pennsylvania (TA–W–35,398) and Ambridge, Pennsylvania (TA–W–35,398A) who became totally or partially separated from employment on or after December 10, 1997 through February 19, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of March 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–6370 Filed 3–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,589]

LUMEX Manufacturing, Johnstown, New York; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 1, 1999, in response to a petition filed by a company official on behalf of workers at LUMEX Manufacturing, Johnstown, New York.

The official submitting the petition has decided to withdraw it. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 1st day of March 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–6373 Filed 3–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,200, et al.]

Nabors Drilling USA, Inc., East Texas/North Louisiana District, Kilgore, Texas; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 28, 1998, applicable to workers of Nabors USA, Inc., East Texas/North Louisiana District, headquarters in Kilgore, Texas operating at various locations in Texas and Louisiana. The notice was published in the **Federal Register** on January 25, 1999 (64 FR 3721).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. New findings show that the Department incorrectly identified the subject firm title name. The investigation conducted for the subject firm was conducted on behalf of the workers at Nabors USA, Inc., East Texas/North Louisiana District, headquarters in Kilgore, Texas operating at various locations in Texas and Louisiana. ''Nabors USA, Inc.'' is not the subject of the investigation. The Department is amending the certification determination to correctly identify the subject firm title name to read ''Nabors Drilling USA, Inc.''.

The amended notice applicable to TA–W–35,200 is hereby issued as follows:

All workers of East Texas/North Louisiana District of Nabors Drilling USA, Inc., operating at various locations in Texas and Louisiana, who are engaged in employment related to the exploration and drilling of crude oil and natural gas who became totally or partially separated from employment on or after October 22, 1997 through December 28, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 25th day of February 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–6365 Filed 3–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,896]

Paxar Woven Label, Paterson, New Jersey; Notice of Affirmative Determination Regarding Application For Reconsideration

By letter of January 8, 1999 the petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to petition number TA–W–34,896. The denial notice was signed on December 11, 1998 and published in the **Federal Register** on December 23, 1998 (63 FR 71165).

The petitioner requested administrative reconsideration but did not provide new information which would support a reopening of the case. The Department, however, reviewed the evidence gathered in the course of the initial investigation and concluded that a review of its determination was warranted.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 8th day of March 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–6368 Filed 3–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix of this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 26, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 26, 1999.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 16th day of February 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 02/16/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Products
35,632	Thomas and Betts (Co.)	Hackettstown, NJ	01/26/1999	Connectors for Underground Power Systems.
35,633	Alamac Knit Fabrics (Wkrs)	Lumberton, NC	01/25/1999	Knit, Dye and Finish Cloth Fabric.
35,634	CJR Contractors, Inc (Co.)	Denver City, TX	01/12/1999	Oil and Gas.
35,635	Cabot Oil and Gas (Co.)	Houston, TX	01/28/1999	Oil and Gas.
35,636	Wright's Knitwear (Co.)	West Hazleton, PA	01/22/1999	Men's and Boy's Knitted Outerwear.
35,637	Stage II Apparel Corp (Wkrs)	New York, NY	01/28/1999	Men's and Boys' Dress/Sport Shirts.
35,638	Northwest Stamping, Inc (Wkrs)	Eugene, OR	01/16/1999	Parts for Electronic Industry.
35,639	Louisiana Pacific Corp (Co.)	Lockhart, Al	01/28/1999	Lumber.
35,640	American International (Wkrs)	Oscoda, MI	01/18/1999	Overhaul and Maintenence of Engines.
35,641	Green Garden (USWA)	Somerset, PA	01/25/1999	Lawn and Garden Hose.
35,642	Atlas Copco Compressors (Wkrs)	Holyoke, MA	01/13/1999	Industrial Air Compressors.
35,643	Peak Oilfield Service (Co.)	Anchorage, Ak	01/27/1999	Oilfield Services.
35,644	Eagle Electric Mfg. (Wkrs)	Sanford, NC	01/15/1999	Metal Bat Handle Switch.
35,645	Phoenix Industries (Wkrs)	McAlester, OK	01/27/1999	Remanufactured Auto Motors.
35,646	Stroh Brewery (The) (Wkrs)	Tampa, FL	01/12/1999	Beer.
35,647	Parker Drilling Co (Co.)	Anchorage, Ak	01/13/1999	Drilling Crude Oilwells.
35,648	Crown Cork and Seal (IAMAW)	Walla Walla, WA	01/15/1999	Tin Plated Steel Food Can.
35,649	TRW, Inc (Co.)	Rochester Hills, MI	02/01/1999	Electro-Mechanical Relays.
35,650	Donnkenny Apparel, Inc (Co.)	West Hempstead, NY	01/29/1999	Ladies' Sportwear.
35,651	A and E Machine Fab. (USWA)	Lone Star, TX	01/29/1999	Steel Mill Machinery.
35,652	Dudley Kebow, Inc (Co.)	Oceanside, CA	01/28/1999	Peppermills and Spice Grinders.
35,652A	Dudley Kebow, Inc (Comp)	Albuquerque, NM	01/28/1999	Peppermills and Spice Grinders.
35,653	Kentucky Apparel & Laundr (Wkrs)	Bowling Green, KY	01/29/1999	Wash Blue Jeans.
35,654	Hasbro, Inc (Co.)	Pawtucket, RI	02/03/1999	Toys and Games.
35,655	JB Sportswear (Co.)	Union, MS	02/02/1999	Knit Shirts.
35,656	Mead Fine Paper Division (UPIU)	Chillicothe, OH	02/01/1999	Paper—Sheets and Rolls.
35,657	Caza Drilling, Inc (Co.)	Denver, Co	01/18/1999	Oil and Gas.
35,658	Motorola (Co.)	Scottsdale, AZ	01/12/1999	Surface Acoustic Wave Filters.
35,659	Buster Brown Apparel (Co.)	Chattanooga, TN	01/28/1999	Fabric for Children's Clothing.
35,660	C.B. Cummings and Sons (Co.)	Norway, ME	02/09/1999	Furniture Components.
35,661	Discovery Drilling (Wkrs)	Hays, KS	01/01/1999	Oil and Gas.
35,662	Kellwood Company (UNITE)	Spencer, WV	01/26/1999	Knitwear for Sag Harbor.
35,663	Baker Hughes Inteq (Wkrs)	Houston, TX	02/02/1999	Oil Services.

[FR Doc. 99–6374 Filed 3–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,454]

Vogue Originals, A/K/A Vogue Stitching, Miami, Florida; Amended Certification Regarding Eligibility To Apply For Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility To Apply for Worker Adjustment Assistance on June 3, 1998, applicable to workers of Vogue Originals located in Miami, Florida. The notice was published in the **Federal Register** on July 13, 1998 (63 FR 37590).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. The workers produce ladies' apparel. Review of the investigation record shows that the subject firm is also known as Vogue Stitching. Some of the workers at the Miami location, engaged in employment related to the production of ladies' dresses have had their wages reported under the unemployment insurance (UI) tax account for Vogue Stitching.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports. Accordingly, the Department is amending the certification to include workers of Vogue Stitching.

The amended notice applicable to TA–W–34,454 is hereby issued as follows:

All workers Vogue Originals, also known as Vogue Stitching, Miami, Florida, who became totally or partially separated from employment on or after April 1, 1997 through June 3, 2000, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 19th day of February 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–6367 Filed 3–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,077, TA–W–35,077A, and TA–W–35,077B]

William Carter Company, Centreville, Mississippi, Thomaston, Georgia, Mill #10, Sandersville, Georgia; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 18, 1998, applicable to all workers of William Carter Company,

Centreville, Mississippi. The notice was published in the **Federal Register** on December 16, 1998 (63 FR 69313).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations will occur at William Carter's Thomaston, Georgia and Mill #10, Sandersville, Georgia facilities when they close in April, 1999. The workers are engaged in the production of infants' basic and designer apparel and children's playwear.

Accordingly, the Department is amending the certification to cover workers at William Carter Company, Thomaston, Georgia and Mill #10, Sandersville, Georgia. The intent of the Department's certification is to include all workers of William Carter Company adversely affected by increased imports.

The amended notice applicable to TA–W–35,077 is hereby issued as follows:

All workers of William Carter Company, Centreville, Mississippi (TA–W–35,077), Thomaston, Georgia (TA–W–35,077A) and Mill #10, Sandersville, Georgia (TA–W–35,077B) who became totally or partially separated from employment on or after September 22, 1997 through November 18, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 6th day of February, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–6363 Filed 3–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02883]

Cascade Steel Rolling Mills, Incorporated, McMinnville, Oregon; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on February 1, 1999 in response to a petition filed on behalf of workers at Cascade Steel Rolling Mills, Incorporated, located in McMinnville, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 8th day of March, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–6369 Filed 3–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Acting Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Acting Director of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request if filed in writing with the Acting Director of OTAA not later than March 26, 1999.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Acting Director of OTAA at the address shown below not later than March 21, 1999.

Petitions filed with the Governors are available for inspection at the Office of the Acting Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 2nd day of March, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Jamesbury (Wkrs)	El Paso, TX	01/25/99	NAFTA–2,882	Warehouse distributing.
Cascade Steel Rolling (USWA)	McMinnville, OR	02/01/99	NAFTA–2,883	Rolled steel.
Wright's Knitwear (Co.)	Auburn, PA	02/08/99	NAFTA–2,884	Men's and boy's knit outerwear.
Cutler Hammer (Co.)	Everett, WA	02/05/99	NAFTA–2,885	Electronic sensors.
Hopewell Sewing (UNITE)	Brodnax, VA	02/05/99	NAFTA–2,886	Girls dresses.
Custom Packaging Systems (Co.)	Rapid City, SD	02/05/99	NAFTA–2,887	Bulk containers and bulk bags.
Branch Cheese—Saputo Cheese (Co.).	Branch, WI	02/04/99	NAFTA–2,888	Bulk cheese.
AMP (Wkrs)	Seven Valleys, PA	02/04/99	NAFTA–2,889	Electrical connectors.
Titan Tire (USWA)	Des Moines, IA	02/01/99	NAFTA–2,890	Rubber tires.
Columbia Forest Products (IUE)	New Freedom, PA	02/04/99	NAFTA–2,891	Veneer.
Burlington Sportswear (Wkrs)	Statesville, NC	02/02/99	NAFTA–2,892	Knitted fabrics and garments.
Kaufman Footwear (Wkrs)	Batavia, NY	02/02/99	NAFTA–2,893	Footwear (sorel boots).

