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Monday
July 19, 1999

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Title 3—

The President

Executive Order 13130 of July 14, 1999

National Infrastructure Assurance Council

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to support a coordinated effort by both government and private sector entities to address threats to our Nation's critical infrastructure, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the National Infrastructure Assurance Council (NIAC). The NIAC shall be composed of not more than 30 members appointed by the President. The members of the NIAC shall be selected from the private sector, including private sector entities representing the critical infrastructures identified in Executive Order 13010, and from State and local government. The members of the NIAC shall have expertise relevant to the functions of the NIAC and shall not be full-time officials or employees of the executive branch of the Federal Government.

(b) The President shall designate a Chairperson and Vice-Chairperson from among the members of the NIAC.

(c) The National Coordinator for Security, Infrastructure Protection and Counter-Terrorism at the National Security Council (National Coordinator) will serve as the Executive Director of the NIAC.

(d) The Senior Director for Critical Infrastructure Protection at the National Security Council will serve as the NIAC's liaison to other agencies.

(e) Individuals appointed by the President will serve for a period of 2 years. Service shall be limited to no more than 3 consecutive terms.

Section 2. *Functions.* (a) The NIAC will meet periodically to:

(1) enhance the partnership of the public and private sectors in protecting our critical infrastructure and provide reports on this issue to the President as appropriate;

(2) propose and develop ways to encourage private industry to perform periodic risk assessments of critical processes, including information and telecommunications systems; and

(3) monitor the development of Private Sector Information Sharing and Analysis Centers (PSISACs) and provide recommendations to the National Coordinator and the National Economic Council on how these organizations can best foster improved cooperation among the PSISACs, the National Infrastructure Protection Center (NIPC), and other Federal Government entities.

(b) The NIAC will report to the President through the Assistant to the President for National Security Affairs, who shall assure appropriate coordination with the Assistant to the President for Economic Policy.

(c) The NIAC will advise the lead agencies with critical infrastructure responsibilities, sector coordinators, the NIPC, the PSISACs and the National Coordinator on the subjects of the NIAC's function in whatever manner the Chair of the NIAC, the National Coordinator, and the head of the affected entity deem appropriate.

(d) Senior Federal Government officials will participate in the meetings of the NIAC as appropriate.

(e) The Department of Commerce shall perform the functions of the President under the Federal Advisory Committee Act for the NIAC, except that of reporting to the Congress, in accordance with the guidelines and procedures established by the Administrator of General Services.

Section 3. *Administration.* To the extent permitted by law:

(a) The NIAC may hold open and closed hearings, conduct inquiries, and establish subcommittees as necessary.

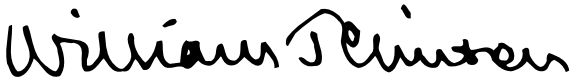
(b) All executive departments and agencies shall cooperate with the NIAC and provide such assistance, information, and advice to the NIAC as it may request, as appropriate.

(c) Members of the NIAC shall serve without compensation for their work on the NIAC. While engaged in the work of the Council, members will be allowed travel expenses, including per diem in lieu of subsistence as authorized by law for persons serving intermittently in the Government service.

(d) To the extent permitted by law, and subject to the availability of appropriations, the Department of Commerce, through the Critical Infrastructure Assurance Office, shall provide the NIAC with administrative services, staff, and other support services, and such funds as may be necessary for the performance of its functions.

(e) The Council shall terminate 2 years from the date of this order, unless extended by the President prior to that date.

Section 4. *Judicial Review.* This order is not intended to create any right, benefit, trust, or responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.



THE WHITE HOUSE,
July 14, 1999.

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Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

RIN 0563–AB15

7 CFR Part 400

General Administrative Regulations; Submission of Policies and Provisions of Policies, and Rates of Premium

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific General Administrative Regulations. The effect of this action is to prescribe the guidelines necessary to implement and administer sections 506 and 508 of the Federal Crop Insurance Act, as amended (Act), with respect to the submission of policies and provisions of policies and rates of premium to FCIC's Board of Directors (Board) for review, approval or disapproval, publication, and implementation.

EFFECTIVE DATE: August 18, 1999.

FOR FURTHER INFORMATION CONTACT: Timothy Hoffmann, Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–3707.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be significant for the purposes of Executive Order 12866 and, therefore, this rule has been reviewed by OMB.

Impact Analysis

An Impact Analysis has been completed and is available to interested persons at the address listed above. In summary, the guidelines contained in this regulation are administrative in nature. They are intended to facilitate the review for approval of policy terms and conditions, endorsements, actuarial documents, underwriting rules, administrative procedures, and rates of premium for new insurance products submitted to FCIC under section 508(h) of the Act for Board approval/disapproval. They contain very little in the way of program policy. While some comments on the proposed rule were received that new products were being held to a ''higher standard'' than FCIC's traditional products, there is nothing in the regulation that differs from standard operating procedure for the existing crop insurance program. In most cases, the provisions of the regulation are dictated by statutory requirements, for example, the requirement for an actuarially appropriate premium rate structure.

Paperwork Reduction Act of 1995

It has been determined by OMB that this rule is exempt from the information collection requirement contained under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The rule provides the guidelines to be used by all approved insurance providers, or any other applicant, FCIC, and the Board for the submission, review, and approval of policies, provisions of policies, or rates of premium which, if approved by the Board, will be sold to producers through approved insurance providers and reinsured by FCIC or incorporated into policies reinsured by FCIC. Any submission is entirely voluntary. This regulation will not impose more stringent requirements on small entities than on large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR 400.169 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate

unnecessary or duplicative regulations and improve those that remain in force.

Background

On Thursday, September 11, 1997, FCIC published a notice of proposed rule making in the **Federal Register** at 62 FR 47772 to make available guidelines necessary to carry out the requirements of the Act with respect to the submission of policies and materials to the Board. FCIC makes available standard policies and forms for use by insurance providers in insuring certain crops against various agricultural production risks and perils. Under section 508(h) of the Act, any person may submit or propose other crop insurance policies, provisions of policies, or rates of premium for insuring wheat, soybeans, field corn, and any other crop determined by the Secretary of Agriculture. The Act states that these policies may be submitted without regard to limitations contained in the Act. The Act also requires that FCIC issue regulations to establish guidelines for the submission and FCIC Board review of policies or other materials submitted to the Board. This regulation provides such guidelines.

Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions. A total of 53 comments were received from an insurance service organization and from several reinsured companies. The comments received and FCIC's responses are as follows:

Comment: An insurance service organization asked if under section 400.700(c)(3) which states that: ''rates of premiums for multiple peril crop insurance'' may be submitted for consideration, means that insurance companies may submit rates for ''regular'' multiple peril crop insurance coverage other than those published in FCIC's actuarial documents.

Response: Section 508(h)(1)(B) of the Act allows a person to submit rates of premiums to the Board for the multiple peril crop insurance program for those wheat, soybeans, field corn, or any other crops determined by the Secretary, if the provisions for insurance are materially different from FCIC's provisions of insurance as published at 7 CFR chapter IV.

Comment: An insurance service organization questioned the difference between the definition of ''MPCI'' contained in section 400.701 and the term ''multiple peril crop insurance'' as referenced in section 400.700(c)(3). The commenter suggested adding a definition of multiple peril crop insurance to distinguish the difference between the two terms.

Response: There is no distinction between the term ''multiple peril crop insurance'' in section 400.700(c)(3) and the definition of MPCI in section 400.701. However, FCIC has amended the definition of MPCI to mean FCIC multiple peril crop insurance policies codified in 7 CFR chapter IV.

Comment: An insurance service organization suggested changing the definition of ''policy'' contained in section 400.701 as new crop insurance provisions submitted for approval may not always need all of the provisions and endorsements listed in the definition. They suggested using ''the appropriate policy provisions and endorsements'' in lieu of listing all the provisions and endorsements.

Response: FCIC has amended the definition of ''policy.''

Comment: An insurance service organization and a reinsured company recommended clarifying the term ''all information'' contained in section 400.702(b) by specifying ''all information submitted by the reinsured company, including statistical modeling and data * * *''

Response: FCIC has amended section 400.702(b) accordingly although FCIC has substituted the term ''applicant'' in place of ''reinsured company'' since any person can provide a submission or proposal to the Board.

Comment: An insurance service organization and three reinsured companies expressed concern with the provisions of section 400.703(a) in the proposed rule (redesignated 400.703) which state: ''Since policies vary in complexity and availability of required data, neither FCIC nor RMA make any assurance that approval will be given in time for sales in any crop year.'' One commenter stated the provision is unnecessary as there is no guarantee a submission will be approved at all. Three of the commenters indicated the provision conflicts with the minimum requirement for submissions to be received no later than 240 days prior to the first sales closing date. The commenters stated that since this provision sets rigorous time requirements for reinsured companies yet does not set such requirements for FCIC, a deadline for response from FCIC should be imposed. One reinsured company stated the deadline precludes the alteration or expansion of an existing program from one year to the next or from one planting season (*e.g.*, spring planted crops) to the next (*e.g.*, fall planted crops) and questioned when the clock starts and restarts. One reinsured company suggested adding language to allow an accelerated time frame to accommodate unusual circumstances.

Response: There is no guarantee that a submission will be approved. However, FCIC has determined that the 240 day period is the minimum time needed for FCIC to review and evaluate a submission, determine actuarial appropriateness, obtain an opinion of legal sufficiency, obtain Board approval, and to make a Board approved submission available to all insurance providers for the upcoming crop year. The time period is intended to provide sufficient time for review and approval of most submissions. However, there may be instances where program complexities, data availability or dispute between FCIC and the applicant delay the review and approval process. FCIC has revised the section to clarify the priority that will be used to review submissions. Unusual circumstances will be addressed on a case-by-case basis.

Comment: An insurance service organization states that the requirement in section 400.703(b) of the proposed rule (redesignated as section 400.705(d)) for six copies suggests a submission must be provided in hard copy format. The service organization requested clarification as to acceptability of submitting electronically, or on computer diskette as is indicated in section 400.707(d)(6)(ii) (redesignated as 400.707(d)(5)).

Response: Sections 400.705(d) and 400.707(d)(5) have been revised to allow for electronic submission or on computer diskettes.

Comment: A reinsured company suggested that the language in the introductory text of section 400.705 of the proposed rule which states: ''at a minimum, it must include the following identified material * * *'', could be deleted as that language is also repeated in section 400.705(a).

Response: FCIC has deleted the introductory text of section 400.705 of the proposed rule.

Comment: A reinsured company stated the minimum submission requirements contained in section 400.705(a) of the proposed rule constitutes a list of information, statements and product documentation that will require a thorough development process and review. This will require that the submitting company invest an enormous amount of capital but provides no commercial incentive or ownership of the product if the submission is approved and all supplementary information becomes available to the public under the provisions of section 400.708(a) and (b) of the proposed rule (redesignated as

400.708(b) and (c)). The reinsured company suggested that FCIC, which does not release such complete information for FCIC products and programs, should follow the same guidelines required of the submitting company, including public disclosure.

Response: When applicants voluntarily submit proposals, development and review of such proposals may require a large expenditure of resources. However, it is Congress that has determined that the information be released to the public once the proposal has been approved by the Board. Congress has imposed no such requirement on FCIC. Further, unless specifically exempted, much of the information compiled by FCIC in the development of its products is available to the public under the Freedom of Information Act. Therefore, no change has been made.

Comment: An insurance service organization requested clarification in the language contained in section 400.705(a)(10). An insurance service organization asked what ''circumstances'' might change and how would the applicant know in order to develop procedures to accommodate such changes.

Response: FCIC has revised this section to specify that any subsidy paid will be limited to an amount authorized by law.

Comment: An insurance service organization recommended combining the provisions contained in section 400.705(a)(11) with those contained in section 400.705(a)(11)(i) because there is no section 400.705(a)(11)(ii).

Response: FCIC has deleted section 400.705(a)(11) (i)(A) through (H) of the proposed rule and reformatted section 400.705(a). These provisions that were duplicative with other provisions were removed. The remainder were incorporated into other more appropriate areas of the section.

Comment: A reinsured company expressed concern in the proposed language contained in section 400.705(a)(11)(i)(J)(1) of the proposed rule (redesignated as section 400.705(a)(12)(i)) that requires the submission to identify the parties and responsibilities for addressing the policy and procedural issues and questions that arise in administering the approved program. The commenter stated that once the program is approved, FCIC becomes the responsible party for those areas. FCIC assumes that responsibility with the approval of the program, and it becomes an FCIC program the same as MPCI or GRP or any other FCIC approved or designed crop insurance program.

Response: Section 508(h) of the Act only requires FCIC to provide reinsurance and risk subsidy, if appropriate, and publish the policy in the **Federal Register** once it is approved. None of these activities results in FCIC, as the reinsurer, assuming liability or ownership for the approved policy or being solely responsible for addressing policy and procedural issues and questions that arise in administering the approved program. This responsibility resides with the party who assumes the obligation. However, FCIC will assist in resolving such issues and then provide the information to other insurance providers. Therefore, no change has been made.

Comment: An insurance service organization and two reinsured companies recommended deleting the provisions contained in section 400.705(a)(11)(i)(J)(2) of the proposed rule (redesignated as section 400.705(a)(12)(ii)). Two of the commenters stated the reason for an approval process is for FCIC to assess the liability of a new product and that if FCIC intends to avoid any product or legal liability, there seems to be no reason for such an approval process. One commenter stated the party responsible for product liability including flaws in product design must be FCIC; otherwise the FCIC approval process is meaningless. Upon the approval of the program, the program becomes an FCIC program.

Response: Before FCIC can approve a private submission under section 508(h) of the Act, it must determine that the interests of producers are adequately protected and that premiums charged to the producers are actuarially appropriate. However, this submission usually involves new and innovative products for which FCIC has no experience and, therefore, FCIC must rely on the information provided by the applicant. FCIC uses its best judgment in evaluating and approving these products but the ultimate responsibility for product design, rating, and development of procedures remains with the submitter. FCIC's role is only as a reinsurer of these submissions. Therefore, since designed by the applicant, the liability for flaws in the design remain with the applicant. Approval for reinsurance does not convert a submission to an FCIC program. Therefore, no change has been made.

Comment: A reinsured company suggested that the annual reviews required by section 400.705(a)(11)(i)(K) of the proposed rule (redesignated as section 400.705(a)(13)) should be conducted by FCIC since after approval of the submission, it is an FCIC program.

Response: As stated in the previous response, FCIC, as a reinsurer, does not assume responsibility or ownership for private crop insurance policies submitted and approved for FCIC reinsurance under section 508(h) of the Act. The applicant submitting the policy is responsible for establishing performance goals for the policy and to conduct annual reviews to determine if such goals are being met. Based on these reviews, the applicant is responsible for making changes to the policy to meet the established goals. As a reinsurer for these types of crop insurance policies, FCIC will monitor their performance to revise reinsurance terms or to withdraw approval if necessary. In addition, if assistance is requested, FCIC will assist the applicant in correcting identified problems. Therefore, no change has been made.

Comment: An insurance service organization and a reinsured company recommended that dates be established in section 400.705(a)(11)(i)(K)(3) of the proposed rule (redesignated as section 400.705(a)(13)(iii)). Both commenters suggested that the dates and language established in the Memorandum of Understanding be utilized. The commenters indicated the Memorandum of Understanding states that the insurance provider shall submit annual rate evaluations and any suggested program improvements for the following crop year to FCIC by July 1 of each year for spring-planted crops and by March 1 for fall-planted crops. In the event of unforeseen circumstances, the commenters recommended that changes may be submitted to FCIC after the July 1 and March 1 deadlines, so long as they are submitted not later than 30 days prior to the contract change date.

Response: The Memorandum of Understanding provides the responsibilities of FCIC and the submitter and does establish the dates by which certain materials must be provided to FCIC. However, not every submission will require a Memorandum of Understanding and not all will require the same dates so flexibility must be maintained. Notwithstanding the dates in the Memorandum of Understanding or provided by the submitter under this rule, if there is a flaw in the policy that requires a change, such change may be submitted to FCIC at any time prior to the contract change date. Therefore, no change has been made.

Comment: An insurance service organization and a reinsured company recommended that the provisions in

section 400.705(a)(12)(i) of the proposed rule (redesignated as section 400.705(a)(14)(i)) be deleted. Both commenters expressed concern that if RMA enforces the requirement of ''sample survey results from producers, producer groups, agents, lending institutions, and other interested parties,'' approval will be impossible. One commenter questioned who will define ''sample survey'' and if the definition would be changed ''from day to day.'' In addition, both commenters recommended deleting the provision because an unofficial survey may not be credible and a professional survey would be cost-prohibitive.

Response: Before FCIC can dedicate resources to a submitted product, FCIC must be assured there is adequate need and interest for the product submitted. FCIC has changed ''sample survey'' to ''market research'' for clarification. This does not require a professional market research but one that provides a summary of the groups or persons contacted, the number of persons or groups responding, and the results of the research so that the demand for the submitted product can be verified.

Comment: An insurance service organization and a reinsured company stated the language contained in section 400.705(a)(14) of the proposed rule (redesignated as section 400.705(a)(16)) that requires an ''explanation of those provisions not authorized under the Act and the premium apportioned to those provisions'' substantiates the concern that the same submission standards should apply to public and private products. The commenters stated the private sector should not be held to higher standards than the government and that sales of the MPCI program would not have been approved if FCIC had to meet those same requirements.

Response: This is not an issue of the private sector being held to a higher standard than those imposed on the MPCI program. Programs offered by FCIC must be in compliance with all provisions of the Act. Congress has relaxed the requirement for section 508(h) submissions, and allows the private sector to offer products not otherwise authorized under the Act. FCIC is only requiring the applicant to explain any provision contained in the submission that are not authorized under the Act. Further, since Congress has limited the amount of risk subsidy to an amount authorized under the MPCI program, FCIC needs an explanation of the premium apportioned to any aspect of the submission not authorized under the Act. An example could be a provision that provides a daily rate for rental of equipment in the event the producers equipment is inoperable. Therefore, no change has been made.

Comment: An insurance service organization questioned if the word ''stochastic'' contained in section 400.705(b)(3)(ii) meets the readability guidelines. The commenter suggested that it may be helpful to add a parenthetical definition or replace the term with ''statistical'' or ''probability.''

Response: FCIC has added a definition of stochastic.

Comment: An insurance service organization and two reinsured companies stated the language contained in section 400.705(b)(5) created standards that are too high to attain. Two commenters indicated certification need only meet current industry standards and suggested the language should read: ''A certification that the submission is consistent with sound insurance principles, practices, and requirements of the Act.'' Both reinsured companies stated it is difficult, if not impossible, to find uninterested third parties who are qualified to review crop insurance. One reinsured company stated that FCIC does not require its employees who develop rates and policies to hold an associate or fellow of the Casualty Actuarial Society (CAS) designation and should not require it of a private submission. This commenter also indicated that paid certifications by CAS designees or a graduate degree economist does not demonstrate much more than an extra expenditure of time and money. All commenters expressed concerns that RMA should not require submissions to provide more certification or review than RMA does on its current product inventory.

Response: FCIC does not believe more stringent requirements are being placed on private submissions. FCIC's premium rating methodology has been evaluated by a private actuarial firm. This firm has determined that FCIC's rating methodologies are consistent with sound insurance principles, practices, and requirements of the Act. Given the problems that have arisen between FCIC and applicants with respect to the submission of rates, FCIC determined that it is prudent to have the methodology review by trained, disinterested parties. Especially since the terms of reinsurance must be based, in part, on the quality of the evidence submitted. Therefore, no change has been made.

Comment: An insurance service organization and two reinsured companies recommended deleting section 400.705(c)(4) of the proposed rule (redesignated as section 400.705(c)(2)) that requires statements from at least three commercial reinsurers or reinsurance brokers regarding the availability of commercial reinsurance. Each of the commenters stated there is no purpose in going through the formalities of acquiring statements from reinsurance brokers regarding the availability of commercial reinsurance because if a proposed product was insurable in the commercial sector, a company would not submit it to FCIC. One reinsured company suggested that if FCIC is concerned whether the submitting company has the capacity to write the proposed amount of policies, a reinsurance plan utilizing the company's own capacity and reinsurance would be reasonable.

Response: There may be cases where a commercial reinsurance market may exist but the applicant merely is attempting to obtain better terms from the Government. FCIC has revised section 400.705(c) so that this requirement is not mandatory but FCIC may require such information if it suspects that a commercial market exists. The clause ''* * * and, if applicable, any past insurance experience of the submission or similar crop program'' has been deleted because it is contained in section 400.705(a)(15).

Comment: A reinsured company recommended that the rules proposed in section 400.706 contain provisions that RMA will provide the submitting applicant an acknowledgment within 30 days of receipt, an inventory of minimum requirements, a time line of its review process, a list of the responsible parties, and a contact person who is knowledgeable of the submission.

Response: Since this rule contains the minimum requirements for a submission and the documents are submitted by the applicant, an inventory is not necessary. Acknowledgment is not needed since the submitter retains a proof of submission. The contact person is the submission addressee until FCIC notifies the submitter of other responsible parties. Since the information contained in the documents may need corrections or clarifications before FCIC can complete its review, a time line cannot be included at this date.

Comment: A reinsured company and an insurance service organization suggested that the provisions of section 400.707(b) include language to ensure that the Manager convenes the Board in time to meet all deadlines contained in the proposed regulation. Both commenters suggested Board meetings

be scheduled one year in advance to assure that a submission would not fail to gain approval because the Board did not meet in time to meet FCIC's deadlines.

Response: Since FCIC cannot predict when a submission will be received and the time required to prepare the submission for the Board, it cannot set a Board meeting date. If the submission is submitted timely and contains all information required by this rule, there should be no problem in scheduling a Board meeting to approve or disapprove the submission. Therefore, no change has been made.

Comment: An insurance service organization and a reinsured company stated the language contained in section 400.707(d)(3) of the proposed rule (redesignated as 400.708(a)(1)) that requires a Memorandum of Understanding to be in place at least 60 days before the earliest crop sales closing date was in reverse order. Each of the commenters indicated that FCIC will not sign a Memorandum of Understanding before the Board has approved the product, thus the Memorandum of Understanding will follow the approval, not precede it.

Response: The Memorandum of Understanding should follow Board approval and the provisions have been revised accordingly. Within 30 days of Board approval, the Memorandum of Understanding should be completed, which will provide approximately 60 days for marketing the product. These provisions have been modified and moved to section 400.708(a)(1) for clarification.

Comment: Two reinsured companies and an insurance service organization expressed concerns about the provisions of section 400.707(d)(4) of the proposed rule (redesignated as 400.707(d)(3)). The commenters stated the provision gives FCIC the authority to make changes at the last minute, despite the requirements for timeliness imposed on the company. The commenters indicated that when FCIC requires an adjustment, it should follow the deadlines set out elsewhere in the proposed rule. The insurance service organization questioned if FCIC's Board will only approve the submission if the applicant ''agrees to make any adjustment FCIC may suggest,'' and whether these suggestions will be separated into ''substantive'' and ''non-substantive'' categories, with the applicant not having to accept the non-substantive suggestions in order to get approval. One reinsured company suggested this statement would be more accurate if it stated the Board will not approve any submission unless the policy, procedures or other related material meet FCIC's approval. The reinsured company stated this would reinforce that FCIC's approval is conditioned on its approval of all aspects of the program, further defining that any approved program is an FCIC program.

Response: Section 400.707(d)(3) does not give FCIC the right to make last minute or untimely changes or adjustments to the submission and is not intended to force the applicant to make all changes FCIC may suggest. Before the Board can approve a submission for reinsurance under section 508(h) of the Act, the Board is required to determine that the rights of producers are adequately protected and that any premiums charged to the producers are actuarially appropriate. Any recommended changes to make the submission conform with these requirements will be considered as substantive changes and must be incorporated into the submission before it can be approved. FCIC will inform the applicant of any such change as soon as possible during FCIC's review of the submission. Suggested changes to the submission should be separated into ''substantive'' and ''non-substantive'' categories and FCIC has revised section 400.707(d)(3). Failure of the applicant to incorporate non-substantive changes will not serve as a basis for the Board to disapprove the submission. However, FCIC will work with the applicant to resolve all issues during FCIC's review of the submission. As stated in a previous response, although the Board may approve a submission, FCIC as a reinsurer, does not assume sole responsibility or ownership for private crop insurance policies submitted.

Comment: An insurance service organization questioned if the time frame provided in section 400.707(d)(6)(i) of the proposed rule is sufficient for the applicant to market the new program, since policies and related forms must be available to producers at least 30 days before the earliest sales closing date.

Response: The 30 days before the sales closing date cited by the commenter refers to carry-over insureds, of which there are none for a new product. FCIC realizes the importance of having sufficient sales time for the product. If the review is completed, FCIC will forward the recommendation to the Board at least 90 days before the first crop sales closing date. Within 30 days of Board approval, the reinsurance agreement should be completed which will provide approximately 60 days for marketing the product. These provisions have been modified and moved to section 400.708(a)(2) for clarification.

Comment: An insurance service organization and a reinsured company suggested the references to rates and rating procedures contained in section 400.707(d)(6)(ii) of the proposed rule (redesignated as 400.707(d)(5)) need clarification and suggested adding language to require definitions for the determination of each variable used in rating.

Response: FCIC has added the phrase ''defining each variable used in any rating formulae'' after rates.

Comment: A reinsured company commented that the provisions of section 400.707(e) indicates the Board may disapprove submissions if all specified requirements are not met. The commenter questioned the purpose of a submission being provided to Research and Development staff if the Board will be presented and charged with determining if a submission does or does not meet all requirements. The commenter stated the Board should not be tasked with review of all minute details, it should only receive for consideration submissions that fulfill all requirements.

Response: FCIC staff do not have the authority to approve or disapprove a submission. Staff will make a recommendation to the Board, but the Board ultimately decides whether producers are adequately protected and rates are actuarially appropriate. Therefore, no change has been made.

Comment: An insurance service organization and a reinsured company suggested that the language in section 400.707(e)(1) be changed to state: ''Such notice will contain the basis for approval, and will include recommended changes necessary for Board approval.'' The insurance service organization also questioned how provisions that state the Board will notify the applicant of disapproval ''not later than 30 days prior to taking such action will fit into the overall time frame when section 400.703(a) (redesignated as 400.703) states a minimum of 240 days before the first sales closing date is to be used for marketing as well as for review and approval. The commenter ask if the language ''not later than 30 days prior'' means more than 30 days before official disapproval, or within that 30 day period and suggested the language be revised to ''at least 30 days prior.''

Response: FCIC may not know what changes may be required to obtain Board approval. Therefore, the provision must provide FCIC with the discretion to provide recommendations when known. FCIC has revised the

provision to state ''at least 30 days prior.''

Comment: A reinsured company suggested that the provisions of section 400.708(b) be clarified to indicate that any solicitation, sales, marketing or advertising before FCIC has made the material available to all interested parties through its official issuance system will result in denial of reinsurance, risk subsidy, and administrative and operating (A&O) subsidy for the first approved crop year for the party which solicited, sold, marketed or advertised early.

Response: FCIC has clarified that any solicitation, sales, marketing, or advertising of the program before FCIC has made the submission and related materials available to all interested parties through its official issuance system will result in the denial of reinsurance, risk subsidy, and A&O subsidy for such policies.

Comment: A reinsured company and an insurance service organization recommended changing the wording ''full subsidy'' contained in section 400.710 to ''subsidy.''

Response: The term full subsidy meant the maximum risk subsidy and A&O subsidy allowed under the Act. An applicant may request less than the maximum allowable subsidies. FCIC has revised the provision to specifically refer to risk and A&O subsidy.

Comment: An insurance service organization and a reinsured company questioned the applicability of the provisions contained in section 400.711 that allow the Board at any time after approval to request additional information, require appropriate amendments, revisions or program changes for the purpose of actuarial soundness or program integrity. Both commenters stated those changes should be made by FCIC because the program is an FCIC program after approval. The insurance service organization recommended clarification of the provision because the approval process should be thorough enough that such cases are rare and there is nothing that indicates whether such reviews, requests and requirements would be effective for the subsequent crop year or whether approval could be revoked retroactively. The service organization recommended the Board's approval be effective for at least the first year.

Response: As stated above, approval of a submission does not convert it to an FCIC program. Further, if problems arise during the crop year, FCIC may need to take corrective action immediately for the purpose of maintaining actuarial soundness of the program, program integrity, or protection of the interests of producers. If this situation arises, FCIC will work closely with the applicant to determine the appropriate corrective actions to be taken. Therefore, no change has been made.

Comment: Two reinsured companies and an insurance service organization expressed concern about the standards set forth in the proposed regulation. All commenters stated that FCIC appears to have approval authority over submissions but takes no responsibility for those programs approved by the Board. The commenters suggested that if FCIC approves a submission, then FCIC must be the regulator, manager, maintainer and administrator of that program. In this role, FCIC will accomplish what was intended by the Act by providing a process and mechanism under which organizations, in addition to FCIC, can design programs that are needed in the marketplace and make them available to producers under the FCIC product umbrella. All commenters stated that if FCIC is not willing to assume that role, then submissions should not be approved.

Response: Section 508(h) of the Act was enacted for the sole purpose to allow private insurance companies to create and manage their own crop insurance policies. FCIC's only role in these private programs is to provide financial assistance if FCIC determines that the interests of producers are adequately protected and that any premiums charged to the producers are actuarially appropriate. There is nothing in the Act which states that the submission must be made available ''under the FCIC product umbrella.'' FCIC need only publish the policy and disseminate information produced by the applicant. This is fully in keeping with the intent of the Act. As stated in a previous response, FCIC does assume the responsibility of a regulator because the submission is approved by FCIC for financial assistance with taxpayers' funds. The approval process is necessary to assure that taxpayers' dollars are supporting a sound crop insurance product. Therefore, no change has been made.

In addition to the changes described above, FCIC has made minor editorial changes and has amended the following:

1. Section 400.700(d) has been clarified to specify those provisions of the Act that are not applicable under section 508(h).

2. Section 400.701—Amended the definitions of ''person,'' '' replacement program,'' ''submission,'' and ''supplemental program'' for clarification.

3. Section 707(d)(5) has been redesignated as section 707(d)(4).

4. Section 400.708(a) has been redesignated as section 400.708(c).

5. Section 400.709(b) has been revised to clarify the changes that are considered material.

List of Subjects in 7 CFR Part 400

Administrative practice and procedures, Claims, Crop insurance, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby amends the General Administrative Regulations (7 CFR part 400) by adding subpart V as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart V—Submission of Policies, Provisions of Policies and Rates of Premium

Sec.

400.700 Basis, purpose, and applicability.
400.701 Definitions.
400.702 Confidentiality of submission.
400.703 Timing of submission.
400.704 Type of submission.
400.705 Contents of submission.
400.706 FCIC review.
400.707 Presentation to and review by the Board for approval or disapproval.
400.708 Approved submission.
400.709 Review of an approved program.
400.710 Preemption and premium taxation.
400.711 Right of review, modification, and amendment.

Authority: 7 U.S.C. 1506(1), 1506(p).

Subpart V—Submission of Policies, Provisions of Policies and Rates of Premium

§ 400.700 Basis, purpose, and applicability.

(a) The Act requires FCIC to issue regulations that establish guidelines for the submission of policies or other material to the FCIC Board under section 508(h) of the Act. These guidelines prescribe the timing, submission and approval process so that the Board may timely consider any submission for approval and, if approved, make it available for sale to producers by any approved insurance provider in the first crop year that the submission is authorized for reinsurance, subsidy, or other financial support that may be available under the Act. These guidelines also authorize FCIC and the Board to monitor the submission to ensure continued compliance with the requirements of the

Act, this subpart, and changes required by the Board.

(b) These regulations apply to all applicants.

(c) An applicant may submit for consideration by the Board:

(1) Crop insurance policies that are not currently reinsured or subsidized by FCIC;

(2) Provisions of policies that may amend existing crop insurance policies that are approved by FCIC; or

(3) Rates of premiums for MPCI policies pertaining to wheat, soybeans, field corn, or any other crop authorized by the Secretary of Agriculture.

(d) A policy or other material submitted to the Board under section 508(h) of the Act may be prepared without regard to the limitations contained in the Act. Only the provisions in the Act directly relating to the terms of the insurance policy, such as coverage, premium rates, or price elections, are considered as the limitations referenced in section 508(h) of the Act.

(e) Any FCIC payment of a portion of the premium may not exceed the amount authorized under section 508(e) of the Act, and payment of administrative and operating expense subsidy may not exceed the amount authorized under section 508(d).

§ 400.701 Definitions.

Act. The Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*).

A&O subsidy. The subsidy for the administrative and operating expenses authorized by the Act and paid by FCIC on behalf of the producer to the insurance provider.

Applicant. Any person who submits a policy, provisions of a policy, or premium rates to the Board for approval under section 508(h) of the Act.

Board. The Board of Directors of FCIC.

FCIC. The Federal Crop Insurance Corporation, a wholly owned government corporation within the United States Department of Agriculture.

Insurance provider. A private insurance company that has been approved by FCIC to provide crop insurance coverage under the Act.

Manager. The Manager of FCIC.

MPCI. The FCIC multiple peril crop insurance policies authorized under the Act and codified in 7 CFR chapter IV.

NASS. National Agricultural Statistics Service, an agency of the United States Department of Agriculture, or a successor agency.

Person. Any individual or legal entity possessing the capacity to contract.

Policy. A crop insurance contract between a person and an insurance provider, consisting of the accepted application, the applicable policy provisions and endorsements, if applicable, and the applicable actuarial material for the insured crop.

Rate of premium. The dollar amount per insured unit or percentage rate per dollar of liability that is needed to pay expected losses and provide for a reasonable reserve.

Replacement program. A crop insurance program that provides coverage at least equal to that provided under the MPCI program with similar terms, conditions, and covered causes of loss approved by the Board under the authority of section 508(h) of the Act.

Revenue insurance. Plans of insurance providing protection against loss of income, which are designated as such by FCIC.

Risk subsidy. That portion of the FCIC approved insurance premium for the risk of loss paid by FCIC on behalf of the policyholders to the insurance provider.

Secretary. The Secretary of the United States Department of Agriculture.

Stochastic. A randomly determined sequence of observations, each of which is considered as a sample of one element for a probability distribution.

Submission. Any policy provisions, rates of premium, and related material submitted to FCIC that differs from the present MPCI program or replacement programs or that request a material change in an existing insurance program.

Supplemental program. A submission requesting reinsurance only that provides coverage in addition to, and is written concurrently with, an MPCI policy or a replacement program.

§ 400.702 Confidentiality of submission.

(a) A submission made to the Board under section 508(h) of the Act will be considered as confidential, commercial, or financial information for purposes of 5 U.S.C. 552(b)(4) until approved by the Board. An applicant may waive such confidentiality by advising FCIC in writing, or by releasing such information to a person or entity other than FCIC.

(b) Once a submission is approved, all information provided by the applicant to the Board, including statistical modeling and data, will be made public.

(c) Any submission disapproved by the Board will remain confidential, commercial, or financial information in accordance with 5 U.S.C. 552(b)(4).

§ 400.703 Timing of submission.

Any submission for Board review must be received not later than 240 days prior to the first sales closing date for which sales are requested for a crop to provide adequate time for review, approval, and marketing of the program. If the submission applies to more than one crop, the earliest applicable crop sales closing date controls. However, any submission received by FCIC less than 240 days prior to the first sales closing date may be considered if all parties agree the submission can be reviewed, approved, and information disseminated to insurance providers in a timely manner without creating excessive risk and exposure to the crop insurance program or disruptions in the market place. Such a submission must meet all statutory requirements, specifically that the approved submission can be made available to all persons reinsured by FCIC in a manner permitting the persons to participate in the sales of the product in the first crop year for which it is approved by the Board for reinsurance, premium subsidy, or other support offered by the Act. Otherwise, the submission will be considered for the subsequent crop year. Since submissions vary in complexity and availability of required data, FCIC makes no assurances that approval will be given in time for sales in any crop year. In the event FCIC receives more submissions than it can process for an upcoming crop year, the date received, complexity, and completeness of the submission will determine when FCIC's review of the submission will be initiated and the crop year for which the submission is approved.

§ 400.704 Type of submission.

An applicant may submit to the Board:

(a) Policies and related material identified as one of the following types:

(1) A supplemental program;

(2) A replacement program; or

(3) Any other submission authorized under section 508(h) of the Act but not classified by paragraphs (a) and (b) of this section.

(b) One or more proposed revisions of any MPCI policy, revenue insurance policy, or any other policy approved by the Board; and

(c) Premium or rates of premiums for MPCI policies.

§ 400.705 Contents of submission.

(a) Each submission may contain any information that the applicant wishes to provide but, at a minimum, must include the following material:

(1) Applicant's name;

(2) Type of submission;

(3) Proposed crops, types, varieties, or practices, as applicable, to be covered by the submission;

(4) Geographical areas in which the submission will be applicable;

(5) Potential crop acreage, production, and liability that could be written (estimated by crop and state);

(6) Percentage of the crop acreage, production, and liability that is expected to be written (estimated by crop and state);

(7) Crop year in which the submission is proposed to be effective;

(8) Proposed duration of the approval, if applicable;

(9) A statement of the applicant's intent to expand the program in future crop years to different geographical areas or crops, types, varieties, or practices, as applicable;

(10) A statement of whether the applicant is requesting reinsurance, risk subsidy, or A&O subsidy for the submission, and if so, the proposed methods of calculating the risk subsidy or A&O subsidy (The allowable subsidies cannot exceed the amount authorized by law);

(11) A determination whether:

(i) The submission will be filed with the applicable Commissioner of Insurance for each state proposed for sales, and if not, the reasons such submission will not be forwarded for review by the Commissioner; and

(ii) The submission complies in all material respects with the standards established by FCIC for processing and acceptance of data as specified in its Manual 13 ''Data Acceptance System Handbook,'' unless FCIC has agreed otherwise as part of the development process (This handbook is available from the Actuarial Division, P.O. Box 419293, Kansas City, MO 64141);

(12) Identification of:

(i) Parties responsible for addressing the policy and procedural issues and questions that may arise in administering the approved program; and

(ii) Parties responsible for the product liability and the basis for such responsibility including liability for flaws in product design if such results in litigation against the applicant or FCIC;

(13) Procedures for annual reviews to ensure compliance with all requirements of the Act, this subpart, and any agreements executed between the applicant and FCIC:

(i) The title of the person responsible for completing each task;

(ii) The date by which each task will be completed; and

(iii) The date by which the information or documents will be made available to FCIC, the policyholder, other insurance providers, or the Commissioner of Insurance, if applicable (Policy information, forms and other related documents must be made available to the producer at least 30 days prior to the earliest crop sales closing date for the crops to which the submission applies.);

(14) A description of the benefits of the submission:

(i) To producers that demonstrate how the submission offers coverages or costs that differ significantly from existing programs and that such coverage is generally not available from the private sector (Such descriptions should be supported by market research results from producers, producer groups, agents, lending institutions, and other interested parties, which should also include a summary of those persons or organizations contacted and the number of persons or organizations responding) that provides verifiable evidence of the demand for the submitted product; and

(ii) To taxpayers that demonstrate how the submission meets the public policy goals and objectives as stated in the Act, the statements of the Secretary, or similar officials and laws (This must include the rationale and data supporting the request for FCIC's financial commitment to the submission);

(15) Any accumulated insurance experience from all years and in all states in which the submission has been offered for sale and a comparison of the submission's performance with other crop insurance programs; and

(16) An explanation of those provisions not authorized under the Act and the premium apportioned to those provisions.

(b) With respect to any submission that impacts the amount of premium charged to the producer, the applicant must provide with the submission:

(1) A detailed description of the rating methodology, including all mathematical formulae and equations used in determining all unsubsidized and subsidized premiums or rates of premium;

(2) A list of the assumptions used in the formulation of the premiums or rates of premium;

(3) Simulations of the performance of the proposed premiums or rates of premium based on one or more of the following:

(i) By determining the total premiums and anticipated losses that would be paid under the submission and comparing these totals to a comparable insurance plan offered under the authority of the Act (Such simulations must use all experience available to the applicant and must include at least one year in which indemnities for the submission and the comparable crop exceed total premiums);

(ii) By means of a stochastic simulation of the submission that is based on the same assumptions as those used to develop the premiums or rates of premium, including sensitivity tests with regard to each assumption that demonstrates the probable impact of an erroneous assumption; or

(iii) By means of any simulation that can be proven to provide results comparable to those described in paragraphs (b)(3)(i) and (ii) of this section;

(4) Worksheets that provide the calculations in sequential order and in sufficient detail to allow verification that the premiums charged for the coverage are consistent with policy provisions (Any unique premium component must be explained in sufficient detail to determine whether the existence or amount of the premium or premium rate is appropriate); and

(5) A certification that includes, but is not limited to, an evaluation of all supporting documentation and analysis from an accredited associate or fellow of the Casualty Actuarial Society or a similar uninterested third party who did not participate in the primary development, or peer review panel or both. The evaluation must demonstrate that the submission is consistent with sound insurance principles, practices, and requirements of the Act.