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Kaufman Footwear (Wkrs)	Batavia, NY	02/02/99	NAFTA–2,893	Footwear (sorel boots).
Phoenix Industrial (Wkrs)	McAlester, OK	02/01/1999	NAFTA–2,894	Long block assembly.
Amphenol Corporation (IAWAW)	Sidney, NY	01/26/1999	NAFTA–2,895	Electrical connectors.
Northwest Stamping (Wkrs)	Eugene, OR	02/02/1999	NAFTA–2,896	Precision metal stamping.
Connor (Wkrs)	Indianapolis, IN	02/05/1999	NAFTA–2,897	Battery casing and covers.
Peregrine (Co.)	Livonia, MI	01/19/1999	NAFTA–2,898	Door trim panel assemblies.
Peregrine (Co.)	Flint, MI	01/19/1999	NAFTA–2,899	Window regulator assemblies.
Baker Hughes Inteq (Wkrs)	Capser, WY	02/08/1999	NAFTA–2,900	Oil and gas.
Baker Hughes (Wkrs)	Cody, WY	02/08/1999	NAFTA–2,901	Oilfield submersible pump equipment.
Parkdale Mills, Inc (Wkrs)	Thomasville, NC	02/11/1999	NAFTA–2,902	Yarn.
Inland Paperboard & Packaging (Wkrs).	Orange, TX	02/12/1999	NAFTA–2,903	Brown Paper.
Imperial Home Decor Group (Wkrs)	Plattsburgh, NY	02/11/1999	NAFTA–2,904	Wallpapers.
Chinook Group, Inc (Wkrs)	North Branch, MN	02/10/1999	NAFTA–2,905	Choline Chloride.
Boise Cascade (Comp)	Fisher, LA	02/10/1999	NAFTA–2,906	Lumber.
Federal Mogul Friction (Comp)	New Castle, IN	02/09/1999	NAFTA–2,907	Heavy Duty Brake.
Thomas and Betts Elastimold (Co.)	Hackettstown, NJ	02/08/1999	NAFTA–2,908	Underground electrical connectors.
Motorola (Comp)	Phoenix, AZ	02/05/1999	NAFTA–2,909	Semiconductors.
Warnaco Group (Wrks)	Nesquehoning, PA	02/11/1999	NAFTA–2,910	Men's and Ladies' Jeans.
Schuylkill Haven Bleach and Dye Works (Co.).	Schuylkill Haven, PA	02/17/1999	NAFTA–2,911	Knitted piece goods (textiles).
Alamac Knit Fabrics (Co.)	Tumberton, NC	02/17/1999	NAFTA–2,912	Cloth fabric (textiles).
Advantage Lift Systems (Co.)	Williamson, PA	02/17/1999	NAFTA–2,913	In-ground automotive hoists.
HAPCO Screenprinting (Wkrs)	Emmaus, PA	02/17/1999	NAFTA–2,914	Screenprinting garments.
William Carter (Wkrs)	Thomaston, GA	02/17/1999	NAFTA–2,915	Children's apparel.
KSC Resources—KSC Mountain (Co.)	Worland, WY	02/16/1999	NAFTA–2,916	Gas and crude oil.
Allegheny Teledyne (USWA)	Latrobe, PA	02/18/1999	NAFTA–2,917	Stainless steel.
Indiana Knitwear (Co.)	Colon, MI	02/12/1999	NAFTA–2,918	Sew knit shirts.
Martin Marietta Magnesia (Wkrs)	Manistee, MI	02/12/1999	NAFTA–2,919	Periclase grain and refracteries products.
Custom Engineering (Wkrs)	Erie, PA	02/18/1999	NAFTA–2,920	Oil pans.
Triple A Trouser (UNITE)	Scranton, PA	02/18/1999	NAFTA–2,921	Men's and boys' slacks.
Goodyear Tire and Rubber (USWA)	Gadsden, AL	02/18/1999	NAFTA–2,922	Radial passenger tires.
Mayflower (UNITE)	Old Forge, PA	02/18/1999	NAFTA–2,923	Men's dress and casual slacks.
R.R. Donnelley and Sons (GCIU)	Dunmore, PA	02/18/1999	NAFTA–2,924	Books, CDs and media articles.
Weyerhaeuser (Co.)	Longview, WA	02/16/1999	NAFTA–2,925	Chlorine, hypochlorate, hydrochlaric.
Snap On Tools (USWA)	Ottawa, IL	02/16/1999	NAFTA–2,926	Steel.
Kelly Springfield Tire (USWA)	Freesport, IL	02/16/1999	NAFTA–2,927	Tires.
Elwood Corporation (Wkrs)	Dak Creek, WI	02/16/1999	NAFTA–2,928	Photoelectric controls.
Indera Mills (Co.)	Yadkinville, NC	02/16/1999	NAFTA–2,929	Thermal underwear for all.
Baker Oil Tools (Wkrs)	Houston, TX	01/25/1999	NAFTA–2,930	Oil.
Plastech (Wkrs)	Corvallis, OR	02/11/1999	NAFTA–2,931	Plastic injection molding.
Westington Electric (Wkrs)	Pensacola, FL	02/10/1999	NAFTA–2,932	Combustion turbines generators.
Arrow Automotive Industries (Wkrs)	Morrilton, AR	02/22/1999	NAFTA–2,933	Auto parts.
Hennepin Paper (USWA)	Little Falls, MN	02/23/1999	NAFTA–2,934	Construction and drawing paper.
Circle Four Farms (Co.)	Milford, UT	02/04/1999	NAFTA–2,935	Pigs.

[FR Doc. 99–6375 Filed 3–15–98; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act

TIME AND DATE: 10:00 a.m., Thursday, March 18, 1999.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Request from a Corporate Federal Credit Union for a National Field of Membership Amendment.

2. Chairman D'Amours Proposal for Small Credit Union Program.

3. Proposed Restoration of Economic Development Specialist Positions for 1999 and 2000.

4. Board Member Wheat's Proposal for Small Credit Union Program and Reconsideration of Economic Development Specialist FTE's for 1999.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, March 18, 1999.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Two (2) Administrative Actions under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

2. Administrative Action under Part 703 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

3. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (6), (7) and (10).

4. Two (2) Personnel Actions. Closed pursuant to exemptions (2) and (6).

5. Year 2000 and Liquidity Plan Issues. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–6430 Filed 3–12–99; 10:59 am]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board.

DATE AND TIME: March 25, 1999: 11:30 a.m., Closed Session; March 25, 1999: 1:15 p.m., Open Session; March 26, 1999: 8:30 a.m., Open Session; March 26, 1999: 11:30 a.m., Closed Session.

PLACE: The National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, VA 22230.

STATUS: Part of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, March 25, 1999

Closed Session (11:30 a.m.–12 noon)

—Closed Session Minutes
—Awards

Closed Session (1 p.m.–1:15 p.m.)

—Awards and Agreements

Open Session (1:15 p.m.–5:30 p.m.)

—Minutes, November 1998, February 1999
—Closed Session Items for May 1999
—Chair's Report
—Director's Report
—Committee Reports
—May NSB Meeting
—NSB Calendar
—Director's Report on Merit Review
—NSF Strategic Planning and Budget

Friday, March 26, 1999

Open Session (9 a.m.–11:30 p.m.)

—NSF Strategic Planning and Budget

Closed Session (11:30 a.m.–12 noon)

—NSF Budget

Marta Cehelsky,

Executive Officer.

[FR Doc. 99–6431 Filed 3–12–99; 10:59 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting; Agenda

TIME AND DATE: 9:30 a.m., Tuesday, March 23, 1999.

PLACE: Springfield Hilton, 6550 Loisdale Road, Springfield, Virginia 22150; (703) 971–8900.

STATUS: Open.

MATTERS TO BE CONSIDERED: 6472A Aviation Accident Report: Uncontrolled Descent and Collision with Terrain, USAir Flight 427, Boeing 727–300, N513AU, near Aliquippa, Pennsylvania, September 8, 1994.

NEWS MEDIA CONTACT: Ted Lopatkiewicz, (202) 314–6100.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Dated: March 12, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99–6521 Filed 3–12–99; 3:47 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Baltimore Gas and Electric Company (Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 and the Independent Spent Fuel Storage Installation)

[Docket Nos. 50–317, 50–318, and 72–8]

Order Approving Application Regarding Restructuring of Baltimore Gas and Electric Company

I

Baltimore Gas and Electric Company (BGE) is the licensee for Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, and the associated Independent Spent Fuel Storage Installation (ISFSI). BGE has the exclusive responsibility for the construction, operation, and maintenance of Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, and the ISFSI, as reflected in Operating Licenses Nos. DPR–53 and DPR–69, and Materials License No. SNM–2505 issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) on July 31, 1974, November 30, 1976, and November 25, 1992, respectively. The facility is located on the western shore of the Chesapeake Bay, in Calvert County, Maryland.