(c) With respect to those submissions that involve new crop insurance programs or revision of an existing crop insurance program:

(1) The applicant must provide with the submission:

(i) An application and related policy forms together with the instructions for completing and processing such forms;

(ii) The insurance policy provisions;

(iii) A sample of the actuarial documents;

(iv) The underwriting rules, including but not limited to:

(A) The procedures for accepting the application;

(B) The rules for determining program eligibility, including but not limited to, minimum acreage, premium requirements, sales closing dates, production reporting requirements, and inception or termination dates of the policy;

(C) The application of administrative fees as required by the Act;

(D) A description of available options that are different from any existing crop insurance program;

(E) Any information needed to establish coverage and determine claims, including prices that must be made available during the insurance period (This information must specify how and when such determination is

made and that the process is in compliance with policy provisions);

(F) Any other applicable underwriting requirements that may be required by FCIC; and

(G) The agent training plans;

(2) The applicant may be required to submit statements from at least three commercial reinsurers or reinsurance brokers regarding the availability of commercial reinsurance, the amount of commercial reinsurance available, and the proposed terms of reinsurance;

(3) Loss adjustment procedures and calculations that include, but are not limited to:

(i) Procedures that clearly specify the methods for determining the existence of and the amount of any payable loss under the submission and that demonstrate that such determinations are consistent with policy provisions; and

(ii) Examples and worksheets that provide the steps for calculating the amounts of any payment for indemnity (loss in yield or price), prevented planting payment or replant payment in sequential order and in sufficient detail to allow review and verification that the indemnity calculations are consistent with policy provisions. Any unique component must be explained in sufficient detail to determine whether the existence or amount of the claim is appropriate;

(4) A detailed calculation for determining commodity prices, coverage levels, the amounts of insurance, and production guarantees; and

(5) A detailed description of the causes of loss covered and excluded under the submission.

(d) The submission must be sent to the Deputy Administrator, Research and Development, Federal Crop Insurance Corporation, 9435 Holmes Road, Kansas City, MO 64131. The submission must also include computer disks or other electronic media in a format acceptable to RMA.

§ 400.706 FCIC review.

Each submission will be reviewed by FCIC to determine if all necessary and appropriate documentation is included. The submission may be returned to the applicant if it does not comply in all material respects with these requirements. Any returned submission must be resubmitted in its entirety unless otherwise determined by FCIC.

§ 400.707 Presentation to and review by the Board for approval or disapproval.

(a) Upon completion of staff review, all recommendations will be forwarded to the Board.

(b) After scheduling the submission to be presented to the Board, the Manager will inform the applicant of the date, time, and place of such meeting.

(c) The applicant will be given the opportunity to present the submission to the Board. The applicant must notify FCIC in writing in advance of the Board meeting as to whether the applicant will present the submission to the Board. If the applicant plans to present the submission and fails to appear, or if the applicant requests FCIC to present the submission, an FCIC representative will present the submission to the Board.

(d) The Board may consider for approval the submission for sale to producers as an additional risk management tool if:

(1) Producers interests are adequately protected;

(2) Premiums charged are actuarially appropriate;

(3) The applicant agrees to make any requested FCIC substantive changes in the submission to ensure compliance with the Act and to protect the interests of producers and the integrity of the program. FCIC will categorize recommended changes in a submission into substantive and non-substantive. (Failure of the applicant to incorporate non-substantive changes suggested by FCIC will not serve as a basis for the Board to disapprove the submission);

(4) The insurance provider's resources, procedures, and internal controls are adequate to make the product available to producers in a timely manner in the proposed market areas; and

(5) The applicant provides rates, defining each variable used in any rating formulae, forms, guidelines, standards, actuarial material, rating procedures, indemnity procedures, and related documents.

(e) The Board may disapprove the submission for financial assistance if all the requirements of paragraph (d) of this section are not met. When the Board indicates its intention to disapprove, it will:

(1) Notify the applicant in writing of its intent to disapprove the submission at least 30 days prior to taking such action (Such notice will contain the basis for disapproval, and may include changes necessary for Board approval);

(2) Consider any resubmission as a new proposal and complete the review process at a later time; and

(3) Reserve the right to act upon an applicant's revised submission or defer action to a later time or for a subsequent crop year.

§ 400.708 Approved submission.

(a) Within 30 days of Board approval, the following must be completed:

(1) A Memorandum of Understanding or other such agreement between the applicant and FCIC that specifies the responsibilities of each with respect to the implementation, delivery and oversight of the submission, and;

(2) A reinsurance agreement between FCIC and the applicant that specifies the amount of reinsurance coverage, risk subsidy, and A&O subsidy, as applicable.

(b) Any solicitation, sales, marketing, or advertising of the program before FCIC has made the submission and related materials available to all interested parties through its official issuance system will result in the denial of reinsurance, risk subsidy and A&O subsidy for those policies in violation of this provision.

(c) A submission approved by the Board under this subpart will be published as a notice of availability in the **Federal Register**, and be made available to all persons contracting with or reinsured by FCIC under the same terms and conditions as required of the submitting company.

§ 400.709 Review of an approved program.

(a) Responses to procedural issues, questions, problems or needed clarification regarding an approved submission shall be jointly addressed by the applicant and FCIC. All such resolutions shall be communicated to all insurance providers through FCIC's official issuance system. Any corrected material must be presented to FCIC in a format specified in § 400.705(d).

(b) Any change causing a material impact upon a submission previously approved by the Board must be resubmitted for Board consideration and approval. (A material impact is any one that may affect the premium charged or liability under the policy.)

(c) The approved submission will be administered in accordance with all terms of the reinsurance agreement, any applicable Memorandum of Understanding, or any other requirement deemed appropriate by the Board.

§ 400.710 Preemption and premium taxation.

A policy that is approved by the Board for FCIC reinsurance only, or FCIC reinsurance and risk and A&O subsidies, and published in the **Federal Register** as a notice of availability is preempted from state and local taxation. Any changes to policy provisions requested under state and local laws

and regulations must be submitted to FCIC for review and Board approval.

§ 400.711 Right of review, modification, and amendment.

At any time after approval, if sufficient material, documentation or cause arises, the Board may review any approved program, request additional information, and require appropriate amendments, revisions or program changes for purposes of actuarial soundness, program integrity or protection of the interests of producers.

Signed in Washington, DC, on July 12, 1999.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 99–18263 Filed 7–16–99; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1, 2, and 3

[Docket No. 97–018–4]

RIN 0579–AA95

Licensing Requirements for Dogs and Cats

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Decision and policy statement.

SUMMARY: This document announces our response to a petition submitted to us by the Doris Day Animal League. The petition requested that we amend the definition of ''retail pet store'' to include only nonresidential business establishments and that we regulate dealers of hunting, breeding, and security dogs in the same manner as dealers of other types of dogs.

We have decided to retain our current definition of ''retail pet store.'' Based on our experience enforcing the regulations, we have determined that the current definition is sufficient to ensure the humane handling, care, and treatment of dogs and cats and is consistent with the congressional intent of the Animal Welfare Act.

We have also decided to begin regulating wholesale dealers of dogs intended for hunting, breeding, and security purposes. We will regulate these dealers under the same regulations currently in place for wholesale dealers of other dogs. We believe this action will help ensure the humane handling, care, and treatment of hunting, breeding, and security dogs.

EFFECTIVE DATE: July 19, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Bettye K. Walters, Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833.

SUPPLEMENTARY INFORMATION: Under the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements regarding the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. The Secretary has delegated responsibility for administering the AWA to the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA). Regulations established under the AWA are contained in the Code of Federal Regulations (CFR) in title 9, parts 1, 2, and 3. Part 1 contains definitions for terms used in parts 2 and 3. Part 2 contains general requirements for regulated parties. Part 3 contains specific requirements for the care and handling of certain animals. Subpart A of part 3 contains the requirements applicable to dogs and cats.

On March 25, 1997, we published in the **Federal Register** (62 FR 14044–14047, Docket No. 97–018–1) a petition for rulemaking, sponsored by the Doris Day Animal League, that requested two changes to the regulations in parts 1 and 3. The requested changes were: (1) To redefine the term ''retail pet store'' in part 1 as ''a nonresidential business establishment used primarily for the sale of pets to the ultimate customer''; and (2) to regulate dealers of dogs intended for hunting, security, and breeding under the provisions applicable to dealers of other types of dogs in part 3.

Based on comments we received from the public on the petition and our review of the issues, on June 24, 1998, we published in the **Federal Register** (63 FR 34333–34335, Docket No. 97–018–2) an advance notice of proposed rulemaking to explain changes to the regulations that we were considering and to solicit public comments on the effect those changes could have on affected persons. Specifically, we were considering:

- Amending the definition of ''retail pet store'' to include only nonresidential, commercial retail stores;
- Increasing the total number of breeding female dogs and/or cats that a person may maintain on his or her premises and be exempt from licensing and inspection requirements; and
- Regulating dealers of hunting, breeding, and security dogs in the same manner as dealers of other types of dogs.

We solicited comments on the advance notice of proposed rulemaking for 60 days, ending August 24, 1998. However, on August 26, 1998, at the request of several commenters, we published in the **Federal Register** (63 FR 45417, Docket No. 97–018–3) a document to reopen and extend the comment period for 30 days, ending September 23, 1998. By September 23, 1998, we received approximately 11,472 comments. They were from dealers of dogs and cats, representatives of industry, members of animal protectionist organizations, and other interested persons.

After careful consideration of the experience we have gained from more than 30 years of implementing the AWA and careful review of the comments we received from the public, we have decided to:

- Retain our current definition of ''retail pet store'';
- Retain our current threshold for the total number of breeding female dogs and/or cats a person may maintain on his or her premises and be exempt from licensing and inspection requirements; and
- Require licensing and inspection for wholesale dealers of dogs intended primarily for hunting, breeding, and security purposes.

A discussion of each of these decisions follows.

Definition of Retail Pet Store

In accordance with the AWA, retail pet stores are exempt from the licensing and inspection requirements in part 2. Other retail dealers and wholesale pet dealers must be licensed and inspected in accordance with the regulations. The definition of retail pet store in 9 CFR part 1 was established to ensure that the appropriate retail facilities were exempt from licensing and inspection requirements.

We define ''retail pet store'' in 9 CFR part 1, § 1.1, as ''any outlet where only the following animals are sold or offered for sale, at retail, for use as pets: Dogs, cats, rabbits, guinea pigs, hamsters, gerbils, rats, mice, gophers, chinchilla, domestic ferrets, domestic farm animals, birds, and cold-blooded species.'' The definition of ''retail pet store'' goes on to describe certain establishments that do not qualify as retail pet stores, even if they sell animals at retail. Those establishments that do not qualify as retail pet stores are: (1) Establishments or persons who deal in dogs used for hunting, security, or breeding purposes; (2) establishments or persons exhibiting,

selling, or offering to exhibit or sell any wild or exotic or other nonpet species of warm-blooded animals (except birds), such as skunks, raccoons, nonhuman primates, squirrels, ocelots, foxes, coyotes, etc.; (3) establishments or persons selling warm-blooded animals (except birds, and laboratory rats and mice) for research or exhibition purposes; (4) establishments wholesaling any animals (except birds, rats, and mice); and (5) establishments exhibiting pet animals in a room that is separate from or adjacent to the retail pet store, or in an outside area, or anywhere off the retail pet store premises.

All retail facilities that meet the definition of retail pet store, even those that are not traditional retail pet stores, are exempt from licensing and inspection requirements.

As part of our continuing efforts to ensure that animals covered by the AWA receive humane handling, care, and treatment, we considered amending the definition of ''retail pet store'' to cover only traditional ''stores''—nonresidential, commercial retail businesses—that sell primarily pets and pet products. If this change had been adopted, many retail pet dealers would no longer have been considered retail pet stores, and, unless otherwise exempt under the regulations, would have been required to be licensed and inspected in accordance with part 2.

However, after careful consideration of comments we received from the public and further review of this issue, we have decided to retain the current definition of ''retail pet store.'' We based this decision on our experience enforcing the regulations, specifically the several factors discussed below.

First, we believe that our current definition of ''retail pet store'' conforms with Congress' intention that the AWA focus primarily on dealers who sell wholesale. During congressional revisions to the AWA, Congress has not challenged our definition of ''retail pet store.'' Therefore, we are confident that our current definition accurately reflects the original and continuing intent of Congress.

Further, we believe our implementation of the AWA has significantly improved the well-being of animals owned by the wholesale dealers we regulate, as well as that of the animals owned by retail dealers. Many retail outlets have improved the living standards of their animals in order to meet the standards of their wholesale counterparts.

Second, we have determined that retail dealers, especially those who sell from their homes, are already subject to a degree of self-regulation and oversight by persons who purchase animals from the retailers' homes, as well as by breed and registry organizations. Breed and registry organizations, such as kennel clubs, require their registrants to meet certain guidelines related to the health and genetic makeup of animals bred and to the education of the registrants. These organizations also monitor the conditions under which animals are bred and raised. Wholesale dealers typically do not have this type of oversight from the public.

Third, we have determined that amending the definition of ''retail pet store'' to include only nonresidential, commercial retail businesses would not offer us the regulatory flexibility we need to concentrate our resources on those facilities that present the greatest risk of noncompliance with the regulations. If we were to amend the definition of ''retail pet store,'' it is conceivable that a significant portion of our annual personnel and financial resources would be used to regulate a very small fraction of the animals covered under our regulations. This disproportionate expenditure of funds would not be in the best interest of animal welfare.

Fourth, retail outlets are not unregulated. There are already many State and local laws and ordinances in place to monitor and respond to allegations of inhumane treatment of and inadequate housing for animals owned by private retail dealers. If we were to regulate these dealers along with State and local officials, it would clearly not be the most efficient use of our resources.

Fifth, our inspectors would have to enforce cleaning, sanitation, handling, and other regulatory requirements in private homes, because most small retail dealers operate from their homes. Many commenters stated that they would regard this as an unnecessary intrusion by the Federal Government and a serious invasion of privacy.

Based on these factors, we have determined that a change to the definition of ''retail pet store'' would not improve animal welfare in general or our current regulatory program. Therefore, we are retaining our current definition of ''retail pet store.''

Number of Breeding Females

In 9 CFR part 2, § 2.1, paragraph (a)(3) lists those persons who are exempt from licensing requirements. In addition to retail pet stores, those who are exempt from licensing requirements include any person who maintains a total of three or fewer breeding female dogs and/or cats and who sells the offspring of these dogs or cats, which were born and raised on his or her premises, for pets or exhibition, and who is not otherwise required to obtain a license (see § 2.1(a)(3)(iii)).

We considered raising this threshold so that fewer establishments would become subject to our licensing and inspection requirements if we amended the definition of retail pet store. The current threshold of three or fewer breeding female dogs and/or cats maintained on a premises is based on a determination that small facilities usually pose less risk to the welfare of animals than do large facilities. We still agree with that determination.

Further, if the threshold were increased, hundreds of wholesale dealers of dogs and cats who are currently required to be licensed would no longer have to be licensed. We do not think that exempting these wholesale dealers from regulatory requirements is in the best interest of animal welfare because, as discussed earlier, wholesale dealers typically do not have the same degree of oversight from potential customers, breed or registry organizations, or other members of the public as retail dealers. This means that, if the threshold were raised, many wholesale dealers of dogs and cats would go essentially unmonitored. Any decision to cease regulation of small wholesale dealers could lead to a significant drop in animal well-being at many of these premises. We believe that maintaining the current threshold will help ensure the continued humane care, treatment, and handling of dogs and cats.

For these reasons, we have decided to retain the current threshold of three for the number of breeding female dogs and/or cats a person may maintain on his or her premises and be exempt from licensing and inspection requirements.

Regulation of Dealers of Hunting, Breeding, and Security Dogs

The AWA defines a dealer as, among other things, a person who sells any dog for hunting, breeding, or security purposes (7 U.S.C. 2132). The AWA goes on to require that a dealer have a valid license to:

- Sell or offer to sell any animal to a research facility, or for exhibition or use as a pet; or
- Sell any animal to another dealer or exhibitor. (7 U.S.C. 2134).

Because hunting, breeding, and security dogs are sold for purposes other than research, exhibition, or use as a pet, dealers of hunting, breeding, and security dogs do not have to be licensed under the first set of conditions in 7 U.S.C. 2134. Therefore, the AWA

requires licensing of only wholesale dealers (i.e., those dealers who sell animals to other dealers) of hunting, breeding, and security dogs.

In accordance with the AWA, we will now require licensing and inspection for wholesale dealers of dogs intended primarily for hunting, breeding, and security purposes. We are instituting this policy to help ensure the humane handling, care, and treatment of hunting, breeding, and security dogs.

Although it has been our policy until now not to require dealers of hunting, breeding, and security dogs to be licensed and inspected, our regulations do. Specifically, the regulations at § 2.1 require that all dealers of dogs must be licensed and inspected. Our current definition of ''dealer'' in § 1.1 includes both wholesale and retail dealers of hunting, breeding, and security dogs. These dealers are not provided any exemption from licensing and inspection under the definition of ''retail pet store'' in § 1.1. Therefore, in the near future, we will publish a document in the **Federal Register** to propose changing the regulations to require only wholesale dealers of hunting, breeding, and security dogs to be licensed and inspected. This action will bring our regulations into accord with the AWA and with our new policy, now in effect, to regulate wholesale dealers of hunting, breeding, and security dogs. The proposal will also solicit public comment on the new policy.

The AWA licensing requirements for animal dealers are contained in 9 CFR part 2, subpart A, and the care standards for dogs and cats are contained in 9 CFR part 3, subpart A. For information about becoming licensed as a dealer under the AWA, contact the person listed above under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

Done in Washington, DC, his 12th day of July 1999.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–18319 Filed 7–16–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 98–028–2]

Importation of Poultry Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations for importing animal products to allow the importation of poultry carcasses and parts or products of poultry carcasses from regions where exotic Newcastle disease (END) is considered to exist if they originated in a region free of END and meet certain conditions with respect to processing and shipping. This action removes some restrictions on the importation of poultry products from regions where END is considered to exist. We believe the conditions for importation will continue to protect the United States from END.

EFFECTIVE DATE: July 19, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Michael David, Senior Staff Veterinarian, Animals and Germplasm Programs, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 734–5034; or e-mail: michael.j.david@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 govern the importation of certain animals, birds, poultry, meat, animal products, animal byproducts, hay, and straw into the United States in order to prevent the introduction of communicable diseases of livestock and poultry. The regulations in § 94.6 (referred to below as the regulations) govern, among other things, the importation of poultry carcasses, parts, and products from regions where exotic Newcastle disease (END) is considered to exist.

Under the regulations in place when our proposed rule was published, poultry carcasses and parts or products of poultry carcasses could be imported into the United States from regions where END was considered to exist if certain conditions were met, such as the poultry carcasses were sent to an approved museum, were hermetically sealed and cooked, or were thoroughly cooked. The regulations were described in greater detail in the proposed rule.

On December 9, 1998, we published in the **Federal Register** (63 CFR 67809–67813, Docket No. 98–028–1) a proposal to amend § 94.6 to allow poultry carcasses and parts or products of poultry carcasses to be imported into the United States from regions where END is considered to exist if they originated in a region free of END and meet certain requirements with respect to processing and shipping.

We solicited comments concerning our proposal for 60 days ending February 8, 1999. We received six comments by that date. They were from representatives of State governments, trade associations, and the scientific community. Four commenters supported the proposed rule. Two commenters expressed concern that the proposed rule would have negative effects on the U.S. domestic poultry processing industry. Their concerns are addressed below.

Comment: The proposed ''system'' of poultry carcass export, processing, and reimportation cannot be assured to be risk free. There is no inspection or enforcement system strong enough to ensure that END will not be introduced into the United States.

Response: If zero tolerance for disease risk were the standard applied to international trade in agricultural commodities, it is quite likely that no country would ever be able to export a fresh animal product to any other country. There will always be some degree of disease risk associated with the movement of animal products; APHIS' goal is to reduce that risk to an insignificant level. For the reasons explained in the proposed rule, we believe that the safeguards contained in this final rule will reduce the disease risk associated with the importation of poultry carcasses and parts or products of poultry carcasses to an insignificant level.

Comment: The current import restrictions for Mexican poultry are consistent with the United States obligations under the North American Free Trade Agreement (NAFTA), Article 712.1, and do not require amendment.

Response: Article 712.1 of NAFTA states.

> Each [country] may, in accordance with this Section, adopt, maintain, or apply any sanitary or phytosanitary measure necessary for the protection of human, animal, or plant life or health in its territory, including a measure more stringent than an international standard, guideline, or recommendation.

While Article 712.1 allows a country to adopt measures more stringent than an international standard, we believe other NAFTA Articles, including

Articles 712.5 and 715.3, obligate us to take this action. Under Article 712.5:

> Each [country] shall ensure that any sanitary or phytosanitary measure that it adopts, maintains, or applies is applied only to the extent necessary to achieve its appropriate level of protection . . .

Further, Article 715.3 states:

> Each [country], in establishing its appropriate level of protection . . . should take into account the objective of minimizing negative trade effects.

The Mexican Government requested the change we are making in this rule. This rule will allow poultry carcasses and parts or products of poultry carcasses from regions that are free of END to be imported into the United States via another region where END is considered to exist, provided the meat or other products have been safeguarded as specified in this rule to prevent contamination. We have determined that such poultry meat or other poultry products will not present a significant risk of introducing END into the United States. Therefore, we believe we are obligated under NAFTA to proceed with this action.

Comment: The major result of the proposal would be to encourage the export of poultry carcasses from the United States to Mexico for processing with the finished product returned to the United States for final sale. The proposal would lead to the establishment of a poultry processing industry in Mexico, where worker safety and health and environmental standards are lax.

Response: As stated below in our Final Regulatory Flexibility Analysis, we cannot determine the extent to which this rule will encourage, or result in, increased volumes of poultry to be exported from the United States for processing in Mexico. However, it is likely that any increased poultry production would be a small percentage of Mexico's total poultry production. Further, we believe it is highly unlikely that new processing facilities will be constructed specifically to process poultry eligible for export to the United States under this rule, since there is already a large poultry processing industry in place in Mexico. Because the poultry eligible for export under this rule would likely be processed in existing facilities and would represent a small percentage of Mexico's total production, this rule would likely have a minimal effect on worker health and safety and the environment.

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.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register.** This action removes some restrictions on the importation of poultry products from regions where END is considered to exist. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register.**

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a Final Regulatory Flexibility Analysis, which is set out below, regarding the economic effects of this rule on small entities.

This rule amends the regulations for importing animal products to allow the importation of poultry carcasses and parts or products of poultry carcasses from regions where exotic Newcastle disease (END) is considered to exist if they originated in a region free of END and meet certain conditions with respect to processing and shipping. This rule removes some restrictions on the importation of poultry carcasses and parts or products of poultry carcasses from regions where END is considered to exist. As stated in our proposal, the most likely outcome of this rule is that U.S.-origin poultry carcasses and parts or products of poultry carcasses would be shipped to Mexico for processing and then returned to the United States.

In our proposal, we solicited comments on the potential effects of the proposed action on small entities. In particular, we sought data and other information to determine the number and kind of small entities that may incur benefits or costs from the implementation of the proposed rule. We received no comments providing specific data in relation to the proposed rule's Initial Regulatory Flexibility Analysis, but two of the commenters expressed concern that the proposal could negatively affect U.S. poultry processing establishments that could lose business to less costly Mexican processing operations.

Our Initial Regulatory Flexibility Analysis agreed that it is possible that, under this rule, U.S. producers would ship poultry carcasses or products to Mexico for processing to take advantage of lower processing costs or to use Mexican processing plants as supplements to the existing U.S. workforce and facilities. However, we stated that we could not predict to what extent U.S. firms would elect to send poultry to Mexico for processing, nor could we determine what effect this rule would have on the volume of poultry processed in U.S. processing facilities. The commenters did not provide any data. Therefore, we are unable to determine the effect of this rule on small or large poultry processors in the United States.

This rule may benefit U.S. truckers and haulers, wholesale traders, and poultry producers and packers, who stand to benefit from increased Mexican trade. However, as stated above, because we are unable to predict the volume of processed poultry meat or other poultry products that would be imported into the United States under this rule, we cannot determine the effect of this rule on the U.S. entities listed above, whether small or large.

Trade Relations

This rule removes some restrictions on the importation of poultry carcasses and parts or products of poultry carcasses from regions where END is considered to exist. Consequently, the rule could encourage a positive trading environment between the United States and Mexico and other regions where END is considered to exist by stimulating economic activity and providing export opportunities to foreign poultry processing industries.

Alternatives Considered

In developing this rule, we considered: (1) Making no changes to the regulations governing the importation of poultry from regions where END is considered to exist; (2) allowing the importation of poultry carcasses and parts or products of poultry carcasses that originated in a region free of END but that were processed in a region where END is considered to exist under conditions different from those proposed; or (3) allowing the importation of poultry carcasses and parts or products of poultry carcasses that originated in a region free of END but that were processed in a region where END is considered to exist under the conditions in this document.

We rejected the first alternative because we believe this rule provides a way to remove trade restrictions while maintaining adequate safeguards against the introduction of END into the United States. Under these circumstances,

making no changes to the regulations would be contrary to trade agreements entered into by the United States.

We also rejected the second alternative because we believe that conditions less stringent than those proposed would increase the risk of the introduction of END into the United States to more than a negligible level and that more stringent conditions would be unnecessarily restrictive. We consider the conditions in this rule to be both effective and necessary in keeping at a negligible level the risk of imported poultry products introducing END into the United States.

Executive Order 12988

This final 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

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0141.

List of Subjects in 9 CFR Part 94

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

Accordingly, we are amending 9 CFR part 94 as follows:

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

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

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

§ 94.18 Amended]

2. In § 94.18, footnotes 15 and 16 and their references are redesignated as footnotes 17 and 18, respectively.

§ 94.17 [Amended]

3. In § 94.17, footnote 2 is redesignated as footnote 16 and is revised to read: ''See footnote 15 in § 94.17(e) of this part.''

§§ 94.6, 94.8, 94.9, 94.12, 94.16, and 94.17 [Amended]

4. In §§ 94.6, 94.8, 94.9, 94.12, 94.16, and 94.17, footnotes 5 through 14 and their references are redesignated as footnotes 6 through 15, respectively.

5. In § 94.12 the newly redesignated footnote 13 is revised to read: ''See footnote 10 in § 94.9 of this part.''

6. In § 94.6, the section heading is revised, paragraph (c)(5) is redesignated as paragraph (c)(6), and a new paragraph (c)(5) is added to read as follows:

§ 94.6 Carcasses, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds; importations from regions where exotic Newcastle disease (END) or S. enteritidis is considered to exist.

* * * * *

(c) * * *

(5) Poultry carcasses or parts or products of poultry carcasses that originated in a region considered to be free of END and are processed (cut, packaged, and/or cooked) in a region where END is considered to exist may be imported under the following conditions:

(i) *Shipment to approved establishments.* (A) The poultry carcasses or parts or products of poultry carcasses must be shipped from the END-free region where they originated in closed containers sealed with serially numbered seals applied by an official of the national government of that region. They must be accompanied by a certificate that is signed by an official of that region's national government and that specifies the products' region of origin, the processing establishment to which the poultry carcasses or parts or products of poultry carcasses are consigned, and the numbers of the seals applied to the shipping containers.

(B) the poultry carcasses or parts or products of poultry carcasses may be removed from containers at the processing establishment in the region where END is considered to exist only after an official of that region's national government has determined that the seals are intact and free of any evidence of tampering. The official must attest to this fact by signing the certificate accompanying the shipment.

(ii) *Handling of poultry carcasses or parts or products of poultry carcasses.* Establishments [5] in regions where END is considered to exist that process poultry carcasses or parts or products of poultry carcasses for export to the United States:

(A) May not receive or handle any live poultry.

(B) Must keep any records required by this section on file at the facility for a period of at least 2 years after export of processed products to the United States, and must make those records available to USDA inspectors during inspections.

(C) May process poultry carcasses or parts or products of poultry carcasses that originate in both END-free regions and regions where END is considered to exist, provided that:

(*1*) All areas, utensils, and equipment likely to contact the poultry carcasses or parts or products of poultry carcasses to be processed, including skimming, deboning, cutting, and packing areas, are cleaned and disinfected between processing poultry from regions where END is considered to exist and poultry carcasses or parts or products of poultry carcasses from END-free regions.

(*2*) Poultry carcasses or parts or products of poultry carcasses intended for export to the United States are not handled, cut, or otherwise processed at the same time as any poultry not eligible for export to the United States.

(*3*) Poultry carcasses or parts or products of poultry carcasses intended for export to the United States are packed in clean new packaging that is clearly distinguishable from that containing any poultry not eligible for export to the United States.

(*4*) Poultry carcasses or parts or products of poultry carcasses are stored in a manner that ensures that no cross-contamination occurs.

(iii) *Cooperative service agreement.* Operators of processing establishments must enter into a cooperative service agreement with APHIS to pay all expenses incurred by APHIS in inspecting the establishment. APHIS anticipates that such inspections will occur once a year. The cooperative service account must always contain a balance that is at least equal to the cost of one inspection. APHIS will charge the cooperative service account for travel, salary, and subsistence of APHIS employees, as well as administrative overhead and other incidental expenses (including excess baggage charges up to 150 pounds).

(iv) *Shipment to the United States.* Poultry carcasses and parts or products

[5] As a condition of entry into the United States, poultry or poultry products must also meet all of the requirements of the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) and regulations thereunder (9 CFR part 381), including requirements that the poultry or poultry products be prepared only in approved establishments.

of poultry carcasses to be imported into the United States must be shipped from the region where they were processed in closed containers sealed with serially numbered seals applied by an official of the national government of that region. The shipments must be accompanied by a certificate signed by an official of the national government of the region where the poultry was processed that lists the numbers of the seals applied and states that all of the conditions of this section have been met. A copy of this certificate must be kept on file at the processing establishment for at least 2 years.

* * * * *

Done in Washington, DC, this 13th day of July, 1999.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–18320 Filed 7–16–99; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AF95

Monitoring the Effectiveness of Maintenance at Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its power reactor safety regulations to require that licensees assess the effect of equipment maintenance on the plant's capability to perform safety functions before beginning maintenance activities on structures, systems, and components (SSCs) within the scope of the maintenance rule. The amendments clarify that these requirements apply under all conditions of operation, including shutdown, and that the assessments are to be used so that the increase in risk that may result from the maintenance activity will be managed to ensure that the plant is not inadvertently placed in a condition of significant risk or a condition that would degrade the performance of safety functions to an unacceptable level. These amendments permit licensees to limit the scope of the assessments to SSCs that a risk-informed evaluation process has shown to be significant to public health and safety.

EFFECTIVE DATE: The final rule becomes effective 120 days after issuance of Revision 3 to Regulatory Guide 1.160, ''Monitoring the Effectiveness of Nuclear Power Plants.'' The NRC will publish a document in the **Federal Register** that announces the issuance of the revised guidance and that specifies the effective date.

FOR FURTHER INFORMATION CONTACT: Richard P. Correia, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, 301–415–1009, e-mail rpc@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The NRC's maintenance team inspections of all nuclear power plant licensees in the late 1980s found the lack of consideration of plant risk in prioritizing, planning, and scheduling maintenance activities to be a common weakness. To address that weakness, paragraph (a)(3) of 10 CFR 50.65, the maintenance rule, currently includes the provision that ''(I)n performing monitoring and preventive maintenance activities, an assessment of the total plant equipment that is out of service should be taken into account to determine the overall effect on performance of safety functions.'' The maintenance rule was issued on July 10, 1991 (56 FR 31306).

During plant visits in mid-1994, several NRC senior managers expressed concerns that licensees were increasing both the amount and frequency of maintenance performed during power operation without adequately evaluating safety when planning and scheduling these maintenance activities. The NRC Executive Director for Operations (EDO) addressed these concerns regarding the safety implications of performing maintenance while at power to the President of the Institute of Nuclear Power Operations (INPO) in a letter dated October 6, 1994. In this letter, the EDO noted that it appeared that some licensees were either not following INPO guidelines for the conduct of maintenance and management of outages or had adopted only portions of the guidance. The EDO also recommended that INPO support the Nuclear Energy Institute (NEI) and appropriate utility managers during meetings with NRC senior managers to discuss the concerns they raised during the site visits.

The growing amount of on-line maintenance (i.e., maintenance during power operations) being performed by licensees and the quality of pre-maintenance assessments have merited the Commission's concern. To address this concern, to clarify the plant operating conditions under which the maintenance rule is applicable, and to make the requirements fully enforceable, the Commission published proposed revisions to 10 CFR 50.65 in the **Federal Register** on September 30, 1998 (63 FR 52201–52206). The 75-day comment period closed December 14, 1998.

II. Comments on the Proposed Rule

Twenty-nine comments were submitted during the comment period, and five were submitted after the comment period closed. Copies of the letters are available for public inspection and copying for a fee at the Commission's Public Document Room, located at 2120 L Street, NW (Lower Level), Washington, DC. The last public comment was received on December 29, 1998. All comments were considered in formulating the final rule. The 34 comments were submitted by 26 utilities with operating power reactors, one utility with a decommissioning status facility, three nuclear industry service companies or consultants, one individual, one State agency, NEI, and one law firm representing several utilities. Twenty-nine commentors endorsed the NEI comments. NEI stated in its comment letter that the industry generally supports the Commission's intent in the proposed rule but has a number of significant concerns that should be addressed before rulemaking proceeds. Of the commentors who did not endorse the NEI comments, one (combined State agencies) supported the concept of the proposed rule and provided comments to enhance it, and two others (an individual and a utility) provided recommendations in specific areas to enhance the proposed rule. Two of the commentors (a consultant and a consulting firm) stated that the rule was unnecessary and presented supporting reasons.

The comments have been grouped under the following general topics:

1. Rule issuance
2. New, vague, ambiguous, undefined terminology in the proposed rule
3. Scope issues
4. Suggestions for wording modifications
5. Regulatory controls overlapping technical specifications
6. Performing assessments
7. Assessing and managing risk
8. Emergent maintenance requirements
9. Documentation of the assessment
10. Definition of availability
11. Backfit and regulatory analyses
12. Regulatory analysis cost estimates
13. Application to decommissioning plants

Summaries of the grouped comments and discussions of the NRC responses follow.

1. Rule Issuance

Comment. One commentor, a utility, stated that they consider the proposed rule unnecessary, and NEI and other utilities stated that the proposed rule, as written, should be withdrawn. However, they also stated that if the rule is approved, Regulatory Guide 1.160 should be revised and issued before finalizing the changes to the rule.

Response. The NRC has determined that the rule is necessary and believes that the performance of this type of assessment is prudent because of changes in industry maintenance practices and findings during NRC inspections of maintenance rule programs. When the maintenance rule was first promulgated in 1991, the NRC had not foreseen the significant changes licensees would be making in maintenance practices. To enhance operational efficiency, made increasingly necessary by the rate deregulation of the electric utility industry, licensees are shortening their refueling outages by performing more maintenance while the plant is at power. At-power maintenance practices have evolved to the point that not only are major systems, subsystems, and components taken off line, but also multiple systems, subsystems, and components are taken off line simultaneously. Taking systems and components off line for maintenance could result in an increase in risk because of the reduced capability to mitigate the consequences of an accident or a transient, compared to risk that occurs from expected random equipment failures. In addition, although the maintenance rule baseline inspections of all operating nuclear power plant sites found that all licensees have implemented programs to perform the assessments, about half of the sites had programs with discernable weaknesses in this area, including instances in which, in accordance with the licensees' own programs, assessments should have been made but were not.

The NRC agrees that it is appropriate to revise Regulatory Guide 1.160 to incorporate clarifying guidance before the final rule's effective date. Accordingly, Revision 3 to Regulatory Guide 1.160 will be prepared for public comment and will be published in final form 120 days before the effective date of the rule.

2. New, Vague, Ambiguous, Undefined Terminology in the Proposed Rule

Comment. Most commentors identified concerns related to the proposed rule's introduction of new, vague, ambiguous, or undefined terminology and recommended that the rule be withdrawn and reissued for public comment after substantial modification. NEI and utilities indicated that terms such as ''risk-significant condition'' and ''unacceptable level'' should be explicitly defined.

Response. Paragraph (a)(4) has been reworded. Guidance for the revised terminology appears below in Item 4 of Section III, ''The Final Rule.''

3. Scope Issues

Comment. Many commentors stated that assessments required by the proposed rule should apply only to high safety-significance SSCs. NEI and utilities expressed concerns that the scope of SSCs subject to assessments was impractical. Such broad scope would dilute attention from high safety-significance SSCs by requiring too many detailed assessments.

Response. Paragraph 50.65(b) defines the scope of SSCs that are covered by the rule (with the exception of SSCs for decommissioning plants). Chapter 11.0 of NUMARC 93–01, ''Industry Guidelines for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants,'' Revision 2, dated April 1996 (which has been endorsed by Regulatory Guide 1.160, Revision 2, dated March 1997), is entitled ''Evaluation of Systems to be Removed from Service.'' Chapter 11.0 guidance makes the evaluation, or assessment, a three-step process: (1) Identify key plant safety functions to be maintained, (2) identify SSCs that support key plant safety functions, and (3) consider the overall effect of removing SSCs from service on key plant safety functions. Requiring, instead of recommending, those assessments does not change the expectation that the assessments need only involve SSCs associated with initiating and mitigating impacts on key plant safety functions. To codify this expectation, paragraph (a)(4) of the final rule contains a second sentence as follows: ''The scope of the assessment may be limited to structures, systems, and components that a risk-informed evaluation process has shown to be significant to public health and safety.''

4. Suggestions for Wording Modifications

Comment. Five commentors provided suggestions clarifying regulatory text. Two of these commentors stated that the plant configuration should be defined as ''SSCs within the scope of the rule,'' and three commentors suggested limiting the scope of maintenance activities to those that result in removing equipment from service.

Response. The NRC disagrees with these suggested language changes. The rule currently applies only to SSCs within the scope of the rule. A revision to specify that fact is not needed, although this rule is being revised to permit licensees to limit the scope of their assessments to SSCs that a risk-informed evaluation process has shown to be significant to public health and safety. Additionally, certain maintenance activities are performed that do not remove equipment from service but have the potential for challenging safety systems. One example is valve testing on certain balance-of-plant systems during which open valves are cycled shut and reopened. If such a valve were to inadvertently stick shut, a transient could ensue. Those scenarios must be assessed and managed to ensure that the risks associated with these activities are properly identified and controlled.

5. Regulatory Controls Overlapping Technical Specifications

Comment. Several commentors stated that there is a need to reconcile the overlapping regulatory regimes of the maintenance rule, technical specifications (TS), and the configuration risk management program (CRMP) (described in Regulatory Guide 1.177, ''An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications''). NEI and the utilities were mainly concerned with the overlap of regulatory controls in the revised rule and TS.

Response. The NRC agrees that some overlap exists among these regulatory controls. Under certain conditions, a plant's TS may allow an SSC to be out of service, while a pre-maintenance assessment proposing the removal of that same SSC from service may indicate a need to take other actions to preclude that configuration. It is possible that allowed outage times of TS may not be in complete agreement with reasonable out-of-service times resulting from the required assessments. However, TS limiting conditions for operation were, in part, developed to address random single failures of plant SSCs; they were not intended to be used by licensees as rationale for removing multiple SSCs from service to perform on-line maintenance. In general, TS may serve as a pre-analyzed assessment, when used with sound judgement, when a licensee proposes to remove a single SSC from service for maintenance. Paragraph (a)(4) is intended to cause the licensee to determine its options and follow a prudent course of action. Nevertheless, while performing on-line or shutdown

maintenance, the licensee will remain in conformance with its TS.

In NRC staff requirements memorandum dated June 29, 1998, for SECY–98–067, the Commission directed the NRC staff to take actions to ensure that CRMP regulatory guidance conforms to the provisions of the final maintenance rule. After revisions to the maintenance rule are completed, the NRC will expeditiously support licensee requests to remove the CRMP requirements from plant TS.

6. Performing Assessments

Comment. NEI and the utilities expressed the need for clarification of when an assessment would be required, the level of complexity necessary in the assessment, and the criteria to be used to evaluate the adequacy of the assessment process.

Response. Please refer to the discussion in Item 4 of Section III, ''The Final Rule,'' below.

7. Assessing and Managing Risk

Comment. Three commentors expressed similar views related to high-risk activities. One noted that, under suitable controls, a shorter time in a more risk-significant configuration may be safer than a longer time in a less risk-significant configuration. Another noted that high risk-significant activities should be recognized and avoided, where practical, and limited in duration when they are necessary. The third noted that the proposed rule does not address situations in which failure to perform a maintenance activity may have a greater impact on risk than performing the high safety-significant activity.

Response. The NRC agrees that the proposed rule precluded entering risk-significant configurations, no matter the duration, when, in fact, situations may exist that would yield a net safety benefit by performing maintenance in a risk-significant configuration for a short time. The rule has been revised to require licensees to understand their options with respect to risk and to manage their maintenance activities according to their best judgment, considering insights from operating experience and deterministic and probabilistic analyses.

8. Emergent Maintenance Requirements

Comment. Two commentors stated that the proposed rule does not address expectations for revising assessments upon the discovery of a previously unknown condition requiring maintenance (emergent maintenance). They also expressed concerns that if certain emergent maintenance activities are not completed immediately, the plant could be at greater risk.

Response. Under the revised rule, an assessment is required to be initiated following the discovery of emergent failures or changes in plant conditions to determine the safety impact of the failure or the change in plant conditions. For additional information on this subject, please see the discussion in Item 4 of Section III, ''The Final Rule,'' below.

9. Documentation of the Assessment

Comment. Three utility commentors stated that the proposed rule is not explicit enough regarding assessment documentation expectations.

Response. The rule has no explicit documentation requirements. Instead, the rule emphasizes performance. A licensee's assessment process is expected to identify the impact on safety that is caused by the performance of maintenance. Licensees should use documentation to the extent necessary to assure themselves that the requirement for an assessment has been acknowledged and performed adequately. NRC expectations are that a licensee will have a requirement for the assessments and an explanation of the process to be followed in its maintenance rule program, along with a description of assessment tool(s) to be used and their limitations, implementing procedures, and explicit direction covering instances when the plant configuration is or is proposed to be outside the span of the assessment tool. Further, the assessment process is expected to be incorporated into the maintenance planning and scheduling process and into work package requirements. Moreover, control room operators, who are expected to understand, use, and know the limitations of the assessment tools, generally use and maintain a variety of documents, such as logs and checklists, that contain information relating to out-of-service SSCs.

10. Definition of Availability

Comment. Three commentors stated that the definition of availability will be key to this rulemaking. They also stated that the availability definition should take into account the time required to restore the functionality of an SSC and should also be risk informed.

Response. A definition of availability for licensee maintenance rule programs is set forth in NUMARC 93–01, Revision 2, which was endorsed by the NRC in Regulatory Guide 1.160, Revision 2, of March 1997. According to that document, availability is ''(t)he time that a(n) SSC is capable of performing its intended function (expressed) as a fraction (usually as percent) of the total time that the function may be demanded.'' Also according to that document, under the definition of ''unavailability,'' is the following statement: ''An SSC that is required to be available for automatic operation must be available and respond without human action.'' Additionally, in the instance where an SSC is taken out of service for testing but could be manually activated, the NRC has accepted that, as long as the dedicated operator's written procedure specifies a single action that would permit an automatic initiation of the out-of-service SSC in the event of an accident or transient during the test, the SSC could be considered available. (Meeting Summary—November 19, 1991, NRC/NUMARC Public Meeting on the Development of Guidance Documents for the Implementation of the Maintenance Rule (10 CFR 50.65), R.P. Correia, Office of Nuclear Reactor Regulation, memorandum to E.W. Brach, Office of Nuclear Reactor Regulation, dated November 23, 1991.) The NRC's expectation is that, by procedure, the dedicated operator is stationed at the equipment and is ready and qualified to perform that single action in a moment. An acceptable single action could be the rapid repositioning of a switch or a lever; an unacceptable action would be racking in a breaker or, in some instances, opening a manual gate valve.

With respect to risk-informing the maintenance rule definition of availability, the reliance of initial availability performance measures on probabilistic risk assessment (PRA) data provided such a basis. However, in quality maintenance programs, availability is monitored to identify and trend the performance of equipment, thereby permitting certain conclusions to be drawn about the effectiveness of the equipment's maintenance program. Paragraph (a)(3) of the rule requires that the prevention of SSC failures (reliability) through maintenance is appropriately balanced against the objective of minimizing unavailability. Omitting unavailability time from the maintenance effectiveness determination analysis is flawed logic. Omitting unavailability time because, in an accident scenario, the equipment may not be needed for the time it may take to restore its safety function recognizes the role of the equipment but masks the actual requirement for maintenance. The maintenance rule requires licensees to monitor the effectiveness of their maintenance

programs. Omitting significant details, such as how much maintenance time an SSC requires in order to attain the objective of preventing failures, is contrary to the purpose of the rule.

Note also that maintenance rule ''availability'' is not technical specification ''operability.''

11. Backfit and Regulatory Analyses

Comment. One commentor stated that the regulatory analysis does not justify the expansion of the maintenance rule to ''normal shutdown operations'' and that a revision of the analysis to better consider such expansion would show through backfit considerations that the expansion is not justified. Another commentor also presented a concern that the overall implications of the rule were not supported by the backfit analysis.

Response. The new preamble to the rule is an introductory sentence clarifying that the rule applies under all operating conditions, including normal shutdown. The Commission intended the rule to apply to all operating conditions, and it has been implemented by the NRC staff consistent with such an interpretation. Moreover, Section 11.2.3 of NUMARC 93–01 specifically states that ''assessment applies during all modes of plant operation.'' The overall implications of the rule were assessed in the backfit analysis for the original maintenance rule, which was issued July 10, 1991.

12. Regulatory Analysis Cost Estimates

Comment. One commentor raised the concern that if facilities are required to develop numerical models for every combination of low safety-significance SSCs, the cost of implementing the program would be significantly higher than estimated in the regulatory analysis.

Response. The NRC does not expect licensees to develop numerical models for assessing all possible combinations of low risk-significant SSCs. The regulatory analysis states that the complexity of assessments to be performed can vary, depending upon the configuration of SSCs to be maintained on line or out of service. It was presumed that assessments involving SSCs having little bearing on safety could be performed in an uncomplicated, deterministic manner and that the cost of the overall program would be dominated by the need for assessment of combinations of SSCs, which, when taken out of service simultaneously, could have an adverse effect on the safe operation of the facility. Additionally, the licensee controls the degree of complexity of the proposed configuration and thereby controls the level of sophistication required for the assessment. Consequently, the licensee should not propose to enter a plant configuration the complexity of which exceeds the licensee's ability to assess.

13. Application to Decommissioning Plants

Comment. One commentor presented concerns regarding the application of the rule to plants in a decommissioning status. The commentor requested that, as part of this rulemaking, the NRC remove the applicability of the rule to decommissioning status plants following some modest level of fission product decay.

Response. This rulemaking is focused on requiring pre-maintenance assessments of plant risk. However, the NRC is considering the issue in a separate rulemaking activity.

III. The Final Rule

The final rule amends 10 CFR 50.65 as follows:

1. An introductory paragraph has been added to 10 CFR 50.65 clarifying that the rule applies under all conditions of operation, including shutdown. This introductory language reads as follows: ''The requirements of this section are applicable during all conditions of plant operation, including normal shutdown operations.'' The intent of this paragraph is to ensure that assessments are performed before maintenance activities when the plants are shut down as well as when the plants are at power. (Note that the word ''section,'' as used in this rulemaking, means all of § 50.65.)

2. The second sentence in paragraph (a)(3) has been revised as follows: ''The evaluations shall take into account, where practical, industry-wide operating experience.'' The change was made only to simplify the language and is purely editorial.

3. The last sentence of paragraph (a)(3), containing the current, non-mandatory provision for performing safety assessments, is deleted. The revised paragraph (a)(3) now contains only the requirement for periodic, programmatic, long-term review.

4. A new paragraph, (a)(4), has been added requiring the performance of assessments. The first sentence of the new (a)(4) paragraph states: ''Before performing maintenance activities (including but not limited to surveillance, post-maintenance testing, and corrective and preventive maintenance), the licensee shall assess and manage the increase in risk that may result from the proposed maintenance activities.'' Separating the assessment requirement from the long-term review requirement in paragraph (a)(3) will more clearly distinguish between the two types of activity.

The intent of this requirement is to have licensees appropriately assess the risks related to proposed maintenance activities that will directly, or may inadvertently, result in equipment being taken out of service and then, using insights from the assessment, suitably minimize the time needed for the proposed maintenance activities while also controlling the configuration of the total plant to maintain and support the key plant safety functions.

Risk is the result of the likelihood of an event with due consideration of the consequences of that same event. The term ''risk'' is used to address what can go wrong, its likelihood, and its consequences. The risk perspective can be assessed deterministically or probabilistically.

In general, a risk assessment is necessary before all planned maintenance activities. Assessments should also be performed when an unexpected SSC failure initiates required maintenance activities or when changes to plant conditions affect a previously performed assessment. However, the reevaluation of a previous assessment should not interfere with, or delay, the plant staff's taking timely actions to restore the appropriate SSC to service or taking compensatory actions necessary to ensure that plant safety is maintained. If the SSC is restored to service before performing the assessment, the assessment need not be conducted.

Assessments may vary from simple and straightforward to highly complex. However, the degree of sophistication required for the assessment notwithstanding, the NRC intends that the assessment process will examine the plant condition existing before the commencement of the maintenance activity, examine the changes expected by the proposed maintenance activity, and identify the increase in risk that may result from the maintenance activity. The assessments are expected to provide insights for identifying and limiting risk-significant maintenance activities and their durations.

The level of complexity necessary in the assessment would be expected to differ from configuration to configuration. When a licensee proposes to perform maintenance on a single SSC from service for maintenance while no other SSC is out of service, a simple deterministic assessment may suffice. If the SSC is covered by TS, a qualitative

assessment based on TS allowed outage time pertinent to the SSC and the informed judgement of a trained, licensed operator is sufficient. When one SSC is out of service and the licensee proposes to remove a second SSC from service for maintenance, the assessment could be simplified through the use of a table of results for pre-analyzed combinations, typically high safety-significance SSCs paired against each other. However, more detailed assessments are required if a licensee proposes to remove multiple SSCs from service during power operations or to remove from service systems necessary to maintain safe shutdown during shutdown or startup operations. These more detailed assessments are expected to involve probabilistic analyses where possible, and to also include considerations of key plant safety functions to be maintained and defense in depth.

The NRC believes that an appropriate assessment and management process should include the following considerations:

a. The likelihood that the maintenance activity will increase the frequency of an initiating event;
b. The probability that the activity will affect the ability to mitigate the initiating event;
c. The probability that the activity will affect the ability to maintain containment integrity;
d. Whether multiple trains are affected;
e. How probabilistic insights are used;
f. How non-probabilistic insights are used;
g. Component and system dependencies;
h. Measures to prevent concurrent unavailabilities of equipment necessary for accident mitigation;
i. Methods to determine the duration of the activity and account for the projected duration;
j. The analytical basis for allowed configurations (quantitative or qualitative consideration);
k. Provisions for accommodating configurations not encompassed by preanalyzed, acceptable configurations; and
l. Scope and quality of analysis for quantified assessments.

In general, it is the NRC's expectation that the processes for managing the risk are scrutable and control the risk increase of the proposed maintenance activities. This process should include an understanding of the nature (i.e., affecting the core damage, or large early release frequency) and significance of the risk implications of a maintenance configuration on the overall plant baseline risk level. For example, risk-significant plant configurations should generally be avoided, as should conditions where a key plant safety function would be significantly degraded while conducting maintenance activities. The effective control of potentially significant risk increase due to an unexpected failure of another risk-important SSC can be reasonably assured by planning for contingencies, or coordinating, scheduling, monitoring, and modifying the duration of planned maintenance activities.

5. The second sentence in the new (a)(4) paragraph states: ''The scope of the assessments may be limited to structures, systems, and components that a risk-informed evaluation process has shown to be significant to public health and safety.'' In response to public comments on the proposed rule, this second sentence has been added so that licensees may reduce the scope of SSCs subject to the pre-maintenance assessment to those SSCs which, singularly or in combination, can be shown to have a significant effect on the performance of key plant safety functions. The focus of the assessments should be on the SSCs modeled in the licensee's PRA, in addition to all SSCs evaluated as risk significant (high safety-significance) by the licensee's maintenance rule expert panel. Typically, these SSCs have been analyzed as causing potential initiating events, if failed, and as accident mitigators, or as high safety-significance SSCs with their support systems. Such SSCs may be identified by operating experience or by deterministic or probabilistic analyses.

Finding of No Significant Environmental Impact: Environmental Assessment

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51 that this final rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The environmental assessment that forms the basis for this determination reads as follows:

Identification of the Proposed Action

The Commission is amending its regulations to require commercial nuclear power plant licensees to perform assessments of changes to the plant's status that would result from maintenance activities before performing the maintenance activities on structures, systems, and components (SSCs) within the scope of 10 CFR 50.65, the maintenance rule. Thus, the maintenance rule has been modified by adding an introductory sentence to clarify that the rule applies under all conditions of operation, including normal shutdown; by making editorial revision to the second sentence of paragraph (a)(3); by deleting the last sentence of paragraph (a)(3); and by creating a new paragraph, (a)(4), that requires licensees to assess and manage the risk that may result from proposed maintenance activities and gives licensees an option to limit the scope of SSCs subject to the assessments.

The Need for the Proposed Action

Formerly, paragraph (a)(3) of the maintenance rule was in the form of a recommendation because it read as follows: ''(I)n performing monitoring and preventive maintenance activities, an assessment of the total plant equipment that is out of service should be taken into account to determine the overall effect on performance of safety functions.'' The Commission believes that the performance of this type of assessment is prudent. The maintenance rule baseline inspections, performed at each operating nuclear power plant site, found that all licensees have implemented programs to perform the assessments. However, about half of the sites had programs with discernable weaknesses in this area, including instances in which, in accordance with the licensee's own programs, assessments should have been made but were not. Because of the hortatory nature of the assessment provision in § 50.65(a)(3), the Commission cannot ensure that licensees perform the assessments. Moreover, licensees are free to remove the performance of the assessments from their programs as they so desire. This final rule permits the Commission to ensure that licensees perform the assessments, as appropriate.

Removing the provision regarding safety assessments from paragraph (a)(3) and creating for it a new, separate paragraph, (a)(4), disassociates the new requirement from the more time-dependent requirement for evaluating the program and the program's effectiveness at maintaining an appropriate balance between reliability and availability for each SSC. In the new paragraph, the requirement for assessment performance is stipulated to ensure that licensees will perform those assessments. There were questions regarding when the assessments are to be performed, which plant conditions are to be evaluated, how the assessments are to be used, and which SSCs are subject to the assessments. The new paragraph (a)(4) was revised to describe that the assessments are to be performed before proposed maintenance activities and are to examine pre-maintenance plant conditions and

expected changes as a result of the proposed maintenance activities. The assessments may be limited to SSCs that a risk-informed evaluation process has shown to be significant to public health and safety. The assessments are to be used to manage the increase in risk that may result from the maintenance activity.

Environmental Impacts of the Proposed Action

This final rule requires that commercial nuclear power plant licensees perform certain assessments of the status of plant equipment before performing proposed maintenance activities. The purpose of this change is to increase the effectiveness of the maintenance rule by requiring licensees to—

(1) Perform an assessment of the plant conditions before the proposed maintenance and the changes expected to result from the proposed maintenance activity;

(2) Ensure that the assessments are performed when the plant is shut down as well as at power; and

(3) Manage the increase in risk that may result from the proposed maintenance activity.

The Commission believes that proper implementation of the rule will reduce the likelihood and consequences of an accidental release of radioactive material caused by imprudently prioritized, planned, or scheduled maintenance.

The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action. The NRC has also committed to complying with Executive Order (EO) 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' dated February 11, 1994, in all its actions. The NRC has determined that there are no disproportionate, high, or adverse impacts on minority or low-income populations. In the letter and spirit of EO 12898, the NRC requested public comment on any environmental justice considerations or questions that the public thinks may be related to this rule but somehow were not addressed. No public comments on this issue were received.

States Consulted and Sources Used

The NRC sent a copy of the proposed rule to every State Liaison Officer and requested his or her comments on the environmental assessment. No comments were received on this issue.

Paperwork Reduction Act Statement

This final rule does not contain a new or an amended information collection requirement subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150–0011.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The Commission has prepared a final regulatory analysis for this rule. The analysis examined the costs and benefits of the alternatives considered by the Commission for revising 10 CFR 50.65, the maintenance rule. Those alternatives were to (1) make no change to the rule, (2) require the safety assessments currently recommended in paragraph (a)(3) of the rule, and (3) make comprehensive revisions to paragraph (a)(3) of the rule. The analysis supported the selection of Alternative 2 as the preferred course of action. Details of the alternative selection are contained in the regulatory analysis, which is available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Richard P. Correia, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, 301–415–1009, e-mail rpc@nrc.gov.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This rule affects only the operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of small entities set forth in the Regulatory Flexibility Act or the size standards adopted by the NRC (10 CFR 2.810).

Backfit Analysis

As required by 10 CFR 50.109, the Commission has completed a backfit analysis for this final rule. The Commission has determined, on the basis of this analysis, that backfitting to comply with the requirements of this rule provides a substantial increase in protection to the public health and safety or the common defense and security at a cost that is justified by the increased protection.

When the maintenance rule was issued, the NRC had not foreseen the rate deregulation of the electric utility industry and the changes to maintenance practices that licensees would make to enhance operational efficiency. Specifically of concern is the significant increase in maintenance while the plant is at power, permitting shortened refueling outages. At-power maintenance practices have evolved to the point that multiple systems, trains, and components are simultaneously out of service. Compared to the risk that occurs from expected random equipment failures, the risk of an accident or transient caused by taking systems, trains, and components off line for maintenance or from performing maintenance on systems, trains, or components while they remain on line could be increased.

The objective of this rule is to require that—

(1) Licensees assess the impact of equipment maintenance on the capability of the plant to perform key plant safety functions; and

(2) Licensees use the results of the assessment before undertaking maintenance activities at operating nuclear power plants to manage the increase in risk caused by those activities.

Thus, the rule adds a new paragraph, (a)(4), that requires the performance of assessments, specifies that the scope of the requirement for performing those assessments covers proposed maintenance activities, specifies that the scope of SSCs to be assessed may be limited to those that a risk-informed evaluation process has shown to be significant to public health and safety, and specifies that the increase in risk that may occur from the maintenance activity must be managed.

This final rule also adds an introductory sentence to 10 CFR 50.65 clarifying that the rule applies under all conditions of operation, including normal shutdown; revises the second sentence of paragraph (a)(3) to simplify the language; and deletes the last sentence of paragraph (a)(3) of the rule.

The details of this backfit analysis have been incorporated in the regulatory analysis. For the reasons elaborated in the regulatory analysis, which also contains cost information, the Commission concludes that this modification to the maintenance rule will result in a substantial increase in the overall protection to the public health and safety, and that the net costs

of the rule are justified in view of this increased level of safety.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. There are no industry consensus standards that apply to the area of maintenance. Thus, the provisions of the Act do not apply to this rulemaking.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.65, an introductory paragraph is added, paragraph (a)(3) is revised, and a new paragraph (a)(4) is added to read as follows:

§ 50.65 Requirements for monitoring the effectiveness of maintenance at nuclear power plants.

The requirements of this section are applicable during all conditions of plant operation, including normal shutdown operations.

(a) * * *

(3) Performance and condition monitoring activities and associated goals and preventive maintenance activities shall be evaluated at least every refueling cycle provided the interval between evaluations does not exceed 24 months. The evaluations shall take into account, where practical, industry-wide operating experience. Adjustments shall be made where necessary to ensure that the objective of preventing failures of structures, systems, and components through maintenance is appropriately balanced against the objective of minimizing unavailability of structures, systems, and components due to monitoring or preventive maintenance.

(4) Before performing maintenance activities (including but not limited to surveillance, post-maintenance testing, and corrective and preventive maintenance), the licensee shall assess and manage the increase in risk that may result from the proposed maintenance activities. The scope of the assessment may be limited to structures, systems, and components that a risk-informed evaluation process has shown to be significant to public health and safety.

* * * * *

Dated at Rockville, Maryland, this 13th day of July, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–18325 Filed 7–16–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–42–AD; Amendment 39–11225; AD 99–15–06]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. (Formerly Textron Lycoming) Model ALF502R–5 and ALF502R–3A Turborfan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to AlliedSignal Inc. Model ALF502R–5 and ALF502R–3A turbofan engines, that requires incorporation of an improved fan core inlet anti-ice system. This amendment is prompted by reports of uncommanded reduction of engine thrust (rollback) and loss of thrust control in icing conditions. The actions specified by this AD are intended to prevent ice accretion on the fan core inlet stator vane surfaces, which can result in engine rollback and loss of thrust control in icing conditions.

DATES: Effective September 17, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of September 17, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal Engines, P.O. Box 5218, Phoenix, AZ 85072–2181; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7148, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to AlliedSignal Inc. Model ALF502R–5 and ALF502R–3A turbofan engines was published in the **Federal Register** on December 14, 1998

(63 FR 68708). That action proposed to require installation of an improved fan core inlet anti-ice system, at the next shop visit, but no later than December 31, 2002.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters state that they should be allowed to use the altitude and operating restrictions, currently mandated by AD 96–14–09, rather than to require incorporation of the proposed engine anti-icing system modifications. One of the commenters proposes adoption of the altitude and operating restrictions regardless of icing conditions being present; while the other commenter proposes permanent use of AD 96–14–09 restrictions in icing conditions only. The commenters state that no rollback events have occurred below 26,000 feet, and that the unsafe icing conditions are not prevalent at altitudes below 26,000 feet. The commenters also state that the modifications are economically burdensome due to increased engine operating costs, and airplane air traffic control restrictions in congested areas. The FAA does not concur. The FAA acknowledges that no known rollback events have occurred below 26,000 feet altitude. However, the FAA considers the total operating hours accrued below that altitude, and the hours accrued in icing conditions below that altitude, to be insufficient to conclude that the interim restrictions, successfully imposed by AD 96–14–09, would provide an acceptable level of safety for long-term unrestricted operation of an unmodified engine below that altitude. In addition, the technical data available to the FAA, including that provided by the commenters, does not show that significant mixed phase icing conditions are isolated to altitudes above 26,000 feet, or that the unmodified ALF502R–5 and ALF502R–3A engines are capable of long-term unrestricted operation in the icing conditions present below that altitude.

Moreover, the FAA is aware of two instances of ALF502R–5 engine rollback which occurred during inadvertent encounters of icing conditions at altitudes above 26,000 feet, after altitude and operating restrictions we originally established by AD 94–07–09, and superseded by AD 06–14–09. Accordingly, the FAA considers the current altitude restriction and operating procedures in icing conditions to be acceptable only for a finite period as necessary for implementation of engine modifications, rather than relying on interim changes to operating procedures.

Therefore, based on the relatively limited fleet experience below the altitude limitation of 26,000 feet, the absence of sufficient engine and meteorological data to confidently isolate the ALF502R–5 engine rollback phenomenon to altitudes above 26,000 feet, and the demonstrated possibility of inadvertent operation in icing conditions above 26,000 feet, the FAA does not concur that an acceptable long-term level of safety would be provided by limiting the operating envelope of unmodified engines to altitudes below 26,000 feet.

One commenter proposes that the AD allow temporary installation of a single unmodified engine without requiring re-imposition of airplane operating restrictions. The change was proposed in order to reduce the frequency of aircraft being reidentified from restricted operation to unrestricted operation and back, to minimize airplane flight manual changes, and to reduce the likelihood of mis-placarding or pilot error. The commenter further states that the change is justifiable by statistical analysis of rollback likelihood. The FAA does not concur. The proposed AD is intended to require specific actions for incorporating ALF502R–5 engine modifications, rather than to address broader requirements with regard to airplane operation. Therefore, this submitted comment and response would not directly impact the requirements of the proposed rule.

The actions proposed by the submitted comment would intentionally allow operation of an engine beyond its known operating capability, including unrestricted operation in icing conditions associated with engine rollback and power loss. The FAA recognizes that reinstallation of a single unmodified engine may require more instances of airplane flight manual changes and cockpit placard than would be required otherwise. However, the FAA does not consider the need for these additional tasks to warrant allowing operation of an unmodified engine beyond its known operating capability. Moreover, installation of cockpit placards and airplane flight manual revisions are currently required by AD 96–14–09, and these tasks are considered appropriate for notifying crews of applicable altitude restrictions and operating procedures for unmodified engines. Accordingly, the FAA does not consider that the potential for mis-placarding or crew error to necessitate consideration of other measures.

In summary, because of the likelihood of rollback and power loss if ALF502R–5 engines are allowed to operate unrestricted in icing conditions, the FAA considers it necessary to continue to impose the operating restrictions in AD 96–14–09 if a single unmodified engine is installed and operated in icing conditions. The FAA continues to consider the installation of cockpit placards and flight manual revisions as acceptable means to identify when an unmodified engine is installed and requires AD 96–14–09 restrictions.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 982 engines of the affected design in the worldwide fleet. The FAA estimates that 100 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 30 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $75,000 per engine. Based on these figures, the cost impact of the AD's required incorporation of engine modifications for U.S. operators is estimated to be $7,680,000.

In addition to the above engine modifications, further aircraft modifications specified by BAe SB No. 71–68–01581A, and BAe SB No. 26–40–01601A, Revision 1, are required prior to installation of modified engines onto BAe 146 aircraft. The FAA estimates that 20 aircraft of U.S. registry will be affected by this proposed AD, that it will take approximately 33 work hours per aircraft to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,400 per aircraft. Based on these figures, the cost impact for incorporation of aircraft modifications required by the AD on U.S. operators is estimated to be $87,600.

Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,767,600.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–15–06 AlliedSignal Inc.: Amendment 39–11225. Docket 98–ANE–42–AD.

Applicability: AlliedSignal Inc. (formerly Textron Lycoming) ALF502R–5 and ALF502R–3A model turbofan engines, installed on but not limited to British Aerospace (BAe) 146–100A, –200A and –300A series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded reduction of engine thrust and loss of thrust control in icing conditions, accomplish the following:

(a) At the next engine shop visit after the effective date of this AD, but not later than December 31, 2002, install an improved fan core inlet anti-ice system in accordance with Accomplishment Instructions, Paragraphs 2.B. through 2.I.(1–4), of AlliedSignal Inc. Service Bulletin (SB) No. ALF/LF 72–1020, Revision 2, dated September 30, 1998. In order to install engines with the required modifications onto BAe 146–100A, –200A and –300A series aircraft, accomplish BAe Regional Aircraft SB No. 26–40–01601A, dated March 25, 1998, and BAe Regional Aircraft SB No. 71–68–01581A, Revision 1, dated March 25, 1998.

(b) For the purpose of this AD, an engine shop visit is defined as maintenance that includes separation of either the fan module or the combustor turbine module from the remainder of the engine.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

(e) The actions required by this AD shall be done in accordance with the following SBs:

Document No.	Pages	Revision	Date
AlliedSignal Inc. No. ALF/LF 72–1020	1	2	September 30, 1998.
	2	1	June 3, 1998.
	3–14	Original	March 11, 1998.
	15	1	June 3, 1998.
	16	Original	March 11, 1998.
	17	1	June 3, 1998.
	18–20	2	September 30, 1998.
	21, 22	Original	March 11, 1998.
	23, 24	1	June 3, 1998.
	25	Original	March 11, 1998.
	26–29	2	September 30, 1998.
	30–33	Original	March 11, 1998.
	34, 35	2	September 30, 1998.
	36	1	June 3, 1998.
	37	2	September 30, 1998.
	38	1	June 3, 1998.
Total Pages: 38.			
BAe Regional Aircraft No. 26–40–01601A	1–7	Original	March 25, 1998.
Total Pages: 7.			
BAe Regional Aircraft No. 71–68–01581A	1–3	1	March 25, 1998.
	4–18	Original	August 14, 1997.
Total Pages: 18.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal Engines, P.O. Box 5218, Phoenix, AZ 85072–2181, telephone (602) 365–2493, fax (602) 365–5577. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on September 17, 1999.

Issued in Burlington, Massachusetts, on July 9, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–18099 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–02]

Revision of Class D and Class E Airspace; Cannon AFB, Clovis, NM.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class D and Class E airspace extending upward from the surface to and including 6,800 feet mean sea level (MSL), within a 4.6-mile radius of Cannon Air Force Base (AFB), NM. This action is prompted by the requirement to contain aircraft operations within controlled airspace. The Class D airspace will revert to Class E airspace when the control tower is not in operation. The intended effect of this rule is to provide adequate controlled airspace for aircraft operating in the vicinity of Cannon AFB, NM.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION:

History

On March 4, 1999, proposal to amend 14 CFR Part 71 to revise Class D and Class E airspace at Cannon AFB, NM, was published in the **Federal Register** (64 FR 10411). The proposal was to revise Class D and Class E airspace extending upward from the surface to and including 6,800 feet MSL, at Cannon AFB NM. This action is prompted by the requirement to contain aircraft operations within controlled airspace. The Class D airspace will revert to Class E airspace when the control tower is not in operation. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of Cannon AFB, NM.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed, with the exception of minor editorial changes.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class D and Class E airspace areas are published in paragraphs 5000 and 6002 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the order.

The Rule

This amendment to 14 CFR Part 71 revises Class D and Class E airspace, at Cannon AFB, NM, extending upward from the surface to and including 6,800 feet MSL, at Cannon AFB, NM.

The FAA has determined that this regulation only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points,* dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D airspace areas.

* * * * *

ASW NM D Clovis, NM [Revised]

Clovis, Cannon AFB, NM
(Lat. 34°22′58″ N., long. 103°19′20″ W.)
Cannon ILS Localizer
(Lat. 34°22′25″ N., long. 103°20′09″ W.)
Cannon TACAN
(Lat. 34°22′51″ N., long. 103°19′21″ W.)

That airspace extending upward from the surface to and including 6,800 feet MSL within a 4.6-mile radius of Cannon AFB and within 1.8 miles each side of the Cannon ILS Localizer northeast course, extending from the 4.6-mile radius to 5.1 miles northeast of the airport and within 1.8 miles each side of the 304° radial of the Cannon TACAN extending from the 4.6-mile radius to 5.1 miles northwest of the airport. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Paragraph 6002 Class E airspace areas extending upward from the surface of the earth.

* * * * *

ASW NM E2 Clovis, NM [Revised]

Clovis, Cannon AFB, NM
(Lat. 34°22′58″ N., long. 103°19′20″ W.)
Cannon ILS Localizer
(Lat. 34°22′25″ N., long. 103°20′09″ W.)
Cannon TACAN
(Lat. 34°22′51″ N., long. 103°19′21″ W.)

That airspace extending upward from the surface within a 4.6-mile radius of Cannon AFB and within 1.8 miles each side of the Cannon ILS Localizer northeast course, extending from the 4.6-mile radius to 5.1 mile northeast of the airport and within 1.8 miles each side of the 304° radial of the Cannon TACAN extending from the 4.6-mile radius to 5.1 miles northwest of the airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Forth Worth, TX on June 15, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–18350 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29642; Amdt. No. 1940]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South Macarthur Blvd. Oklahoma City, OH 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on July 9, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . *Effective Upon Publication*

FDC Date	State	City	Airport	FDC No.	SIAP
06/04/99	ME	Wiscasset	Wiscasset	9/3841	NDB Rwy 25 Amdt 5.
06/24/99	AL	Tuscaloosa	Tuscaloosa Muni	9/4373	NDB Rwy 4, Amdt 10A.
06/24/99	AL	Tuscaloosa	Tuscaloosa Muni	9/4374	VOR or TACAN Rwy 4, Amdt 11A.
06/25/99	SC	Aiken	Aiken Muni	9/4418	NDB Rwy 24 Amdt 9A.
06/25/99	SC	Aiken	Aiken Muni	9/4419	GPS Rwy 24 Orig.
06/25/99	SC	Aiken	Aiken Muni	9/4420	GPS Rwy 6 Orig.
06/25/99	SC	Aiken	Aiken Muni	9/4421	VOR/DME or GPS–A, Orig–A.
06/28/99	SC	North Myrtle Beach	North Myrtle Beach/Grand Strand	9/4455	GPS Rwy 23, Orig.
06/28/99	SC	North Myrtle Beach	North Myrtle Beach/Grand Strand	9/4456	ILS Rwy 23, Amdt 10A.
06/28/99	SC	North Myrtle Beach	North Myrtle Beach/Grand Strand	9/4457	VOR Rwy 23, Amdt 19A.
06/28/99	SC	North Myrtle Beach	North Myrtle Beach/Grand Strand	9/4458	NDB Rwy 23, Amdt 10B.
06/28/99	SC	North Myrtle Beach	North Myrtle Beach/Grand Strand	9/4459	GPS Rwy 5, Orig.
06/28/99	SC	North Myrtle Beach	North Myrtle Beach/Grand Strand	9/4461	VOR Rwy 5, Amdt 20A.
06/29/99	FL	Titusville	Space Coast Regional	9/4525	GPS Rwy 9, Orig.
06/30/99	NC	Asheville	Asheville Regional	9/4540	ILS Rwy 34, Amdt 23C.
07/01/99	KS	Concordia	Blosser Muni	9/4562	NDB–A, Orig.
07/01/99	KS	Concordia	Blosser Muni	9/4563	GPS Rwy 17, Orig.
07/01/99	KS	Concordia	Blosser Muni	9/4564	GPS Rwy 35, Orig.

[FR Doc. 99–18355 Filed 7–16–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29641; Amdt. No. 1939]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description

of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on July 9, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 41113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . *Effective August 12, 1999*

Provo, UT, Provo Muni, GPS RWY 13, Orig

. . . *Effective September 9, 1999*

Mobile, AL. Mobile Regional, VOR OR TACAN OR GPS–A, Amdt 1
Akron, CO, Akron-Washington County, GPS RWY 11, Orig
Akron, CO, Akron-Washington County, GPS RWY 29, Orig
Leadville, Co, Lake County, GPS RWY 16, Orig
Fort Myers, FL, Southwest Florida Intl, GPS RWY 6, Orig
Fort Myers, FL, Southwest Florida Intl, GPS RWY 24, Orig
Key West, FL, Key West Intl, VOR/DME OR GPS RWY 27, Amdt 2, CANCELLED
Key West, FL, Key West Intl, VOR OR GPS–B, Amdt 10, CANCELLED
Key West, FL, Key West Intl, GPS RWY 9, Orig
Key West, FL, Key West Intl, NDB OR GPS–A, Amdt 15
Key West, FL, Key West Intl, GPS RWY 27, Orig
St. Petersburg-Clearwater, FL, St. Petersburg-Clearwater Intl, GPS RWY 17L, Orig
St. Petersburg-Clearwater, FL, St. Petersburg-Clearwater Intl, GPS RWY 35R, Orig
Bainbridge, GA, Decatur County Industrial Air Park, NDB OR GPS RWY 27, Amdt 1
Bloomington/Normal, IL, Central IL Regl Arpt at Bloomington-Normal, GPS RWY 11, Orig
Mount Sterling, KY, Mount Sterling-Montgomery County, GPS RWY 21, Amdt 1
Paducah, KY, West Kentucky Airpark, GPS RWY 4, Orig
Paducah, KY, West Kentucky Airpark, GPS RWY 22, Orig
Baltimore, MD, Martin State, VOR/DME OR TACAN RWY 15, Amdt 5
Bigfork, MN, Bigfork Muni, GPS RWY 15, Orig
Charlotte, NC, Charlotte/Douglas, Intl, ILS RWY 23, Amdt 1
Rockingham, NC, Rockingham-Hamlet, GPS RWY 31, Orig
Wadesboro, NC, Anson County, NDB RWY 17, Amdt 2
Van Wert, OH, Van Wert County, NDB RWY 9, Amdt 2
Van Wert, OH, Van Wert County, GPS RWY 9, Orig
Van Wert, OH, Van Wert County, GPS RWY 27, Orig
Austin, TX, Austin Executive Airpark, GPS RWY 18, Orig, CANCELLED
Neillsville, WI, Neillsville Muni, NDB RWY 27, Amdt 6
Neillsville, WI, Neillsville Muni, GPS RWY 27, Orig

[FR Doc. 99–18354 Filed 7–16–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 98F–0894]

Secondary Direct Food Additives Permitted in Food for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a mixture of peroxyacetic acid, hydrogen peroxide, and 1-hydroxyethylidene-1,1-diphosphonic acid as an antimicrobial agent on fruits and vegetables that are not raw agricultural commodities without the requirement of a potable water rinse following treatment. This action is in response to a petition filed by Ecolab, Inc.

DATES: This regulation is effective July 19, 1999; submit written objections and requests for a hearing by August 18, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mary E. LaVecchia, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3072.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 20, 1998 (63 FR 56035), FDA announced that a food additive petition (FAP 8A4622) had been filed by Ecolab, Inc., 370 North Wabasha St., St. Paul, MN 55102. The petition proposed to amend the food additive regulation in § 173.315 *Chemicals used in washing or to assist in the peeling of fruits and vegetables* (21 CFR 173.315) to provide for the safe use of a mixture of peroxyacetic acid, hydrogen peroxide, and 1-hydroxyethylidene-1,1-diphosphonic acid as an antimicrobial agent to wash or assist in the lye peeling of fruits and vegetables that are not raw agricultural commodities without the requirement of a potable water rinse following treatment. The use of peroxyacetic acid, hydrogen peroxide, and 1-hydroxyethylidene-1,1-diphosphonic acid is currently approved under § 173.315 provided its use is followed by a potable water rinse (§ 173.315(c)).

The current approval under § 173.315 for the use of peroxyacetic acid, hydrogen peroxide, and 1-hydroxyethylidene-1,1-diphosphonic acid is to control the microbial growth in water that contacts fruits and vegetables that are not raw agricultural commodities (61 FR 46374, September 3, 1996). This intended technical effect is unchanged by this regulation. Under the Antimicrobial Regulation Technical Corrections Act (Pub. L. 105–324), such use in water that comes into contact with the food in the preparing, packing, or holding of the food for commercial purposes is subject to regulation by FDA as a food additive under section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348) and is not subject to regulation by the Environmental Protection Agency (EPA) as a pesticide chemical under section 408 of the act (21 U.S.C. 346a). However, this intended use of peroxyacetic acid, hydrogen peroxide, and 1-hydroxyethylidene-1,1-diphosphonic acid may nevertheless be subject to regulation as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Therefore, manufacturers intending to use this food additive for this intended use should contact EPA to determine whether this use requires a pesticide registration under FIFRA.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, that the additive will achieve its intended technical effect, and therefore, that the regulation in § 173.315 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the potential environmental effects of this rule as announced in the notice of filing for the petition. 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.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before August 18, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in the brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 173

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

2. Section 173.315 is amended in the table in paragraph (a)(2) by removing the entries for ''1-Hydroxyethylidene-1, 1-diphosphonic acid,'' ''Hydrogen Peroxide,'' and ''Peroxyacetic acid'', and by adding paragraph (a)(5) to read as follows:

§ 173.315 Chemicals used in washing or to assist in the peeling of fruits and vegetables.

* * * * *

(a) * * *

(5) Substances identified in this paragraph (a)(5) for use on fruits and vegetables that are not raw agricultural commodities and subject to the limitations provided:

Substances	Limitations
Hydrogen peroxide	Used in combination with acetic acid to form peroxyacetic acid. Not to exceed 59 ppm in wash water.

Substances	Limitations
1-Hydroxyethylidene-1,1-diphosphonic acid	May be used only with peroxyacetic acid. Not to exceed 4.8 ppm in wash water.
Peroxyacetic acid	Prepared by reacting acetic acid with hydrogen peroxide. Not to exceed 80 ppm in wash water.

* * * * *

Dated: July 7, 1999.

Janice F. Oliver,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–18300 Filed 7–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 661

[FHWA Docket No. FHWA–98–4743]

RIN 2125–AE57

Indian Reservation Road Bridge Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule.

SUMMARY: Section 1115 of the Transportation Equity Act for the 21st Century establishes a nationwide priority program for improving deficient Indian reservation road (IRR) bridges and reserves $13 million of IRR funds per year to replace and rehabilitate bridges that are in poor condition. The FHWA, Federal Lands Highway (FLH), and the Bureau of Indian Affairs, Division of Transportation (BIADOT), intend to implement the IRR bridge program (IRRBP) to promptly address the deficient IRR bridges. Toward that end, the FLH and the BIADOT, in consultation with Indian tribal governments (ITG)s and other public commenters, have developed interim project selection/fund allocation procedures for uniform application of the legislation. In this document, the FHWA is announcing interim project selection/fund allocation procedures for the IRRBP.

DATES: This rule is effective on July 19, 1999.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit your comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Wade F. Casey, Federal Lands Highway, HFPD–9, (202) 366–9486; or Ms. Grace Reidy, Office of Chief Counsel, HCC–32, (202) 366–6226; Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Background

Section 1115 of TEA–21, amended title 23, U.S.C., to require the Secretary to establish a nationwide priority program for improving deficient IRR bridges. Of the amounts authorized to be appropriated for IRRs for each fiscal year beginning with FY1998 and continuing through FY2003, section 1115 requires the Secretary, in cooperation with the Secretary of the Interior, to reserve not less than $13 million for projects to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate to, apply sodium acetate/formate or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions, or install scour countermeasures for deficient IRR bridges, including multiple-pipe culverts.

The statute provides that, to be eligible to receive funding under the Nationwide Priority Bridge Program, a bridge must: (i) Have an opening of 20 feet or more; (ii) be on an IRR; (iii) be unsafe because of structural deficiencies, physical deterioration, or functional obsolescence; and (iv) be recorded in the national bridge inventory (NBI) administered by the Secretary under 23 U.S.C. 144(b). The statute further provides that the funds to carry out IRR bridge projects shall be made available only on approval of plans, specifications, and estimates (PS&E) by the Secretary.