II

Under cover of a letter dated November 20, 1998, BGE submitted an application, which was supplemented by letter dated January 8, 1999, for approval by the Commission, pursuant to 10 CFR 50.80 and 10 CFR 72.50, regarding a proposed corporate restructuring action that would result in the indirect transfer of the operating licenses for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, and the associated ISFSI. Under the proposed restructuring, BGE would form, and become a wholly owned subsidiary of, a new holding company. Current stockholders of BGE common stock would become stockholders of the new holding company's common stock. BGE would continue to directly hold the licenses following the restructuring.

According to the application, BGE will continue to be an ''electric utility'' as defined in 10 CFR 50.2, as a wholly owned subsidiary of the new holding company. In addition, adoption of the new holding company structure will not affect BGE's management of nuclear operations or BGE's technical qualifications. The restructuring will involve no significant change in the personnel who operate and maintain the Calvert Cliffs Nuclear Power Plant and the ISFSI.

A Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring was published in the **Federal Register** on January 8, 1999 (64 FR 1244).

Under 10 CFR 50.80 and 10 CFR 72.50, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information submitted in the application of November 20, 1998, as supplemented by letter dated January 8, 1999, the NRC staff has determined that the restructuring of BGE by establishment of a holding company will not affect the qualifications of BGE as the holder of licenses for Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, and as the holder of the license for the ISFSI, and that the transfer of control of the licenses, to the extent effected by the proposed restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a safety evaluation dated March 8, 1999.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), 2201(o), and 2234, 10 CFR 50.80, and 10 CFR 72.50, *it is hereby ordered* that the application regarding the proposed restructuring of BGE by the establishment of a holding company is approved, subject to the following: (1) BGE shall provide the Director, Office of Nuclear Reactor Regulation, and the Director, Office of Nuclear Material Safety and Safeguards, a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from BGE to

its proposed parent, or to any other affiliated company, facilities for production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent (10%) of BGE's consolidated net utility plant as recorded on its books of account; and (2) should the restructuring of BGE, as described herein, not be completed by March 1, 2000, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

For further details with respect to this action, see the application dated November 20, 1998, and supplement dated January 8, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland this 8th day of March 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–6348 Filed 3–15–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549

Extension:

Form N–14, SEC File No. 270–297, OMB Control No. 3235–0336

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') requests for extension of the previously approved collection of information discussed below.

Form N–14—Registration Statement Under the Securities Act of 1933 for Securities Issued in Business Combination Transactions by Investment Companies and Business Development Companies. Form N–14 is used by investment companies registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (''Investment Company Act'') and business development companies as defined by section 2(a)(48) of the Investment Company Act to register securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] to be issued in business combination transactions specified in Rule 145(a) (17 CFR 230.145(a)) and exchange offers. The securities are registered under the Securities Act to ensure that investors receive the material information necessary to evaluate securities issued in business combination transactions. The Commission staff reviews registration statements on Form N–14 for the adequacy and accuracy of the disclosure contained therein. Without Form N–14, the Commission would be unable to verify compliance with securities law requirements. The respondents to the collection of information are investment companies or business development companies issuing securities in business combination transactions. The estimated number of responses is 283 and the collection occurs only when a merger or other business combination is planned. The estimated total annual reporting burden of the collection of information is approximately 620 hours per response for a new registration statement, and approximately 350 hours per response for an amended Form N–14, for a total of 140,090 annual burden hours. Providing the information on Form N–14 is mandatory. Responses will not be kept confidential. Estimates of the burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms. The Commission may not conduct or sponsor, a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 9, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–6333 Filed 3–15–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23733; 812–11452]

Nations Funds Portfolios, Inc., et al.; Notice of Application

March 9, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 17(b) of the Investment Company Act of 1940 (''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants, Nations Funds Portfolios, Inc. (''Portfolios'') and NationsBanc Advisors, Inc. (''NBAI''), seek an order to permit one series of the Portfolios to acquire all of the assets and assume all of the liabilities of another series of the Portfolios. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

FILING DATE: The application was filed on January 6, 1999 and amended on March 1, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 30, 1999, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, DC 20549. Applicants, Portfolios and NBAI, One Bank America Plaza, Charlotte, North Carolina 28255.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, N.W., Washington, DC 20549 (tel. no. 202–942–8090).

Applicants' Representations

1. Portfolios, a Maryland corporation, is registered under the Act as an open-end management investment company. Portfolios currently consists of three series, two of which—Nations Emerging Markets Fund (''Acquiring Fund'') and Nations Pacific Growth Fund (''Acquired Fund'')—are the subject of this application.

2. NBAI, a wholly-owned subsidiary of NationsBank, N.A. (''NationsBank''), is registered under the Investment Advisers Act of 1940 and is the investment adviser to both the Acquiring and the Acquired Funds (the ''Fund''). NationsBank and certain of its affiliated companies that are under common control with NBAI (''NationsBank Group''), hold of record in their name and in the names of their nominees approximately 86% and 92% of the outstanding voting securities of the Acquired Fund and Acquiring Fund, respectively. All such securities are held for the benefit of others in a trust, agency, custodial or other fiduciary or representative capacity. None of the members of the NationsBank Group owns a direct economic interest in the Funds' securities.

3. On October 7, 1998, the board of directors of the Funds (''Board''), including a majority of the disinterested directors as defined under section 2(a)(19) of the Act, approved the Agreement and Plan of Consolidation pursuant to which the Acquiring Fund will acquire all of the assets and assume all of the liabilities of the Acquired Fund in exchange for shares of the Acquiring Fund equal in value to the net asset value (''NAV'') of the Acquired Fund (the ''Consolidation''). The Consolidation is expected to close on March 30, 1999 (''Closing Date''). Each shareholder of the Acquired Fund will receive shares of the Acquiring Fund having an aggregate NAV equal to the aggregate NAV of the Acquired Fund's shares held by that shareholder calculated as of 4:00 p.m. on the Closing Date. No front end sales load, redemption fee or contingent deferred sales charge will be imposed on shareholders in connection with the Consolidation.

4. Shares of both the Acquired Fund and Acquiring Fund are divided into five classes: Primary A Shares, Primary B Shares, Investor A Shares, Investor B Shares, and Investor C Shares. The Portfolios have adopted identical distribution and shareholder servicing plans for the corresponding classes within the Acquired and Acquiring Fund. The number of shares of the Acquiring Fund to be issued to shareholders of the Acquired Fund will be determined by dividing the aggregate net assets of each class of the Acquired Fund by the NAV per corresponding class of shares of the Acquiring Fund, each computed at the time on the Closing Date determined by the Funds' valuation procedures. Shares of the Acquiring Fund will be distributed to shareholders of the Acquired Fund in liquidation of the Acquired Fund, and the Acquired Fund will be dissolved.

5. Applicants state that the investment objectives of the Funds are generally similar. Each Fund seeks to provide investors with long-term capital appreciation by investing primarily in equity securities of foreign companies. The Acquiring Fund primarily invests in securities of companies located in emerging market countries, including Pacific Basin and Far East countries (excluding Japan), India, and countries in Latin America, Eastern Europe, and Africa. The Acquired Fund invests primarily in securities of companies located in the Pacific Basin and the Far East (excluding Japan). The Acquired Fund intends to sell a substantial portion of its portfolio securities prior to the Closing Date, the proceeds of which will be held in temporary investments or reinvested in assets that qualify to be held by the Acquiring Fund. The Board determined that even with the costs of repositioning the Acquired Fund's portfolio it was in the best interests of the Acquired Fund's shareholders to have the Acquired Fund consolidate into a similar investment product that would allow them to have the international exposure that they desired and was managed in a similar style.

6. The Board found that participation in the Consolidation was in the best interests of each Fund and their shareholders and that the interests of the existing shareholders of each Fund would not be diluted as a result of the Consolidation. The Board considered a number of factors in authorizing the Consolidation including: (i) Possible alternatives to the Consolidation, including liquidation of the Acquired Fund; (ii) the terms and conditions of the Consolidation and whether the Consolidation would result in the dilution of shareholder interests; (iii) the future viability of the Acquired Fund; (iv) the expected cost savings for shareholders of the Acquired Fund; (v) expense ratios and available information regarding fees and expenses of the Funds; (vi) the compatibility of the investment objectives of the Funds; and (vii) the tax consequences of the Consolidation. NBAI will pay all customary expenses incurred in connection with the Consolidation.

7. The Board considered that both before and after expense waivers each class of the Acquired Fund would be consolidated into a class of the Acquiring Fund that has a lower total expense ratio. The Consolidation will not be considered a tax-free ''reorganization'' under applicable provisions of the Internal Revenue Code of 1986, as amended. The Board considered the taxable nature of the Consolidation and in particular the Board considered that, in light of the NAV performance of the Acquired Fund, most shareholders have a basis in their shares that equals or exceeds the current value of their shares (and therefore that they would realize, if anything, a loss rather than a taxable gain).

8. The Consolidation is subject to a number of conditions precedent, including that: (i) Definitive proxy solicitation materials shall have been filed with the SEC and distributed to shareholders of the Acquired Fund; (ii) the shareholders of the Acquired Fund approve the Consolidation; and (iii) applicants will receive from the SEC an exemption from section 17(a) of the Act for the Consolidation. The Consolidation may be terminated and the transactions abandoned at any time prior to the Closing Date by mutual consent of the Portfolios or by consent of the Portfolios on behalf of either Fund. Applicants agree that no material changes will be made to the Consolidation plan without the prior approval of the Commission staff.