In order to implement the IRRBP established in section 1115 of the Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178, 112 Stat. 107, codified at 23 U.S.C. 202(d)(4)(A), and in order to promptly address the deficient IRR bridges, the FHWA and the BIADOT, in consultation with Indian tribal governments (ITG)s and other interested parties, have developed project selection/fund allocation procedures which will be incorporated in the Code of Federal Regulations (CFR) as an interim final rule.

Comments Received on the IRRBP

The FHWA solicited comments through informal meetings with tribal representatives in early December, 1998. A two page summary requesting comment on interim guidance was provided to the tribal representatives and also sent out to tribes not in attendance at those meetings. The two page summary was forwarded via the tribal local technical assistance program centers and the BIA area offices to Indian tribal governments(ITG)s. Following this, the FHWA published a notice in the **Federal Register** on February 12, 1999, requesting comments on the project selection/fund allocation procedures being considered for the IRRBP. The notice provided for a 30-day public comment period ending March 15, 1999. Comments were received from five ITGs, seven Bureau of Indian Affairs (BIA) offices, one county, and one State Department of Transportation. The FHWA considered all comments

received in developing project selection/fund allocation procedures that are set forth in this notice as interim final rules for the IRRBP.

While FHWA is issuing these interim final rules to make funds available as soon as possible this fiscal year, we welcome any comments on them. As discussed subsequently in the ''RULEMAKING ANALYSES'' portion of this preamble, there exists good cause in this instance for adopting interim final rules to ensure that funds may be readily dispersed under the IRRBP. We emphasize that the rule adopted here will be ''interim'' in nature. Prior to issuance of the final rule, the FHWA will invite and actively consider comments introduced concerning this action and will assess how the IRRBP is working, including the fund allocation process based on experience with these rules. As the FHWA gathers more experience and feedback with the project selection/fund allocation process under the interim final rules, the FHWA will revisit the funding allocation process and propose appropriate changes as necessary to insure the operational effectiveness of the IRRBP. The FHWA intends to fully utilize IRRBP funds and to continually monitor the performance of the program to insure that all IRRBP funds are fully utilized. The funding allocation procedures will be influenced by our experience under these interim final rules.

Comments introduced in response to general issues concerning the IRRBP raised in the prior notice are addressed in the Section-by-Section Analysis, that follows.

Section-by-Section Analysis

1. What is the Total Funding Available for the IRR Bridge Program? (§ 661.15)

The majority of commenters made no remark on this issue. Three commenters indicated that they mostly agree, generally agree or that no comment was necessary.

FHWA Position: Total funding available for the IRR Bridge Program remains unchanged from that set forth in the prior notice since funding is that specifically prescribed by statute. The statute provides a total program funding of not less than $13 million for each fiscal year.

2. When Will These Funds Become Available? (§ 661.17)

The majority of commenters made no remark on this issue. Two commenters indicated that they mostly agree or generally agree.

FHWA Position: The statute states that these funds become available on October 1 of each fiscal year.

3. When Does an Eligible Project Receive Funding? (§ 661.19)

The majority of commenters made no remark on this issue. Two commenters indicated that they mostly agree or generally agree.

FHWA Position: The statute provides that these funds are provided after the Secretary of Transportation approves a completed PS&E.

4. How Long Will These Funds be Available? (§ 661.21)

The majority of commenters made no remark on this issue. Three commenters indicated that they mostly agree, generally agree or that no comment was necessary.

FHWA Position: The statute provides that the funds for each fiscal year are available for the year authorized plus three years (a total of four years).

5. What Can These IRR Bridge Funds be Used for? (§ 661.23)

The majority of commenters made no remark on this issue. Three commenters indicated that they mostly agree, generally agree or that no comment was necessary.

FHWA Position: The statute provides that these funds can be used to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate to, apply sodium acetate/formate or other environmentally acceptable, minimally corrosive anti-icing and deicing compositions, or install scour countermeasures for deficient IRR bridges, including multiple pipe culverts.

6. Which Bridges are Eligible? (§ 661.25)

The majority of commenters made no remark on this issue. Five commenters indicated that they mostly agree, generally agree, agree or that no comment was necessary regarding including the provision that if a bridge has been rehabilitated or replaced in the last 10 years, its eligibility would be limited to seismic retrofit or installation of scour countermeasures.

FHWA Position: We modified our position announced in the prior notice that any bridges constructed within the last ten years be excluded from the program. This position is consistent with FHWA policy. It reads as follows. The statute provides that to be eligible to receive funding, a bridge must: (i) have an opening of 20 feet or more; (ii) be on an IRR; (iii) be unsafe because of structural deficiencies, physical deterioration or functional obsolescence; and (iv) be recorded in the NBI maintained by the FHWA. In view of the limited availability of funds, and under 23 U.S.C. 204(a), recognition of the need for all Federal roads to be treated under uniform policies that apply to Federal-aid highways, if a bridge has been constructed, rehabilitated or replaced in the last 10 years, its eligibility would be limited to seismic retrofit or installation of scour countermeasures.

7. When is a Bridge Eligible for Replacement? (§ 661.27)

The majority of commenters made no remark on this issue. Four commenters indicated that they generally agree or agree with the eligibility requirements for bridge replacement.

FHWA Position: As discussed in the previous notice, given that 23 U.S.C. 204(a) recognizes the need for all Federal roads to be treated under uniform policies that apply to Federal-aid highways, to be eligible for replacement, the bridge must be considered deficient for reasons of structural deficiency or functional obsolescence. The bridge also must have a sufficiency rating of less than 50 to be eligible for replacement.

The BIA Navajo Area Office felt that the procedures should include a provision for replacement of deficient bridges which otherwise would be only eligible for rehabilitation, in cases where a section of roadway is reconstructed to meet current roadway standards.

FHWA Response: The proposed procedures allow for a deficient bridge, which is eligible for rehabilitation, to be replaced if the total life cycle costs for rehabilitation exceed the replacement costs. Hence, when a bridge is eligible for replacement it would be upgraded to meet current standards.

Another commenter, the Eastern Band of Cherokee Indians, wanted a definition for functional obsolescence.

FHWA Response: A functional obsolete bridge is one in which the deck geometry, load carrying capacity (comparison of the original design load to the State legal load), clearance, or approach roadway alignment no longer meets the usual criteria for the system of which it is an integral part. We will include this definition in the rules at § 661.5.

8. When is a Bridge Eligible for Rehabilitation? (§ 661.29)

The majority of commenters generally agree with the eligibility requirements for bridge rehabilitation.

FHWA Position: As discussed in the prior notice, for reasons corresponding

to those addressed in item 7 concerning replacement eligibility, to be eligible for rehabilitation, a bridge must be considered deficient for reasons of structural deficiency or functional obsolescence. Also, a bridge must have a sufficiency rating of less than or equal to 80 to be eligible for rehabilitation. A bridge would be eligible for replacement if the total life cycle cost for bridge rehabilitation exceeds the costs to replace.

The BIA Phoenix Area Office commented that the IRRBP should only address bridges with sufficiency ratings (SR) under 50 at this time.

FHWA Response: The IRRBP was established to reduce the number of deficient IRR bridges. In addition to bridges with SR less than 50, the IRRBP would include IRR bridges having a sufficiency rating of 80 or less and having a status of either structurally deficient (SD) or functionally obsolete (FO), assuming that the bridge meets the other eligibility requirements of the IRRBP.

9. How Does Ownership Impact Project Selection? (§ 661.31)

The majority of commenters made no remark on this issue.

FHWA Position: As discussed in the prior notice, since the Federal government has both a trust responsibility and owns the BIA bridges on Indian reservations, primary consideration would be given to funding construction projects for deficient BIA owned IRR bridges. We emphasize that consideration could also be given to the funding of construction projects for the deficient non-BIA, IRR bridges.

On this question four commenters wanted to see all IRRBP funds going toward BIA owned IRR bridges.

FHWA Response: The IRRBP was established to reduce the number of deficient IRR bridges, not just BIA owned IRR bridges.

The Eastern Band of Cherokee Indians commented that ownership should not be an issue.

FHWA Response: ITGs do provide input as to what bridges are to be chosen for rehabilitation or replacement following eligibility requirements for the IRRBP, regardless of who owns the bridge. However, ownership is an issue since the State and counties have ownership and primary responsibility for their bridges. Therefore, a smaller percentage of available funds has been set aside for non-BIA IRR bridges, since States and counties have access to Federal-aid and other funding to replace and rehabilitate their bridges and because 23 U.S.C. 204(c) requires that IRR funds be supplemental to and not in lieu of other funds apportioned to the State. For these reasons, the IRRBP should not fully fund non-BIA owned IRR bridges.

10. Do IRRBP Projects Have to be on a Transportation Improvement Program (TIP)? (§ 661.33)

The majority of commenters made no remark on this issue. Three commenters indicated that they agree with the discussion in our prior notice.

FHWA Position: As discussed in the prior notice, yes, all IRRBP projects have to be listed on an approved TIP. Under 23 U.S.C. 204(j), IRR bridges must appear on the BIA's IRRBP TIP and be forwarded to the State.

11. What Percent of the Contract Authority in any Fiscal Year is Available for Use on BIA Owned Bridges and non-BIA Owned IRR Bridges? (§ 661.35)

The majority of the commenters wanted to see 100 percent of the IRRBP funds going toward BIA owned IRR bridges.

FHWA Response: The statute established this program for deficient IRR bridges and did not simply prescribe the IRRBP funds for sole use on BIA owned IRR bridges.

The Eastern Band of Cherokee Indians commented that there should be no distinction in ownership. Another commenter, Isabella County in Michigan, felt that non-BIA IRR bridges serve Tribal communities and to limit the annual funding for these bridges would be a disservice to the Tribal community.

FHWA Response: While the Federal government has both a trust responsibility and ownership of the BIA bridges on Indian reservations, States and counties also have a responsibility and themselves own other IRR bridges. Therefore, the IRRBP which is funded exclusively by the Federal government, should not bear the full burden of rehabilitation and replacement costs associated with non-BIA owned IRR bridges. Ownership is relevant in determining the percentage of funding for non-BIA IRR bridges and is an issue since the States and counties have ownership and primary responsibility for their bridges.

The Saginaw Chippewa Indian Tribe of Michigan stated that the eastern tribes were being penalized.

FHWA Response: Under the former ''not less than 1 percent'' Highway Bridge Replacement and Rehabilitation Program (HBRRP), funding was State specific and the bulk of funding was provided for the tribes east of the Mississippi River. The IRRBP is correcting an inequity that the HBRRP created. Under the IRRBP, funding is not State specific, but can be used in any State. The only tribes that are penalized are ones which fail to submit PS&E packages for IRRBP funding.

The Cherokee Nation commented that the Oklahoma tribes are not treated fairly under the proposed procedures.

FHWA Response: While the 80–20 split is designed to provide the bulk of the funding for BIA bridges, it also takes into account the need to fund non-BIA owned IRR bridges. The $2.6 million provided each fiscal year (1998–2003) will enable the elimination of numerous deficient non-BIA owned IRR bridges in Oklahoma or any other State regardless of geographic location to the extent ITGs are willing to participate. Presently there is $5.2 million available for non-BIA owned IRR bridges under the 80–20 split approach (representing FY 1998 and FY 1999 available funds).

We modified our position announced in the prior notice to provide carryover funding for non-BIA owned IRR bridges from one fiscal year to the next, to provide a uniform carryover policy for both BIA and non-BIA owned IRR bridges. It reads as follows. Up to 80 percent ($10.4 million) of funding in any fiscal year would be available for use on BIA owned IRR bridges. This would leave 20 percent ($2.6 million) of funding in any fiscal year that would be available for use on non-BIA owned IRR bridges. A smaller percentage of available funds has been set aside for non-BIA IRR bridges, since States and counties have access to Federal-aid and other funding to replace and rehabilitate their bridges and that 23 U.S.C. 204(c) requires that IRR funds be supplemental to and not in lieu of other funds apportioned to the State. The program policy will be to maximize the number of IRR bridges participating in the IRRBP in a given fiscal year regardless of ownership.

12. What Percent of a Specific Project's Construction Costs is Covered Under This Program? (§ 661.37)

The majority of commenters had no remark on this issue.

FHWA position: As discussed in our prior notice, the following funding provisions apply in administration of the IRRBP: (i) 100 percent funding would be provided for a BIA owned IRR bridge; (ii) up to 80 percent of the funding would be provided for a State, county, or locally owned non-BIA IRR bridge; (iii) States, counties, local and tribal governments would be required to provide at least 20 percent of the funds for non-BIA IRR bridges; (iv) the funding ceiling for any single non-BIA

IRR bridge project would be $1.5 million.

Addressing this question, four commenters wanted to see 100 percent of funding going towards BIA owned IRR bridges.

FHWA Response: We recognize the need to include non-BIA owned IRR bridges in this program since the statute does not exclude them.

The Pueblo of Zuni commented that they wanted to see the 80 percent for non-BIA owned IRR bridges changed to 75 percent.

FHWA Response: The 80–20 split is consistent with other FHWA programs and we believe that this allocation of funds is reasonable.

Another commenter, the BIA Great Lakes Agency, recommended changing the funding ceiling for any single non-BIA IRR bridge project from $1.5 million to $500,000.

FHWA Response: There is presently $5.2 million available in FY 1998 and 1999 funds for non-BIA owned IRR bridges. The FHWA believes the $1.5 million is a reasonable limit.

13. When are IRR Bridge Projects Eligible for Funding? (§ 661.39)

Six commenters had no remark on this issue.

FHWA position: We have modified our position announced in the prior notice by deleting ''control schedule'' and replacing with ''IRRBP TIP'' in order to reduce some of the documentation requirements. It reads as follows. The statute provides that IRR funds to carry out IRRBP projects shall be made available only on approval of the PS&E by the Secretary. Approval consists of having completed and approved bridge design, specifications and estimates. The project must be ready for construction, right of way must have been acquired, and the project must be awarded within 120 calendar days of funding. A copy of the FHWA or BIADOT PS&E approval letter, certification checklist and IRRBP TIP must be forwarded by the area office to the BIADOT/FLH for review and acceptance. Submittal of an incomplete application package would form the basis for project disapproval and the BIA area office would have to revise and resubmit the package.

Three commenters, the BIA Navajo Area Office, the Navajo Nation and the BIA Aberdeen Area Office were concerned with the 120 calendar day award period.

FHWA Response: If the BIA Area office cannot award a contract within 120 days, those funds should be made available to ones that can. The BIA Area offices in partnership with ITGs, all need to be pro-active in awarding bridge construction contracts once they receive approval and funding. It is important that obligation limitation in a given fiscal year be fully utilized so as not to impact regular IRR program obligation limitation in the next fiscal year.

The BIA Billings Area Office stated that there is no requirement in some area certification acceptance plans for FHWA approval.

FHWA Response: Based on the current BIA/FHWA Stewardship plan, there are no BIA Area offices with second level approval authority for IRR bridge projects.

The Confederated Salish and Kootenai Tribes of the Flathead Nation, wanted to know what funding can be used for project development.

FHWA Response: Regular IRR program funds can be used for project development. The IRRBP funds can only be used for construction and construction engineering (CE) and may not be used for project development. We will address this comment in § 661.13 of the rules.

The New York State DOT seemed concerned that somehow the FHWA would override State, local or ITG selection of projects. The ITG should be involved in selection of candidate bridge projects.

FHWA Response: We are not establishing the priority of which IRR bridges should be chosen but will provide a list of bridges which are in fact deficient. We do however, have approval authority via review of the application packages being submitted.

The BIA Aberdeen Area Office, was concerned with insufficient staffing levels at the FHWA Division Offices.

FHWA Response: Because of the concern for the ability of an FHWA Division Office to review a PS&E package in a timely manner, the term ''FHWA Division Office'' will be replaced with ''FHWA or BIADOT'' in § 661.39 of the rules.

14. What Does a Complete Application Package Consist of? (§ 661.41)

Six commenters had no remark on this issue. The BIA Navajo Area Office stated that the FHWA was requiring too much documentation.

FHWA Response: We have modified our position announced in the prior notice by deleting ''control schedule'' and replacing it with ''IRRBP TIP'' in order to reduce some of the documentation requirements. Aside from this, in order for the 12 BIA area offices to operate consistently and fairly with each other, we believe that it is a reasonable requirement for sufficient documentation to be supplied with each application, to ensure that the PS&E package is complete and the project is ready for construction.

FHWA Position: The FHWA has also included a requirement that non-BIA IRR bridge projects be supported with a tribal resolution. The FHWA is including this requirement to insure that public authorities confer with the ITGs on the issue of replacement and rehabilitation of deficient non-BIA owned IRR bridges if and when public authorities apply for IRRBP funding. This will be included in § 661.31, § 661.39 and § 661.41 of the rules.

The BIA Aberdeen Area Office was concerned with insufficient staffing levels at the FHWA Division Offices which may not be sufficient enough to review PS&Es.

FHWA Response: The term ''Division Office'' is deleted and ''or BIADOT'' is added. In cases where the divisions are not sufficiently staffed to review PS&Es, the review can be accomplished by the BIADOT or the FHWA Federal Lands Highway Division offices. This is delineated in the FHWA/BIADOT Stewardship plan of July 1996. Based on the preceding discussions, the response to this question is as follows: Therefore, a complete application package would consist of the following: the FHWA or BIADOT PS&E approval letter, certification checklist and IRRBP TIP. In addition to the preceding items, for non-BIA IRR bridges, the application package must also include a tribal resolution supporting the project.

15. How are the FY 1998 Projects To Be Treated? (§ 661.43)

The majority of commenters had no remark on this issue. Two commenters agreed with the discussion in our prior notice.

FHWA Position: As discussed in our prior notice, in order not to penalize any BIA area office which completed PS&E packages in FY 1998 that were not funded because the project selection/fund allocation procedures for distribution of funds for FY 1998 were not in place, the funds for approved projects would be made available to the BIA area offices on receipt and acceptance of their application packages.

Two commenters, the BIA Navajo Area Office and Navajo Nation, were concerned regarding bridge projects where the award for the construction contract occurred in FY 1998 using regular IRR program funds. These commenters wanted reimbursement from the IRRBP funds.

FHWA Response: This issue has been addressed in a FHWA policy letter

dated February 19, 1999, to allow for reimbursement on a case-by-case basis within one year of award.

The BIA Aberdeen Area Office expressed concern with obtaining ''accurate detour length.''

FHWA Response: Detour length is national bridge inventory (NBI) item number 19, which is included with each bridge file. This item should be checked along with other condition data by the bridge inspectors performing the biennial inspections for the BIA and by the BIADOT which performs oversight quality assurance/quality control checks of the inspection data.

16. How is a List of Deficient Bridges To Be Generated? (§ 661.45)

The majority of commenters had no remark on this issue.

FHWA position: As discussed in our prior notice, in consultation with the BIA, a list of deficient BIA IRR bridges would be developed each fiscal year by the FHWA based on the annual April update of the NBI. The NBI is based on data from the inspection of all bridges. Likewise, a list of non-BIA IRR bridges would be obtained from the NBI. These lists would form the basis for identifying bridges that would be considered potentially eligible for participation in the IRRBP. Two separate master bridge lists (one each for BIA and non-BIA IRR bridges) would be developed and would include, at a minimum, the following: (i) Sufficiency rating; (ii) status (structurally deficient or functionally obsolete); (iii) average daily traffic (NBI item 29); (iv) detour length (NBI item 19); and (v) truck average daily traffic (NBI item 109). These lists would be provided by the FHWA to the BIADOT for publication and notification of affected BIA area offices, ITGs, and State and local governments.

The BIA area offices in consultation with Indian tribal governments, are encouraged to prioritize the design for bridges that are structurally deficient over bridges that are simply functionally obsolete, since the former is more critical structurally than the latter. Bridges that have higher average daily traffic (ADT) should be considered before those that have lower ADT. Detour length should also be a factor in selection and submittal of bridges, with those having a higher detour length being of greater concern. Lastly, bridges with high truck ADT should take precedence over those which have lower truck ADT. Other items of note should be whether school buses use the bridge and the types of trucks that may cross the bridge and the loads imposed.

The New York State DOT was concerned that the decision of which bridge will be programmed for the IRRBP would be accomplished at the local level.

FHWA Response: There is nothing in the current language to preclude this. BIA area offices in consultation with ITGs must be involved in selection of candidate bridge projects since, as users of the facility, they are most familiar with local needs, and safety implications, as well as other factors related to priorization. The master list based on the national bridge inventory (NBI) would identify bridges which are deficient; however, prioritization would be made at the local level. We are not establishing the priority—merely providing a list of IRR bridges which are deficient.

Three commenters, the Navajo Nation, BIA Billings Area Office and BIA Fort Belknap Agency, thought only one list would be necessary, i.e., one for BIA owned IRR bridges.

FHWA Response: In order to include non-BIA owned IRR bridges two lists will need to be developed.

17. In the Event of Project Cost Overruns, How Would They be Funded? (§ 661.47)

Seven commenters had no remark and four agreed with the FHWA on this issue. The New York State DOT wanted the States to retain any ''cost savings.''

FHWA Response: The IRRBP funds are reimbursable and project specific. As such they are to be returned to the BIADOT/FLH in cases where ''under runs'' or ''savings'' occur.

The BIA Phoenix Area Office wanted to see specific language to clarify the process for handling overruns and further argued that under runs also should be considered.

FHWA Response: The question of under runs is addressed in item number 21. We have provided the following additional language to the rules: The BIA area road engineer (ARE) would request additional funding for a specific bridge project and submit a request with appropriate justification along with an explanation as to why this additional funding is necessary.

Based on the preceding discussion, the response to the question of cost overrun treatment is as follows: Because of the critical nature of this program, BIA area road engineer approved costs in excess of the project estimate could be funded out of this program depending on the availability of funds and subject to BIADOT/FLH project approval procedures. The AREs would request additional IRRBP funding for a specific bridge project and submit a request with appropriate justification along with an explanation as to why this additional IRRBP funding is necessary. Likewise, project cost over runs may be funded out of regular IRR program funds.

18. Could Regular IRR Funds be Used to Fund a Bridge Project? (§ 661.49)

Seven commenters had no comment and two agreed with the FHWA position set forth in the prior notice.

FHWA Position: Regular IRR construction funds can be used to fund a bridge project with the concurrence of the FHWA, BIADOT and the ARE.

The BIA Billings Area Office expressed concern that the IRR funds would be provided for non-BIA owned IRR bridges. The same commenter noted the desire to strike, ''Note, IRR funds may not be used to match state HBRRP funds.''

FHWA Response: In response to this comment, the ITG may elect to use their IRR funds for non-BIA IRR bridges. Title IX of Pub. L. 105–206, sec. 1115(f)(3), changed the ability to use IRR funds to match State HBRRP funds. The use of the HBRRP funds is outside the scope of this document.

The BIA Aberdeen Area Office wanted to know why the concurrence of the FHWA and the BIADOT is needed to use IRR program funds to fund a bridge construction project?

FHWA Response: The BIADOT and the FHWA have approval authority for all IRR projects which appear on a TIP, therefore concurrence is a requirement.

19. Could Bridge Maintenance Be Performed With These Funds? (§ 661.51)

Eight commenters have no comment and three agree with the FHWA position stated in the prior notice.

FHWA Position: As discussed in our prior notice, the response to this question is as follows. No, bridge maintenance type repairs would not be within the scope of funding, e.g., guard rail replacement, deck timber repair, delineators replacement, etc. There are maintenance funds available through annual Department of the Interior appropriations for use on BIA owned bridges. These Department of the Interior bridge maintenance funds would be the appropriate funding source for bridge maintenance.

20. Once Eligibility of a Bridge Project has Been Determined, how Will the Project be Funded/Programmed? (§ 661.9)

Several alternatives were set forth in the prior notice and we considered them fully in our review. For ease of

reference, the alternatives are presented in tabular form at the end of this topic.

For BIA owned IRR bridges, the Pueblo of Zuni, BIA Aberdeen Area Office and BIA Great Lakes Agency generally preferred alternative 1; the Eastern Band of Cherokee Indians preferred alternative 1 along with a modified alternative 4; the New York State DOT preferred alternative 2; the Cherokee Nation preferred a combination of alternatives 2, 3 and 5 coupled with an Indian population factor; the Navajo Nation and the BIA Navajo Area Office preferred alternative 3; the BIA Billings Area Office and BIA Fort Belknap Agency preferred alternative 4; and the Confederated Salish and Kootenai Tribes of the Flathead Nation preferred alternative 5. The BIA Phoenix Area Office wanted to see a triage approach involving funding of the ''worst first''.

Most commenters did not want to see funding for non-BIA owned IRR bridges. Four commenters, the Cherokee Nation, Eastern Band of Cherokee Indians, Saginaw Chippewa Indian Tribe of Michigan and Isabella County, desire funding for non-BIA owned IRR bridges.

FHWA Response: The purpose of the IRRBP is to optimize the number of IRR bridges rehabilitated or replaced with the intent of eliminating as many deficient IRR bridges as possible during the TEA–21 period of authorization. Alternative 4 provides a first in and first out approach to fund these projects and, as such, would meet the program objective. Alternative 5, priorization of projects, would be used in cases where application packages arrive at the same time and the procedure outlines a method to settle any issues if such a situation were to occur. Alternative 4 is believed to maximize the number of IRR bridges participating in the IRRBP in a given fiscal year. Funding for the IRRBP should be fully utilized in a given fiscal year to eliminate deficient IRR bridges which pose a potential safety problem for the Tribes and motoring public; to maximize the number of bridges participating in the IRRBP; and to reduce the impact of obligation limitation deductions on the IRR program from one fiscal year to the next by fully obligating available IRRBP funding. We realize that this whole program hinges on ITGs using their regular IRR program funds for development of PS&E packages regardless of the approach being used.

For non-BIA IRR bridges, the procedures using 20 percent of the IRRBP funds should parallel the same procedures adopted for the BIA owned IRR bridges.

While alternative 1, deficient bridge deck area percentage, provides allocation of funds to be set aside for at a specific BIA Area Office, it has the potential to tie bridge program funds up among the 12 BIA area offices for an unknown period of time. There is the likelihood of some BIA Area Offices not having PS&E packages in order to use up all of the available funding under this alternative. This being the case, it would impact the other BIA Area Offices regarding the amount of regular IRR funds available in the following fiscal year. Alternative 1 is not likely to maximize the rehabilitation and replacement of deficient IRR bridges. Alternative 2, deficient bridge deck area percentage—State specific, follows along the same line as alternative 1, but would be State specific.

Alternative 3, percentage of deficient bridges, does not reflect a true measure for programming bridges since it is based on numbers of deficient bridges. A small bridge will have the same value as a larger, more costly bridge. The costs will not be proportional and therefore not maximize the use of the IRRBP funding.

Alternatives 1, 2 and 3 essentially have similar limitations imposed on the bridge program as the previous ''not less than 1 percent'' HBRRP which many people complained about. Congress eliminated the ''not less than 1 percent'' HBRRP with the TEA–21 Restoration Act. The basis of the complaints had to do with inequities in funding with more going toward bridges east of the Mississippi River when a greater number of deficient IRR bridges are actually to the west of the Mississippi River. In some cases the HBRRP funding was not being fully utilized.

We believe that after determination of bridge project eligibility, funding and/or programming should consist of a combination of alternatives 4 and 5. Based on the preceding discussion, the response to the question of how projects will be funded/programmed is as follows: Funding and/or programming of construction projects for BIA owned IRR bridges would be based on the order of receipt of a complete application package, i.e., eligibility requirements met, PS&E package is complete, etc. All application packages would be placed in a queue upon submission to the BIADOT and date stamped. This submission queue would form the basis for prioritization during any fiscal year. After the queue for the FY is filled up, that is, the obligation limitation is used up, a queue for the following FY would be established.

In those cases where application packages have arrived at the same time, application packages would be ranked and prioritized based on: (i) Bridge sufficiency rating; (ii) bridge status with structurally deficient having precedence over functionally obsolete; (iii) bridges on school bus routes; (iv) detour length; (v) ADT; and (vi) truck ADT. Funding and approval would be based on this priority ranking.

ALTERNATIVES FOR THE IRR BRIDGE PROGRAM

	Deficient IRR Bridges			
	Alt No.	BIA	Alt No.	Non-BIA
Bridge funds to be allocated to the BIA Area Offices: Based on bridge deck area for deficient bridges.	1	Calculation made of the deficient bridges within any BIA Area Office along with percent of deficient bridge deck areas. That percent of the fund is then made available to each Area Office. Funds distributed to Areas and can be spent against bridge projects regardless of State.	1	Calculation made of the deficient bridges within any BIA Area Office along with percent of deficient bridge deck areas. That percent of the fund is then made available to each Area Office. Funds distributed to Areas and can be spent against bridge projects regardless of State. If no, non-BIA bridge projects are identified in any FY, those funds would be made available for BIA owned bridges

ALTERNATIVES FOR THE IRR BRIDGE PROGRAM—Continued

	Deficient IRR Bridges			
	Alt No.	BIA	Alt No.	Non-BIA
Based on bridge deck area for deficient bridges but State specific.	2	Calculation made of the deficient bridges within any BIA Area Office along with percent of deficient bridge deck areas. That percent of the fund is then made available to each Area Office. Funds distributed to Areas and can be spent only against bridge projects in the specific state on which the deficient bridge funds were generated (similar to the not less than 1 percent HBRRP).	1	Intentionally left blank
Based on *number* of deficient bridges.	3	Calculation made of the number of deficient bridges within a given BIA Area Office. Based on the number of deficient bridges, a percent of the fund is then made available to each Area Office. Funds distributed to Areas and can be spent against bridge projects regardless of State.		Intentionally left blank
Based on order of receipt of the PS&E package (first in first out).	4	Bridges are placed in a queue based on the order of receipt of a complete PS&E package. Funds are made available to the BIA Area Office based on the order of submission.	2	Bridges are placed in a queue based on the order of receipt of a complete PS&E package. Funds are made available to the BIA Area Office based on the order of submission. If no, non-BIA bridge projects are identified in any FY, those funds would be made available for BIA owned bridges
Based on ranking of received PS&E Packages.	5	Bridges are prioritized and ranked based on SR, status, school bus route, detour length, ADT, and truck ADT. Funds are allocated to the BIA Area Office based on the ranking.	3	Submitted complete PS&E packages are ranked and prioritized by sufficiency rating, etc. Funds are made available to the Area Office based on the priority ranking. If no, non-BIA bridge projects are identified in any FY, those funds would be made available for BIA owned bridges

21. Under Alternative Procedures Presented Above, After a Bridge Project Has Been Completed, What Happens With the Excess or Surplus Contract Authority? (§ 661.11)

The majority of commenters had no comment on this issue.

Three commenters, the BIA Navajo Area Office, the Navajo Nation and the BIA Great Lakes Agency, wanted to see excess funds reserved for use on another bridge project involving that BIA Area office. The BIA Billings Area Office and the BIA Fort Belknap Agency, wanted to see excess funds being sent back to BIADOT/FHWA for use on additional approved IRR bridge projects. The New York State DOT, wanted the funds to be reserved for use within the State.

FHWA Response: Since the funding is project specific, once a bridge construction project has been completed under this program, any excess or surplus funding would be returned to BIADOT/FHWA. These surplus funds would be for use on additional approved deficient IRR bridge projects. This is based on the need for maximizing the numbers of bridges to be either replaced or rehabilitated in a nationwide program. Since this is a cost reimbursable program, there are no savings and cost underruns shall be returned to BIADOT/FHWA.

Rulemaking Analyses and Notices

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, allows agencies engaged in rulemaking to dispense with prior notice and opportunity for comment when the agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to public interest. For the reasons set forth below, the FHWA has determined that prior notice to the public on this action is unnessary and contrary to the public interest.

The FHWA has determined that prior notice and opportunity for comment are unnecessary because comments regarding the project selection/fund allocation procedures proposed for the IRRBP were solicited in a February 12, 1999, **Federal Register** notice along with informal meetings on this subject that were held at various locations during December 1998. We have reviewed all comments received in response to the published notice and those introduced at the public meetings and have incorporated changes to the original document where necessary.

The criticality of having in place the project selection/fund allocation procedures for the IRRBP cannot be over emphasized since there are deficient IRR bridges which are both on and off reservation which require remedy to safety, functional and structural deficiencies. These deficient IRR bridges pose a safety threat to residents of the Indian reservation as well as the motoring public.

The agency has currently identified 163 deficient BIA owned IRR bridges where IRRBP funds can be used to alleviate the safety deficiencies identified in bridge inspection reports and subsequent data submitted to the NBI. Likewise, there are approximately 940 non-BIA owned IRR bridges which are also deficient. While the IRRBP may not be able to replace or rehabilitate all bridges which are deficient, it attempts to correct ones which have a dire need; these are ones that have been chosen for participation in the IRRBP by the Indian tribal governments.

By proceeding with implementation of the program procedures prescribed herein, the FHWA plans to fully utilize IRRBP funding by eliminating deficient IRR bridges which pose a potential safety problem for the Tribes and motoring public; maximizing the number of bridges participating in the IRRBP; and reducing the impact of obligation limitation deductions on the IRR program from one fiscal year to the next.

The IRRBP funds were available in the fourth quarter of FY 1998; however, the project selection/fund allocation procedures were not in place at that time to allow the FHWA to legally release these funds. We have essentially lost use of these funds for one year (FY1998) of the four year funding provided in TEA–21. Unless these procedures are put in place very soon, we also may not be able to provide the IRRBP funds to the BIA with enough time to obligate against the bridge projects which are waiting to be funded in the current fiscal year (FY1999).

In summary: (1) The regulations are necessary to put in place the project selection/fund allocation procedures for the IRRBP immediately; (2) the IRRBP is vitally important to alleviate deficient IRR bridges, bridges which are crucial to the well being of Native Americans living both on and off reservations, as well as the motoring public using these bridges; (3) IRR bridges play an important role in support of the transportation infrastructure on reservations; and (4) the regulations govern a program designed to alleviate safety, structural and functional deficiencies for IRR bridges of which there is a immediate and critical need.

In conclusion, any further delay in adopting the prescribed procedures may impact safety of the motoring public in general and the Tribes in particular using these deficient IRR bridges. Accordingly, we believe that imposition of notice and comment procedures prior to adoption of this rule would prove potentially detrimental to safety and, thus, contrary to the public interest.

Nevertheless, we will invite public comment in response to the interim final rule. Comments received will be carefully considered in evaluating whether any change to the interim rule adopted here is warranted.

The APA also allows agencies, upon a finding of good cause, to make a rule effective immediately upon publication, 5 U.S.C. 553(d)(3). The FHWA has determined that good cause exists in this instance to make this rule effective for the following reasons: (1) The regulations are necessary to put in place the project selection/fund allocation procedures for the IRRBP immediately; (2) the IRRBP is vitally important to alleviate deficient IRR bridges, bridges which are crucial to the well being of Native Americans living both on and off reservations, as well as the motoring public using these bridges; (3) IRR bridges play an important role in supporting the transportation infrastructure on reservations; and (4) the regulations govern a program designed to alleviate safety, structural and functional deficiencies for IRR bridges of which there is a immediate and critical need. We emphasize that making these rules effective immediately will ensure that IRRBP funds may be readily dispersed and, thus, will be responsive to the goal of fully utilizing IRRBP funding in a given fiscal year to maximize the number of bridges participating in the program.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities including Indian Tribal and local governments. The funding available under the IRRBP is thought to have a beneficial economic impact on small entities; however, the funding impact is not expected to be significant. Accordingly, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities, except in a positive manner.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Polices and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking action will be minimal; therefore, a full regulatory evaluation is not required. The $13 million in IRRBP funds comprises only 6 percent of the overall IRR program funds (FY 1999) and does not have a significant economic impact on the IRR program. Therefore, the economic impact is considered minimal.

Unfunded Mandates Reform Act of 1995

This interim rule does not impose a Federal mandate as defined by the unfunded mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205 Highway planning and construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain information collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this action for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 661

Bridges, Highways and roads, Indian reservation roads and bridges.

Issued on: July 9, 1999.

Kenneth R. Wykle,

Administrator.

In consideration of the foregoing, the FHWA is amending title 23, Code of Federal Regulations, Chapter I, as set forth below:

1. Add part 661 to read as follows:

PART 661—INDIAN RESERVATION ROAD BRIDGE PROGRAM

Sec.

661.1 What is the purpose of this regulation?
661.3 Who must comply with this regulation?
661.5 What definitions apply to this regulation?
661.7 What is the Indian Reservation Road Bridge Program (IRRBP)?
661.9 How will the bridge project be funded/programmed once eligibility has been determined?
661.11 After a bridge project has been completed what happens with the excess or surplus funding?
661.13 What restrictions are there on the use of the IRRBP funds?

661.15 What is the total funding available for the IRR Bridge Program?
661.17 When will these funds become available?
661.19 When does an eligible project receive funding?
661.21 How long will these funds be available?
661.23 What can these IRR bridge funds be used for?
661.25 What are the criteria for bridge eligibility?
661.27 When is a bridge eligible for replacement?
661.29 When is a bridge eligible for rehabilitation?
661.31 How does ownership impact project selection?
661.33 Do IRRBP projects have to be on a transportation improvement program (TIP)?
661.35 What percent of the funding in any fiscal year is available for use on BIA owned IRR bridges and non-BIA owned IRR bridges?
661.37 What percent of a specific project's construction costs is covered under this program?
661.39 When are IRR bridge projects eligible for funding?
661.41 What does a complete application package consist of?
661.43 How are the FY 1998 projects to be treated?
661.45 How is a list of deficient bridges to be generated?
661.47 In the event of project cost over runs, how would they be funded?
661.49 Could regular IRR funds be used to fund a bridge project?
661.51 Could bridge maintenance be performed with these funds?

Authority: 23 U.S.C. 120(j) and (k), 202, and 315; 49 CFR 1.48.

§ 661.1 What is the purpose of this regulation?

The purpose of this regulation is to prescribe policies for project selection and fund allocation procedures for administering the Indian Reservation Road Bridge Program (IRRBP).

§ 661.3 Who must comply with this regulation?

Public authorities must comply to participate in the IRRBP by preparing plans, specification and estimates (PS&E) for deficient Indian Reservation Road (IRR) bridges and make application for construction funds for the replacement or rehabilitation of these bridges.

§ 661.5 What definitions apply to this regulation?

The following definitions apply to this regulation:

Construction engineering (CE) is the supervision and inspection of construction activities; additional staking functions considered necessary for effective control of the construction operations; testing materials incorporated into construction; checking shop drawings; and measurements needed for the preparation of pay estimates.

Functional obsolescence (FO) is the state or process of being one in which the deck geometry, load carrying capacity (comparison of the original design load to the State legal load), clearance, or approach roadway alignment no longer meets the usual criteria for the system of which it is an integral part.

Indian reservation road means a public road that is located within or provides access to an Indian reservation or Indian trust land or restricted Indian land which is not subject to fee title alienation without the approval of the Federal Government, or Indian and Alaska Native villages, groups, or communities in which Indians and Alaskan Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians.

Indian reservation road bridge means a structure located on an Indian reservation road (IRR), including supports, erected over a depression or an obstruction, such as water, a highway, or a railway, and having a track or passageway for carrying traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of the openings for multiple boxes; it may also include multiple pipes, where the clear distance between openings is less than half of the smaller contiguous opening.

Public authority means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities.

Public road means any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

Structural deficient (SD) bridge means a bridge that has been restricted to light vehicles only, is closed or requires immediate rehabilitation to remain open.

Sufficiency rating (SR) means the numerical rating of a bridge based on its structural adequacy and safety, essentiality for public use, and its serviceability and functional obsolescence.

§ 661.7 What is the Indian Reservation Road Bridge Program (IRRBP)?

Section 202(d)(4) of title 23, U.S.C., establishes a nationwide priority program for improving deficient Indian reservation road (IRR) bridges and reserves not less than $13 million of IRR funds per year to replace and rehabilitate bridges that are in poor condition. This program which addresses the replacement of deficient IRR bridges is referred to as the IRRBP.

§ 661.9 How will the bridge project be funded/programmed once eligibility has been determined?

(a) Funding and/or programming of construction projects for IRR bridges would be based on the order of receipt of a complete application package, i.e., eligibility requirements met, PS&E package is complete, etc. All application packages would be placed in a queue upon submission to the BIADOT and date stamped. This submission queue would form the basis for prioritization during any fiscal year (FY). After the queue for the FY is filled up, that is, the IRRBP funding is used up, a queue for the following FY would be established.

(b) In those cases where application packages have arrived at the same time, application packages would be ranked and prioritized based on the following criteria:

(1) Bridge sufficiency rating (SR);

(2) Bridge status with structurally deficient (SD) having precedence over functionally obsolete (FO);

(3) Bridges on school bus routes;

(4) Detour length;

(5) Average daily traffic; and

(6) Truck average daily traffic.

§ 661.11 After a bridge project has been completed what happens with the excess or surplus funding?

Since the funding is project specific, once a bridge construction project has been completed under this program, any excess or surplus funding would be returned to BIADOT/FHWA for use on additional approved deficient IRR bridge projects.