9. Definitive proxy solicitation materials have been filed with the SEC and were mailed to shareholders of the Acquired Fund on or about February 26, 1999. A special meeting of shareholders is scheduled for March 29, 1999.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or

indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants state that they may not rely on rule 17a–8 in connection with the Consolidation because the Funds may be affiliated by reasons other than having a common investment adviser, common director, and/or common officers. The Acquiring Fund and the Acquired Fund are affiliated persons also because of NationsBank Group's ownership of 86% and 92% of the Acquired Fund and Acquiring Fund, respectively.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the term of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to consummate the Consolidation. Applicants submit that the Consolidation satisfies the standards of section 17(b) of the Act. Applicants state that the Board has determined that the Consolidation is in the best interest of the existing shareholders of the Fund and that the interests of the existing shareholders will not be diluted as a result of the Consolidation. In addition, Applicants state that the exchange of the Acquired Fund's shares for shares of the Acquiring Fund will be based on NAV.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–6278 Filed 3–15–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Leah Industries, Inc.; Order of Suspension of Trading

March 11, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Leah Industries, Inc. (''Leah'') because of questions regarding the accuracy of assertions by Leah, and by others, in press releases concerning, among other things: (1) Leah's relationship with a national auditing firm; and (2) an acquisition Leah made.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, on Friday, March 12, 1999 through 11:59 p.m. EST, on Thursday, March 25, 1999.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–6445 Filed 3–12–99; 11:13 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Ikar Mineral Corporation; Order of Suspension of Trading

March 12, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ikar Mineral Corporation (''Ikar''), a Vancouver, British Columbia, Canada based company, incorporated in the State of Delaware, which holds itself out to be in the business of acquiring, developing and mining base and precious metal properties in Tajikistan. There are questions regarding the accuracy and adequacy of publicly disseminated information concerning a purported agreement between Ikar and European American Resources, Inc. (''Epar''), another mining company, for the sale of a portion of Ikar's mineral deposit in Tajikistan for over $39 million, to be paid in cash and stock of Epar.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(K) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, March 12, 1999 through 11:59 p.m. EST, on March 25, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–6446 Filed 3–12–99; 11:13 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 7, 1998, (63 FR 67504).

DATES: Comments must be submitted on or before April 15, 1999.

FOR FURTHER INFORMATION CONTACT: Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue, SW.; Washington, DC 20591; telephone number (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: War Risk Insurance (formerly, Aviation Insurance).

OMB Control Number: 2120–0514.

Type of Request: Extension of currently approved collection.

Affected Public: Approximately 45 air carriers.

Abstract: The Federal Aviation Administration is authorized to provide aviation insurance in emergency situations in which the President determines that continuation of air service is in the foreign policy interest

of the United States and the Administrator has determined that aviation insurance is not available on reasonable terms and conditions from commercial sources.

Annual Estimated Burden Hours: 68.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments

Comments are invited on: whether the proposed collection of information is 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 collection; 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 most effective if OMB receives it within 30 days of publication.

Issued in Washington, D.C. on March 10, 1999.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 99–6353 Filed 3–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of The Secretary

Aviation Proceedings, Agreements Filed During the Week Ending March 5, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–5189.
Date Filed: March 3, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 SATL–EUR 0049 dated 5 February 1999
South Atlantic-Europe Passenger Resolutions r1–r15
Minutes—PTC12 SATL–EUR 0050 dated 12 February 1999
Tables—PTC12 SATL–EUR FARES 0013 dated 09 February 1999
Intended effective date: 01 April 1999.

Docket Number: OST–99–5190.
Date Filed: March 3, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 AFR 0048 dated 5 March 1999
Mail Vote 990—Within Africa Expedited Resolution 010a
Intended effective date: 15 April 1999.

Docket Number: OST–99–5192.
Date Filed: March 3, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 NMS–AFR 0059 dated 16 February 1999
North Atlantic-Africa Resolutions r1–r22
Minutes—PTC12 NMS–AFR 0062 dated 26 February 1999
Tables—PTC12 NMS–AFR Fares 0041 dated 26 February 1999
Intended effective date: 1 May 1999.

Docket Number: OST–99–5202.
Date Filed: March 5, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC COMP 0416 dated 9 March 1999
Mail Vote 993—Resolution 024d
Amendment to Rounding unit and decimal unit for Zimbabwe
Intended effective date: 1 April 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–6335 Filed 3–15–99; 8:45 am]

BILLING CODE 4910–62–P

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 March 5, 1999

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–99–5168.
Date Filed: March 1, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 29, 1999.

Description: Application of Luxair, S.A., pursuant to 49 U.S.C. Section 41302 and Subpart Q, requests authority to provide the broad range of scheduled and charter transportation of persons, property and mail: (1) From points behind Luxembourg via Luxembourg and intermediate points to a point or points in the United States and beyond; and (2) all-cargo service or services between the United States and any point or points.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–6334 Filed 3–15–99; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Draft Updates to Advisory Circular 27–1A, Certification of Normal Category Rotorcraft, and Advisory Circular 29–2B, Certification of Transport Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of advisory circular (AC) draft updates.

SUMMARY: This notice announces the availability of draft updates to AC 27–1A, Certification of Normal Category Rotorcraft, and AC 29–2B, Certification of Transport Category Rotorcraft. The draft updates contain guidance material to bring the AC's up to date with the most recent amendments to 14 Code of Federal Regulations (CFR) parts 27 and 29.

DATES: Any comments must identify Draft Updates to AC 27–1A, or Draft Updates to AC 29–2B, and must be received by March 31, 1999.

ADDRESSES: Any comments can be submitted to FAA, Rotorcraft Standards Staff, ASW–110, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193–0110, or via electronic mail to Kathy.L.Jones@FAA.GOV.

FOR FURTHER INFORMATION CONTACT: Kathy Jones, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, TX 76193–0110; telephone (817) 222–5359, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: This notice announces the availability of draft updates. These draft updates have been reviewed and commented on by representatives from U.S. industry, European industry, U.S. authorities, and European authorities. Any interested person not receiving these draft updates

may obtain a copy of contacting the person named under the caption **FOR FURTHER INFORMATION CONTACT**.

Interested persons can submit comments on these draft updates. Comments received may be inspected at the office of the Rotorcraft Standards Staff, FAA, 4th floor, 2601 Meacham Boulevard, Fort Worth, Texas.

Issued in Fort Worth, Texas, on March 9, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–6389 Filed 3–15–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–99–5194]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before May 17, 1999.

FOR FURTHER INFORMATION CONTACT: Crawford Ellerbe, Office of Maritime Labor, Training and Safety, MAR–250, Maritime Administration, 400 Seventh St., S.W., Room 7302, Washington, D.C. 20590. Telephone: 202–366–5755, or FAX 202–493–2288. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Request for Waiver of Service Obligation/Request for Deferment of Service Obligation.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0510.

Form Numbers: MA–355; MA–528; MA–742; MA–828; and, MA–942.

Expiration Date of Approval: November 30, 1999.

Summary of Collection of Information: This information collection is essential for determining if a student or graduate of the United States Merchant Marine Academy(USMMA) or subsidized student or graduate of a State Maritime Academy has a waivable situation preventing them from fulfilling the requirements of a service obligation contract signed at the time of their enrollment in a Federal maritime training program.

Need and Use of the Information: The collected information is necessary for MARAD to determine if waivers and deferments of the service obligation may be granted.

Description of Respondents: Students and graduates of the U.S. Merchant Marine Academy and subsidized students or graduates of the State Maritime Academies who request waivers of service obligations.

Annual Responses: 75

Annual Burden: 20 minutes each or 25 hours total.

Comments: Signed written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., ET., 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: March 11, 1999.

Joel C. Richard,

Secretary.

[FR Doc. 99–6359 Filed 3–15–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Education, Notice of Meeting

The Department of Veterans Affairs gives notice that a meeting of the Veterans' Advisory Committee on Education, authorized by 38 U.S.C. 3692, will be held on March 25, and March 26, 1999. The meeting will take place at the Department of Veterans Affairs, Room 542, 1800 G St., NW, Washington, DC 20420, 8:30 a.m. to 4:30 p.m. on Thursday, March 25, and from 8:30 a.m. to 3:00 p.m. Friday, March 26. The purpose of the Committee is to assist in the evaluation of existing programs and services, and recommend needed programs and services. On Thursday, the Committee will review and discuss education issues in the report submitted to Congress by the Commission on Servicemembers and Veterans' Transition Assistance. On Friday, the Committee will review and discuss recent legislation introduced regarding the Department of Veterans' Affairs education programs and prepare their recommendations to the Secretary.

The meeting will be open to the public. Those wishing to attend should contact Mr. Bill Susling, Education Policy and Program Administration, (phone 202–273–7187).

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard on Friday at 9:00 a.m.

Dated: March 8, 1999.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 99–6303 Filed 3–15–99; 8:45 am]

BILLING CODE 8230–01–M

DPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Amendment Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer program matching Internal Revenue Service (IRS) records with VA pension and parents' dependency and indemnity compensation (DIC) records.

The goal of this match is to compare income status as reported to VA with records maintained by IRS.

VA plans to match records of veterans and surviving spouses and children who receive pension, and parents who receive DIC, with data from the IRS income tax return information as it relates to unearned income.

VA will use this information to adjust VA benefit payments as prescribed by law. The proposed matching program will enable VA to ensure accurate reporting of income.

Records to be Matched: The VA records involved in the match are the VA system of records, Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22) first published at 41 FR 9294, March 3, 1976 and last amended at 63 FR 37941 (July 14, 1998). The IRS records consist of return information with respect to unearned income from the Wage and

Information Returns (IRP) master file, Privacy Act System Treas/IRS 22.061, hereafter referred to as the Information Return Master File (IRMF) published at 60 FR 56786 (11/9/95) through the Disclosure of Information to Federal, State, and Local Agencies (DIFSLA) program. In accordance with Title 5 U.S.C. subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget (OMB).

This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by Pub. L. 100–503.

DATES: The match will start no sooner than 30 days after publication of this Notice in the **Federal Register,** or 40 days after copies of this Notice and the agreement of the parties is submitted to Congress and OMB, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs within three months of the ending date of the original match that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Intersted individuals may submit written comments to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between 8 a.m. and 4:30 p.m., Mondays through Fridays, except holidays.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge (213B), (202) 273–7218.

SUPPLEMENTARY INFORMATION: This information is required by Title 5 U.S.C. subsection 552a(e)(12), the Privacy Act of 1974. A copy of this notice has been provided to both Houses of Congress and OMB.

Approved: March 1, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

[FR Doc. 99–6302 Filed 3–15–99; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment of System of Records Notice ''Means Test Verification Records—VA''

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is amending and renaming the system of records currently known as ''Means Test Verification Records—VA (89VA161)'' as set forth in the **Federal Register** 59FR8677 (2/23/94). VA is amending the system by revising the System Name and Number and the paragraphs for System Location; Categories of Individuals Covered by the System; Categories of Records in the System; Authority for Maintenance of the System; and Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System, including Storage, Retrievability and Safeguards. VA is republishing the system notice in its entirety at this time.

DATES: These amendments are effective on March 16, 1999.

FOR FURTHER INFORMATION CONTACT: Alan Begbie, Director, Health Eligibility Center (HEC), Veterans Health Administration, 1644 Tullie Circle, Atlanta, Georgia 30329, (404) 235–1300.

SUPPLEMENTARY INFORMATION: The name and number of the system is changed from ''Means Test Verification Records'' VA(89VA161) to ''Healthcare Eligibility Records'' VA(89VA19) to more accurately reflect the type of records maintained in this system and to reflect recent organizational changes.

The system location has been amended to reflect that the Income Verification Match Center (IVMC) has been renamed the Health Eligibility Center (HEC) and to indicate the current address of the HEC.

The individuals covered by this system have been increased to include all veterans who have applied for VA healthcare services under Title 38, United States Code, Chapter 17, and in certain cases, members of their immediate families. Under the previous notice only data on nonservice-connected veterans was collected.

The VHA HEC in Atlanta, Georgia, was originally established as the IVMC to verify the self-reported income of certain veterans with Internal Revenue Service (IRS) and Social Security Administration (SSA) information to determine the veteran's correct eligibility for VA healthcare benefits, as mandated by section 8051, Pub. L. 101–508. Section 8014 of Pub. L. 105–33 extended VA's matching authority through September 30, 2002.

Title 38, United States Code, Section 1705, requires VA to design, establish and operate a system of annual patient enrollment. As a matter of policy, VHA has determined that the HEC database will be expanded to serve as the central repository for eligibility and enrollment data of veterans applying for or receiving VA healthcare benefits. Veterans' enrollment information such as beginning and ending dates of the enrollment period, enrollment status and primary healthcare facility, will be maintained in this database and provided to VA healthcare facilities involved in the veteran's care. This increases the types of records and individuals covered under the system.

To carry out the HEC programs, the Center receives electronic transmissions from VA healthcare facilities via the Department's electronic communications system (wide area network). These transmissions include personal, income and eligibility information, such as name, social security number, address, health insurance coverage, and other information concerning the veteran's self-reported household income and eligibility status. In certain cases, these transmissions include limited immediate family information provided by the veteran.

Compensation and pension award adjustment information contained in claim records administered by the Veterans Benefit Administration (VBA) is also sent to the HEC database, ensuring consistency of eligibility information contained in records covered by this system.

The HEC automatically sends this information over VA's wide area network to VA medical facilities where the veteran received care within the previous 12 month period. VA medical facilities can query the HEC database to obtain information on veteran applicants who have not received healthcare at that facility during the previous 12 month time frame. If available, updated information is transmitted to the requesting facility and loaded into the facility's database. Access to data in these files is controlled at the healthcare facility in accordance with nationally and locally-established data security procedures. These standards include, but are not limited to, requiring a unique password for each user, restricting access to ''need-to-know'' data, and deactivating screen displays after short periods of inactivity.

The HEC submits record identifiers (name, social security number, date of birth, and sex) to SSA for social security number validation. The validated social security number assists in matching a veteran's record maintained at one VA healthcare facility with records maintained at another. For certain veterans whose eligibility for VA healthcare is based on income, the validated social security number is also

used to match VA records with SSA and IRS for income verification purposes. For these veterans, the HEC database contains earned and unearned income data received from IRS and SSA.

The purpose of this system of records is to conduct income testing and verification activities; to validate social security numbers of veterans receiving VA healthcare benefits; to identify veterans' third party health insurance coverage; to ensure accuracy of veterans' eligibility information for medical care benefits; and to operate an annual patient enrollment system.

Approved: February 27, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

89VA19

Healthcare Eligibility Records—VA.

SYSTEM LOCATION:

All paper and electronic records are maintained at the Health Eligibility Center (HEC), 1644 Tullie Circle, Atlanta, Georgia 30329 and at VA healthcare facilities listed in the biennial publication of the VA's Systems of Records, Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Veterans who have applied for VA healthcare services under Title 38, United States Code, Chapter 17, and in certain cases, members of their immediate families.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical benefit application and eligibility information; identifying information including name, address, date of birth, social security number, claim number, eligibility information, family information including spouse and dependent(s) name, address, and social security number; employment information on veteran and spouse, including occupation, employer(s) name(s) and address(es); financial information concerning the veteran and the veteran's spouse including family income, assets, expenses, debts; third party health plan contract information, including health insurance carrier name and address, policy number and time period covered by policy; facility location(s) where treatment is provided; type of treatment provided, i.e., inpatient or outpatient; and dates of visits. Documents generated as a result of income verification by computer match with records from the IRS and the SSA and during the notification, verification and due process periods, such as initial verification letters, income verification forms, final confirmation letters, due process letters, clarification letters and subpoena documentation. Individual correspondence provided to the HEC by veterans or family members including, but not limited to, copies of death certificates; DD 214, Notice of Separation; disability award letters; IRS documents (i.e., Form 1040's, W–2's, etc.); state welfare and food stamp applications; VA and other pension applications; VA Forms 10–10, Application for Medical Benefits, and 10–10F, Financial Worksheet; workers compensation forms; and various annual earnings statements, as well as pay stubs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, sections 501(a), 1705, 1722, and 5317.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Income information that is received from IRS and SSA is protected by 26 U.S.C. 6103, and may not be disclosed under routine uses set forth absent specific authorization from the IRS or the VA Office of General Counsel (024).

1. The record of an individual who is covered by this system may be disclosed to a Member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of, and at the written request of, that individual.

2. Disclosure of records covered by this system, as deemed necessary and proper to named individuals serving as accredited service organization representatives and other individuals named as approved agents or attorneys for a documented purpose and period of time, to aid beneficiaries in the preparation and presentation of their cases during the verification and/or due process procedures and in the presentation and prosecution of claims under laws administered by the Department of Veterans Affairs.

3. In the event that information in this system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or a particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

4. Relevant information from this system of records may be disclosed as a routine use in the course of presenting evidence to a court, magistrate or administrative tribunal in matters of guardianship, inquests and commitments; to private attorneys representing veterans rated incompetent in conjunction with issuance of Certificates of Incompetency; and to probation and parole officers in connection with Court required duties.

5. Any information in this system may be disclosed to a VA Federal fiduciary or a guardian *ad litem* in relation to his or her representation of a veteran but only to the extent necessary to fulfill the duties of the VA Federal fiduciary or the guardian *ad litem*.

6. Relevant information may be disclosed to attorneys, insurance companies, employers, third parties, liable or potentially liable under health plan contracts to the Department of Veterans Affairs, and to courts, boards, or commissions. Such disclosures may be made only to the extent necessary to aid the Department of Veterans Affairs in the preparation, presentation, and prosecution of claims authorized under Federal, State, or local laws, and regulations promulgated thereunder.

7. Relevant information may be disclosed to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

8. Disclosure may be made to the National Archives and Records Administration (NARA), and the General Services Administration (GSA) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

9. Information in this system of records may be disclosed for the purposes identified below to a third party, except consumer reporting agencies, in connection with any proceeding for the collection of an amount owed to the United States by virtue of a person's participation in any benefit program administered by the Department of Veterans Affairs. Information may be disclosed under this routine use only to the extent that it is reasonably necessary to: (a) Assist the VA in the collection of costs of services provided individuals not entitled to such services; and (b) initiate civil or criminal legal actions for collecting amounts owed to the United States. This disclosure is consistent with 38 U.S.C. 5701(b)(6).

10. The name and address of a veteran, other information as is reasonably necessary to identify such veteran, including personal information obtained from other Federal agencies through computer matching programs and any information concerning the veteran's indebtedness to the United States by virtue of the person's participation in a benefits program administered by the VA, may be disclosed to a consumer reporting agency for purposes of assisting in the collection of such indebtedness, provided that the provisions of 38 U.S.C. 5701(g)(4) have been met.

11. For computer matching program and ADP security review purposes, record information may be disclosed to teams from other source Federal agencies who are parties to computer matching agreements involving the information maintained in this system, but only to the extent that the information is necessary and relevant to the review.

12. For veterans subject to income verification requirements, the name and identifying information on a veteran and/or spouse may be provided to reported payers of earned and/or unearned income in order to verify the identifier provided, address, income paid, period of employment, and health insurance information provided on the means test and to confirm income and demographic data provided by other Federal agencies during income verification computer matching.

13. Identifying information, including social security numbers, concerning veterans, their spouses, and the dependents of veterans may be disclosed to other Federal agencies for purposes of conducting computer matches to obtain valid identifying demographic and income information to determine or verify eligibility of certain veterans who are receiving VA medical care under Title 38, U.S.C.