§ 661.13 What restrictions are there on the use of the IRRBP funds?

The IRRBP funds can only be used for construction and construction engineering (CE) and may not be used for project development.

§ 661.15 What is the total funding available for the IRR Bridge Program?

The statute provides a total program funding of not less than $13 million for each fiscal year.

§ 661.17 When will these funds become available?

These funds become available on October 1 of each fiscal year.

§ 661.19 When does an eligible project receive funding?

The statute provides that these funds are provided after the Secretary of Transportation (FHWA) approves a completed PS&E.

§ 661.21 How long will these funds be available?

The statute provides that the funds for each fiscal year are available for the year authorized plus three years (a total of four years).

§ 661.23 What can these IRR bridge funds be used for?

The statute provides that these funds can be used to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate to, apply sodium acetate/formate or other environmentally acceptable, minimally corrosive anti-icing and deicing compositions, or install scour countermeasures for deficient IRR bridges, including multiple pipe culverts.

§ 661.25 What are the criteria for bridge eligibility?

(a) Bridge eligibility requires the following:

(1) Have an opening of 20 feet or more;

(2) Be on an IRR;

(3) Be unsafe because of structural deficiencies, physical deterioration or functional obsolescence; and

(4) Be recorded in the national bridge inventory (NBI) maintained by the FHWA.

(b) Bridges that were constructed, rehabilitated or replaced in the last 10 years, will be eligible only for seismic retrofit or installation of scour countermeasures.

§ 661.27 When is a bridge eligible for replacement?

To be eligible for replacement, the bridge must be considered deficient for reasons of structural deficiency or functional obsolescence. Also, the bridge must have a sufficiency rating of less than 50 to be eligible for replacement.

§ 661.29 When is a bridge eligible for rehabilitation?

To be eligible for rehabilitation, the bridge must be considered deficient for reasons of structural deficiency or functional obsolescence. Also, the bridge must have a sufficiency rating of less than or equal to 80 to be eligible for rehabilitation. A bridge would be eligible for replacement if the total life cycle cost for bridge rehabilitation exceeds the costs to replace.

§ 661.31 How does ownership impact project selection?

Since the Federal government has both a trust responsibility and owns the BIA bridges on Indian reservations, primary consideration would be given to funding construction projects for deficient BIA owned IRR bridges. We emphasize that consideration could also be given to the funding of construction projects for the deficient non-BIA, IRR bridges, however; these projects must be supported by a tribal resolution.

§ 661.33 Do IRRBP projects have to be on a transportation improvement program (TIP)?

Yes. All IRRBP projects have to be listed on an approved TIP. Under 23 U.S.C. 204(j), IRR bridges must appear on the BIA's IRRBP TIP and be forwarded to the State.

§ 661.35 What percent of the funding in any fiscal year is available for use on BIA owned IRR bridges and non-BIA owned IRR bridges?

Up to 80 percent ($10.4 million) of funding in any fiscal year would be available for use on BIA owned IRR bridges. This would leave 20 percent ($2.6 million) of funding in any fiscal year that would be available for use on non-BIA owned IRR bridges. A smaller percentage of available funds has been set aside for non-BIA IRR bridges, since States and counties have access to Federal-aid and other funding to replace and rehabilitate their bridges and that 23 U.S.C. 204(c) requires that IRR funds be supplemental to and not in lieu of other funds apportioned to the State. The program policy will be to maximize the number of IRR bridges participating in the IRRBP in a given fiscal year regardless of ownership.

§ 661.37 What percent of a specific project's construction costs is covered under this program?

The following funding provisions apply in administration of the IRRBP:

(a) 100 percent IRRBP funding would be provided for a BIA owned IRR bridge;

(b) Up to 80 percent of the IRRBP funding would be provided for a State, county, or locally owned non-BIA IRR bridge;

(c) States, counties, local and tribal governments would be required to provide at least 20 percent of the funds for non-BIA owned IRR bridges;

(d) The IRRBP funding ceiling for any single non-BIA owned IRR bridge project would be $1.5 million.

§ 661.39 When are IRR bridge projects eligible for funding?

The statute provides that IRR funds to carry out IRRBP projects shall be made available only on approval of the PS&E by the Secretary (FHWA). Approval consists of having completed and approved bridge design, specifications and estimates. The project must be ready for construction, right of way must have been acquired, and the project contract must be awarded within 120 calendar days of funding. A copy of the FHWA or BIADOT PS&E approval letter, certification checklist and IRRBP TIP must be forwarded by the area office to the BIADOT/FLH for review and acceptance. For non-BIA IRR bridges, the application package must also include a tribal resolution supporting the project. Submittal of an incomplete application package would form the basis for project disapproval and the BIA area office would have to revise and resubmit the package.

§ 661.41 What does a complete application package consist of?

A complete application package would consist of the following: the FHWA or BIADOT PS&E approval letter, certification checklist and IRRBP TIP. In addition to the preceding items, for non-BIA IRR bridges, the application package must also include a tribal resolution supporting the project.

§ 661.43 How are the FY 1998 projects to be treated?

In order not to penalize any BIA area office which completed PS&E packages in FY 1998 that were not funded because the project selection/fund allocation procedures for distribution of funds for FY 1998 were not in place, the funds for approved projects would be made available to the BIA area offices on receipt and acceptance of their application packages.

§ 661.45 How is a list of deficient bridges to be generated?

(a) In consultation with the BIA, a list of deficient BIA IRR bridges will be developed each fiscal year by the FHWA based on the annual April update of the NBI. The NBI is based on data from the inspection of all bridges. Likewise, a list of non-BIA IRR bridges will be obtained from the NBI. These lists would form the basis for identifying bridges that would be considered potentially eligible for participation in the IRRBP. Two separate master bridge lists (one each for BIA and non-BIA IRR bridges) will be developed and will include, at a minimum, the following:

(1) Sufficiency rating (SR);

(2) Status (structurally deficient or functionally obsolete);

(3) Average daily traffic (NBI item 29);
(4) Detour length (NBI item 19); and
(5) Truck average daily traffic (NBI item 109).

(b) These lists would be provided by the FHWA to the BIADOT for publication and notification of affected BIA area offices, Indian tribal governments (ITG)s, and State and local governments.

(c) BIA area offices in consultation with ITGs, are encouraged to prioritize the design for bridges that are structurally deficient over bridges that are simply functionally obsolete, since the former is more critical structurally than the latter. Bridges that have higher average daily traffic (ADT) should be considered before those that have lower ADT. Detour length should also be a factor in selection and submittal of bridges, with those having a higher detour length being of greater concern. Lastly, bridges with higher truck ADT should take precedence over those which have lower truck ADT. Other items of note should be whether school buses use the bridge and the types of trucks that may cross the bridge and the loads imposed.

§ 661.47 In the event of project cost over runs, how would they be funded?

(a) Because of the critical nature of this program, BIA area road engineer (ARE) approved costs in excess of the project estimate could be funded out of this program depending on the availability of funds and subject to BIADOT/FLH project approval procedures. The ARE would request additional IRRBP funding for a specific bridge project and submit a request with appropriate justification along with an explanation as to why this additional IRRBP funding is necessary.

(b) In addition, project cost over runs may be funded out of regular IRR program funds.

§ 661.49 Could regular IRR funds be used to fund a bridge project?

Yes. Regular IRR construction funds can be used to fund a bridge project with the concurrence of the FHWA, BIADOT and the BIA ARE.

§ 661.51 Could bridge maintenance be performed with these funds?

No. Bridge maintenance repairs would not be within the scope of funding, e.g., guard rail repair, deck repairs, repair of traffic control devices, striping, cleaning scuppers, deck sweeping, snow and debris removal, etc. There are maintenance funds available through annual Department of the Interior appropriations for use on BIA owned bridges. The Department of the Interior maintenance funds would be the appropriate funding source for bridge maintenance.

[FR Doc. 99–18308 Filed 7–16–99; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA36

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Extension of the Active Duty Dependents Dental Plan to Overseas Areas

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements statutory authority for the extension of the Active Duty Dependents Dental Plan to overseas areas.

EFFECTIVE DATE: September 1, 1997.

ADDRESSES: TRICARE Management Activity, 16401 East Centretech, Aurora, CO 80011.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Brian Grassi, TRICARE Management Activity, (303) 676–3496.

SUPPLEMENTARY INFORMATION:

I. Overview of the Final Rule

On June 25, 1997, an interim final rule regarding the benefit and operational issues associated with the implementation of the extension of the Active Duty Dependents Dental Plan to overseas areas was published (62 FR 33940).

Military force reductions in Europe, the Middle East, and the Pacific have resulted in diminished medical services for many areas, particularly those areas where the active duty end strengths have fallen below levels which would support a military medical facility. Service members and their families, particularly those in remote areas, have experienced access problems in obtaining dental services at military facilities. This rule is based on section 703 of the National Defense Authorization Act for Fiscal Year 1995, Pub. L. 103–337, and section 732 of the National Defense Authorization Act for Fiscal Year 1998, Pub. L. 105–85, which amended Title 10, United States Code, section 1076a. These laws allow the Department to extend the Active Duty Dependents Dental Plan to overseas areas and waive or reduce required cost-shares to the extent the Secretary determines appropriate for the effective and efficient operation of the Plan. Family members enrolled in the Active Duty Dependents Dental Plan will be allowed to receive dental care from host nation providers and have the dental claims processed by a dental contractor. Where applicable, host nation providers who meet accepted professional dental practice standards will be identified by the local military dental treatment facility (DTF) commander and the overseas lead agents.

Enrolled family members overseas will be eligible to obtain the same basic dental benefits offered to enrollees in the Active Duty Dependents Dental Plan (also referred to as the TRICARE Family Member Dental Plan or TFMDP) in the Continental United States subject to availability and accessibility of these services. For the purposes of this program, the Continental United States is defined as the forth-eight contiguous states, as well as Alaska, Hawaii, Guam, Puerto Rico, the District of Columbia, the U.S. Virgin Islands and Canada. Overseas is defined as those countries not previously mentioned.

In order to participate, beneficiaries must voluntarily enroll in the TFMDP and pay the standard monthly premium. In countries with a military DTF, the local military DTF commander will refer enrollees to designated host nation providers for all covered dental services. These referrals will be contingent upon the lack of availability of these dental services in the DTF and the Department's designation of qualified host nation providers.

In countries without a military DTF, enrollees can receive treatment for non-orthodontic dental care without a referral from any qualified host nation provider meeting professionally accepted standards. The Department encourages enrollees residing in these countries to first contact their respective overseas lead agent, U.S. Embassy or Consulate or other local representatives of the U.S. Government before seeking non-orthodontic care to determine if any of these agencies can assist in identifying a qualified host nation provider in their local area. For orthodontic care in these countries, the overseas lead agent will refer enrollees to designated host nation providers.

Where a referral is required, the issuing activity must complete a Non-Availability Statement (NAS) and provide this statement to the enrollee before care can be received and the claim can be processed by the dental contractor. To obtain a referral and NAS, family members are not restricted to visiting a DTF of their sponsor's branch of service, rather, they should contact their primary servicing military DTF.

Basic dental care encompasses diagnostic and preventive (exams, x-rays, cleanings, etc), sealants, restorative (fillings, crowns, etc), endodontics (root canals, etc.), periodontics (gum surgery, etc.), oral surgery (extractions, etc.), and prosthodontics (bridges, dentures, etc.) While the annual cap of $1,000 and lifetime cap of $1,200 for orthodontic care is applicable in these overseas locations, the Department will pay the enrollee's cost-share for some non-orthodontic services as well as any difference between the provider's billed charge and the dental claims processor's allowance, subject to the amount remaining on the enrollee's annual or lifetime maximum.

This final rule will allow dental claims to be paid on a ''billed charge'' basis. Billed charges are charges submitted by host nation dental providers for the costs of dental care in their country. These charges are not based on Diagnostic Related Groups nor are they expected to be developed based on American Dental Association current dental terminology codes.

Since publication of the interim final rule, section 732 of the National Defense Authorization Act for Fiscal Year 1998 authorized the Secretary to waive or reduce cost-shares in overseas areas. Therefore, the Department has implemented procedures to waive the cost shares for certain non-orthodontic benefits as long as the enrollee has not exceeded their annual maximum. The previous procedures for waivers to the annual and lifetime maximums are no longer applicable.

Additionally, the interim final rule stated that enrollees in remote locations would not be required to obtain an NAS to receive dental services. The Department has changed that provision so that enrollees in remote locations will be required to obtain an NAS from their respective overseas lead agent prior to receiving orthodontic care. This change provides an opportunity for the overseas lead agent to make referrals to designated host nation orthodontists, monitor and approve treatment plans and advise enrollees of other options. It also provides appropriate oversight in a benefit area where only a one-time lifetime benefit is available.

Finally, the interim final rule limited the benefit to family members accompanying their active duty sponsors while overseas. That provision has been deleted because the overseas extension was designated to be portable and available to enrolled family members traveling or residing overseas with or without their sponsor.

II. Public Comments

The interim final rule was published on July 25, 1997 (62 FR 33940). We did not receive any public comments.

III. Rulemaking Procedures

Executive Order 12866 requires certain regulatory assessments for any ''significant regulatory action,'' defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal Agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

The final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 55).

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals with disabilities and Military personnel.

Accordingly, 32 CFR part 1999 is amended as follows:

PART 1999—[AMENDED]

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

Authority: 5 U.S.C. 301, 10 U.S.C. Chapter 55.

2. Section 199.13 is amended by revising paragraph (i) to read as follows:

§ 199.13 Active duty dependents dental plan.

* * * * *

(i) *Extension of the Active Duty Dependents Dental Plan to areas outside the United States.* The Assistant Secretary of Defense (Health Affairs) (ASD(HA) may, under the authority of 10 U.S.C. 1076a(h), extend the Active Duty Dependents Dental Plan to areas other than those areas specified in paragraph (a)(2)(i) of this section for the eligible beneficiaries of members of the Uniformed Services. In extending the program outside the Continental United States, the ASD(HA), or designee, is authorized to establish program elements, methods of administration and payment rates and procedures to providers that are different from those in effect under this section in the Continental United States to the extent the ASD(HA), or designee, determines necessary for the effective and efficient operation of the plan outside the Continental United States. This includes provisions for preauthorization of care if the needed services are not available in a Uniformed Service overseas dental treatment facility and payment by the Department of certain cost-shares and other portions of a provider's billed charges. Other differences may occur based on limitations in the availability and capabilities of the Uniformed Services overseas dental treatment facility and a particular nation's civilian sector providers in certain areas. Otherwise, rules pertaining to services covered under the plan and quality of care standards for providers shall be comparable to those in effect under this section in the Continental United States and available military guidelines. In addition, all provisions of 10 U.S.C. 1076a shall remain in effect.

Dated: July 13, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–18250 Filed 7–16–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AJ39

Veterans Education: Effective Date for Reducing Educational Assistance

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) regulations pertaining to the effective dates of reductions or discontinuances of monthly payments of educational assistance under the Montgomery GI Bill—Active Duty. Pursuant to statutory authorization, VA requires veterans or servicemembers to certify their continued pursuit of a program of education before they may receive such monthly payments. VA further provides for reductions in the rates of educational assistance in the event the veteran or servicemember reduces the rate of training by withdrawing from part of a course. By statute, the effective date of an adjustment of benefits made on the basis of a monthly certification by a veteran or person is the date of the change. This document revises the regulations to reflect the statutory effective date.

DATES: Effective Date: July 19, 1999.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Adviser, Education Service, Veterans Benefits Administration (202) 273–7187.

SUPPLEMENTARY INFORMATION: The provisions of 38 U.S.C. 3680(g) allow VA to require eligible veterans and eligible persons to certify their continued pursuit of a program of education before they may receive their monthly payment of educational assistance.

VA requires such certification by regulation for individuals receiving educational assistance under the Montgomery GI Bill—Active Duty (MGIB) (38 CFR 21.7154). Further, VA regulations provide for reduction of educational benefits where a veteran or servicemember withdraws from part of a course (38 CFR 21.7135(f)). By statute, any adjustment of benefits made on the basis of certification is effective as of the date of the occurrence (38 U.S.C. 5113(b)).

Previously, 38 CFR 21.7135(f)(1) provided that the effective date for reduction of a veteran's or servicemember's educational assistance was the earlier of the end of the month or the end of the term in which the withdrawal from part of a course occurred. The regulations are now revised to reflect the statutory requirement that the date of change is the effective date.

Nonsubstantive changes also are made for the purpose of clarity.

Substantive changes made by this final rule merely reflect statutory requirements. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612 and does not directly affect small entities. This final rule directly affects only individuals. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance number for the program affected by this final rule is 64.124.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health programs, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 22, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set out above, 38 CFR part 21, subpart K is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

1. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

2. In § 21.7135, paragraph (f)(1) introductory text and the authority citations for paragraphs (f)(2) and (f)(3) are revised to read as follows:

§ 21.7135 Discontinuance dates.

* * * * *

(f) * * *

(1) If the reduction in the rate of training occurs other than on the first date of the term, VA will reduce the veteran's or servicemember's educational assistance effective the date on which the withdrawal occurs when either:

* * * * *

(2) * * *

(Authority: 38 U.S.C. 3680(a))

(3) * * *

(Authority: 38 U.S.C. 3034, 3680(a), 5113(b))

* * * * *

[FR Doc. 99–18379 Filed 7–16–99; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA52–1–7422a; FRL–6378–3]

Approval and Promulgation of Air Quality State Implementation Plans; Louisiana; Approval of Clean Fuel Fleet Substitution Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action on approving Louisiana's State Implementation Plan (SIP) revision because it adequately demonstrates that the Louisiana Clean Fuel Fleet (CFF) substitute program achieves equivalent or better long term reductions in emissions of ozone producing and toxic air pollutants than the Federal CFF program. A detailed rationale for the approval is set forth in the accompanying Technical Support Document.

DATES: This rule is effective on September 17, 1999 without further notice, unless we receive adverse comment by August 18, 1999. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of the documents about this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least two working days in advance before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section, (6PD–L), Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, Air Quality Division, 7290 Bluebonnet Blvd., Baton Rouge, Louisiana, 70810.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scoggins, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7354 or via e-mail at scoggins.paul@epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region 6 address.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

What action is EPA taking?
What is the background?
What did the State submit?
What is the process for EPA approval of this action?

What Action is EPA Taking?

After review of the SIP revision request, we find the Louisiana's substitution plan for the Federal CFF program requirements to be approvable because the revision adequately demonstrated Volatile Organic Compounds (VOC) emission reductions that are sufficient to meet or exceed the

emission reductions of the Federal CFF program.

The information submitted by Louisiana demonstrated that the substitution of the State's Clean Fuel Fleet program with above Reasonable Available Control Technology (RACT) VOC emission reductions achieved from tank fitting controls pursuant to Louisiana Administrative Code (LAC) 33:III.2103 will not result in new National Ambient Air Quality Standards (NAAQS) violations, nor increase the frequency or severity of existing NAAQS violations, nor delay attainment and maintenance of the NAAQS in the Baton Rouge Ozone nonattainment area.

We believe the SIP revision submitted by Louisiana meets the requirements of a substitute program that achieves equivalent long term emission reductions of ozone precursors in the Baton Rouge ozone nonattainment area. The State surveyed nine storage tanks in Baton Rouge area which show, over a ten year period equivalent to the Federal CFF program, an estimated total VOC emission reduction of 2,010 tons. The emission reductions over the ten year period from the Federal CFF program were estimated to be 1,264 tons.

What is the Background?

On November 15, 1990, Congress enacted amendments to the 1997 Clean Air Act; Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Part C of Title II was added to the Act to establish two programs: a clean-fuel vehicle pilot program in the State of California (the California Pilot Test Program) and the Federal CFF program in certain ozone and carbon monoxide nonattainment areas. The CFF program is required by section 182(c)(4), 42 U.S.C., section 7511a(c)(4) and the underlying requirements are in sections 246 of the Act, 42 U.S.C., section 7586.

On November 10, 1994, the Louisiana Department of Environmental Quality submitted a SIP revision to the EPA, Region 6, which contained provisions for a state CFF program. The SIP submittal was in response to publication of the EPA's final CFF program rule (58 FR 11888, March 1, 1993) which established the 40 CFR part 88, subpart C regulations required by the Act. The Louisiana CFF program SIP revision was reviewed and subsequently approved by EPA on October 23, 1995 (60 FR 54305). State regulations governing the CFF program are codified in LAC 33:III.1951–1973. The Louisiana CFF program would have required covered vehicle fleet owners in the Baton Rouge ozone nonattainment area to purchase specified percentages of clean fuel vehicles beginning in September, 1998.

Section 182(c)(4) of the Act, 42 U.S.C. 7511a, allows States to opt-out of the Federal CFF program by submitting, for EPA approval, a SIP revision consisting of a substitute program resulting in as much or greater long term emissions reductions in ozone producing and toxic air emissions as the Federal CFF program. We may approve such a revision ''only if it consists exclusively of provisions other than those required under this Act for the area.''

After a thorough evaluation of their CFF program's costs and marginal benefits, the State of Louisiana elected to opt-out of the CFF program requirements.

What did the State Submit?

Louisiana submitted a SIP revision, on April 1, 1999, that substitutes the long term emissions reductions resulting from a CFF program for the Baton Rouge nonattainment area. The revision was adopted after reasonable public notice and public hearing as required by sections 110(a)(2) and 110(l) of the Act and 40 CFR 51.102(f). The submission was reviewed and determined to be administratively complete on April 6, 1999. The submittal was then reviewed for approvability by EPA Region 6 and EPA headquarters.

The State of Louisiana is substituting emission reductions achieved from LAC 33:III.2103 which impose controls beyond the Act requirements (i.e., RACT) for storage tanks in the Baton Rouge nonattainment area. The VOC storage tank rule LAC 33:III.2103 goes beyond Act requirements by requiring guide pole and stilling well controls on external floating roof tanks. The resultant long term emission reductions were greater than the Louisiana CFF program emission reductions in the ozone nonattainment area.

The SIP submittal contains: (1) Letter dated March 21, 1999, from Governor Mike Foster replacing the CFF program submitted on November 10, 1994, and subsequently approved by EPA on October 23, 1995; (2) plan revision dated March 22, 1999, and received at EPA on April 1, 1999; (3) documentation of the public notice dated December 21, 1998, and a transcript of the public hearing dated January 25, 1999; and (4) supplemental information dated January 22, 1999.

The areas affected by this substitute program include the parishes of Ascension, Iberville, East Baton Rouge, Livingston, and West Baton Rouge. These five parishes comprise the Baton Rouge ozone nonattainment area.

A more detailed discussion of the Louisiana CFF substitute program elements and control strategy can be found in the Technical Support Document available from the U.S. EPA Region 6 office.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

What is the Process for EPA Approval of this Action?

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the action if adverse comments are received.

This rule will be effective on September 17, 1999 without further notice unless we receive adverse comment by August 18, 1999. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not initiate a second comment period on this action. Any parties interested in commenting must do so at this time.

Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to

issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable rules on any of these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that EPA determines is: (1) ''economically significant,'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the order has the potential to influence the regulation.

This final rule is not subject to E.O. 13045 because it approves a state program.

D. Executive Order 13084

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

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 60 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule can not take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major'' rule as defined by 5 U.S.C. 804(2). This rule will be effective September 17, 1999.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 17, 1999. Filing a petition for reconsideration with the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Implementation plans, Reporting and recordkeeping requirements.

Dated: July 7, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart T—Louisiana

2. In § 52.970(e) the second table is amended by revising the title to the table to read ''EPA approved Louisiana nonregulatory provisions and quasi-regulatory measures'', revising the first column title ''Control measures'' to read ''Name of SIP provision'', revising the last column title ''Comments'' to read ''Explanation'' and adding a new entry to the end of the table to read as follows:

§ 52.970 Identification of plan.

* * * * *

(e) EPA approved nonregulatory provisions and quasi-regulatory measures.

* * * * *

EPA Approved Louisiana Nonregulatory Provisions and Quasi-Regulatory Measures

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date/ effective date	EPA approval date	Explanation
*	*	*	*	*
Clean Fuel Fleet Program Substitution.	Baton Rouge, LA	03/21/99	7/19/99 64 FR 38580.	Substituted above RACT VOC emission reductions from storage tank rule LAC 33:III.2103

[FR Doc. 99–18037 Filed 7–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–207–1–9924a; TN–214–1–9925a; FRL–6379–4]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to the Tennessee SIP Regarding National Emission Standards for Hazardous Air Pollutants and Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to Rule 1200–3–2–.01 and Rule 1200–3–9–.01 of the Tennessee State Implementation Plan (SIP) that were submitted to EPA by the Tennessee Department of Air Pollution Control (TDAPC), on June 16, 1998 and February 11, 1999. Rule 1200–3–2–.01 is revised to include a definition for national emission standards for hazardous air pollutants (NESHAPs). Rule 1200–3–9–.01 is revised to incorporate by reference the definition for volatile organic compounds (VOCs) contained in 40 CFR part 51, subpart F.

DATES: This direct final rule is effective September 17, 1999 without further notice, unless EPA receives adverse comment by August 18, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Allison Humphris at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Allison Humphris, 404/562–9030.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. 615/532–0554.

FOR FURTHER INFORMATION CONTACT: Allison Humphris at 404/562–9030.

SUPPLEMENTARY INFORMATION:

I. Background

The EPA is approving revisions to Rules 1200–3–2–.01 and 1200–3–9–.01 of the Tennessee SIP. Rule 1200–3–2–.01 is amended to include a subparagraph establishing a definition for NESHAPs. Rule 1200–3–9–.01 is revised to incorporate by reference an updated definition for VOCs contained in 40 CFR part 51, subpart F.

II. Analysis of State's Submittal

Rule 1200–3–2–.01 is being amended to include the following definition for NESHAPs: ''standards for the emissions of hazardous air pollutants promulgated by the Administrator of the Environmental Protection Agency and published in the **Federal Register**.'' The purpose for this addition is to ensure that the Tennessee SIP includes an accurate description of these emission standards, which are applied to new major sources and modifications through implementation of the construction permitting programs that were approved into the SIP via Rule 1200–3–2.

The definition for VOCs in Rule 1200–3–9–.01 is revised to be consistent with the definition for this term that was approved by EPA on October 8, 1996 (61 FR 52848). The revision adds HFC 43–10mee and HCFC 225ca and cb to the list of compounds excluded from the definition of VOCs on the basis that these compounds have negligible contribution to tropospheric ozone formation. The definition is revised for use in preparing SIPs to attain the National Ambient Air Quality Standard (NAAQS) for ozone under Title I of the Clean Air Act.

III. Final Action

EPA is approving the aforementioned changes to the SIP because they are consistent with Clean Air Act and EPA requirements.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register**

publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective September 17, 1999 without further notice unless the Agency receives adverse comments by August 18, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 17, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

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

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

C. Executive Order 13084

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

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 17, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: June 14, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart RR—Tennessee

2. Section 52.2220(c) is amended by revising the entries for Section 1200–3–2–.01 and Section 1200–3–9–.01 to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA APPROVED TENNESSEE REGULATIONS FOR TENNESSEE

State citation	Title/subject	Adoption date	EPA approval date	Federal Register notice
Section 1200–3–2–.01	General Definitions	07/29/93	7/19/99	[64 FR 38582
* *	*	*	*	* *
Section 1200–3–9–.01	Construction Permits	01/26/99	7/19/99	[64 FR 38582

[FR Doc. 99–18043 Filed 7–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region 2 Docket No. NY31–192a, FRL–6379–2]

Approval and Promulgation of State Plans For Designated Facilities; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is conditionally approving the State Plan submitted by New York implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines. The State Plan establishes performance standards for existing MSW landfills located in New York State and provides for the implementation and enforcement of those standards, which will reduce the designated pollutants.

DATES: This direct final rule is effective on September 17, 1999 without further notice, unless EPA receives adverse comment by August 18, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Craig Flamm or Kirk Wieber, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

I. Background
II. State Submittal
III. Review of State Submittal
A. Identification of Enforceable State Mechanism for Implementing the EG
B. Demonstration of the State's Legal Authority to Carry Out the Section 111(d) State Plan as Submitted
C. Inventory of Existing MSW Landfills in the State Affected by the State Plan
D. Emission Limitations for MSW Landfills
E. A Process for State Review and Approval of Site-Specific Gas Collection and Control System Design Plans
F. Compliance Schedules
G. Testing, Monitoring, Recordkeeping and Reporting Requirements
H. Submittal of Annual State Progress Reports to EPA
IV. Conclusion
V. Administrative Requirements
A. Executive Order 12866
B. Executive Order 12875
C. Executive Order 13045
D. Executive Order 13084

E. Regulatory Flexibility Act
F. Unfunded Mandates
G. Submission to Congress and the Comptroller General
H. Petitions for Judicial Review

I. Background

Under section 111(d) of the Clean Air Act (Act), EPA established procedures for states to submit plans to control certain existing sources of ''designated pollutants.'' Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not ''criteria pollutants'' (i.e., pollutants for which National Ambient Air Quality Standards are set under sections 108 and 109 of the Act) or hazardous air pollutants (HAPs) regulated under section 112 of the Act.

As required by section 111(d) of the Act, EPA established a process, at title 40 of the Code of Federal Regulations (CFR) part 60, subpart B which states must follow in adopting and submitting a section 111(d) plan. Whenever EPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, EPA establishes emission guidelines in accordance with 40 CFR section 60.22 which contain information pertinent to the control of the designated pollutant from existing sources for that NSPS source category (i.e., the ''designated facility'' as defined at 40 CFR 60.21(b)). Thus, a state's section 111(d) plan for a designated facility must comply with the emission guidelines for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, EPA published emission guidelines (EG) for existing Municipal Solid Waste (MSW) landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c) and the NSPS for new MSW landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750 through 60.759). *See,* 61 FR 9905 (March 12, 1996). The NSPS and EG regulate MSW landfill emissions, which contain a mixture of volatile organic compounds (VOCs), other organic compounds, methane, and HAPs. To determine if emissions control is required, nonmethane organic compounds (NMOCs) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.31c) for which construction, reconstruction or modification was commenced before May 30, 1991. Under 40 CFR 60.23(a), states were required to submit a plan for the control of the designated pollutant to which the EG applies within nine months after publication of the EG (by December 12, 1996).

On June 16, 1998, EPA published in the **Federal Register** (63 FR 32743) a direct final action which amended, corrected errors in, and clarified the regulatory text of the ''Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills,'' which was promulgated on March 12, 1996. The Background section of the amended rule (63 FR 32744) states, ''These changes do not significantly modify the requirements of the regulation.'' No adverse comments were received on the amended landfill rule, and as a result, it became effective on August 17, 1998.

II. State Submittal

On October 8, 1998, the New York State Department of Environmental Conservation (NYSDEC) submitted its ''Section 111(d) State Plan for MSW Landfills'' for implementing EPA's MSW landfill EG. New York's submittal included: the necessary legal authority; an enforceable mechanism; some of the increments of progress of an enforceable compliance schedule; an emissions inventory; emission standards; testing, monitoring, recordkeeping, and reporting requirements; a process to review design plans; a provision for annual state progress reports; and the record of public hearing. New York held a public hearing on January 15, 1998 for all of the required elements of the MSW landfill State Plan.

III. Review of State Submittal

EPA has reviewed New York's section 111(d) plan for existing MSW landfills against the requirements of 40 CFR part 60, subpart B and subpart Cc, as follows:

A. Identification of Enforceable State Mechanism for Implementing the EG

40 CFR 60.24(a) requires that a section 111(d) plan include emissions standards, defined in 40 CFR 60.21(f) as ''a legally enforceable regulation setting forth an allowable rate of emissions into the atmosphere, or prescribing equipment specifications for control of air pollution emissions.'' New York has adopted revisions to State rules to control air emissions from existing landfills in the State. The New York State rules for MSW Landfills are primarily found in part 360–2 of title 6 of the New York Code of Rules and Regulations of the State of New York, entitled, ''Landfills''. Part 360–2 became effective on November 21, 1998.

B. Demonstration of the State's Legal Authority To Carry out the Section 111(d) State Plan as Submitted

40 CFR 60.26 requires that a section 111(d) plan demonstrate that the state has the necessary legal authority to adopt and implement the plan. In order to make this demonstration, the plan must show that the state has the legal authority to adopt emission standards and compliance schedules for the designated facilities; enforce the applicable laws, regulations, emission standards and compliance schedules, including the ability to obtain injunctive relief; the authority to obtain information from the designated facilities in order to determine compliance, including the authority to require recordkeeping from the facilities, to make inspections and to conduct tests at the facilities; the authority to require designated facilities to install, maintain and use emission monitoring devices; the authority to require periodic reporting to the state on the nature and amounts of emissions from the facility; and the authority for the state to make such emissions data available to the public. New York has demonstrated all these elements. As a result, New York has demonstrated that it has sufficient authority to adopt rules governing MSW landfills and that the NYSDEC has sufficient legal authority to enforce these rules and to develop and administer this MSW landfill plan.

C. Inventory of Existing MSW Landfills in the State Affected by the State Plan

The regulation at 40 CFR 60.25(a) requires that the section 111(d) plan include a complete source inventory of all existing MSW landfills (i.e., those MSW landfills that were constructed, reconstructed, or modified prior to May 30, 1991) in the state that are subject to the plan. This includes all existing landfills that have accepted waste since November 8, 1987, or that have additional capacity for future waste deposition. 40 CFR 60.25(a) also requires an estimate of the regulated pollutant, which is NMOC for landfills. A list of the existing MSW landfills in New York and an estimate of NMOC emissions from each landfill has been submitted as part of the State's landfill 111(d) plan (see Table 1 below).

TABLE 1.—NEW YORK STATE MSW LANDFILLS EMISSIONS INVENTORY

Landfill name	Mass (1,000 tons)	Status—year opened/closed	NMOC emission rate (tons/year)	NSPS or EG
Brookhaven	17,200	opened in 1974	1,395	EG
Babylon LF	6,000	closed in 1990	356	EG
Islip	6,200	closed in 1990	262	EG
E. Northport SLF	3,800	closed in 1991	40	EG
Oceanside SLF	2,750	closed in 1989	88	EG
Freshkills	126,000	opened in 1948	2,273	EG
Orange County	3,800	opened in 1974	512	EG
Al Turi LF	4,800	opened in 1968	772	EG
Sullivan Co. LF	2,800	opened in 1962	300	EG
Albany LF	2,750	opened in 1969	335	NSPS
Colonie LF	3,000	opened in 1972	320	NSPS
Fulton Co. LF	5,000	opened in 1989	136	EG
DANC	5,500	opened in 1992	3	NSPS
Nanticoke	3,200	opened in 1969	390	EG
Chemung Co. LF	2,750	opened in 1973	210	EG
High Acres (WMI)	5,630	opened in 1972	1,942	NSPS
Mill Seat	6,930	opened in 1993	88	NSPS
Ontario Co. LF	3,600	opened in 1975	27	EG
Seneca Meadows	5,300	opened in 1981	1,104	NSPS
Monroe Livingston	5,210	closed in 1989	129	EG
Niagara Recycling	3,700	opened in 1970	226	EG
Modern LF	6,300	opened in 1983	865	EG
Niagara LF (BFI)	8,000	closed in 1993	334	EG
CID SLF	5,600	opened in 1957	792	EG
Chautauqua Co. LF	6,500	opened in 1981	228	EG

D. Emission Limitations for MSW Landfills

The regulation at 40 CFR 60.24(c) specifies that the state plan must include emission standards that are no less stringent than the EG (except as specified in 40 CFR 60.24(f) which allows for less stringent emission limitations on a case-by-case basis if certain conditions are met). 40 CFR 60.33c contains the emissions standards applicable to existing MSW landfills. Part 360–2.21(c) requires existing MSW landfills to comply with the same equipment design criteria and level of control as prescribed in the NSPS. The controls required by the NSPS are the same as those required by the EG. Thus, the emission limitations/standards are ''no less stringent than'' subpart Cc, which meets the requirements of 40 CFR 60.24(c).

E. A Process for State Review and Approval of Site-Specific Gas Collection and Control System Design Plans

The provision of the EG at 40 CFR 60.33c(b) requires state plans to include a process for state review and approval of site-specific design plans for required gas collection and control systems. New York's regulation, part 360–2.21(c), requires the submission of design plans from all applicable MSW Landfills. The process for state review and approval of site specific gas collection and control systems is specified in the State's Title V operating permit review process, to which these landfills are subject. Thus, New York's section 111(d) plan adequately addresses this requirement.

F. Compliance Schedules

A state's section 111(d) plan must include a compliance schedule that owners and operators of affected MSW landfills must meet in complying with the requirements of the plan. Under 40 CFR 60.24(e)(1) any compliance schedule extending more than 12 months from the date required for plan submittal shall include legally enforceable increments of progress as specified in 40 CFR 60.21(h), including: (1) deadlines for the submittal of a final control plan, (2) awarding of contracts for emission control systems, (3) initiation of on-site construction or installation of emission control equipment, (4) completion of on-site construction/installation of emission control equipment, and (5) final compliance. 40 CFR 60.36c of the EG gives the general deadline that the planning, the awarding of contracts, and the installation of air emission collection and control equipment capable of meeting the EG must be accomplished within 30 months of the effective date of a state emission standard for MSW landfills. Meant to be a guideline for a state developing a plan rather than a plan itself, the EG does not give specific deadlines for each increment of progress required in a compliance schedule under 40 CFR 60.21(h).

Part 360–2 of New York's regulation addresses the above increments of progress, including final compliance, except for increments 2 and 3; awarding of contracts for emission control systems and initiation of on-site construction or installation of emission control equipment. Thus, all the required increments of progress are not included in New York's regulation.

However, 40 CFR 60.24(e)(2) provides that the compliance schedules for individual sources may be submitted after the submittal of the state plan, as long as the compliance schedules are submitted no later than the deadline for the first annual report required under 40 CFR 60.25(e). After the approval of its landfill plan, it is New York's intention to incorporate the two missing increments of progress (the awarding of contracts and the initiation of on-site construction), as well as the other three increments of progress into compliance schedules in existing state permits for each facility or in each facility's Title V operating permit when issued. The incorporation of the compliance schedule into each facility's permit will include a public hearing for each affected facility, therefore, making the compliance schedules, including all increments of progress, legally enforceable. In a letter dated May 4, 1999 from NYSDEC to EPA, New York committed to submit the applicable

Title V operating permits or state permits within one year of EPA approval of New York's plan in accordance with 40 CFR 60.24(e)(2). Thus, EPA is conditionally approving New York's State Plan based on the condition that New York will submit the state permits or Title V permits for each facility, which will include compliance schedules with all five increments of progress specified in 40 CFR part 60, subpart B, section 60.21(h), and within one year of the effective date of this approval.

If New York does not make the required submittal to EPA within one year of the effective date of this action, EPA's conditional approval will convert to a disapproval. In that event, EPA would issue a letter to notify the State that the condition has not been met, and the approval has converted to a disapproval.

G. Testing, Monitoring, Recordkeeping and Reporting Requirements

The regulation at 40 CFR 60.34c specifies the testing and monitoring provisions that state plans must include (section 60.34c specifically refers to the requirements found in 40 CFR 60.754 to 60.756), and 40 CFR 60.35c specifies the reporting and recordkeeping requirements (section 60.35c refers to the requirements found in 40 CFR 60.757 and 60.758). Part 360-2.21(l) requires that all landfills subject to this rule keep appropriate records of the operation and maintenance of the collection and control systems. Part 360–2.21(f)(3) requires monitoring of surface methane concentrations every three months. If the concentration of methane exceeds 500 parts per million, the landfill owner must take corrective action. Part 360–2.21(h) requires annual reporting of operation of the collection and control systems. Thus, the State's rule satisfies the requirements of 40 CFR 60.34c.

H. Submittal of Annual State Progress Reports to EPA

The regulation at 40 CFR 60.25(e) and (f) requires states to submit to EPA annual reports on the progress of plan enforcement. New York will submit to EPA annual reports on the progress in the implementation of the State Plan. These will be incorporated into the reports required by 40 CFR part 51, section 51.321, ''Annual source emissions and state action report''. These reports will include compliance status, enforcement actions, increments of progress, identification of landfills that have closed and ceased to operate a collection and control system, emissions inventory for MSW landfills that were not in operation or were not identified at the time of plan development, updated emission data and compliance information, and copies of initial performance test reports, including control device operating conditions.

IV. Conclusion

EPA has evaluated the Municipal Solid Waste Landfill State Plan submitted by New York for consistency with the Act, EPA guidelines and policy. EPA has determined that New York's State Plan contains all approvable elements and critical compliance dates, in addition New York has committed to submit the remaining increments of progress for compliance. Therefore, EPA is conditionally approving New York's Plan to implement and enforce subpart Cc, as it applies to existing MSW Landfills. If New York does not make the required submittal to EPA within one year of the effective date of this action, EPA's conditional approval will convert to a disapproval.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan revision should adverse comments be filed. This rule will be effective September 17, 1999 without further notice unless the Agency receives adverse comments by August 18, 1999.

If the EPA receives adverse comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

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

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

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This State Plan approval is not subject to E.O. 13045 because it proposes approval of a state program implementing a Federal standard, and it is not economically significant under E.O. 12866.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds

necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because Conditional approvals of State Plan submittals under section 111 of the Act does not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal State Plan approval does not impose any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 111(d), based on the state's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, I certify that this disapproval action will not have a significant economic impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the final approval action does not include a federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 17, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: July 6, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

Part 62, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

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

Authority: 42 U.S.C. 7401–7642.

Subpart HH—New York

2. Part 62 is amended by adding § 62.8104 and an undesignated heading to subpart HH to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.8104 Identification of plan

(a) The New York State Department of Environmental Conservation submitted to the Environmental Protection Agency a ''State Plan for implementation and enforcement of 40 CFR part 60, subpart Cc, Emissions Guidelines for Municipal Solid Waste Landfills' on October 8, 1998.

(b) Identification of sources: The plan applies to all existing municipal solid waste landfills for which construction, reconstruction or modification was commenced before May 30, 1991 that accepted waste at any time since November 8, 1987 or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

[FR Doc. 99–18041 Filed 7–16–99; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 85]

RIN 3090–AH06

Federal Travel Regulation; Maximum Per Diem Rates in California, Illinois, New Jersey, North Carolina, Utah, and Virginia

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) Amendment 75, as corrected, published in the **Federal Register** on Wednesday, February 10, 1999 (64 FR 6550), to combine, add, and remove certain localities and increase the maximum lodging amounts in the States of California, Illinois, New Jersey, North Carolina, Utah, and Virginia.

DATES: This final rule is effective July 19, 1999, and applies to travel performed on or after July 19, 1999.

FOR FURTHER INFORMATION CONTACT: Jim Harte, Office of Governmentwide Policy, Travel and Transportation Management Policy Division, at 202–501–1538 .

SUPPLEMENTARY INFORMATION:

A. Background

The General Services Administration (GSA), after an analysis of additional data, has determined that current lodging allowances for the localities of San Diego, San Luis Obispo, and Los Angeles, California; Chicago, Illinois; Belle Mead, New Jersey; Durham and Research Triangle Park, North Carolina; Ogden, Utah; and Londoun County, Virginia, do not adequately reflect the cost of lodging in those areas. To provide adequate per diem reimbursement for Federal employee travel to those areas, the maximum lodging allowances are changed. Also, the per diem localities of Orange County, California; Durham and Research Triangle Park, North Carolina; and Ogden and Davis County, Utah, are revised.

B. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

C. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Chapter 301

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, 41 CFR chapter 301 is amended as follows:

CHAPTER 301—TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES

Appendix A to chapter 301 is amended by—

(a) Removing the entries for Orange County, under the State of California; Durham and Research Triangle Park under the State of North Carolina; and Ogden and Davis County, under the State of Utah;

(b) Revising the entries for Los Angeles, San Diego, and San Luis Obispo, under the State of California; Chicago, under the State of Illinois; and Loudoun County, under the State of Virginia; and

(c) Adding entries for Belle Mead under the State of New Jersey; Durham/Research Triangle Park, under the State of North Carolina; and Layton/Ogden under the State of Utah.

Appendix A to Chapter 301—Prescribed Maximum Per Diem Rates for Conus

* * * * *

Per diem locality: Key city 1	County and/or other defined location 2, 3	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate 4 (c)
* *	* *	*		*		*
CALIFORNIA						
* *	* *	*		*		*
Los Angeles	Los Angeles and Orange County; Edwards AFB; Naval Weapons Center and Ordnance Test Station, China Lake.	95		46		141
* *	* *	*		*		*
San Diego	Dan Diego	96		46		142
* *	* *	*		*		*
San Luis Obispo	San Luis Obispo.					
(June 1–September 30)		79		38		117
(October 1–May 31)		69		38		107
* *	* *	*		*		*
ILLINOIS						
* *	* *	*		*		*
Chicago	Cook	109		46		155

Per diem locality: Key city 1	County and/or other defined location 2, 3	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate 4 (c)
* *	* *	*		*		*
NEW JERSEY						
* *	* *	*		*		*
Belle Mead	Somerset	129		38		167
* *	* *	*		*		*
NORTH CAROLINA						
* *	* *	*		*		*
Durham/Research Triangle Park	Durham	85		42		127
* *	* *	*		*		*
UTAH						
* *	* *	*		*		*
Layton/Ogden	Davis and Weber	69		34		103
* *	* *	*		*		*
VIRGINIA						
* *	* *	*		*		*
Loudoun County	Loudoun	102		38		140
* *	* *	*		*		*

Dated: July 8, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99–18297 Filed 7–16–99; 8:45 am]

BILLING CODE 6820–34–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–35

RIN 3090–AG03

Relocation of FIRMR Provisions Relating to the Use of Government Telephone Systems and GSA Services and Assistance

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Interim rule; extension of expiration date.

SUMMARY: The General Services Administration (GSA) is extending the expiration date of an interim rule on Federal Property Management Regulations provisions regarding management and use of telecommunications resources.

DATES: *Effective Date:* The interim rule published at 61 FR 41003 was effective August 8, 1996.

Expiration Date: The expiration date of the interim rule published at 61 FR 41003 is extended through August 8, 2000.

FOR FURTHER INFORMATION CONTACT: R. Stewart Randall, Jr., Office of Governmentwide Policy, telephone 202–501–4469.

SUPPLEMENTARY INFORMATION: FPMR interim rule F–1 was published in the **Federal Register** on August 7, 1996, 61 FR 41003. The expiration of the interim rule was August 8, 1998. A supplement published in the **Federal Register** on May 20, 1998, 63 FR 27682, extended the expiration date through August 8, 1999. This supplement further extends the expiration date through August 8, 2000.

List of Subjects in 41 CFR Part 101–35

Archives and records, Computer technology, Telecommunications, Government procurement, Property management, Records management, and Federal information processing resources activities.

Therefore the expiration date for interim rule F–1 adding 41 CFR part 101–35 published at 61 CFR 41003, August 7, 1996, and extended until August 8, 1999 at 63 FR 27682, May 20, 1998, is further extended through August 8, 2000.

Dated: July 8, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99–18115 Filed 7–16–99; 8:45 am]

BILLING CODE 6820–34–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–171, RM–8846, 9145]

FM Broadcasting Services; Indian Springs, Nevada; Mountain Pass, California; Kingman, Arizona; and St. George, Utah

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants the rulemaking proposal (RM–8846) filed by Claire B. Benezra and set forth in *Notice of Proposed Rulemaking*, 61 FR 44,287, published August 28, 1996, to substitute Channel 257C for Channel 257A at Indian Springs, Nevada, and to modify the construction permit of Station KPXC(FM) to specify operation on the upgraded channel. To accommodate the allotment at Indian Springs, Channel 259B is substituted for Channel 258B at Mountain Pass, California; Channel 261C2 is substituted for Channel 260C2

at Kingman, Arizona; and Channel 260C is substituted for Channel 259C at St. George, Utah. Station KHYZ(FM) at Mountain Pass is authorized to retain its Class B superpower status on Channel 259B (facilities of 8.4 kilowatts effective radiated power (ERP)and 551 meters antenna height above average terrain (HAAT)). The licenses of Stations KHYZ(FM), KGMN(FM), and KZEZ(FM) are modified accordingly. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes and J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 96–171, adopted July 2, 1999 and released July 2, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036. Channel 257C can be allotted to Indian Springs in compliance with the Commission's minimum distance separation requirements at petitioner's desired transmitter site restricted to 21.2 kilometers (13.2 miles) southwest of the community at coordinates 36–25–18 North Latitude and 115–48–35 West Longitude. Channel 259B can be allotted to Mountain Pass, California at Station KHYZ(FM)'s licensed transmitter site at coordinates 35–29–27 North Latitude and 115–33–27 West Longitude. Channel 261C2 can be allotted to Kingman, Arizona at Station KGMN(FM)'s licensed transmitter site at coordinates 35–06–37 North Latitude and 113–52–55 West Longitude. Channel 260C can be allotted to St. George, Utah at Station KZEZ(FM)'s licensed transmitter site at coordinates 36–50–49 North Latitude and 113–29–28 West Longitude. Concurrence by the Mexican government as to the allotments at Kingman and at Mountain Pass (using superpower Class B facilities of 8.4 kilowatts ERP and 551 meters HAAT) has been received, given that both communities are located within 320 kilometers (199 miles) of the U.S.-Mexican border.

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, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 260C2 and adding Channel 261C2 at Kingman.

3. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 258B and adding Channel 259B at Mountain Pass.

4. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by removing Channel 257A and adding Channel 257C at Indian Springs.

5. Section 73.202(b), the Table of FM Allotments under Utah, is amended by removing Channel 259C and adding Channel 260C at St. George.

Federal Communications Commission.

John Karousos,

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

[FR Doc. 99–18237 Filed 7–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–64; RM–9485]

Radio Broadcasting Services; Genoa, Mt. Morris and Oregon, Illinois

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission at the request of Farm Belt Radio, Inc., makes two simultaneous amendments to the FM Table of Allotments. First it reallots Channel 291A from Oregon, Illinois to Genoa, Illinois, substitutes Channel 292A for Channel 291A at Genoa and modifies the construction permit of Station WOXM(FM) accordingly. Second, it reallots Channel 239A from Mt. Morris, Illinois to Oregon, Illinois with no change of channel with and modifies Station WSEY(FM)'s construction permit accordingly. *See* 64 FR 8785 (February 23, 1999). The coordinates for Channel 292A at Genoa are North Latitude 42–01–00 and West Longitude 88–49–00. The coordinates for Channel 239A at Oregon are North Latitude 41–59–04 and West Longitude 89–29–52. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 23, 1999.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–64, adopted June 30, 1999, and released July 9, 1999.

The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information Center (Room CY–A257) at its headquarters, 445 12th Street, SW Washington, DC The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc. (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

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: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by removing Channel 291A from Oregon and adding Channel 292A to Genoa and removing Channel 239A from Mt. Morris and adding Channel 239A to Oregon.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–18239 Filed 7–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–33; RM–9453]

Radio Broadcasting Services; Burdett, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 228A to Burdett, Kansas, as that

community's first local aural transmission service in response to a petition for rule making filed by Dana Puopolo. *See* 64 FR 7844, February 17, 1999. Coordinates used for Channel 228A at Burdett are 38–11–30 NL and 99–31–30 WL. With this action, the proceeding is terminated.

DATES: Effective August 23, 1999. A filing window for Channel 228A at Burdett, Kansas, 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.

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. 99–33, adopted June 30, 1999, and released July 9, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., 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 Kansas, is amended by adding Burdett, Channel 228A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–18240 Filed 7–16–99; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–32; RM–9445]

Radio Broadcasting Services; Rye, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 285A to Rye, Colorado, as that community's first local commercial FM transmission service in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 7844, February 17, 1999. Coordinates used for Channel 285A at Rye are 37–55–18 NL and 104–55–48 WL. With this action, the proceeding is terminated.

DATES: Effective August 23, 1999. A filing window for Channel 285A at Rye, Colorado, 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.

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. 99–32, adopted June 30, 1999, and released July 9, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information

Center (Room CY–A257), 445 Twelfth Street, SW., 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 Colorado, is amended by adding Rye, Channel 285A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–18241 Filed 7–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–31; RM–9444]

Radio Broadcasting Services; Palisade, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 253C3 to Palisade, Colorado, in lieu of previously proposed Channel 295C3, as that community's first local aural transmission service, in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 7845, February 17, 1999. The channel substitution was required to avoid a conflict with counterproposals filed in the context of MM Docket No. 98–188. Coordinates used for Channel 253C3 at Palisade are 39–06–30 NL and 108–21–06 WL. With this action, the proceeding is terminated.

DATES: Effective August 23, 1999. A filing window for Channel 253C3 at Palisade, Colorado, 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.

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. 99–31, adopted June 30, 1999, and released July 9, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., 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 Colorado, is amended by adding Palisade, Channel 253C3.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–18242 Filed 7–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–30; RM–9443]

Radio Broadcasting Services; Aberdeen, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 258C2 to Aberdeen, Idaho, as that community's first local aural transmission service in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 7845, February 17, 1999. Coordinates used for Channel 258C2 at Aberdeen are 43–00–27 NL and 112–41–54 WL. With this action, the proceeding is terminated.

DATES: Effective August 23, 1999. A filing window for Channel 258C2 at Aberdeen, Idaho, 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.

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. 99–30, adopted June 30, 1999, and released July 9, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., 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:

47 CFR 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 Idaho, is amended by adding Aberdeen, Channel 258C2.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–18243 Filed 7–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–29; RM–9439]

Radio Broadcasting Services; Walden, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 231C2 to Walden, Colorado, as that community's first local aural transmission service in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 7845, February 17, 1999. Coordinates used for Channel 231C2 at Walden are 40–41–54 NL and 106–29–48 WL. With this action, the proceeding is terminated.

DATES: Effective August 23, 1999. A filing window for Channel 231C2 at Walden, Colorado, 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.

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. 99–29, adopted June 30, 1999, and released July 9, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., 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:

47 CFR 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 Colorado, is amended by adding Walden, Channel 231C2.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–18244 Filed 7–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–27; RM–9437]

Radio Broadcasting Services; New Castle, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 233A to New Castle, Colorado, as that community's first local commercial FM transmission service in response to a petition for rule making filed by Mountain West Broadcasting. See 64 FR 7842, February 17, 1999. Coordinates used for Channel 233A at New Castle, Colorado, are 39–34–12 NL and 107–31–54 WL. With this action, the proceeding is terminated.

DATES: Effective August 23, 1999. A filing window for Channel 233A at New Castle, Colorado, 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.

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. 99–27, adopted June 30, 1999, and released July

9, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., 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 Colorado, is amended by adding New Castle, Channel 233A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–18245 Filed 7–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–3; RM–9427]

Radio Broadcasting Services; Rozel, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This documents allots Channel 273A to Rozel, Kansas, as that community's first local aural transmission service in response to a petition filed by Dana Puopolo. *See* 64 FR 3913, January 26, 1999. Coordinates used for Channel 273A at Rozel are 38–11–42 NL; 99–24–24 WL. With this action, the proceeding is terminated.

DATES: Effective August 23, 1999. A filing window for Channel 273A at Rozel, Kansas, 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.

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. 99–3, adopted June 30, 1999, and released July 9, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., 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 Kansas, is amended by adding Rozel, Channel 273A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–18246 Filed 7–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–2; RM–9347]

Radio Broadcasting Services; Saltillo, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 275C3 to Saltillo, Mississippi, as that community's first local aural transmission service in response to a petition for rule making filed on behalf of Broadcasters & Publishers, Inc. *See* 64 FR 3913, January 26, 1999. Coordinates used for Channel 275C3 at Saltillo are 34–23–56 NL and 88–34–06 WL. With this action, the proceeding is terminated.

DATES: Effective August 23, 1999. A filing window for Channel 275C3 at Saltillo, Mississippi, 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.

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. 99–2, adopted June 30, 1999, and released July 9, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY-A257), 445 Twelfth Street, SW., 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 Mississippi, is amended by adding Saltillo, Channel 275C3.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–18247 Filed 7–16–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Part 829

RIN 2900–AJ32

VA Acquisition Regulation: Taxes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This rule amends the Department of Veterans Affairs Acquisition Regulation (VAAR) by deleting procedures and controls prescribed in the VAAR whereby facilities or institutions owned or controlled by State governments, territories, and the District of Columbia, can, under supervision of a Federal

agency, obtain tax-free tobacco products for gratuitous distribution to present and former members of the Armed Forces of the United States. These procedures and controls are inconsistent with VA policy against promotion of the use of tobacco products. Accordingly, we are deleting the provisions concerning tax-free tobacco products. Further, this document removes provisions stating that contracting officers will submit requests for legal advice, through channels, to the General Counsel. These provisions are internal VA instructions to contracting officers and are not required to be published in the **Federal Register** or the Code of Federal Regulations. In addition, this document removes provisions stating that the VAAR contains refund procedures for State and local taxes, since the VAAR does not contain such provisions.

DATES: Effective Date: August 18, 1999.

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

SUPPLEMENTARY INFORMATION: On January 29, 1999, we published in the **Federal Register** (64 FR 4607) a proposal to amend the Department of Veterans Affairs Acquisition Regulation (VAAR). We solicited comments concerning the proposal for 60 days, ending March 30, 1999. We did not receive any comments. Based on the rationale set forth in the proposed rule document and this document, we are adopting the provisions of the proposed rule as a final rule with no changes. The actions taken by this document are described in the SUMMARY portion of this document.

The Secretary of Veterans Affairs hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule would have a minuscule effect, if any, on small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

List of Subjects in 48 CFR part 829

Government procurement, Taxes.

Approved: June 30, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR part 829 is amended as follows:

PART 829—TAXES

1. The authority citation for part 829 is revised to read as follows:

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

2. Section 829.000 is revised to read as follows:

829.000 Scope of part.

This part prescribes policies and procedures for exemptions from Federal excise taxes imposed on alcohol products purchased for use in the Department of Veterans Affairs medical care program.

Subpart 829.1 [Removed]

3. Subpart 829.1 consisting of 829.101 is removed.

829.270 through 829.270–2 [Removed]

4. Sections 829.270 through 829.270–2 are removed.

[FR Doc. 99–18157 Filed 7–16–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 567

[Docket No. NHTSA–99–5937]

RIN 2127–AH49

Vehicle Certification; Contents of Certification Labels for Altered Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This document amends NHTSA's regulations on vehicle certification that specify the contents of the certification labels that vehicle alterers are required to affix to motor vehicles that they alter. The amendment requires the certification label affixed by the alterer to state that the vehicle, as altered, conforms to all applicable Federal motor vehicle safety, bumper, and theft prevention standards affected by the alteration. The prior regulations did not require the certification labels on altered vehicles to state that the vehicles, as altered, complied with the Theft Prevention Standard. This amendment makes the certification requirements for vehicle alterers consistent with those for vehicle manufacturers.

DATES: 1. *Effective Date:* The amendment established by this final rule will become effective on September 2, 1999.

2. *Deadline for Submission of Petitions for Reconsideration:* Any petitions for reconsideration must be received by NHTSA not later than September 2, 1999.

3. *Compliance Date:* The amendment established by this final rule applies to vehicles manufactured on or after January 1, 2000. However, any alterer who wishes to voluntarily affix certification labels that meet the requirements of this final rule to vehicles manufactured before that date may do so.

ADDRESSES: Any petitions for reconsideration should refer to the docket number above and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are 9 am to 5 pm, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. (202–366–5238).

SUPPLEMENTARY INFORMATION:

A. Background

This rule was preceded by a notice of proposed rulemaking (NPRM) published on February 11, 1999 (64 FR 6852). As explained in the NPRM, a final rule published on February 11, 1999 (64 FR 6815), had amended the regulations on vehicle certification at 49 CFR 567.4 to require the certification label for multipurpose passenger vehicles (MPVs) and trucks with a gross vehicle weight rating (GVWR) of 6,000 pounds or less to specify that the vehicle complies with all applicable Federal motor vehicle safety and theft prevention standards. This amendment was prompted by a letter that NHTSA had received from a vehicle manufacturer noting that under a provision of the Anti Car Theft Act of 1992, now codified at 49 U.S.C. 33101, the definition of vehicles subject to the major parts marking requirements of the Theft Prevention Standard was expanded to include ''a multi-purpose passenger vehicle or light duty truck when that vehicle or truck is rated at not more than 6,000 pounds gross vehicle weight.''

One of the comments submitted in response to the notice of proposed rulemaking (NPRM) (published on June 25, 1998 at 63 FR 34623) that preceded the final rule on the contents of certification labels for MPVs and light duty trucks was from John Russell Deane III, the General Counsel of the Speciality Equipment Market

Association (SEMA). In his comment, Mr. Deane recommended that NHTSA amend 49 CFR 567.7, the provision in the certification regulations that prescribes requirements for persons who alter certified vehicles, so that it is consistent with the amendments to the certification requirements for manufacturers that the agency was proposing.

The certification requirements in section 567.7 apply to a person who alters a previously certified vehicle before it is first purchased for purposes other than resale. The certification requirements are triggered only when the vehicle is altered ''other than by the addition, substitution, or removal of readily attachable components such as mirrors or tire and rim assemblies, or minor finishing operations such as painting,'' or when the vehicle is altered ''in such a manner that its stated weight ratings are no longer valid.''

In his comment, Mr. Deane noted that although vehicle alterers have a statutory responsibility to certify that any vehicle they alter that is subject to the Theft Prevention Standard remains in compliance with that standard following the completion of the alterations, section 567.7 was never amended to reflect that requirement.

In its response to Mr. Deane's comment, NHTSA acknowledged the validity of the issue that he raised, and stated that the agency would commence a rulemaking to address the disparity between the certification responsibilities for manufacturers and those for alterers with regard to the Theft Prevention Standard.

Accordingly, NHTSA proposed to amend the certification regulations to require the label affixed by vehicle alterers to state that the vehicle, as altered, conforms to all applicable Federal motor vehicle safety, bumper, and theft prevention standards affected by the alteration. The NPRM stated that this requirement would apply to vehicles manufactured on or after September 1, 1999 so that vehicle alterers have adequate lead time to exhaust their existing inventory of certification labels and have new labels printed if the amendment were adopted.

B. Comments

Three comments were submitted in response to the NPRM. The first of these was from John Russell Deane III, who was again commenting on behalf of SEMA. Mr. Deane stated that SEMA was pleased to see that the agency was proposing to adopt the amendment to the certification requirements for altered vehicles that he had recommended. Mr. Deane expressed concern, however, that the proposal for the amendment to apply to vehicles manufactured on or after September 1, 1999 would not provide sufficient lead time for label makers and vehicle alterers to be apprized of the changes that will be required in the contents of the certification label.

As stated in the NPRM, NHTSA proposed September 1, 1999 as the compliance date for this amendment because it assumed that this would provide vehicle alterers with adequate lead time to exhaust their existing inventory of certification labels and have new labels printed. The agency was additionally motivated by the belief that a September 1, 1999 compliance date would eliminate confusion for vehicle alterers because that date also coincides with the commonly recognized start of production for model year (MY) 2000 vehicles.

In a comment responding to the NPRM on certification requirements for manufacturers of MPVs and light duty trucks, the Association of International Automobile Manufacturers (AIAM) requested that manufacturers be given 120 days lead time to implement the proposed changes and to exhaust their existing supply of certification labels. Based on this comment, NHTSA assumed that 120 days would provide adequate lead time for vehicle alterers as well.

The agency notes, however, that owing to a delay in the publication of this final rule, a September 1, 1999 compliance date will no longer provide vehicle alterers with 120 days of lead time. Accordingly, the agency has decided to postpone the compliance date of this amendment for an additional 120 days. As a consequence, the amendment will apply to vehicles manufactured on or after January 1, 2000. The additional delay in the compliance date of this amendment should address Mr. Deane's concern that there be adequate lead time for label makers and vehicle alterers to be apprised of the required changes in the contents of the certification label for altered vehicles.

The second comment was submitted by the National Truck Equipment Association (NTEA), a trade association representing distributors and manufacturers of multi-stage produced, work-related trucks, truck bodies, and equipment. In its comment, the NTEA questioned the need for amending the certification label for altered MPVs and light duty trucks because those vehicles will already have labels affixed by their manufacturers certifying the vehicles' compliance with all applicable Federal motor vehicle safety and theft prevention standards as a result of the February 11, 1999 amendment to 49 CFR 567.4. The NTEA noted that the manufacturer's label will remain on these vehicles after they are altered. As a consequence, the NTEA contended that it would be redundant to require the alterer's certification label to also state that the vehicles comply with the Theft Prevention Standard.

The NTEA also requested six months lead time if the agency decided to change the required contents of certification labels for altered vehicles so that it has adequate time to redesign the labels, have them printed, and sufficiently reduce its current inventory of labels to mitigate the cost of the change. The NTEA noted that many of its members obtain labels far in advance of their intended use and that it is not unusual for a member company to purchase labels once a year.

With respect to the first issue raised by the NTEA, the agency notes that the certification responsibilities of vehicle alterers are distinct from those of vehicle manufacturers. A manufacturer must certify that its vehicle conforms to all applicable standards in effect on the vehicle's date of manufacture, while an alterer must certify that the vehicle, as altered, remains in conformity with those standards. As such, any statement on the certification label affixed by the manufacturer that a MPV or light duty truck conforms to the Theft Prevention Standard as of the date of the vehicle's manufacture does not relieve the alterer from certifying that the vehicle, as altered, remains in conformity with that standard. Because of the different function they serve, NHTSA sees no redundancy between the certification statements made by the vehicle manufacturer and those made by the vehicle alterer.

Addressing the second issue raised by the NTEA, the agency notes that the January 1, 2000 compliance date that is being adopted for this final rule will provide an amount of lead time for changing the contents of certification labels for altered vehicles that is close to what the organization has requested for its members.

The third comment was received from the National Automobile Dealers Association (NADA). In its comment, NADA expressed the opinion that NHTSA is relying on 49 U.S.C. 33108(c) to expand the contents of the certification label for altered vehicles to include a reference to the Theft Prevention Standard. NADA stated that it is concerned that section 33108(c) ''fails to vest NHTSA with the necessary discretion and authority to require an

alterer to certify conformity with the theft prevention standard.''

Section 33108(c) states, in relevant part, that the ''manufacturer of a motor vehicle subject to the standard * * * shall provide at the time of delivery of the vehicle * * * a certification that the vehicle * * * conforms to the applicable motor vehicle theft prevention standard.'' The section further authorizes the Secretary of Transportation to prescribe the type and form of the certification by regulation. NHTSA has accordingly relied on this section, and other similar provisions, as statutory authority for the vehicle certification regulations at 49 CFR part 567, which, as previously noted, include requirements for persons who alter certified vehicles at 49 CFR 567.7. The alteration of certified vehicles is not a subject that is specifically addressed within 49 U.S.C. 33108(c) or the other sources of statutory authority for the vehicle certification regulations. Because the operations performed by vehicle alterers could affect a vehicle's compliance with applicable Federal motor vehicle safety, bumper, and theft prevention standards, and potentially introduce safety-related defects into the vehicle, NHTSA has identified alterers as having the same duties and responsibilities as vehicle manufacturers, and has accordingly regulated them as such. The statutes that authorize NHTSA to prescribe the manner and form in which manufacturers are to certify compliance with applicable safety, bumper, and theft prevention standards apply equally to vehicle alterers.

In its comment, NADA also observed that no reference to the Theft Prevention Standard need be provided in an alterer's label for a vehicle that is exempted by NHTSA from that standard under 49 CFR Part 543. The agency disagrees with this observation. As part of the rulemaking that established Part 543, NHTSA solicited comments on whether the exemption status of a vehicle with respect to the Theft Prevention Standard should be reflected on the vehicle's certification label. Most of the comments that were received disfavored this requirement because it would have imposed additional costs on manufacturers to have different labels printed for vehicle lines that were subject to, exempted from, and not subject to the standard, without providing any apparent benefit to law enforcement organizations that the standard was intended to assist. See Final Rule published on September 8, 1987 at 52 FR 33821, 33823–24. Based on these comments, NHTSA concluded that it was unnecessary for the exemption status of a vehicle to be reflected on the vehicle's certification label. As a consequence, the certification regulations at 49 CFR 567.4(g)(5) require manufactures to state that 1987 and subsequent model year passenger cars conform to ''all applicable Federal motor vehicle safety, bumper, and theft prevention standards.'' The agency notes that this certification statement is appropriate for vehicle lines that are exempted from the Theft Prevention Standard, because that standard is not ''applicable'' to those vehicles. In like manner, where a vehicle has been exempted from the Theft Prevention Standard, alterers will face no additional burden in certifying that the vehicle conforms to all ''applicable,'' standards, including the Theft Prevention Standard.

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rule was not reviewed under E.O. 12866. NHTSA has analyzed this rule and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendment resulting from this final rule will not have a significant economic impact on a substantial number of small entities. Although most vehicle alterers are likely to qualify as small entities, the amendment will have no adverse economic impact upon them because they are being afforded adequate lead time to exhaust their existing inventory of certification labels and have new labels printed. This amendment also will have no effect on small organizations and small governmental units. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws will be affected.

4. National Environmental Policy Act

The agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that the rule will not significantly affect the human environment.

5. Civil Justice Reform

This rule does not have any retroactive effect. It modifies an existing Federal regulation to make it consistent with a statutory requirement. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This rule does not preempt the states from adopting laws or regulations on the same subject, except that it does preempt a state regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

List of Subjects in 49 CFR Part 567

Labeling, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, § 567.7, *Requirements for persons who alter certified vehicles*, in Title 49 of the Code of Federal Regulations at Part 567 is amended as follows:

PART 567—[AMENDED]

1. The authority citation for Part 567 is revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166, 32502, 32504, 33101–33104, 33108, and 33109; delegation of authority at 49 CFR 1.50

2. Section 567.7 is amended by revising paragraph (a) to read as follows:

§ 567.7 Requirements for persons who alter certified vehicles.

* * * * *

(a) The statement: ''This vehicle was altered by (individual or corporate name) in (month and year in which alterations were completed) and as altered it conforms to all applicable Federal Motor Vehicle Safety Standards affected by the alteration and in effect in (month, year).'' The second date shall be no earlier than the manufacturing date of the original vehicle, and no later than the date alterations were completed.

(1) In the case of passenger cars manufactured on or after January 1, 2000, the expression ''safety, bumper, and theft prevention'' shall be substituted in the statement for the word ''safety''.

(2) In the case of multipurpose passenger vehicles (MPVs) and trucks with a GVWR of 6,000 pounds or less manufactured on or after January 1, 2000, the expression ''and theft

prevention'' shall be included in the statement following the word ''safety''.

* * * * *

Issued on: July 14, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–18324 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 64, No. 137
Monday, July 19, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV99–906–2 PR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate from $0.11 to $0.12 per 7/10 bushel carton of oranges and grapefruit established for the Texas Valley Citrus Committee (Committee) under Marketing Order No. 906 for the 1999–2000 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. Authorization to assess orange and grapefruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by August 9, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 906 (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, orange and grapefruit handlers in the Lower Rio Grande Valley in Texas are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable oranges and grapefruit beginning on August 1, 1999, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule would increase the assessment rate established for the Committee for the 1999–2000 and subsequent fiscal periods from $0.11 to $0.12 per 7/10 bushel carton handled.

The Texas orange and grapefruit marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Texas oranges and grapefruit. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1998–99 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate of $0.11 per 7/10 bushel carton that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on June 8, 1999, and unanimously recommended 1999–2000 expenditures of $1,148,850 and an assessment rate of $0.12 per 7/10 bushel carton of oranges and grapefruit handled. In comparison, last year's

budgeted expenditures were $1,181,950. The assessment rate of $0.12 is $0.01 higher than the rate currently in effect. The Committee has operated under a lower assessment rate in recent years and used available reserve funds to make up most of the difference between assessment income and expenses. Since 1994, the Committee's reserve has decreased from almost $400,000 to slightly under $120,000. Thus, the Committee recommended increasing the assessment rate because the current rate would not generate enough income to cover 1999–2000 expenses, and the Committee only wants to use a limited amount of reserve funds to meet expenses. The Committee wants to ensure that adequate reserve funds are available to meet unexpected expenses.

The major expenditures recommended by the Committee for the 1999–2000 fiscal period include $739,000 for advertising, $179,000 for the Mexican Fruit Fly program, $109,781 for management and administration of the program, and $73,369 for compliance. Budgeted expenses for these items in 1998–99 were $768,700, $179,000, $109,781, and $73,369, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Texas oranges and grapefruit. Texas orange and grapefruit shipments for the year are estimated at 9.5 million 7/10 bushel cartons, which should provide $1,140,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve (currently $119,402) would be kept within the maximum of one fiscal period's expenses permitted by the order (§ 906.35).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 1999–2000 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

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

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

There are approximately 315 producers of oranges and grapefruit in the production area and 16 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Texas orange and grapefruit producers and handlers may be classified as small entities.

Last year, 5 of the 16 handlers (31 percent) each shipped over 625,000 7/10 bushel cartons of oranges and grapefruit. Using an average f.o.b. price of $8.00 per carton, these handlers could be considered large businesses by the SBA, and the remaining 11 handlers (69 percent) could be considered small businesses. Of the approximately 315 producers within the production area, few have sufficient acreage to generate sales in excess of $500,000; therefore, a majority of producers of Texas oranges and grapefruit may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent fiscal periods from $0.11 to $0.12 per 7/10 bushel carton of oranges and grapefruit. The Committee unanimously recommended 1999–2000 expenditures of $1,148,850 and an assessment rate of $0.12 per 7/10 bushel carton. The proposed assessment rate of $0.12 is $0.01 higher than the 1998–99 rate. The Committee recommended increasing the assessment rate because the current rate would not generate enough income to cover 1999–2000 expenses, and the Committee only wants to use a limited amount of reserve funds to meet expenses. The Committee wants to ensure that adequate reserve funds are available to meet unexpected expenses. The quantity of assessable oranges and grapefruit for the 1999–2000 season is estimated at 9.5 million 7/10 bushel cartons. Assessment income, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 1999–2000 fiscal period include $739,000 for advertising and promotion, $179,000 for the Mexican Fruit Fly program, $109,781 for management and administration of the marketing order program, and $73,369 for compliance. Budgeted expenses for these items in 1998–99 were $768,700, $179,000, $109,781, and $73,369, respectively.

Many producers are still recovering from the devastating freezes of 1983 and 1989 that virtually destroyed the Texas citrus industry. Most trees in the production area were planted within the past ten years and have not yet reached full maturity. As a result, yields are still somewhat low and profit to the producers is marginal. Also, a general oversupply of citrus from other domestic sources and foreign countries depressed prices. The Committee recommended that the 1999–2000 rate of assessment be increased to $0.12 per 7/10 bushel carton. The Committee recommended increasing the assessment rate because the current rate would not generate enough income to cover 1999–2000 expenses, and the Committee only wants to use a limited amount of reserve funds ($5,850) to meet expenses. Interest income totaling $3,000 will also be used to cover program expenses in 1999–2000. At the end of the 1999–2000 fiscal period, the reserve is expected to be $113,552.

The Committee reviewed and unanimously recommended 1999–2000 expenditures of $1,148,850, which included a decrease in the advertising and promotion program. Budgeted expenses for the Mexican Fruit Fly program were left the same as last year. In arriving at the budget, the Committee considered information from various sources, including the Executive Committee. The Committee considered leaving the established lower assessment rate unchanged. The Committee, however, concluded that

retaining the current $0.11 per 7/10 bushel carton assessment rate for the 1999–2000 fiscal period would reduce the Committee's reserve to an unacceptable level. Alternative expenditure levels were discussed based upon the relative value of the advertising and promotion program to the Texas citrus industry. The proposed assessment rate of $0.12 per 7/10 bushel carton of assessable oranges and grapefruit was determined by dividing the total recommended budget by the quantity of assessable oranges and grapefruit estimated at 9.5 million 7/10 bushel cartons for the 1999–2000 fiscal period. The $0.12 rate should provide $1,140,000 in assessment income. The additional $8,850 would come from the Committee's reserve and interest income.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the f.o.b. price for the 1999–2000 season could range from $4.75 to $12.50 per 7/10 bushel carton of oranges and grapefruit depending upon the fruit variety, size, and quality. Therefore, the estimated assessment revenue for the 1999–2000 fiscal period as a percentage of the total pack-out revenue could range between .96 and 2.5 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Texas orange and grapefruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 8, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Texas orange and grapefruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A 20-day comment period is provided to allow interested persons to respond to this proposed rule. Twenty days is deemed appropriate because: (1) The 1999–2000 fiscal period begins on August 1, 1999, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable oranges and grapefruit handled during such fiscal period, and handlers will begin harvesting their fruit in early September; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is proposed to be amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 906.235 is revised to read as follows:

§ 906.235 Assessment rate.

On and after August 1, 1999, an assessment rate of $0.12 per 7/10 bushel carton is established for oranges and grapefruit grown in the Lower Rio Grande Valley in Texas.

Dated: July 14, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–18318 Filed 7–16–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 98–095–1]

Pork and Pork Products From Mexico Transiting the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The importation and in-transit movement of fresh (chilled or frozen) pork and pork products from Mexico into the United States is restricted because of the presence of hog cholera in some areas in Mexico. We are proposing to amend the regulations to allow fresh (chilled or frozen) pork and pork products from the Mexican States of Baja California Sur, Coahuila, Nuevo Leon, Tamaulipas, Sinaloa, Campeche, and Quintana Roo to transit the United States, under certain conditions, for export to another country. We are proposing this action because there has been no outbreak of hog cholera in any of the States of Baja California Sur, Coahuila, Nuevo Leon, Tamaulipas, Sinaloa, Campeche, or Quintana Roo since 1993, and it appears that fresh (chilled or frozen) pork and pork products from each of the above States could transit the United States under seal with an insignificant risk of introducing hog cholera.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by September 17, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–095–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–095–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Michael David, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737, (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations)

prohibit or restrict the importation of certain animals and animal products into the United States to prevent the introduction of certain animal diseases. Section 94.9 of the regulations prohibits the importation of pork and pork products into the United States from countries where hog cholera exists, unless the pork or pork products have been treated in one of several ways, all of which involve heating or curing and drying.

Because hog cholera exists in certain areas in Mexico, pork and pork products from most Mexican States must meet the requirements of § 94.9 to be imported into the United States. Section 94.20 provides an exception, allowing the importation of fresh (chilled or frozen) pork and pork products from the Mexican State of Sonora.

Under § 94.15, pork and pork products that are from certain Mexican States and that are not eligible for entry into the United States in accordance with the regulations in § 94.9 or § 94.20 may transit the United States for immediate export if certain conditions are met. These provisions were added to the regulations in 1992, following a United States Department of Agriculture investigation of the hog cholera situation in Sonora, Mexico, and a determination that pork and pork products from Sonora could transit the United States, under certain conditions, with minimal risk of introducing hog cholera. Final rules published in the **Federal Register** in 1995, 1996, and 1997 applied the provisions to Chihuahua, Yucatan, and Baja California, respectively.

Mexico's Director of Animal Health has requested that we allow pork and pork products from additional Mexican States to transit the United States under the same conditions. The additional Mexican States are Baja California Sur, Coahuila, Nuevo Leon, Tamaulipas, Sinaloa, Campeche, and Quintana Roo.

In response, officials of the Animal and Plant Health Inspection Service (APHIS) have met with Mexican representatives knowledgeable in disease prevention, epidemiology, and diagnostic methods. The team reviewed the information supplied by these representatives (discussed below) and found two factors contributing to the seven States' apparent successes in remaining free of hog cholera: The States' locations and controls by Mexico's Division of Animal Health on the movement into the States of pork, pork products, and live swine. Based on this review, the team recommended granting Mexico's request.

General Information

As required by the Mexican Government, pork from Mexico that is currently eligible to transit the United States under § 94.15 must be processed and packaged in Tipo de Internacional Federal (TIF) plants that are approved by the Mexican Government and that are subject to strict Federal supervision to ensure that international health standards are maintained. A ''TIF'' may be a slaughter facility or a processing plant, or a combination of the two.

The seven States that are subject to this proposed rule and other States recognized by Mexico as free of hog cholera may import live swine only from other hog cholera-free States and countries. The Mexican Government requires shipments of swine from hog cholera-free countries to be accompanied by a certificate of origin issued by that country's veterinary authorities and by a certificate of import issued by the Mexican veterinary authorities. States recognized by Mexico as free of hog cholera also require and issue their own permits and health certificates, further ensuring that the products originate in a hog cholera-free region. In addition, live swine and pork imported into these hog cholera-free States must be shipped in sealed trucks, and all shipments are inspected at inspection stations located either on State lines or at international ports of entry.

The Mexican government also requires that any fresh pork or pork products that are shipped for processing to a hog cholera-free State from a region where hog cholera is believed to exist arrive at TIF processing plants in sealed, numbered containers. The seals must show no evidence of tampering, and the shipment must be accompanied by a certificate signed by an authorized official in the region of origin. Once they arrive at the TIF plant in a hog cholera-free State, such pork and pork products must be clearly labeled and set apart from pork that is eligible for importation into the United States to ensure that no comminglement occurs. Mexico further protects its swine population from hog cholera by requiring that pork that originates in non-hog cholera-free regions may only enter commerce in hog cholera-free States after it is heated or cured and dried.

Baja California Sur

The last outbreak of hog cholera in the Mexican State of Baja California Sur occurred in May 1993. Vaccination for hog cholera was discontinued in 1980. Mexico officially recognized Baja California Sur as free of hog cholera in December 1993.

Baja California Sur is bordered on the north by the Mexican State of Baja California, which Mexico recognizes as free of hog cholera. To the west of Baja California Sur is the Pacific Ocean and to the east is the Gulf of California.

There is little swine production in Baja California Sur and there are no TIF plants that handle swine and pork in the State. According to 1997 production data, Baja California Sur produced 788 metric tons of pork (less than one tenth of one percent of Mexico's total pork production for that year).