14. The name and social security number of a veteran, spouse and dependents, and other identifying information as is reasonably necessary may be disclosed to SSA, Department of Health and Human Services, for the purpose of conducting a computer match to obtain information to validate the social security numbers maintained in VA records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are maintained at the HEC, 1644 Tullie Circle, Atlanta, Georgia 30329. Paper correspondence received from the veteran in response to HEC inquiries may be scanned and stored for viewing electronically.

RETRIEVABILITY:

Records (or information contained in records) maintained on paper documents are indexed by the veteran's name and social security number and are filed in case number order. Automated veterans' health eligibility records are indexed and retrieved by the veteran's name, social security number or case number. Automated health eligibility record information on spouses may be retrieved by the spouse's name or social security number.

SAFEGUARDS:

1. Data transmissions between VA healthcare facilities and the HEC and VA databases housed at VA's Austin Automation Center are accomplished using the Department's wide area network. The software programs at the respective facilities automatically flag records or events for transmission based upon functionality requirements. VA healthcare facilities and the HEC control access to data by using VHA's Veterans Health Information System and Technology Architecture (VISTA), (formerly known as Decentralized Hospital Computer Program (DHCP) software modules), specifically Kernel and MailMan. Kernel utility programs provide the interface between operating systems, application packages and users. Once data are identified for transmission, records are stored in electronic mail messages which are then transmitted to specific domains on the Department's wide area network which currently uses the Integrated Data Communications Utility (IDCU), a vendor-provided set of communications utilities and hardware. The data are stored in the electronic mail message using Health Level Seven (HL7) protocol. HL7 is a standard protocol which specifies the implementation of interfaces between two computer applications (sender and receiver) from different vendors for electronic data exchange in healthcare environments. Based on predetermined functional specifications, HL7 defines the data to be exchanged, the timing of the interchange, and the communication of errors when necessary. Server jobs at each agency run continuously to check for data to be transmitted and/or incoming data which needs to be parsed to files on the receiving end. All mail messages containing data transmissions include header information which is used for validation purposes. Consistency checks in the software are used to validate the transmission, and electronic acknowledgment messages are returned to the sending application. The Department's Telecommunications Support Service has oversight responsibility for planning, security, and management of the IDCU network.

2. Working spaces and record storage areas at the HEC are secured during all business hours, as well as during non-business hours. All entrance doors require an electronic passcard for entry when unlocked, and entry doors are locked outside normal business hours. Electronic passcards are issued by the HEC Security Officer. Visitor entry is controlled by HEC staff by door release or escort. The building is equipped with an intrusion alarm system for non-business hours, and this system is monitored by a security service vendor. The office space occupied by employees with access to veteran records is secured with an electronic locking system which requires a card for entry and exit of that office space.

3. Strict control measures are enforced to ensure that access to and disclosure from all records including electronic files and veteran specific data elements stored in the HEC veteran database are limited to HEC employees whose official duties warrant access to those files. The automated record system recognizes authorized users by keyboard entry of a series of unique passwords. Once the employee is logged onto the system, access to files is controlled by discreet menus which are assigned by the HEC computer system administration staff upon request from the employee's supervisor and the employee's demonstrated need to access the data to perform the employee's assigned duties. A number of other security measures are implemented to enhance security of electronic records (automatic timeout after short period of inactivity, device locking after pre-set number of invalid logon attempts, etc.). Employees are required to sign a user access agreement acknowledging their knowledge of confidentiality requirements, and all employees receive annual training on information security. Access is deactivated when no longer required for official duties. Recurring monitors are in place to ensure compliance with nationally- and locally-established security measures.

4. Veteran data are transmitted from the HEC to VA healthcare facilities over the Department's computerized electronic communications system (currently the Integrated Data Communications Utility or IDCU). Access to data in these files is controlled at the healthcare facility level in accordance with nationally-and locally-established data security

procedures. VA employees at healthcare facilities are granted access to patient data on a ''need-to-know'' basis. All employees receive information security training and are issued unique access and verify codes. Employees are assigned computer menus that allow them to view and edit records as authorized by the supervisor. While employees at the healthcare facility may edit data which was initially input at the facility level, employees at the facility do not have edit access to income tests which originated at the HEC. Likewise, HEC employees have view-only access to the income tests that originated at the healthcare facility.

5. In addition to passcards, the HEC computer room requires manual entry of a security code prior to entry. Only the automated information systems (AIS) staff and the HEC security officer are issued the security code to this area.

Programmer access to the HEC database is restricted only to those AIS staff whose official duties require that level of access.

6. On-line data reside on magnetic media in the HEC Computer Room that is highly secured. Backup media are stored in a combination lock safe in a secured room within the same building; only information system staff has access to the safe. On a weekly basis, backup media are stored in off-site storage by a media storage vendor. The vendor picks up and returns the media in a locked storage container; vendor personnel do not have key access to the locked container.

7. Any sensitive information that may be downloaded to personal computer files in the HEC or printed to hard copy format is provided the same level of security as the electronic records. All paper documents and informal notations containing sensitive data are shredded prior to disposal. All magnetic media (primary computer system) and personal computer disks are degaussed prior to disposal or release off site for repair.

8. The Income Verification Match Program of the HEC requires that HEC obtain veteran and spouse earned and unearned income data from IRS and SSA. The HEC complies fully with the Tax Information Security Guidelines for Federal, State and Local Agencies (Department of Treasury IRS Publication 1075) as it relates to access and protection of such data. These guidelines define the management of magnetic media, paper and electronic records, and physical and electronic security of the data.

9. All new HEC employees receive initial information security training, and refresher training is provided to all employees on an annual basis. An annual information security audit is performed by the VA Regional Information Security Officer. This annual audit includes the primary computer information system, the telecommunication system, and local area networks. Additionally, the IRS performs periodic on-site inspections to ensure the appropriate level of security is maintained for Federal tax data. The HEC Information Security Officer and AIS administrator additionally perform periodic reviews to ensure security of the system and databases.

10. Identification codes and codes used to access HEC automated communications systems and records systems, as well as security profiles and possible security violations, are maintained on magnetic media in a secure environment at the Center. For contingency purposes, database backups on removable magnetic media are stored off-site by a licensed and bonded media storage vendor.

RETENTION AND DISPOSAL:

Depending on the record medium, records are destroyed by either shredding or degaussing. Paper records are destroyed after they have been accurately scanned on optical disks. Optical disks or other electronic medium are deleted when all phases of the veteran's appeal rights have ended (ten years after the income year for which the means test verification was conducted). Tapes received from SSA and IRS are destroyed 30 days after the data have been validated as being a true copy of the original data. Summary reports and other output reports are destroyed when no longer needed for current operation. Regardless of record medium, no records will be retired to a Federal records center.

SYSTEM MANAGER(S) AND ADDRESS

Official responsible for policies and procedures: Chief Information Officer (19), VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420. Official maintaining the system: Director, Health Eligibility Center, 1644 Tullie Circle, Atlanta, Georgia 30329.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier or wants to determine the contents of such record, should submit a written request or apply in person to the HEC. All inquiries must reasonably identify the records requested. Inquiries should include the individual's full name, social security number and return address.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of HEC records may write to the Director, Health Eligibility Center, 1644 Tullie Circle, Atlanta, Georgia 30329.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Information in this system of records may be provided by the veteran; veteran's spouse or other family members or accredited representatives or friends; employers and other payers of earned income; financial institutions and other payers of unearned income; health insurance carriers; other Federal agencies; ''Patient Medical Records—VA'' (24VA136) system of records; Veterans Benefits Administration automated record systems (including Veterans and Beneficiaries Identification and Records Location Subsystem—VA (38VA23); and the ''Compensation, Pension, Education and Rehabilitation Records—VA'' (58VA21/22).

[FR Doc. 99–6304 Filed 3–15–99; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 64, No. 50

Tuesday, March 16, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of a Public Workshop Regarding Conformity Assessment Bodies for the Medical Devices Annex of the US/EC Mutual Recognition Agreement

Correction

In notice document 99–5385 appearing on page 10449 in the issue of Thursday, March 4, 1999, the subject heading should appear as set forth above.

[FR Doc. C9–5385 Filed 3–15–99; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 136 and 439

Pharmaceutical Manufacturing Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; Final Rule

Correction

In rule document 99–5106 beginning on page 10391, in the issue of Thursday, March 4, 1999, make the following correction:

On page 10392, in the third column, in the fifth line, ''BOB_5'' should read ''BOD_5''.

[FR Doc. C9–5106 Filed 3–15–99; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6306–4]

Workshop for Peer Review of the Draft EPA Risk Characterization Handbook and Case Studies

Correction

In notice document 99–5234 beginning on page 10662, in the issue of Friday, March 5, 1999, make the following corrections:

1. The heading should appear as set forth above.

2. On page 10663, in the first column, under **ADDRESSES:**, in the second line, ''Hotel,'' should read ''Hotel''.

3. On the same page, in the same column, in the third line from the bottom, ''accessors'' should read ''assessors''.

4. On the same page, in the second column, in the fifth line, ''or'' should read ''of''.

[FR Doc. C9–5234 Filed 3–15–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD09-99-004]

Great Lakes Regional Waterways Management Forum Meeting

Correction

In notice document 99–5508 beginining on page 10733, in the issue of Friday, March 5, 1999, make the following correction:

On page 10733, in the third column, the docket number is corrected to read as set forth above.

[FR Doc. C9–5508 Filed 3–15–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Tuesday
March 16, 1999

Part II

Department of Housing and Urban Development

24 CFR Parts 5, 887, 982, and 984
Section 8 Certificate and Voucher Programs Conforming Rule; Technical Amendment; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 887, 982, 984

[Docket No. FR–4054–C–04]

RIN 2577–AB63

Section 8 Certificate and Voucher Programs Conforming Rule; Technical Amendment

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

ACTION: Final rule; technical amendment.