Coahuila

The last outbreak of hog cholera in the Mexican State of Coahuila occurred in 1984. Vaccination for hog cholera was discontinued in 1984. Mexico officially recognized Coahuila as free of hog cholera in July 1995.

Coahuila is bordered on the northwest by the Mexican State of Chihuahua, which Mexico recognizes as free of hog cholera. Coahuila is bordered on the southwest by the Mexican States of Durango and Zacatecas, both of which are in the eradication phase of Mexico's National Campaign Against Classical Swine Fever (hog cholera). To the southeast of Coahuila is the Mexican State of Nuevo Leon, which Mexico declared free of hog cholera in July 1995. To the north and east of Coahuila is the United States, which is free of hog cholera.

Three TIF plants handle swine and pork in the State of Coahuila. According to 1997 production data, Coahuila produced approximately 13,423 metric tons of pork (less than 1.5 percent of Mexico's total pork production for that year).

Nuevo Leon

The last outbreak of hog cholera in the Mexican State of Nuevo Leon occurred in 1990. Vaccination for hog cholera was discontinued in 1993. Mexico officially recognized Nuevo Leon as free of hog cholera in July 1995.

Nuevo Leon is bordered on the northwest by the Mexican State of Coahuila, on the northeast by the United States, and on the northeast and southeast by the Mexican State of Tamaulipas, which Mexico considers free of hog cholera. To the southwest of Nuevo Leon is the Mexican State of San Luis Potosi, which is in the eradication phase of Mexico's National Campaign Against Classical Swine Fever.

Eight TIF plants handle swine and pork in the State of Nuevo Leon. According to 1997 production data, Nuevo Leon produced approximately

17,416 metric tons of pork (less than 2 percent of Mexico's total pork production for that year).

Tamaulipas

The last outbreak of hog cholera in the Mexican State of Tamaulipas occurred in 1984. Vaccination for hog cholera was discontinued in 1993. Mexico officially recognized Tamaulipas as free of hog cholera in July 1995.

Tamaulipas is bordered on the northwest by the Mexican State of Nuevo Leon and on the northeast by the United States. To the southeast of Tamaulipas is the Gulf of Mexico. To the south and west of Tamaulipas are the Mexican States of San Luis Potosi and Veracruz. San Luis Potosi is in the eradication phase of Mexico's National Campaign Against Classical Swine Fever, and Veracruz is in the control phase.

One TIF plant handles swine and pork in the State of Tamaulipas. According to 1997 production data, Tamaulipas produced approximately 6,490 metric tons of pork (less than 1 percent of Mexico's total pork production for that year).

Sinaloa

The last outbreak of hog cholera in the Mexican State of Sinaloa occurred in April 1990. Vaccination for hog cholera was discontinued in 1990. Mexico officially recognized Sinaloa as free of hog cholera in November 1993.

Sinaloa is bordered on the west by the Gulf of California and the Pacific Ocean. To the north and northeast of Sinaloa are the Mexican States of Sonora and Chihuahua, both of which are considered free of hog cholera by Mexico. To the east and south of Sinaloa are the Mexican States of Durango and Nayarit. Both Durango and Nayarit are in the eradication phase of Mexico's National Campaign Against Classical Swine Fever.

Three TIF plants handle swine and pork in the State of Sinaloa. According to 1997 production data, Sinaloa produced approximately 12,968 metric tons of pork (less than 1.5 percent of Mexico's total pork production for that year).

Campeche

The last outbreak of hog cholera in the Mexican State of Campeche occurred in 1989. Vaccination for hog cholera was discontinued in 1995. Mexico officially recognized Campeche as free of hog cholera in December 1997.

Campeche is bordered on the northeast and east by the Mexican States of Yucatan and Quintana Roo, respectively, both of which are considered free of hog cholera by Mexico. To the northwest of Campeche is the Gulf of Mexico. South and southwest of Campeche are Guatemala and the Mexican State of Tabasco. Hog cholera is believed to exist in Guatemala. Tabasco is currently in the control phase of Mexico's National Campaign Against Classical Swine Fever.

According to 1997 production data, Campeche produced approximately 3,363 metric tons of pork (less than one half of 1 percent of Mexico's total pork production for that year).

Quintana Roo

The last outbreak of hog cholera in the Mexican State of Quintana Roo occurred in 1980. Vaccination for hog cholera was discontinued in 1994. Mexico officially recognized Baja California as free of hog cholera in July 1996.

Quintana Roo is bordered on the north and west by the Mexican States of Yucatan and Campeche, both of which are considered free of hog cholera by Mexico. To the east of Quintana Roo is the Caribbean Sea. South of Quintana Roo is Belize, which has not been officially recognized as free of hog cholera and, therefore, does not export pork or live swine to Mexico.

There are no TIF plants that handle swine and pork in the State of Quintana Roo. According to 1997 production data, Quintana Roo produced approximately 7,250 metric tons of pork (less than 1 percent of Mexico's total pork production for that year).

Conditions for Movement Through the United States

The following conditions for in-transit movement currently apply to pork and pork products from Baja California, Chihuahua, Sonora, and Yucatan. Under this proposed rule, they would also apply to pork and pork products from Baja California Sur, Coahuila, Nuevo Leon, Tamaulipas, Sinaloa, Campeche, and Quintana Roo.

1. Any person wishing to move pork or pork products from one of these States through the United States for export must first obtain a permit for importation from APHIS. The application for the permit tells APHIS who will be involved in the transportation, how much and what type of pork and pork products will be transported, when they will be transported, and the method and route of shipment.

2. The pork or pork products must be packaged prior to movement from the State in a leakproof container and sealed with a serially numbered seal approved by APHIS. The container must remain sealed at all times while transiting the United States.

3. The person moving the pork or pork products through the United States must inform the APHIS officer at the United States port of arrival, in writing, of the following information before the pork or pork products arrive in the United States: The time and date that the pork or pork products are expected at the port of arrival in the United States, the time schedule and route of the shipments through the United States, the permit number, and the serial numbers of the seals on the containers.

4. The pork or pork products must transit the United States under Customs bond.

5. The pork or pork products must be exported from the United States within the time period specified on the permit.

Any pork or pork products exceeding the time limit specified on the permit or transiting in violation of any of the requirements of the permit or the regulations may be destroyed or otherwise disposed of at the discretion of the Administrator, APHIS, pursuant to section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111).

These safeguards are intended to prevent tampering with the shipments, ensure that the shipments actually leave the United States, and otherwise ensure that the shipments do not present a risk of introducing hog cholera into the United States.

Under these circumstances—the low risk associated with the pork and pork products coupled with the safeguards for in-transit shipments—we believe that there would be little, if any, risk of introducing hog cholera into the United States by allowing pork and pork products from Baja California Sur, Coahuila, Nuevo Leon, Tamaulipas, Sinaloa, Campeche, and Quintana Roo to transit the United States for export. Therefore, we are proposing to amend § 94.15 to allow pork and pork products from the Mexican States of Baja California Sur, Coahuila, Nuevo Leon, Tamaulipas, Sinaloa, Campeche, and Quintana Roo to transit the United States for export under the same conditions that currently apply to pork and pork products from Baja California, Chihuahua, Sonora, and Yucatan.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the effects of this proposed rule on small entities. Based on the information we have, there is no basis to conclude that this rule will result in any significant economic effects on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

In accordance with 21 U.S.C. 111–113, 114a, 115, 117, 120, 123, and 134a, the Secretary of Agriculture has the authority to promulgate regulations and take measures to prevent the introduction into the United States, and the interstate dissemination within the United States, of communicable diseases of livestock and poultry.

This proposed rule would allow fresh (chilled or frozen) pork and pork products from the Mexican States of Baja California Sur, Coahuila, Nuevo Leon, Tamaulipas, Sinaloa, Campeche, and Quintana Roo to transit the United States, under certain conditions, for export to another country.

There appears to be little risk of hog cholera exposure from shipments of pork and pork products from Baja California Sur, Coahuila, Nuevo Leon, Tamaulipas, Sinaloa, Campeche, and Quintana Roo transiting the United States. Assuming that proper risk management techniques continue to be applied in Mexico, and that accident and exposure risk are minimized by proper handling during transport, the risk of exposure to hog cholera from pork in transit from Mexico through the United States would be minimal.

The proposed rule would have no direct effect on U.S. producers and consumers of pork because Mexican pork would only transit the United States and would not enter U.S. marketing channels. Neither the quantity or price of pork traded in U.S. domestic markets, nor U.S. consumer or producer surplus would be affected by the proposed rule.

Effects on Small Transport Firms

This proposed rule, if implemented, could directly affect U.S. trucking companies in the border states of Texas and California. These companies would benefit from transporting an estimated 5 to 6 thousand metric tons annually of Mexican pork and pork products from U.S. land border ports to U.S. maritime ports. Additional annual revenues generated by the proposed rule would range from $2,000 to $3,000 for California transport firms (based on an additional 5 to 7 trips annually), and from $10,000 to $57,000 for Texas transport firms (based on an additional 15 to 18 trips annually). The majority (98 percent) of trucking firms in Texas and California meets the Small Business Administration's definition of small firm (less than $18.5 million in receipts annually). However, based on the limited number of trips and negligible amount of revenue generated by these trips, it is safe to conclude that the proposed rule would not have a significant economic impact on a substantial number of small trucking firms.

Effects on U.S. Pork Exporters

The extent to which the proposed rule would affect U.S. pork exporters is unclear, but, based on historical data on Mexican pork exports, it appears that the overall effect of the proposed rule would be to increase the quantity of Mexican pork destined for the Japanese frozen pork market. According to Japanese import statistics, Japan imported 382,000 metric tons of frozen swine cuts valued at roughly $1.9 billion in 1997. Denmark, Taiwan, and the United States were the top three suppliers, but Mexico and Canada, who are relative newcomers to the Japanese frozen pork market, have gained market share in recent years. As discussed above, we estimate that an additional 5,000 to 6,000 metric tons annually of frozen pork from Mexico would transit the United States for Japan after adoption of the proposed rule. This is roughly 1.4 percent of the total quantity imported by Japan in 1997.

During the period 1996 through 1997, Mexican frozen pork exports to Japan increased from 12,953 metric tons (valued at $76 million) to 24,408 metric tons (valued at $122 million). During the same period, U.S. frozen pork exports to Japan decreased from 64,500 metric tons valued at $360 million to 48,000 metric tons valued at $244 million. Analysts cite price advantage and the willingness of Mexican packers to tailor pork cuts to Japanese specifications as key reasons for Mexico's increased market share in 1997.

Since this rule simply allows pork from additional Mexican States to transit the United States for immediate export, it is unclear whether this rule would result in increased volumes of Mexican exports to foreign regions (e.g., Japan), though it would likely result in increased volumes of pork transiting the United States. It is possible that the volume of Mexico's total pork exports would remain constant, though the volume of pork in transit through the United States would increase. This scenario would likely have a minimal economic effect on U.S. pork exporters, whether small or large. However, since we are unable to determine whether this rule will result in increased volumes of Mexican pork exports, we cannot determine the effect of this rule on U.S. pork exporters, whether small or large.

Trade Relations

This proposal would remove some restrictions on the importation of pork and pork products from Mexico and would encourage a positive trading environment between the United States and Mexico and other regions where hog cholera is considered to exist by stimulating economic activity and providing export opportunities to foreign pork processing industries.

The proposed changes to the regulations would result in new information collection or recordkeeping requirements, as described below under the heading, ''Paperwork Reduction Act.''

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 98–095–1. Please send a copy of your comments to: (1) Docket No. 98–095–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full

effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the regulations to allow fresh (chilled or frozen) pork and pork products from the Mexican States of Baja California Sur, Coahuila, Nuevo Leon, Tamaulipas, Sinaloa, Campeche, and Quintana Roo to transit the United States, under certain conditions, for export to another country.

Implementing this proposed rule would necessitate the use of several information collection activities, including the completion of an import permit application, the placement of serially number seals on product containers, and the forwarding of a written, pre-arrival notification to APHIS port personnel.

We are asking OMB to approve these information collection activities in connection with our efforts to ensure that fresh pork and pork products transiting the United States from Mexico pose a negligible risk of introducing hog cholera into the United States.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .744 hours per response.

Respondents: Exporters in Mexico, and full-time, salaried veterinarians of Mexico's Animal Health Inspection Service.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 12.5.

Estimated annual number of responses: 250.

Estimated total annual burden on respondents: 186 hours.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 94

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

Accordingly, we propose to amend 9 CFR part 94 as follows:

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

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

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

2. In § 94.15, paragraph (b) introductory text would be revised to read as follows:

§ 94.15 Animal products and materials; movement and handling.

* * * * *

(b) Pork and pork products from Baja California, Baja California Sur, Campeche, Chihuahua, Coahuila, Nuevo Leon, Quintana Roo, Sinaloa, Sonora, Tamaulipas, and Yucatan, Mexico, that are not eligible for entry into the United States in accordance with this part may transit the United States for immediate export if the following conditions are met:

* * * * *

Done in Washington, DC, this 13th day of July, 1999.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–18321 Filed 7–16–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–378–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes. This proposal would require modification of the pressure web of the nose landing gear wheel well. This proposal is prompted by reports of fatigue cracks in the pressure web of the nose landing gear wheel well. The actions specified by the proposed AD are intended to prevent cracking of the pressure web of the nose landing gear wheel well, which could result in loss of airplane pressurization.

DATES: Comments must be received by September 2, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–378–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Walt Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall

identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–378–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–378–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In 1990, the FAA issued AD 90–06–09, amendment 39–6488 (55 FR 8370, March 7, 1990), which required incorporation of certain structural modifications on certain Boeing Model 727 series airplanes, in accordance with Boeing Document No. D6–54860, Revision C, dated December 11, 1989, ''Aging Airplane Service Bulletin Structural Modification Program—Model 727.'' One of those modifications was installation of reinforcement straps and stiffeners on the sidewall, top, and forward bulkhead panels of the pressure web of the nose landing gear wheel well. That AD was prompted in part by reports of fatigue cracks in the pressure web of the nose landing gear wheel well.

Since the issuance of AD 90–06–09, the airplane manufacturer has notified the FAA that certain Model 727 series airplanes were inadvertently not included in the effectivity listing of Boeing Document No. D6–54860, Revision C, and hence, were also omitted from the applicability of that AD. Because such cracking has been attributed to fatigue, those airplanes may also be subject to the same unsafe condition. Cracking in the pressure web of the nose landing gear wheel well could result in loss of airplane pressurization.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 727–53–0145, Revision 1, dated December 7, 1989, which describes procedures for repetitive inspections of the sidewall, top, and forward bulkhead panels of the pressure web of the nose landing gear wheel well, and repair, if necessary. The service bulletin also describes procedures for a modification that involves installation of reinforcement straps and stiffeners on the sidewall, top, and forward bulkhead panels of the pressure web of the nose landing gear wheel well. Such installation would eliminate the need for the repetitive inspections in that area. Accomplishment of the modification specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin describes procedures for repetitive inspections of the pressure web of the nose landing gear wheel well, and repair, if necessary, this AD proposes to mandate only the modification of the pressure web of the nose landing gear wheel well. The FAA has determined that long-term continued operational safety will be better assured by design changes to prevent cracks, rather than repetitive inspections. Long-term inspections may not provide the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The decision to propose mandating only the modification and not the repetitive inspections described previously is in consonance with these conditions.

Operators should also note that this proposed AD would be applicable to airplanes not included in the effectivity listing of the service bulletin. AD 90–06–09 mandated the modification of the pressure web of the nose landing gear wheel well for airplanes listed in Boeing Document No. D6–54860, Revision C, dated December 11, 1989, ''Aging Airplane Service Bulletin Structural Modification Program—Model 727.'' The airplanes to which this proposed AD would be applicable are included in the effectivity listing of Revision H, dated May 9, 1996, of that document.

Cost Impact

There are approximately 24 airplanes of the affected design in the worldwide fleet. The FAA estimates that 13 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 82 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $701 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $73,073, or $5,621 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 98-NM–378-AD.

Applicability: Model 727 series airplanes; line numbers 124, 126, 130, 146, 221, 287, 331, 339, 345, 355, 416, 439, 516, 532, 540, 608, 631, 650, 717, 777, 788, 791, 837, and 1087; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the pressure web of the nose landing gear wheel well, which could result in loss of airplane pressurization, accomplish the following:

Modification

(a) Prior to the accumulation of 60,000 total flight cycles, or within 4 years after the effective date of this AD, whichever occurs later, install reinforcement straps and stiffeners on the sidewall, top, and forward bulkhead panels of the pressure web of the nose landing gear wheel well, in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727–53–0145, Revision 1, dated December 7, 1989.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Special Flight Permits

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

Issued in Renton, Washington, on July 13, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18368 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–110–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes. That action would have required a one-time inspection to determine if the rigging bushings in the rudder control system protrude above the surface of the flange in which they are installed, and replacement of any discrepant bushing with a new bushing. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new data that shows that all affected airplanes have already been inspected and modified (if necessary) in accordance with the proposed rule. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager,International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on September 25, 1997 (62 FR 50264). The proposed rule would have required a one-time inspection to determine if the rigging bushings in the rudder control system protrude above the surface of the flange in which they are installed, and replacement of any discrepant bushing with a new bushing. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The proposed actions were intended to prevent jamming in the rudder control system, and consequent reduced controllability of the airplane.

Actions that Occurred Since Issuance of the NPRM

Since the issuance of that NPRM, Dornier has provided information that shows that all affected airplanes in the worldwide fleet have already been inspected in accordance with the proposed NPRM. Additionally, for any airplane on which a bushing was found to protrude, that bushing has been replaced with a new bushing of correct length. Therefore, the unsafe condition that was addressed in the NPRM no longer exists. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 97–NM–110–AD, published in the **Federal Register** on September 25, 1997 (62 FR 50264), is withdrawn.

Issued in Renton, Washington, on July 13, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate,

Aircraft Certification Service.

[FR Doc. 99–18369 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–26–AD]

RIN 2120–AA64

Airworthiness Directives; Avions Mudry et Cie Model CAP 10B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Avions Mudry et Cie (Avions Mudry) Model CAP 10B airplanes. The proposed AD specifies restricting the entry speed for performing flick maneuvers to 97 knots. Inserting a copy of the proposed AD into the Limitations Section of the CAP 10B flight manual is also proposed, along with fabricating and installing a placard (in the cockpit of the airplane within the pilot's clear view) that indicates this limitation. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by the proposed AD are intended to provide the flight information necessary for the pilot to prevent the pilot from using excessive speed during aerobatic maneuvers, which could result in the wing separating from the airplane.

DATES: Comments must be received on or before August 27, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–26–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Avions Mudry & Cie, 9, rue de l'Aviation, 21121 Darois, France; telephone: 03 80 356 65 10; facsimile 03 80 35 65 15. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Karl M. Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–CE–26–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–26–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Avions Mudry Model CAP 10B airplanes. The DGAC reports that there is currently no airspeed limitation for performing flick maneuvers during aerobatic flight. The speeds listed in sections 4 and 7 of the CAP 10B flight manual are only recommendations instead of required speeds.

Without required entry speeds for flick maneuvers when performing aerobatic flight, the pilot could use excessive speed and cause the wing to separate from the airplane.

Relevant Service Information

Avions Mudry has issued Service Bulletin No. 990501, dated May 20, 1999, which specifies restricting the entry speed for performing flick maneuvers to 97 knots by installing a placard in the cockpit of the aircraft that indicates this limitation.

The DGAC classified this service bulletin as mandatory and issued French AD T1999–222(A), not dated, in order to assure the continued airworthiness of these airplanes in France.

The FAA's Determination

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above.

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Avions Mudry Model CAP 10B airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD specifies restricting the entry speed for performing flick maneuvers to 97 knots. Inserting a copy of the proposed AD into the Limitations Section of the CAP 10B flight manual is also proposed, along with fabricating and installing a placard (in the cockpit of the airplane within the pilot's clear view) that indicates this limitation. The

placard will incorporate the following language:

''THE NEVER-EXCEED AIRSPEED FOR POSITIVE OR NEGATIVE FLICK-MANEUVERS IS 180 KM/H (97 KTS)''

Cost Impact

The FAA estimates that 39 airplanes in the U.S. registry would be affected by the proposed AD. Accomplishing the proposed flight manual and placard requirements of this NPRM may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with the proposed AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of the proposed AD is the time it would take each owner/operator of the affected airplanes to insert the information into the flight manual and fabricate and install the placard.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Avions Mudry & Cie: Docket No. 99–CE–26–AD.

Applicability: Model CAP 10B airplanes, all serial numbers, certificated in any category.

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

Compliance: Required within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To provide the flight information necessary for the pilot to prevent the pilot from using excessive speed during aerobatic maneuvers, which could result in the wing separating from the airplane, accomplish the following:

(a) Restrict the entry speed for performing flick maneuvers to 97 knots through the incorporation of the following information into the CAP 10B flight manual. Accomplish this by inserting a copy of this AD into the Limitation Section of the flight manual:

''The never-exceed airspeed for positive or negative flick-maneuvers is 180 km/h (97 knots).''

(b) Fabricate a placard that incorporates the following words (using at least ⅛-inch letters), and install this placard on the instrument panel within the pilot's clear view:

''THE NEVER-EXCEED AIRSPEED FOR POSITIVE OR NEGATIVE FLICK-MANEUVERS IS 180 KM/H (97 KTS)''

Note 2: Although not required by this AD, the FAA recommends that the bonds between the plywood skins and the ribs are checked and corrected through the ''tapping'' method specified in Avions Mudry Service Bulletin No. 15. This procedure is especially recommended if it is suspected that the above-referenced speed limitation was exceeded during a previous flight.

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Avions Mudry Service Bulletin No. 990501, dated May 20, 1999, should be directed to Avions Mudry & Cie, 9, rue de l'Aviation, 21121 Darois, France; telephone: 03 80 356 65 10; facsimile 03 80 35 65 15. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 4: The subject of this AD is addressed in French AD T1999–222(A), not dated.

Issued in Kansas City, Missouri, on July 13, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–18370 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–34]

Amendment of Class E Airspace; Kansas City, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E airspace area at Kansas City International Airport, MO. The Kansas City VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) has been relocated from its present position to the Kansas City International Airport, MO. Relocating the Kansas City VORTAC requires amending the radial for the VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) or Tactical Air Navigation (TACAN) Runway (RWY) 27, Standard Instrument Approach Procedure (SIAP). Also, a review of the Class E airspace area for Kansas City International Airport indicates it does not comply with the criteria for 700 feet Above

Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. This document proposes to enlarge the Class E airspace to conform to the criteria of FAA Order 7400.2D. The review indicated the Instrument Landing System (ILS) localizer RWY 19R, ILS RWY 19L, ILS RWY 1L, ILS RWY IR, and coordinates should be included in the text header for the Kansas City International Airport, MO.

The intended effect of this proposed rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), revise the coordinates of the Kansas City VORTAC, include the ILS RWY 19R, ILS RWY 19L, ILS RWY 1L, ILS RWY 1R and coordinates, amend the radial for the VOR/DME or TACAN RWY 27 SIAP, and comply with the criteria of FAA Order 7400.2D.

DATES: Comments must be received on or before August 24, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ACE–520, Federal Aviation Administration, Docket No. 99–ACE–34, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Airspace Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–ACE–34.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to provide additional controlled Class E airspace area for Instrument Flight Rules (IFR) procedures at Kansas City International Airport, MO. The Kansas City VORTAC has been relocated from its present position to the Kansas City International Airport, MO. A review of the Class E airspace for Kansas City International Airport, MO, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile.

The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation (1) is not a ''significant regulatory action'' under Executive order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Revised]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ACE MO E5 Kansas City International Airport, MO

Kansas City International Airport, MO
(Lat. 39°17′51″N., long. 94°42′50″W.)
Kansas City Downtown Airport, MO
(Lat. 39°07′24″N., long. 94°35′34″W.)
Fort Leavenworth, Sherman Army Airfield (AAF), KS
(Lat. 39°22′06″N., long. 94°54′53″W.)
Kansas City VORTAC
(Lat. 39°17′07″N., long. 94°44′13″W.)
DOTTE LOM
(Lat. 39°13′15″N., long. 94°45′00″W.)
Riverside VOR/DME
(Lat. 39°07′14″N., long. 94°35′48″W.)
ILS RWY 19R localizer
(Lat. 39°17′24″N., long. 94°43′49″W.)
ILS RWY 19L localizer
(Lat. 39°16′44″N., long. 94°42′35″W.)
ILS RWY IL localizer
(Lat. 39°19′30″N., long. 94°43′12″W.)
ILS RWY 1R localizer
(Lat. 39°18′34″N., long. 94°42′03″W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of the Kansas City International Airport and within 4.4 miles west of the Kansas City International Runway 19R ILS localizer north course and within 4.4 miles east of the Kansas City International Runway 19L ILS localizer north course extending from the 7.6-mile radius to 21.7 miles north of the DOTTE LOM and within 4.4 miles each side of the 093° radial of the Kansas City VORTAC extending from the Kansas City International Airport 7.6-mile radius to 12 miles east of the Kansas City VORTAC, and within 2.5 miles west of the Kansas City International Runway 1L ILS localizer south course and within 2.5 miles east of the Kansas City International Runway 1R ILS localizer course extending from the 7.6-mile radius to 9.5 miles south of the DOTTE LOM and within a 6.7-mile radius of the Kansas City Downtown Airport and within 3 miles each side of the 210° radial of the Riverside VOR/DME extending from the 6.7-mile radius to 12.6 miles southwest of the Downtown Airport, and within a 6.5-mile radius of the Sherman AAF.

* * * * *

Issued in Kansas City, MO, on June 18, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–18346 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–12]

Proposed Establishment of Class E Airspace; Rockport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish Class E airspace extending upward from the surface within a 4.1-mile radius of Aransas County Airport, Rockport, TX. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of Aransas County Airport, Rockport, TX.

DATES: Comments must be received on or before September 17, 1999.

ADDRESSES: Send comments on the proposal in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–12, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520; telephone: (817) 222–5593.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES**. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped postcard containing the following statement: ''Comments to Airspace Docket No. 99–ASW–12.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR Part 71 to establish Class E airspace, controlled airspace extending upward from the surface within a 4.1-mile radius of Aransas County Airport, Rockport, TX. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of Aransas County Airport, Rockport, TX.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas are published in paragraph 6002 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant

impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6002: Class E airspace areas extending upward from the surface of the earth.

* * * * *

ASW TX E2 Rockport, TX [Established]

Rockport, Aransas County Airport, TX, (Lat. 28°05′12″N., long. 97°02′41″W.)

That airspace extending upward from the surface within a 4.1-mile radius of Aransas County Airport, Rockport, TX.

* * * * *

Issued in Fort Worth, TX on June 15, 1999.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–18352 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 432

Trade Regulation Rule Relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (''Commission'' or ''FTC''), is commencing a rulemaking proceeding to amend its Rules relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products (the ''Amplifier Rule'' or the ''Rule''). The Commission proposes amending the Rule to: exempt sellers who make power output claims in media advertising from the requirement to disclose total rated harmonic distortion and the associated power bandwidth and impedance ratings; clarify the manner in which the Rule's testing procedures apply to self-powered subwoofer-satellite combination speaker systems; and reduce the preconditioning power output requirement from one-third of rated power to one-eighth of rated power. The Commission is commencing this rulemaking because of the comments filed in response to its Advanced Notice of Proposed Rulemaking (''ANPR''), and other information discussed in this notice. The notice includes a description of the procedures to be followed, an invitation to submit written comments, a list of questions and issues upon which the Commission particularly desires comments, and instructions for prospective witnesses and other interested persons who desire to participate in a hearing where oral testimony could be presented.

DATES: Written comments must be submitted on or before September 17, 1999. Notifications of interest in testifying must be submitted on or before September 17, 1999. If interested parties request the opportunity to present testimony, the Commission will publish a document in the **Federal Register**, stating the time and place at which the hearings will be held and describing the procedures that will be followed in conducting the hearings. In addition to submitting a request to testify, interested parties who wish to present testimony must submit, on or before September 17, 1999, a written comment or statement that describes the issues on which the party wishes to testify and the nature of the testimony to be given. If there is no interest in a hearing, the Commission will base its decision on the written rulemaking record.

ADDRESSES: Written comments and requests to testify should be submitted to Office of the Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Comments and requests to testify should be identified as ''16 CFR Part 432 Comment—Amplifier Rule'' and ''16 CFR Part 432 Request to Testify—Amplifier Rule,'' respectively. If possible, submit comments both in writing and on a personal computer diskette in Word Perfect or other word processing format (to assist in processing, please identify the format and version used). Written comments should be submitted, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: Dennis Murphy, Economist, Division of Consumer Protection, Bureau of Economics, (202) 326–3524, or Neil Blickman, Attorney, Division of Enforcement, Bureau of Consumer Protection, (202) 326–3038, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Part A—Introduction

This Notice of Proposed Rulemaking (''NPR'') is being published pursuant to section 18 of the Federal Trade Commission (''FTC'') Act, 15 U.S.C. 57a *et seq.*, the provisions of part 1, subpart B of the Commission's rules of practice, 16 CFR 1.7, and 5 U.S.C. 551 *et seq.* This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1). The Commission is undertaking this rulemaking proceeding as part of the Commission's ongoing program of evaluating trade regulation rules and industry guides to determine their effectiveness, impact, cost and need.[1]

The Amplifier Rule was promulgated on May 3, 1974 (39 FR 15387), to assist consumers in purchasing power amplification equipment for home entertainment purposes by standardizing the measurement and disclosure of various performance characteristics of the equipment. On April 7, 1997, the Commission published a **Federal Register** Notice (''FRN'') seeking comment on the rule as part of an ongoing project to review all Commission rules and guides to determine their current effectiveness and impact (62 FR 16500). This FRN sought comment on the costs and benefits of the Rule, what changes in the Rule would increase its benefits to purchasers and how those changes would affect compliance costs, and whether technological or marketplace changes have affected the Rule. The FRN also sought comment on issues related to the Rule's product coverage,

[1] In accordance with section 18 of the FTC Act, 15 U.S.C. 57a, the Commission submitted this NPR to the Chairman of the Committee on Commerce, Science, and Transportation, Untied States Senate, and the Chairman of the Committee on Commerce, United States House of Representatives, 30 days prior to its publication in the **Federal Register**.

test procedures,and disclosure requirements.

The comments in response to the FRN generally expressed continuing support for the Rule, stating that it has given consumers a standardized method of comparing the power output of audio amplifiers, and has created a level playing field among competitors. The comments also suggested that there have been technological and marketplace changes that may warrant modifications to the Rule's testing and disclosure requirements, and a clarification of the Rule's applicability to self-powered loudspeakers for use with personal computers and home stereo systems. Certain comments also recommended that the Commission expand the Rule's coverage to include automotive sound amplification products. On the basis of this review, the Commission determined to retain the Rule, but to seek additional comment on possible amendments to the Rule.

The Commission published an Advanced Notice of Proposed Rulemaking (''ANPR'') on July 9, 1998 (63 FR 37238), seeking public comment on whether it should initiate a rulemaking proceeding by publishing a Notice of Proposed Rulemaking (''NPR'') under section 18 of the FTC Act, 15 U.S.C. 57a. The ANPR solicited specific comment on whether the Commission should (1) eliminate certain disclosure requirements in media advertising; (2) clarify testing procedures for self-powered speakers; and (3) amend certain required test procedures that may impose unnecessary costs on manufacturers. The ANPR also announced that the Commission had determined not to initiate a proceeding to amend the Rule to cover power ratings for automotive sound amplification equipment. Finally, the Commission published elsewhere in the July 9, **Federal Register** a Notice of Final Action announcing a non-substantive technical amendment to the Rule clarifying that the Rule covered self-powered loudspeakers for use in the home (63 FR 37234).

The ANPR elicited five written comments on the possible amendments described therein.[2] Based on the comments and the evidence discussed below, the Commission proposes to amend the Rule in the following ways.

Part B—Analysis of Proposed Amendments

1. Proposed Amendment to Required Disclosures Section of the Amplifier Rule

a. Background

Section 432.2 of the Rule requires disclosure of maximum rated total harmonic distortion (''THD''), power bandwidth, and impedance whenever a power claim is made in any advertising, including advertising by retail stores, direct mail merchants, and manufacturers. In the ANPR, the Commission concluded tentatively that improvements in amplifier technology since the Rule's promulgation in 1974 appeared to have reduced the benefits to consumers of disclosure of THD in medic advertising in the ANPR, the Commission also concluded tentatively that an insufficient number of consumers would understand the meaning and significance of the remaining triggered disclosures concerning power bandwidth and impedance to justify their publication in media advertising. Accordingly, the ANPR sought comment on whether the Commission should initiate a rulemaking proceeding to amend the Rule to exempt media advertising, including advertising on the Internet, from disclosure of THD and the associated power bandwidth and impedance ratings when a power output claim is made. In the ANPR, the Commission tentatively concluded further that the proposed exemption should be conditioned on the requirement that the primary power output specification disclosed in any advertising distributed through the media be the manufacturer's rated minimum sine wave continuous average power output, per channel, at an impedance of 8 ohms, or, if the amplifier is not designed for an 8-ohm impedance, at the impedance for which the amplifier is primarily designed.

Finally, the ANPR explained the Commission's tentative conclusion that publication of all other power output claims currently subject to the Rule, including those appearing in manufacturer specification sheets that are either in print or reproduced on the Internet, should continue to trigger the requirement that the seller provide the full complement of disclosures concerning power bandwidth, maximum harmonic distortion, and impedance, so that interested consumers could obtain this information prior to purchase.

The Commission received four comments on the tentatively proposed exemption of THD, bandwidth, and impedance disclosures in media advertising. CEMA, the principal trade association for the electronics industry, supported the proposed exemption, including the requirement that the primary power output specification disclosed in media advertising be continuous per-channel output at an 8-ohm impedance (unless the amplifier is designed primarily for a different impedance level).[3] Velodyne, a manufacturer of powered loudspeakers, also supported the exemption of THD and bandwidth disclosures in media advertising, stating that they contain little useful information for today's consumer.[4] This commenter suggested, however,that the standardized impedance value for power output claims be 4 ohms rather than the proposed 8 ohms.[5] No explanation was provided for this suggestion. A third commenter, Wass, opposed elimination of the required THD, bandwidth, and impedance disclosures in advertising, stating that sellers could take unfair advantage of the consumer through in-store sales techniques that obscure the true performance capabilities of an amplifier.[6] Finally, a fourth commenter, Sonance, stated simply that the relationship between power and distortion is vital to specifying power output, and recommended against the tentatively proposed exemption.[7]

b. Proposed Amendment and Reasons Therefore

Based on its review of the comments on its ANPR, the Commission has reason to believe that the disclosure of THD, power bandwidth, and impedance in media advertising that contains a triggering power output claim no longer provides sufficient consumer benefit to justify the associated increase in advertising costs. Two of the commenters stated that the disclosures were of little value. Two commenters opposed the tentatively proposed exemption, with one expressing concern that eliminating the disclosure requirements in media advertising would allow sales personnel to take advantage of consumers at retail stores. As the Commission noted in the ANPR, however, very few amplifiers in today's market generate high levels of THD (*e.g.*, more than one percent) using the FTC testing protocol. Further, those few

[2] The commenters were: Consumer Electronics Manufacturers Association (CEMA)(1); Wass Audio≈Digital (Wass)(2); Sonance (Sonance)(3); PHI Acoustics (PHI)(4), and Velodyne Acoustics, Inc. (Velodyne)(5). The comments are cited as ''(name of commenter), Comment (designated number), p. __.'' All Rule ANPR comments are on the public record and are available for public inspection in the Public Reference Room, Room 130, Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington, DC, from 8:30 a.m. to 5 p.m., Monday through Friday, except federal holidays.

[3] CEMA, (1), pp. 2–3.

[4] Velodyne, (5) p. 1.

[5] *Id.*

[6] Wass, (2), p. 3.

[7] Sonance, (3), p. 1.

amplifiers that do generate appreciable levels of THD tend to be very expensive vacuum tube designs that are sold to a specialized group of consumers that may not consider THD specifications an important consideration in their purchase decisions. Thus, it would not appear that sales personnel at retail stores would have an appreciable incentive to mislead consumers concerning the distortion characteristics of an amplifier. Finally, consumers who are interested in the Rule's THD, power bandwidth, and impedance specifications should be able to find such information relatively easily in product brochures at retail stores or on the Internet.

Commenters on the ANPR did not agree on which impedance value should serve as the standard for power output claims in media advertising under the tentatively proposed disclosure exemption. CEMA endorsed the value of 8 ohms suggested in the ANPR. Velodyne, however, commented that the standardized impedance value should be 4 ohms. The Commission notes that, under the proposed exemption, for amplifiers designed to drive a specific loudspeaker in an integrated powered configuration, the seller could base power output claims on an impedance of 4 ohms, if the amplifier is powering a loudspeaker that is rated at a nominal impedance of 4 ohms. Although the Commission has reason to believe that the majority of non-powered loudspeakers are rated at a nominal impedance of 8 ohms, and that this value should therefore be adopted as the basis for power output claims in media advertising for separate stand-alone amplifiers, this NPR solicits further comment on whether the Commission's tentative conclusion on this issue is correct.

Accordingly, the Commission proposes amending § 432.2 of the Rule to exempt advertising disseminated through the media, including advertising on the Internet, from disclosure of total rated harmonic distortion and the associated power bandwidth and impedance ratings when a power output claim is made. The exemption for advertising disseminated through the media would be conditioned on the requirement that the primary power output specification disclosed in any media advertising be the manufacturer's rated minimum sine wave continuous average power output, per channel, at an impedance of 8 ohms, or, if the amplifier is not designed for an 8-ohm impedance, at the impedance for which the amplifier is primarily designed. Publication of all other power output claims currently subject to the Rule, including those appearing in manufacturer specification sheets that are either in print or reproduced on the Internet, would continue to trigger the requirement that the seller provide the full complement of disclosures concerning power bandwidth, maximum harmonic distortion, and impedance, so that interested consumers could obtain this information prior to purchase.

2. Proposed Amendment Relating to Self-Powered Loudspeakers

a. Background

When the FRN was published, the Rule did not specifically mention self-powered speakers as an example of sound amplification equipment manufactured or sold for home entertainment purposes. In the FRN, the Commission solicited comment on its tentative conclusion that the Rule covers: (A) Self-powered speakers for use with (i) home computers, (ii) home sound systems, (iii) home multimedia systems; and (B) other sound power amplification equipment for home computers. On July 9, 1998, the Commission published in the **Federal Register** a non-substantive technical amendment to the Rule to clarify that the Rule applies to the types of self-powered loadspeakers enumerated above (63 FR 37234).

In the ANPR published elsewhere in the July 9, 1998 **Federal Register** (63 FR 37238), the Commission explained that comments received in response to the FRN indicated that a clarification was needed concerning the testing procedure that should be followed in applying the Rule's continuous power rating protocol to self-powered subwoofer-satellite combination speaker systems that employ two or more power amplifiers sharing a common power supply. These comments contained recommendations for two alternative approaches for such combination self-powered speakers. The first proposed procedure was for power measurements to be made with all associated channels of both the subwoofer and satellite amplifiers driven simultaneously to full power using a test tone at the system's crossover frequency. The second proposal was to allow manufacturers of such equipment to test the subwoofer and satellite amplifiers separately over their respective frequency bandwidth.

In the ANPR, the Commission announced its tentative conclusion that the second procedure was more appropriate, given the types of power demands combination self-powered speakers would most likely encounter in actual home use. Accordingly, in the ANPR the Commission sought comment on whether to initiate a rulemaking proceeding to clarify the Amplifier Rule by amending § 432.2 of the Rule to included a note stating that, for self-powered combination speaker systems that employ two or more amplifiers dedicated to different portions of the audio frequency spectrum, only those channels dedicated to the same audio frequency spectrum need be fully driven to rated per channel power under § 432.2(a)(2).

The Commission received three comments on the tentatively proposed clarification of testing procedures for self-powered combination subwoofer-satellite loudspeaker systems. CEMA supported the Commission's clarification. CEMA stated that this approach would allow self-powered subwoofers to be rated over their operating frequency range and at their appropriate impedance value.[8] Sonance also endorsed the tentative proposal to restrict the power tests of such equipment to each amplifier's intended operating range.[9] The final commenter, Velodyne, disagreed with the Commission's tentative proposal and stated that power rating tests for self-powered combination subwoofer-satellite loudspeakers should be conducted with all channels operating simultaneously. Velodyne proposed that the amplifiers driving the subwoofer and satellites should be given a test signal within each amplifer's typical range, and suggested a combination 60Hz–1,000Hz tone.[10] Velodyne stated that the power supply was the most costly and critical component determining an amplifier's continuous power output capability, and that the primary quantitative measurement of interest to consumers is the amount of watts the power supply can deliver.[11]

b. Proposed Amendment and Reasons Therefore

Based on the comments submitted in response to the FRN and the ANPR, the Commission tentatively concludes that the most appropriate method of testing self-powered combination subwoofer-satellite loudspeaker systems under the Rule is to require simultaneous operation only of those channels dedicated to the same portion of the audio frequency spectrum. As noted in the ANPR, the Commission does not have sufficient evidence to concluded that in-home use, under even strenuous conditions, typically would place

[8] CEMA, (1), p. 3.
[9] Sonance, (3), p. 1.
[10] Velodyne, (5), p. 3.
[11] *Id.*

maximum continuous power demands simultaneously on both the subwoofer and satellite amplifiers at the crossover frequency. Rather, it is the Commission's understanding that such demands are more likely to occur in portions of the audio spectrum that would be assigned primarily either to the subwoofer amplifier or the satellite amplifier. In contrast, conventional stand-alone stereo amplifiers, which incorporate left and right-channel amplifiers that must reproduce signals covering the full musical frequency bandwidth, will more commonly be required to meet simultaneous continuous power demands that are present in both channels (such as might occur when a pipe organ play a sustained pedal tone in the deep bass.