SUMMARY: This document makes technical amendments to the final rule that was published April 30, 1998 (63 FR 23826), which combined and conformed program regulations for the Section 8 certificate and voucher programs.

EFFECTIVE DATE: April 15, 1999.

FOR FURTHER INFORMATION CONTACT: Gloria Cousar, Deputy Assistant Secretary for Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4204, 451 7th Street, SW, Washington, DC 20410. Her telephone numbers are (202) 708–2841 (voice) and (202) 708–0850 (TTY). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Need for Amendments

The Section 8 Certificate and Vouchers Programs Conforming Rule, published on April 30, 1998 (63 FR 23826), was corrected by a document published on June 10, 1998 (63 FR 31624). This document corrects additional errors in the final rule and makes additional clarifying technical amendments to parts 887 and 984, which inadvertently were not included in that rulemaking. This technical final rule does the following:

(1) Removes remaining provisions of part 887, the former rule for the Section 8 tenant-based voucher program. As intended, program rules for the voucher program are now contained in the conforming rule at part 982;

(2) Corrects formulas used to prorate assistance for a ''mixed family'' (that includes persons without citizenship or eligible immigration status) (24 CFR § 5.520). The final rule did not specify the procedure to prorate assistance for an over-FMR tenancy;

(3) Corrects calculation of the housing assistance payment for rental of a manufactured home space under a voucher or over-FMR tenancy. (The prior correction document corrected an error in calculation of the subsidy for a manufactured home space regular tenancy.) The rule is revised to specify that the maximum subsidy is rent to owner for the manufactured home space (§ 982.623(c)(2) and (c)(3)). This replaces the prior erroneous reference to ''gross rent'' (including the allowance for tenant-paid utilities);

(4) Inserts conforming references to requirements for certain special housing types, in the regulations that specify types of housing that are ineligible for assistance under the certificate and voucher programs (§ 982.352(a)(6));

(5) Clarifies confusion concerning the relationship between separate regulatory provisions concerning adjustments in subsidy payment upon a regular or interim reexamination of family income and composition. Sections 982.516(d)(2) and 982.516(e) are revised by eliminating reference to adjustments in the ''family unit size'' at a regular or interim reexamination. As so corrected, the rule provides that an HA must make appropriate adjustments in the housing assistance payment at the effective date of a regular or interim reexamination. Furthermore, § 982.516(d)(2) is revised to cross-reference the separate regulatory provisions that specify how housing assistance payments are calculated (§ 982.505 for a voucher or over-FMR tenancy; § 982.507 for a regular certificate tenancy). In addition, § 982.505(d)(5) is restated to clarify, as originally intended, that after a change in family unit size, the new family unit size is used to compute the payment standard at the next regular reexamination;

(6) Restates a technical provision that specifies when an annual adjustment is effective (§ 982.509(b)(5)(i)). This change is necessary to clarify when the annual adjustment is effective for a HAP contract with a mid-month anniversary; and

(7) Updates cross-references in the regulation for the Family Self-Sufficiency Program (§ 984.305(b)(1)).

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 887

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Housing, Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 984

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Catalog

The Catalog of Federal Domestic Assistance numbers for the programs that are the subject of this document are 14.855 and 14.857.

For the reasons stated above, parts 5, 887, 982, and 984 of title 24 of the Code of Federal Regulations are amended as follows:

PART 5—GENERAL HUD PROGRAM

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

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

Subpart E—Restrictions on Assistance to Noncitizens

2. In § 5.520 paragraphs (c)(1) introductory text, (c)(1)(ii), (c)(2) introductory text, (c)(2)(i) and (c)(2)(iv) are revised to read as follows:

§ 5.520 Proration of assistance.

* * * * *

(c) *Method of prorating assistance for Section 8 covered programs.*

(1) *Section 8 assistance other than assistance provided for a tenancy under the Section 8 Rental Voucher Program or for an over-FMR tenancy in the Section 8 Rental Certificate Program.* For Section 8 assistance other than assistance for a tenancy under the voucher program or an over-FMR tenancy under the certificate program, the PHA must prorate the family's assistance as follows:

(i) * * *

(ii) *Step 2.* Determine total tenant payment in accordance with section 5.613(a). (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

* * * * *

(2) *Assistance for a Section 8 voucher tenancy or over-FMR tenancy.* For a tenancy under the voucher program or for an over-FMR tenancy under the certificate program, the PHA must

prorate the family's assistance as follows:

(i) *Step 1.* Determine the amount of the pre-proration housing assistance payment. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

* * * * *

(iv) *No effect on rent to owner.* Proration of the housing assistance payment does not affect rent to owner. The family must pay the portion of rent to owner not covered by the prorated housing assistance payment.

* * * * *

PART 887—HOUSING VOUCHERS [REMOVED AND RESERVED]

3. Part 887 is removed and reserved.

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: UNITED RULE FOR TENANT-BASED ASSISTANCE UNDER THE SECTION 8 RENTAL CERTIFICATE PROGRAM AND THE SECTION 8 RENTAL VOUCHER PROGRAM

4. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

5. Section 982.352(a)(6) is revised to read as follows:

§ 982.352 Eligible housing.

(a) * * *

(6) A unit occupied by its owner or by a person with any interest in the dwelling unit. (However, assistance may be provided for a family residing in a cooperative. Assistance may be provided to the owner of a manufactured home leasing a manufactured home space. In the case of shared housing, an owner unrelated to the assisted family may reside in the unit, but assistance may not be paid on behalf of the resident owner. For provisions on cooperative housing, manufactured home space rental, and shared housing, see part 982, subpart M.); and

* * * * *

6. In § 982.505, paragraph (d)(5) is revised, to read as follows:

§ 982.505 Voucher tenancy or over-FMR tenancy: How to calculate housing assistance payment.

* * * * *

(d) * * *

(5) At the next regular reexamination following a change in family size or composition during the HAP contract term, and for any examination thereafter during the term:

(i) Paragraph (d)(4)(i) does not apply, and

(ii) If there is a change in family unit size resulting from such change in family size or composition, the new family unit size must be used to compute the payment standard.

7. In § 982.509, paragraph (b)(5)(i) is revised, to read as follows:

§ 982.509 Regular tenancy: Annual adjustment of rent to owner.

* * * * *

(b) * * *

(5) * * *

(i) The first day of the first month commencing on or after the contract anniversary date; or

* * * * *

8. In § 982.516, paragraph (e) is amended by removing from the last sentence the phrase ''and family unit size'', and paragraph (d)(2) is revised, to read as follows:

§ 982.516 Family income and composition: Regular and interim examinations.

* * * * *

(d) * * *

(2) At the effective date of a regular or interim reexamination, the HA must make appropriate adjustments in the housing assistance payment. (For a voucher tenancy or over-FMR tenancy, the housing assistance payment shall be calculated in accordance with § 982.505. For a regular tenancy, the housing assistance payment shall be calculated in accordance with § 982.507.)

* * * * *

§ 982.623 [Amended]

9. Section 982.623 is amended as follows:

a. In the first sentence of paragraph (c)(2)(ii), the phrase ''monthly gross rent'' is removed and the phrase ''rent to owner'' is inserted in its place.

b. In paragraph (c)(3)(ii), the phrase ''monthly gross rent'' is removed and the phrase ''rent to owner'' is added in its place.

PART 984—SECTION 8 AND PUBLIC HOUSING FAMILY SELF-SUFFICIENCY PROGRAM

10. The authority citation for part 984 continues to read as follows:

Authority: 42 U.S.C. 1437f, 1437u, and 3535(d).

§ 984.304 [Amended]

11. In § 984.304, paragraph (a)(2) is amended as follows:

a. In the first sentence, by removing ''in accordance with the regulations set forth in 24 CFR parts 813 and 882.'' and inserting ''in accordance with the regulations set forth in subpart F of 24 CFR part 5, and subpart K of 24 CFR part 982.''

b. In the second sentence, by removing ''in accordance with the regulations set forth in 24 CFR part 887.'' and inserting ''in accordance with the regulations set forth in 24 CFR § 982.505.''

§ 984.305 [Amended]

12. In section 984.305, paragraph (b)(1) is amended as follows:

a. By removing ''part 913'' and inserting ''subpart F of 24 CFR part 5''.

b. By removing ''part 813'' and inserting ''subpart F of 24 CFR part 5''.

Dated: March 2, 1999.

Andrew Cuomo,

Secretary.

[FR Doc. 99–6271 Filed 3–15–99; 8:45 am]

BILLING CODE 4210–33–P

federal register

Tuesday
March 16, 1999

Part III

Department of Commerce

National Telecommunications and Information Administration

Public Telecommunications Facilities Program: Closing Date; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 990302059–9059–01]

RIN 0660–ZA07

Public Telecommunications Facilities Program: Closing Date

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces the solicitation of applications for a grant for the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program. Applications for the PEACESAT Program grant will compete for funds from the Public Broadcasting, Facilities, Planning and Construction Funds account. An announcement regarding the submission of applications for the Public Telecommunications Facilities Program (PTFP) which is also funded from this account, was published in the **Federal Register** on November 6, 1998.

Applicants for grants for the PEACESAT Program must file their applications on or before April 15, 1999. NTIA anticipates making the grant award by September 30, 1999. NTIA shall not be liable for any proposal preparation costs.

DATE: Applications for the PEACESAT Program grant must be received on or before 5:00 p.m. on April 15, 1999. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the Closing Date and Time. NTIA will not accept mail delivery of applications posted on the Closing Date or later and received after the above deadline. However, if an application is received after the Closing Date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the Closing Date, or (2) significant weather delays or natural disasters, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline. Applicants submitting applications by hand delivery are notified that, due to security procedures in the Department of Commerce, all packages must be cleared by the Department's security office. The security office is located in Room 1874, located at Entrance No. 10 on the 15th St. NW side of the building.

ADDRESSES: To submit completed applications, or send any other correspondence, write to: NTIA/PTFP, Room H–4625, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: William Cooperman Acting Director, Public Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156.

SUPPLEMENTARY INFORMATION:

I. Application Forms and Requirements

Funding for the PEACESAT Program is provided pursuant to Pub. L. 105–277, ''The Department of Commerce and Related Agencies Appropriations Act, 1999.'' Pub. L. 105–277 provides that ''notwithstanding any other provision of law, the Pan-Pacific Education and Communications Experiments by Satellite (PEACESAT) Program is eligible to compete for Public Broadcasting Facilities, Planning and Construction funds.'' The PEACESAT Program was authorized under Pub. L. 100–584 (102 Stat. 2970) and also Pub. L. 101–555 (104 Stat. 2758) to acquire satellite communications services to provide educational, medical, and cultural needs of Pacific Basin communities. The PEACESAT Program has been operational since 1971 and has received funding from NTIA for support of the project since 1988.

Pub. L. 105–277 appropriated $21 million for this account to be awarded for Public Telecommunications Facilities Program (PTFP) grants and for PEACESAT Program grants. The solicitation notice for the PTFP Program was published in the **Federal Register** on November 6, 1998 (63 FR 60191). Applications submitted in response to this solicitation for PEACESAT applications are not subject to the requirements of the November 6, 1998 Notice and are exempt from the PTFP regulations at 15 CFR part 2301. NTIA anticipates making a single award for approximately $450,000 for the PEACESAT Program in FY1999.

NTIA requests that each applicant for a PEACESAT Program grant supply one (1) original signed application and five (5) copies, unless doing so would present a financial hardship, in which case the applicant may submit one (1) original and two (2) copies of the application. The application form consists of the Standard Form 424 Application for Federal Assistance; Standard Form 424A Budget Information—Non-Construction Programs; Standard Form 424 B, Assurances; Standard Form CD–511 Certification; and Standard Form LLL, Disclosure of Lobbying Activities (if applicable). These requirements are subject to the Paperwork Reduction Act and have been approved by the Office of Management and Budget under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046.

Applicants are not required to respond to a collection of information sponsored by the Federal Government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice.

Eligible applicants will include any for-profit or non-profit organization, public or private entity, other than an agency or division of the Federal government. Individuals are not eligible to apply for the PEACESAT Program funds.

Grant recipients under this program will not be required to provide matching funds toward the total project cost.

Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

The Fly America Act requires that Federal travelers and others performing U.S. Government-financed foreign air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency's mission.

Applicants should note that they must comply with the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' The Executive Order requires applicants for financial assistance under this program to file a copy of their application with the Single Points of Contact (SPOC) of all states relevant to the project. Applicants are required to provide a copy of their completed application to the appropriate SPOC on or before April 15, 1999.

Applicants may be required to submit Name Check forms (Form CD–346) which may be used to ascertain background information on key individuals associated with potential grantees as part of the application, per Department Pre-Award Administrative Requirements and Policies.

All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the

following explanations are hereby provided:

(1) *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

(2) *Drug Free Workplace.* Grantees (as defined at 15 CFR part 26, Section 605) are subject to 15 CFR part 26, subpart F, ''Government-wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

(3) *Anti-lobbying.* Persons (as defined at 15 CFR part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applicants/bidders for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(4) *Anti-lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' (OMB Control Number 0348–0046) as required under 15 CFR part 28, Appendix B.

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the grant award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to the Department. SF–LLL submitted by any tier recipient or subrecipient should be submitted to the Department in accordance with the instructions contained in the award document.

If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department.

Recipients and subrecipients are subject to all Federal laws and Federal and Department policies, regulations, and procedures applicable to Federal assistance awards. In addition, unsatisfactory performance by the applicant under prior Federal awards may result in the application not being considered for funding.

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that they have received, there is no obligation on the part of the Department to cover preaward costs.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) The delinquent account is paid in full; (2) a negotiated repayment schedule is established and at least one payment is received, or (3) other arrangements satisfactory to the Department are made.

Applicants are reminded that a false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

II. Scope of Project and Eligible Costs

Projects funded pursuant to this Notice are intended to support the PEACESAT Program's acquisition of satellite communications to service Pacific Basin communities and to manage the operations of this network.

Allowable costs incurred under approved projects shall be determined in accordance with applicable federal cost principles, i.e. OMB Circular A–21, A–87, A–122, or 48 CFR part 31, as applicable. If included in the approved project budget, NTIA will allow costs for personnel, fringe benefits, travel, consultants and other contractual services, supplies, and other costs which are reasonable and necessary to manage the operation of a satellite communications network. Communications and computer equipment costs are eligible as necessary in order to provide communications services to meet the education, medical, and cultural needs of the Pacific Basin communities. The costs allowable under this Notice are not subject to the limitation on costs contained in the November 6, 1998 Notice regarding the PTFP Program.

The total dollar amount of indirect costs proposed in an application must not exceed the indirect costs rate negotiated and approved by a cognizant federal agency or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

III. Notice of Applications Received

NTIA will publish a notice in the **Federal Register** listing all applications received in response to this notice. Listing an application in such a notice merely acknowledges receipt of an application to compete for funding with other applications. Publication does not preclude subsequent return or disapproval of the application, nor does it assure that the application will be funded. The notice will also include a request for comments on the applications from any interested party.

IV. Evaluation Process

Each eligible application will be reviewed by a panel of outside reviewers who have demonstrated expertise in the programmatic and technological aspects of the application. The review panel will evaluate applications according to the following evaluation criteria and will provide written ratings of each application. The first three criteria, (1) Meeting the Purposes of the PEACESAT Program, (2) Extent of Need for the Project, and (3) Plan of Operation for the Project, are each worth 25 points. Criterion (4) Budget and Cost Effectiveness is worth 20 points and Criterion (5) Quality of Key Personnel is worth 5 points.

Criteria 1. Meeting the purposes of the PEACESAT Program (i) how well the proposal meets the objectives of the PEACESAT Program and (ii) how the objectives of the proposal further the purposes of the PEACESAT Program.

Criteria 2. Extent of need for the project. Determine the extent to which the project meets the needs of the PEACESAT Program, including consideration of: (i) The needs addressed by the project; (ii) how the applicant identified those needs; (iii) how those needs will be met by the project; and (iv) the benefits to be gained by meeting those needs.

Criteria 3. Plan of operation for the project, including (i) The quality of the design of the project; (ii) the extent to which the plan of management is effective and ensures proper and efficient administration of the project; (iii) how well the objectives of the project relate to the purpose of the program; (iv) the quality of the applicant's plan to use its resources and personnel to achieve each objective; and (v) how the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

Criteria 4. Budget and cost effectiveness. To determine the extent to

which: (i) The budget is adequate to support the project; and (ii) costs are reasonable in relation to the objectives of the project.

Criteria 5. Quality of key personnel applicant plans to use on the project, including: (i) The qualifications of the project director (if one is to be used); (ii) the qualifications of each of the other key personnel to be used in the project; (iii) the time that each person will commit to the project; and (iv) how the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition. In this section, qualifications refer to the experience and training in fields related to the objectives of the project; and any other qualifications that pertain to the quality of the project.

V. Selection Process

The program staff prepares summary recommendations for the Director of the Public Broadcasting Division. These recommendations include outside reviewers' ratings and will incorporate analysis based on the degree to which a proposed project meets the program purpose and cost eligibility as described in Section II of this Notice. Staff recommendations also consider (1) project impact, (2) the cost/benefit of a project and (3) whether review panels have consistently applied the evaluation criteria. The analysis of program staff will be provided to the Director of the Public Broadcasting Division in writing.

The Director will recommend the funding order of the applications for the PTFP and PEACESAT Programs taking into consideration the outside reviewers' ratings, the summary recommendations prepared by program staff, and the relative rating of the PEACESAT and PTFP applications. The Director will present recommendations to the Office of Telecommunications and Information Applications (OTIA) Associate Administrator for review and approval. The Director recommends the funding order for applications in three categories: ''Recommended for Funding,'' ''Recommended for Funding if Funds Available,'' and ''Not Recommended for Funding.'' The selection factors retained by the Director, OTIA Associate Administrator, and the Assistant Secretary for Telecommunications and Information for the PTFP Program are described in 15 CFR 2301.18. These sections factors will also be used, as applicable, for selection of applications for funding for the PEACESAT Program.

Upon review and approval by the OTIA Associate Administrator, the Director's recommendations will then be presented to the Selection Official, the NTIA Administrator. The NTIA Administrator selects the applications to be negotiated for possible grant award taking into consideration the outside reviewers rating, the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the PTFP and PEACESAT Program's stated purposes. These applications are negotiated between NTIA staff and the applicant. The negotiations are intended to resolve whatever differences might exist between the applicant's original request and what NTIA proposes to fund. During negotiations, some applications may be dropped from the proposed slate, due to lack of Federal Communications Commission licensing authority, an applicant's inability to make adequate assurances or certifications, or other reasons. Negotiation of an application does not ensure that a final award will be made. When the negotiations are completed, the Director recommends final selections to the NTIA Administrator applying the same factors as listed above. The Administrator then makes the final award selections from the negotiated applications taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the stated purposes for the PTFP Program in 15 CFR 2301.1(a) and (c) and for the PEACESAT Program.

VI. Project Period

Any project awarded pursuant to this notice will be for a one-year period.

Authority: Pub. L. 105–277, ''The Department of Commerce and Related Agencies Appropriations Act, 1999.''

Dr. Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 99–6390 Filed 3–15–99; 8:45 am]

BILLING CODE 3510–60–P

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This is the first in a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 433/P.L. 106–1

District of Columbia Management Restoration Act of 1999 (Mar. 5, 1999; 113 Stat. 3)

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