In addition, a simultaneous power test of both the subwoofer and the satellite amplifiers would, from a practical standpoint, require a single test signal at the crossover frequency, or a single combination set of tones, such as the 60Hz–1,000Hz composite signal suggested by Velodyne. This would mean that the resulting power and THD specifications might not be valid over the full frequency range over which each amplifier was designed to operate.

Accordingly, the Commission proposed amendment 432.2(a)(2) of the Rule to include a clarifying note stating that, when measuring maximum per channel output of self-powered combination speaker systems that employ two or more amplifiers dedicated to different portions of the audio frequency spectrum, only those channels dedicated to the same audio frequency spectrum need be fully driven to rated per channel power.

3. Proposed Amendment to the Amplifier Rule Preconditioning Requirement

a. Background

Section 432.3(c) of the Rule specifies that an amplifier must be preconditioned by simultaneously operating all channels at one-third of rated power output for one hour using a sinusoidal wave at a frequency of 1,000Hz. The ANPR sought comment on whether the Commission should amend the Rule to reduce the preconditioning power output requirement from one-third of rated power to a lower figure, such as one-eighth of rated power.

CEMA supported reducing the preconditioning power output requirement to below the current one-third power. CEMA stated that the current one-third power requirement is ''beyond what can be expected through normal use in the home'' and is ''harsh and unrealistic.'' [12] CEMA claimed that in order to meet the physical conditions presented by the Rule's existing preconditioning requirement, manufacturers must design and incorporate in amplifiers larger and costlier heat sinks.[13] CEMA listed several alternative solutions, including operation at idle during preconditioning, operation at a small fixed power representative of average power during typical in-home operation, or preconditioning at one-eighth power. CEMA went on to state that the one-eighth power option ''has the virtue of being consistent with current industry and international testing specification.'' [14]

A second commenter, Velodyne, stated that a preconditioning period is not really necessary, but that the Commission should follow Underwriters Laboratories' (''UL'') one-eighth power requirement if the preconditioning requirement is retained.[15] Velodyne did not provide any explanation for its conclusion that no preconditioning period of any kind was necessary under the Rule.

A third commenter, Wass, concluded from a series of calculations that reducing the preconditioning requirement from one-third to one-eighth power would reduce the thermal stress (expressed in ''watts of heat'' delivered to an amplifer's heatsink) by approximately 24 percent.[16] Wass, however, opposed amending the Rule to provide such a reduction in specified preconditioning power output because the consumer would get ''a poorer unit.'' [17] Wass did not provide any evidence, however, that would allow the Commission to compare the magnitude of the alleged reduction in amplifier quality with the magnitude of the associated reduction in manufacturing costs resulting from the one-eighth power preconditioning standard.

Finally, a fourth commenter, Sonance, stated that the one-third power preconditioning requirement should be retained and enforced evenly.[18] Sonance saw no technical problem with the requirement, stating that many generations of consumer electronic products have been built to this standard.[19]

b. Proposed Amendment and Reasons Therefore

Based on the aforementioned comments, the Commission tentatively concludes that the current one-third power preconditioning requirement imposes unnecessary costs on amplifier manufacturers and is not needed to measure amplifiers accurately under conditions that represent actual in-home use. Two of the commenters, including the principal trade association for the electronics industry, did not believe that there was any benefit to consumers that would justify the increased heat-sink capacity needed to withstand the current preconditioning requirement. A third commenter provided evidence that lowering the preconditioning requirement to one-eighth power would in fact reduce thermal stress significantly, and thus allow manufacturers to provide less costly heat sink capacity.

None of the commenters provided any evidence that lowering the preconditioning standard to one-eighth power, or some other value, would lead to a reduction in the actual in-home performance capabilities of amplifiers. In addition, both commenters that supported a reduction in the preconditioning power-output requirement either recommended the UL's one-eighth-power preconditioning standard explicitly, or considered the UL standard an acceptable choice among several alternatives.

Accordingly, the Commission proposes amending § 432.3(c) of the Rule by reducing the specified per-channel power output during preconditioning from one-third of rated power output for one hour to one-eighth of rated power output for one hour.

c. Additional Preconditioning Issue and Proposed Amendment

As discussed in Part B(2) above, the Commission is proposing to amend the Rule to clarify the manner in which power tests should be conducted for self-powered subwoofer-satellite combination loudspeaker systems. In reviewing the technical issues related to this proposed amendment, the Commission has tentatively concluded that clarification also is required concerning the manner in which powered subwoofers should be preconditioned under the Rule.

Section 432.3(c) of the Rule specifies a preconditioning sinusoidal test tone of 1,000Hz. Most self-powered subwoofer systems, however, incorporate crossover circuitry that filters out frequencies above the bass range. Depending upon the crossover frequency and the

[12] CEMA, (1), p. 2
[13] *Id.*
[14] *Id.*
[15] Velodyne, (5), p. 1.
[16] Wass, (2), p. 2.
[17] *Id.*
[18] Sonance, (3), p. 1.
[19] *Id.*

steepness of the crossover slope, such crossover circuitry may severely attenuate a test tone of 1,000Hz and prevent the subwoofer amplifier from being driven to one-third of rated power (as currently required by the Rule), or even to one-eighth of rated power (as specified in the proposed amendment). Thus, it would appear that testers of self-powered subwoofers would need to select a preconditioning frequency considerably lower than 1,000Hz.

The Commission, therefore, has tentatively concluded that the Rule should be amended to clarify the preconditioning procedure for self-powered subwoofers. The Commission does not currently believe, however, that any such amendment should specify the precise frequency of the test tone that is to be used in preconditioning powered subwoofers. Powered subwoofers may differ widely in the portion of the bass spectrum over which they are designed to operate, and, consequently, there may not be a single preconditioning frequency that is appropriate for all powered subwoofers. The Commission has tentatively concluded, therefore, the testers of powered subwoofers should have the flexibility to choose for the sinusoidal preconditioning signal any frequency (within the intended operating bandwidth of the subwoofer amplifier) that will allow the amplifier to be driven for one hour to the required proportion of rated power output.

Accordingly, the Commission proposes amending § 432.3(c) of the Rule by adding an explanatory note stating that for amplifiers utilized as a component in a self-powered subwoofer system, the sinusoidal wave used as a preconditioning signal may be any frequency within the amplifier's intended operating bandwidth that will allow the amplifier to be driven to one-eighth of rated power for one hour.

Part C—Rulemaking Procedures

The Commission finds that the public interest will be served by using expedited procedures in this proceeding. Using expedited procedures will support the Commission's goals of clarifying existing regulations, when necessary, and eliminating obsolete or unnecessary regulation without an undue expenditure of resources, while ensuring that the public has an opportunity to submit data, views and arguments on whether the Commission should amend the Rule.

The Commission, therefore, has determined, pursuant to 16 CFR 1.20, to use the procedures set forth in this notice. These procedures include: (1) Publishing this Notice of Proposed Rulemaking; (2) soliciting written comments on the Commission's proposals to amend the Rule; (3) holding an informal hearing, if requested by interested parties; (4) obtaining a final recommendation from staff; and (5) announcing final Commission action in a notice published in the **Federal Register.**

Part D—Requests for Public Hearings

Because written comments appear adequate to present the views of all interested parties, a public hearing has not been scheduled. If any person would like to present testimony at a public hearing, he or she should follow the procedures set forth in the **DATES** and **ADDRESSES** sections of this notice.

Part E—Section-by-Section Description of Proposed Amendments

1. Amendment Relating to Exemption from Required Disclosures in Media Advertising

The Commission proposes to amend § 432.2 to exempt media advertising, including advertising on the Internet, from disclosure of maximum total rated harmonic distortion, power bandwidth, and load impedance. This exemption would be conditioned on the requirement that the primary power output specification disclosed in any media advertising be the manufacturer's rated minimum sine wave continuous average power output, per channel, at an impedance of 8 ohms, or, if the amplifier is not designed for an 8-ohm impedance, at the impedance for which the amplifier is primarily designed. All other power output claims currently subject to the Rule, including those appearing in manufacturer specification sheets that are either in print or reproduced on the Internet, would continue to trigger the full complement of disclosures concerning power bandwidth, maximum rated harmonic distortion, and impedance.

2. Clarifying Amendment Relating to Testing Procedures for Self-Powered Speakers

The Commission proposes to amend § 432.2(a) by adding a clarifying note stating that, for self-powered combination speaker systems that employ two or more amplifiers dedicated to different portions of the audio frequency spectrum, only those channels dedicated to the same audio frequency spectrum need be fully driven simultaneously to rated per channel power.

3. Amendments Relating to Preconditioning

The Commission proposes to amend § 432.3(c) to read as follows:

> The amplifier shall be preconditioned by simultaneously operating all channels at one-eighth of rated power output for one hour using a sinusoidal wave at a frequency of 1,000Hz;

The Commission also proposes to amend § 432.3(c) by adding an explanatory note stating that, for amplifiers utilized as a component in a self-powered subwoofer system, the sinusoidal wave used as a preconditioning signal may be any frequency within the amplifier's bandwidth that will allow the amplifier to be driven to one-eighth of rated power for one hour.

Part F—Preliminary Regulatory Analysis and Regulatory Flexibility Act Requirements

Under section 22 of the FTC Act, 15 U.S.C. 57b, the Commission must issue a preliminary regulatory analysis for a proceeding to amend a rule only when it (1) estimates that the amendment will have an annual effect on the national economy of $100,000,000 or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. The Commission has preliminarily determined that the proposed amendments to the Rule will not have such effects on the national economy, on the cost of sound amplification equipment, or on covered businesses or consumers. The Commission, however, requests comment on the economic effects of the proposed amendments.

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–12, requires that the agency conduct an analysis of the anticipated economic impact of the proposed amendments on small businesses. The purpose of a regulatory flexibility analysis is to ensure that the agency considers impact on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entitles. Section 605 of the RFA, 5 U.S.C. 605, provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

Because the Amplifier Rule covers manufacturers and importers of power amplification equipment for use in the

home, the Commission believes that any amendment to the Rule may affect a substantial number of small businesses. Nevertheless, the proposed amendments would not appear to have a significant economic impact upon such entities. Specifically, the proposed change in the preconditioning protocol and the proposed exemption of disclosure of THD, bandwidth, and impedance specifications in media advertising should allow a moderate reduction in amplifier manufacturing and advertising costs that should benefit both small and larger businesses. The proposed clarification of testing procedures for combination subwoofer-satellite self-powered loudspeaker systems is the least burdensome application of the Rule among the alternative proposals suggested by commenters, and should not have a significant disproportionate impact on the testing costs of small manufacturers of such power amplification equipment.

Based on available information, therefore, the Commission certifies that amending the Amplifier Rule as proposed will not have a significant economic impact on a substantial number of small businesses. To ensure that no significant economic impact is being overlooked, however, the Commission requests comments on this issue. The Commission also seeks comments on possible alternatives to the proposed amendments to accomplish the stated objectives. After reviewing any comments received, the Commission will determine whether a final regulatory flexibility analysis is appropriate.

Part G—Paperwork Reduction Act

The Amplifier Rule contains various information collection requirements for which the Commission has obtained clearance under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Office of Management and Budget (''OMB'') Control Number 3084–0105. As noted above, for purposes of performing the tests necessary for affected entities to make the disclosures required under the Rule, § 432.3(c) of the Rules requires that an amplifier be preconditioned by simultaneously operating all channels at one-third of rated power output for one hour using a sinusoidal wave at a frequency of 1,000Hz. In addition, § 432.2 of the Rules requires disclosure of the manufacturer's rated minimum sine wave continuous average power output, in watts per channel, maximum rated total harmonic distortion, power bandwidth, and impedance whenever a power claim is made in advertising, including advertising by retail stores, direct mail merchants, and manufacturers.

The proposed amendments would not increase the paperwork burden associated with the aforementioned paperwork requirements. Three of the amendments proposed by the Commission would not increase or alter the Rule's paperwork requirements, and one amendment proposed by the Commission would reduce the paperwork burden for businesses. Consequently, there are no additional ''collection of information'' requirements included in the proposed amendments to submit to OMB for clearance under the Paperwork Reduction Act. A separate Notice soliciting public comment on extending the OMB clearance for the Rule through March 31, 2002, was published in the **Federal Register** on January 8, 1999 (64 FR 1203). If, as expected, OMB extends clearance for the Rule as presently written, any reduction of the paperwork burden associated with the Rule's requirements that may result from this proceeding will be reflected in subsequent reviews of the Rule for OMB clearance.

The Commission's proposed amendment to reduce the specified per-channel power output of amplifiers during preconditioning from one-third of rated power output for one hour to one-eighth of rated power output for one hour would not alter or increase the paperwork burden associated with this requirement because amplifiers must continue to be preconditioned for one hour. Also, with respect to preconditioning, the proposed amendment to add a note to the Rule stating that, for amplifiers utilized as a component in a self-powered subwoofer system, the sinusoidal wave used as a preconditioning signal may be any frequency within the amplifier's intended operating bandwidth that will allow the amplifier to be driven to one-eighth of rated power for one hour, would not increase the Rule's paperwork burden. The note would not change the Rule's requirements, but merely would clarify the preconditioning procedure for self-powered subwoofers.

Similarly, the proposed amendment to add a note to the Rule stating that, for self-powered combination speaker systems that employ two or more amplifiers dedicated to different portions of the audio frequency spectrum, only those channels dedicated to the same audio frequency spectrum need be fully driven to rated per channel power also would not increase the Rule's paperwork burden. The note would not alter the Rule's requirements, but merely would clarify the test procedure that should be followed in applying the Rule's continuous power rating protocol to self-powered subwoofer-satellite combination speaker systems that employ two or more power amplifiers sharing a common power supply.

The proposed amendment of the Rule to exempt from media advertising, including advertising on the Internet, disclosure of an amplifier's total rated harmonic distortion and the associated power bandwidth and impedance ratings when a power output claim for an amplifier is made would result in reducing the Rule's paperwork burden. Although the exemption for media advertising would be conditioned on the requirement that the amplifier's primary power output specification continue to be disclosed in any media advertising, the net effect of the proposed amendment would be to reduce the Rule's paperwork burden for businesses.

Thus, the Commission concludes that the proposed amendments would not increase the paperwork burden associated with compliance with the Rule. To ensure that no significant paperwork burden is being overlooked, however, the Commission requests comments on this issue.

Part H—Additional Information for Interested Persons

1. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

2. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Commission Rule 1.18(c)(1), 16 CFR 1.18(c)(1), the Commission has determined that communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor shall be subject to the following treatment. Written communications and summaries or transcripts of oral communications shall be placed on the rulemaking record if the communication is received before the end of the comment period. They shall be placed on the public record if the communication is received later. Unless the outside party making an oral communication is a member of Congress, such communications are permitted only if advance notice is published in the Weekly Calendar and Notice of ''Sunshine'' Meetings.[20]

[20] See 15 U.S.C. 57a(i)(2)(A); 45 FR 50814 (1980); 45 FR 78626 (1980).

Part I—Invitation to Comment and Questions for Comment

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of proposed amendments to the Amplifier Rule. The Commission requests that factual data upon which the comments are based be submitted with the comments. In addition to the issues raised above, the Commission solicits public comment on the costs and benefits to industry members and consumers of each of the proposals, as well as the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

The written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, on normal business days between the hours of 8:30 a.m. to 5 p.m. at the Federal Trade Commission, 600 Pennsylvania Ave., NW, Room 130, Washington, DC 20580, (202) 326–2222.

Questions

A. Exemption From Rule-Required Disclosures in Media Advertising

(1) Should the Commission amend § 432.2 of the Rule to exempt disclosure of total rated harmonic distortion and the associated power bandwidth and impedance ratings when a power output claim is made in media advertising?

(2) If the Commission amends the Rule to allow the above exemption, should this exemption be conditioned on the requirement that the primary power output specification disclosed in any media advertising be the manufacturer's rated minimum sine wave continuous average power output, per channel, at an impedance of 8 ohms, or, if the amplifier is not designed primarily for an 8-ohm impedance, at the impedance for which the amplifier is primarily designed?

(3) What is the most common nominal impedance rating for the majority of home loudspeakers that are designed to be driven conventionally by separate sound amplification equipment?

B. Rule Coverage of Self-Powered Loudspeakers for Use in the Home

(4) Should the Commission amend § 432.2(a) of the Rule to clarify that, for self-powered combination speaker systems that employ two or more amplifiers dedicated to different portions of the audio frequency spectrum, only those channels dedicated to the same audio frequency spectrum need be fully driven to rated per channel power under § 432.2(a)(2) of the Rule? If not, how should the Commission amend the Rule to clarify testing procedures for such self-powered combination speaker systems?

C. The Rule's Preconditioning Requirement

(5) Should the Commission amend § 432.3(c) of the Rule to reduce the preconditioning power output requirement from one-third of rated power to one-eighth of rated power?

(6) Should the Commission amend § 432.3(c) of the Rule to explain that, for amplifiers utilized as a component in a self-powered subwoofer system, the sinusoidal wave used as a preconditioning signal may be any frequency within the amplifier's normal operating bandwidth that will allow the amplifier to be driven to one-eighth of rated power for one hour? If not, how should the Commission amend the Rule to clarify the preconditioning protocol for self-powered subwoofers?

Authority: 15 U.S.C. 41–58.

List of Subjects in 16 CFR Part 432

Amplifiers, Home entertainment products, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–18302 Filed 7–16–99; 8:45 am]

BILLING CODE 6750–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA52–1–7422b; FRL–6378–4]

Approval and Promulgation of Air Quality State Implementation Plans; Louisiana; Approval of Clean Fuel Fleet Substitution Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve Louisiana's State Implementation Plan (SIP) Clean Fuel Fleet (CFF) substitute program revision because it adequately demonstrates that their substitute program achieves equivalent or better long term reductions in emissions of ozone producing and toxic air pollutants than the Federal CFF program.

In the ''Rules and Regulations'' section of this **Federal Register**, we are approving the State's SIP revision as a direct final rule without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received by August 18, 1999.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, Air Quality Division, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scoggins, of the EPA Region 6 Air Planning Section at (214) 665–7354 at the address above.

SUPPLEMENTARY INFORMATION: This document concerns approval of the Louisiana Clean Fuel Fleet substitution program SIP revision. For further information, please see the information provided in the direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 7, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 99–18038 Filed 7–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–207–1–9924b; TN–214–1–9925b; FRL–6379–3]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to the Tennessee SIP Regarding National Emission Standards for Hazardous Air Pollutants and Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Tennessee on June 16, 1998 and February 11, 1999, for the purposes of establishing a definition for national emission standards for hazardous air pollutants in Rule 1200–3–2-.01 and incorporating by reference the definition for volatile organic compounds contained in 40 CFR part 51, subpart F into Rule 1200–3–9–.01. In the Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before August 18, 1999.

ADDRESSES: All comments should be addressed to: Allison Humphris at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Allison Humphris, 404/562–9030

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531. 615/532–0554

FOR FURTHER INFORMATION CONTACT: Allison Humphris at 404/562-9030.

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

Dated: June 14, 1999.

A. Stanley Meinburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–18044 Filed 7–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region 2 Docket No. NY31–192b, FRL–6379–1]

Approval and Promulgation of State Plans for Designated Facilities; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve the State Plan submitted by New York to fulfill the requirements of section 111(d) of the Clean Air Act for Municipal Solid Waste (MSW) Landfills. The revisions concern the implementation and enforcement of the Emissions Guidelines applicable to existing MSW Landfills. The State Plan imposes landfill gas emissions limits and control requirements for the existing MSW Landfills in New York which will reduce the designated pollutants. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is conditionally approving New York's State Plan submittal, as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the conditional approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received on or before August 18, 1999.

ADDRESSES: All comments should be addressed to: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Craig Flamm or Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637–4249.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: July 6, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 99–18042 Filed 7–16–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 22 and 101

[WT Docket No. 97–81; FCC 99–101]

Multiple Address Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document addresses the impact of the Balanced Budget Act of 1997 (Balanced Budget Act) on the ongoing Multiple Address Systems (MAS) rulemaking proceeding. The Commission's objective is to supplement the record received in response to a previous *Notice,* which was released prior to the passage of the Balanced Budget Act. This document examines the impact of the Balanced Budget Act on various proposals in the *Notice,* seeks comment on whether the

Balanced Budget Act has affected the proposals in the *Notice*, seeks comment on how to resolve mutually exclusive MAS applications received from parties filing applications in some of the MAS bands, assuming that channels in these bands are reserved for public safety radio services, seeks comment on specific size standards to be applied to the ''small business'' definition for bidding credits, and the proposed offering of ''tiered bidding credits'' for the different sizes of small businesses, and suspends the acceptance and processing of applications in the 928/952/956 MHz bands.

DATES: Comments are due on or before September 17, 1999. Reply comments are due on or before October 19, 1999.

ADDRESSES: Federal Communications Commission, Room TW–B204F, 445 12th St., SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Ronald E. Quirk, Jr. or Shellie Blakeney, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, (202) 418–0680, or via E-mail to ''rquirk@fcc.gov'' or ''sblakene@fcc.gov''. *TTY:* (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rule Making and Order (Further Notice),* WT Docket No. 97–81, FCC 99–101, adopted May 18, 1999, and released on July 1, 1999. The full text of this *Further Notice* is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, SW, Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Services, 1231 20th Street, NW, Washington, DC 20036, telephone (202) 857–3800, facsimile (202) 857–3805. Alternative formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0260, *TTY* (202) 418–2555, or, at mcontee@fcc.gov. The full text of the *Further Notice* can also be downloaded at:

http://www.fcc.gov/Bureaus/Wireless/Orders/1999/fcc99101.txt or
http://www.fcc.gov/Bureaus/Wireless/Orders/1999/fcc99101.txt.wp

Summary of the Further Notice of Proposed Rule Making and Order

1. On August 10, 1993, Congress enacted the Omnibus Budget Reconciliation Act of 1993 (1993 Budget Act) which authorized the Commission to select licensees applying for initial license grants by competitive bidding for certain classes of radio licenses. The 1993 Budget Act, *inter alia,* permitted the Commission to employ competitive bidding procedures to choose among mutually exclusive applications wherein the ''principal use'' of the spectrum would involve receiving compensation for their services (*i.e.* ''subscriber-based services''). *See* 47 U.S.C. 309(j)(2)(A) (1993).

2. In 1997, the Commission released the *Notice* (62 FR 11407, March 12, 1997) which sought comment on various Commission proposals to streamline the MAS service rules, increase technical and operational flexibility for MAS licensees, license most MAS channels by geographic area, and award mutually exclusive licenses by competitive bidding. In the *Notice,* the Commission tentatively concluded that, because the vast majority of pending applications for the 932/941 MHz bands proposed subscriber-based services, the 932/941 MHz bands should be designated for subscriber-based services, and thus be subject to competitive bidding. Accordingly, the Commission proposed to dismiss, without prejudice, all the pending 932/941 MHz band applications, which were originally slated to be awarded by random selection procedures. The Commission also tentatively concluded that because the majority use of the 928/959 MHz bands was to provide subscriber-based services, the 928/959 MHz bands should be designated for such services, and be subject to competitive bidding. Additionally, the Commission tentatively concluded that some MAS channels should be exempted from competitive bidding. The Commission, therefore, proposed to: (a) Set aside five channel pairs in the 932/941 MHz bands for public safety/Federal Government use; (b) designate the 928/952/956 MHz bands exclusively for private, internal use; and (c) exempt applications for these bands from competitive bidding. Additionally, the Commission suspended acceptance of applications for new licenses, amendments and major modifications for the 932/941 MHz bands, the 928/959 MHz bands, and applications to provide subscriber-based services in the 928/952/956 MHz bands.

3. Subsequently, Congress enacted the Balanced Budget Act, which eliminated the Commission's authority to use lotteries (with an exception not relevant to the MAS context) to assign any license issued after July 1, 1997, 47 U.S.C. 309(i)(5) (1997). The Balanced Budget Act also expanded the Commission's authority—and statutory mandate—to use competitive bidding to select among mutually exclusive applications for any initial license, with no exceptions for pending mutually exclusive applications. 47 U.S.C. 309(j)(1) (1997). (Accordingly, in September, 1998, the Public Safety and Private Wireless Division of the Commission's Wireless Telecommunications Bureau dismissed the pending applications for the 932/941 MHz bands, without prejudice. *Order* (63 FR 53350, Oct. 5, 1998)). Further, the Balanced Budget Act changed the criteria for determining the auctionability of spectrum, removing the requirement that the principal use of the subject spectrum be for subscriber-based services. 47 U.S.C. 309(j)(1) (1997). The Balanced Budget Act also altered the criteria for determining exemptions to competitive bidding. 47 U.S.C. 309(j)(2) (1997). The exemption pertinent to MAS is for ''public safety radio services'' (public safety exemption). The public safety exemption applies to services that ''(i) are used to protect the safety of life, health, or property; and (ii) are not made commercially available to the public.'' 47 U.S.C. 309(j)(2)(A) (1997).

4. Due to the changes brought about by the Balanced Budget Act, which was enacted subsequent to the release of the *Notice,* parties have not had an opportunity to assess the impact of the Balanced Budget Act on the Commission's outstanding proposals for MAS spectrum. Accordingly, the Commission concludes that the public interest would be served by giving interested parties a further opportunity to comment in this proceeding.

5. The Commission tentatively concludes that, as a general matter, the use of competitive bidding to select between mutually exclusive applications for initial MAS licenses is consistent with Section 309(j), as amended by the Balanced Budget Act. The Commission seeks comment on this tentative conclusion. The Commission additionally seeks comment on whether Congress' highlighting in the Balanced Budget Act, the Commission's obligation under 47 U.S.C. 309(j)(6)(E) to use various means to avoid mutual exclusivity in application and licensing proceedings, has any effect on its tentative conclusion that competitive bidding should be used to resolve mutually exclusive applications for initial MAS licenses.

6. The Commission also tentatively concludes that the proposed use of the 932/941 MHz bands, and the current MAS use of the 928/959 MHz bands, do not fall within the public safety exemption, and therefore licenses for

these bands should be subject to competitive bidding. The Commission seeks comment on this tentative conclusion. Regarding the 928/952/956 MHz bands, the Commission seeks comment on the level of representation of public safety radio services in the current use of these bands. If it appears that these bands are predominantly used for public safety purposes, the Commission seeks comment on allocating all, or part, of the 928/952/956 MHz bands for public safety radio services, and whether the Commission should grandfather all existing services currently being provided in these bands. Additionally, if the Commission reserves the 928/952/956 MHz bands for public safety radio services, it tentatively concludes that site-by-site licensing should be retained, but if the current and foreseeable use of these bands do not comport with the statutory definition of public safety radio services, the Commission tentatively concludes that the bands should be subject to competitive bidding and that a system of geographic licensing should be adopted. The Commission seeks comment on these tentative conclusions.

7. In the interest of implementing the Congressional intent of increasing the public safety community's access to frequencies without having to participate in an auction, the Commission tentatively concludes that its proposal in the *Notice* to set aside five of the 40 channel pairs in the 932/941 MHz bands for public safety/Federal Government use should be retained. The Commission seeks comment on this tentative conclusion. The Commission also seeks comment as to how it should determine eligibility for such a set-aside. For example, should it use the traditional public safety service categories outlined in the Commission's rules (*see* 47 CFR part 90, Subpart B), or should eligibility be expanded to encompass services that fall under the public safety exemption in the Balanced Budget Act? The Commission further seeks comment on the need for this set-aside if all or part of the 928/952/956 MHz bands is reserved for public safety radio services.

8. If the Commission does not set aside five channels in the 932/941 MHz bands for public safety/Federal Government use, it seeks comment on how to treat applications for the 932/941 MHz bands that propose to provide public safety radio services. The Commission tentatively concludes that such applicants should be required to participate in the competitive bidding process, because the subject spectrum would not be specifically allocated for public safety radio services. The Commission seeks comment on this tentative conclusion.

9. The Commission tentatively concludes that if it reserves channels in either the 932/941 MHz bands or the 928/952/956 MHz bands, or both, for public safety radio services, thereby exempting them from competitive bidding, licensing should be on a first-come, first-serve basis. Because these site-based applications would be frequency coordinated prior to filing, and would be subject to a filing window, mutual exclusivity would be rare. Because mutual exclusivity is still possible, however, the Commission seeks comment on a proposal offered by Microwave Data Systems that if mutually exclusive applications are filed, the Commission should grant all applications that reach the frequency coordinator on the day that the mutual exclusivity is created, provided that they are in order, and that the licensees be required to share the channels under whatever private arrangements they negotiate. The Commission also seeks comment on other possible alternatives.

10. In the *Notice*, the Commission sought comment generally on establishment of a ''small business'' definition for MAS. In the *Further Notice*, the Commission seeks comment on the specific size standards that should be applied to any small business definition the Commission decides to adopt for MAS. The Commission proposes to define a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million, and it proposes to define a ''very small business'' as an entity with average gross revenues for the preceding three years not exceeding $3 million. The Commission seeks comment on those proposals.

11. The Commission also seeks comment on its proposal to offer ''tiered bidding credits'' for different sizes of small businesses. The Commission proposes to establish two levels of bidding credits: small businesses will receive a 25 percent bidding credit, and very small businesses will receive a 35 percent bidding credit. Bidding credits will not be cumulative. The Commission believes that tiered bidding credits will help achieve its statutory objective to provide varying sizes of small businesses with a meaningful opportunity to participate in the MAS auction. *See* 47 U.S.C. 309(j)(3)(B) (1997).

12. The Commission maintains the current suspension of the acceptance of MAS applications for new licenses, amendments, or modifications for the 932/941 MHz and 928/959 MHz bands. Additionally, effective as of the date of the release of the *Further Notice*, the Commission suspends acceptance of all MAS applications for new licenses, amendments, or modifications for the 928/952/956 MHz bands, regardless of the type of service proposed by the applicant. The application suspension is extended because of the uncertainty regarding whether to employ geographic area licensing and auctioning for these bands. This suspension will remain in effect until further notice. The Commission will continue to accept and process applications for minor modifications, or for license assignment or transfer of control under existing procedures. This exception will also apply to amendments to applications for minor amendments.

13. Regarding MAS applications for new licenses, amendments, or non-minor modifications which were filed prior to the applicable deadlines and remain pending, the Commission will process such applications provided that they are not mutually exclusive with other applications as of the applicable deadline, and the relevant period for filing competing applications has expired as of the applicable deadline. Previously-filed applications not meeting this criteria will be held in abeyance until the conclusion of this proceeding. The Commission will determine later, in accordance with such new rules as they are adopted, whether to process or return any such pending applications.

Ex Parte Rules

14. This is a permit-but-disclose notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. *See generally*, 47 CFR 1.1202, 1.203, and 1.1206.

Comment Filing Procedures

15. Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before September 17, 1999 and reply comments on or before October 19, 1999. Comments may be filed using the Commission's Electronic Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

16. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-mail/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking

numbers appear in the caption of this proceeding, however, commenters must transmit an electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

17. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW, Room TW–A325, Washington, DC 20554. In addition, a courtesy copy should be delivered to Ronald E. Quirk, Jr., Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 Twelfth Street, SW, Room 4 C–405, Washington, DC 20554.

18. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Information Center, 445 Twelfth Street, SW, Room CY–A257, Washington, DC 20554.

Initial Regulatory Flexibility Analysis

Regulatory Flexibility Act

19. Pursuant to the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in this *Further Notice*. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and are to be filed by the deadlines for comments on this *Further Notice*, as described *supra* in section VI. The Commission's Office of Public Affairs (OPA) shall cause a copy of this *Further Notice* to be sent to Chief Counsel for Advocacy of the Small Business Administration (SBA), in accordance with 5 U.S.C. 603(a).

20. This *Further Notice* requests further public comment on our proposals to maximize the use of spectrum allocated to MAS in the Microwave Services. The *Notice* in this proceeding offered proposals that included: (1) Converting licensing of MAS spectrum for ''subscriber-based'' services from site-based licensing to geographic area licensing; (2) simplifying and streamlining the MAS licensing process and rules; (3) increasing licensee flexibility to provide communications services that are responsive to dynamic market demands; and (4) employing competitive bidding procedures, or auctions, to resolve mutually exclusive applications for initial licenses or permits for MAS spectrum for which the principal use would involve, or reasonably likely involve, subscriber-based services. In this *Further Notice*, we seek comment on whether, and to what extent, the Balanced Budget Act's amendment of Section 309(j) of the Communications Act affects these proposals. Specifically, the Commission is now directed to use competitive bidding to resolve mutually exclusive applications, with an exemption for ''public safety radio services.'' This *Further Notice* also extends the temporary suspension of the acceptance and processing of MAS applications to include all applications for new licenses, major amendments, or modifications.

21. In attempting to maximize the use of MAS spectrum, we continue our efforts to establish a flexible regulatory framework for spectrum allocations that will, among other things, provide opportunities for the continued development of competitive new service offerings by allowing flexible use of spectrum, expedite market entry through modified licensing procedures, and promote technological innovation by eliminating unnecessary regulatory burdens.

22. The authority for this action is contained in Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j). *See also* Administrative Procedures Act, 5 U.S.C. 553.

23. Pursuant to the Contract with America Advancement Act of 1996, Pub. L. No. 101–121, 110 Stat. 847 (1996) (CWAAA), the Commission is required to estimate in its Final Regulatory Flexibility Analysis the number of small entities to which a rule will apply, provide a description of such entities, and assess the impact of the rule on such entities. The Regulatory Flexibility Act states that a ''small business'' is the equivalent of a ''small business concern'' under the Small Business Act unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). To assist the Commission in this analysis, commenters are requested to provide information regarding how many MAS entities, total, would be affected by the various proposals on which the Commission seeks comment in this *Further Notice*. In particular, we seek estimates of the number of affected entities that will be considered ''small businesses.'' We ask commenters to note that we requested comment in the *Notice* regarding the establishment of a small business definition for MAS for the purpose of competitive bidding.

24. The proposals first announced in the *Notice* would affect MAS licensees and applicants for licenses. Such entities, in general, fall into two broad categories: (1) Those using MAS spectrum for the offering of commercial services and (2) those using MAS spectrum to meet their internal communications needs, including for public safety radio services. It is possible that an entity could be categorized as both.

25. With respect to the first category, neither the Commission nor the SBA has developed a specific definition of small entities applicable to MAS commercial licensees. The applicable definition of small entity in this instance appears to be the definition under the SBA rules applicable to establishments engaged in radiotelephone communications. This definition provides that a small entity is any entity employing fewer than 1,500 persons. *See* 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812. The 1992 Census of Transportation, Communications and Utilities, conducted by the Bureau of the Census, which is the most recent information available, shows that only 12 radiotelephone firms out of a total of 1,178 such firms operating during 1992 had 1,000 or more employees. Therefore, whether or not any or all of these 12 firms are MAS commercial service providers, nearly all MAS commercial service providers are small businesses under the SBA's definition. The Commission's licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260

authorizations were associated with common carrier service.

26. Alternatively, under the SBA rules, the applicable definition of small entity for MAS licensees that provide commercial services may also be applicable to establishments primarily engaged in furnishing telegraph and other message communications. This definition provides that a small entity is an entity with annual receipts of $5 million or less. 13 CFR 121.201, Standard Industrial Classification (SIC) code 4822. 1992 Census data, which is the most recent information available, indicates that, of the 286 firms under this category, 247 had annual receipts of $4.999 million or less. We seek comment on whether the appropriate definition for such MAS licensees is SIC Code 4812, SIC code 4822, or both.

27. The Commission seeks comment on the number of small entities that currently provide commercial MAS subscription service, and the number of small entities that would anticipate filing applications to provide such service under the various proposals described in this *Further Notice* and the *Notice.* We seek comment on whether we should conclude, for purposes of the Final Regulatory Flexibility Analysis in this matter, that all MAS commercial communications service providers are small entities.

28. With respect to second category, which consists of entities that use, or seek to use, MAS spectrum for the meeting of their own internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. Because of the array of users, the Commission has not developed (nor would it be possible to develop) a definition of small entities specifically applicable to such MAS users. Nor is there a precise SBA definition. In this context we again seek comment on whether the appropriate definition of small entity under the SBA rules is that applicable to radiotelephone companies: any entity employing fewer than 1,500 persons. *See* 13 CFR 121.201, Standard Industrial Code (SIC) Code 4812. Again, alternatively, we seek comment on the appropriateness of defining such MAS licensees under SIC Code 4822, concerning establishments primarily engaged in furnishing telegraph or other message communications, or perhaps under both Codes 4812 and 4822. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private mobile service.

29. We seek comment on the number of small entities that use MAS spectrum for their internal communications needs. Further, we seek comment on the number of small entities that are likely to apply for licenses, under the various proposals described in this *Further Notice* and the *Notice,* to obtain spectrum for their own internal communications needs. Because any entity engaged in a business or commercial activity is eligible to hold an MAS license, the proposals could prospectively affect any small business in the United States interested in using MAS for its own communications needs. In other words, the universe of prospective or possible MAS licensees includes all U.S. small businesses.

30. The RFA also includes small governmental entities as part of the regulatory flexibility analysis. The definition of a small governmental entity is one with populations of fewer than 50,000. There are 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that 96 percent, or about 81,600, are small entities that may be affected by our rules.

31. Again, we have requested comment, in the initial *Notice,* regarding the establishment of a refined small business definition for MAS for the specific purpose of competitive bidding. Neither the *Notice* nor this *Further Notice* propose any specific definition, rather the *Notice* merely sought comment on this issue.

Paperwork Reduction Act

32. This *Further Notice* contains a proposed information collection. As part of the Commission's continuing effort to reduce paperwork burdens, we invite the general public, the Office of Management and Budget (OMB), and other agencies to take this opportunity to comment on the information collections contained in the *Further Notice*, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due at the same time as other comments on the *Further Notice*; OMB comments are due 60 days after the publication of the *Further Notice* summary in the **Federal Register**. Comments should address: (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 estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to *both* of the following: Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th St., SW., Washington, DC 20554, or via the Internet to lsmith@fcc.gov, and Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington DC 20503, or via the Internet to fain__t@al.eop.gov.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–18248 Filed 7–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–252, RM–9648]

Digital Television Broadcast Service; Las Vegas, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Journal Broadcast Corporation, licensee of station KTNV, NTSC Channel 13, Las Vegas, Nevada, proposing the substitution of DTV Channel 12 for station KTNV's assigned DTV Channel 17. DTV Channel 12 can be allotted to Las Vegas, Nevada, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 35–56–43 N and

115–02–32 W. As requested, we propose to modify station KTNV's authorization to specify operation on DTV Channel 12 at Las Vegas, Nevada, with a power of 26.4(kW) and an antenna HAAT of 610 meters.

DATES: Comments must be filed on or before September 7, 1999, and reply comments on or before September 22, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John T. Scott, III, Jessica R. Herrera, Crowell & Moring LLP, 1001 Pennsylvania, NW, Washington, D.C. 20004–2595 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–252, adopted July 13, 1999, and released July 14, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

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* contacts.

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

List of Subjects in 47 CFR Part 73

Digital Television Broadcasting.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 99–18301 Filed 7–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–220; RM–9399]

Radio Broadcasting Services; Sioux Rapids, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission, at the request of ALALATEX, dismisses its petition proposing the allotment of Channel 252A at Sioux Rapids, Iowa, as the community's second local FM transmission service. *See* 63 FR 68719, December 24, 1998. A showing of continuing interest is required before a channel can be alloted to a community. It is Commission policy, absent such an expression of interest, to refrain from allotting the channel. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–220, adopted June 30, 1999, and released July 9, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–18238 Filed 7–16–99; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 64, No. 137
Monday, July 19, 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

Forest Service

Monitor/Hot Creek Forest Plan Amendment EIS; Humboldt-Toiyabe National Forest; Nye, Eureka and Lander Counties, NV

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Humboldt-Toiyabe National Forest will prepare an environmental impact statement (EIS) to consider amending the Toiyabe National Forest Land and Resource Management Plan (Forest Plan). The amendment will be comprehensive, covering a wide variety of issues needed to update the Forest Plan for the Monitor and Hot Creek Mountain Ranges.

DECISION TO BE MADE: The Forest Service will decide whether or not to amend the Forest Plan for the Monitor and Hot Creek Mountain Ranges of the Austin and Tonopah Ranger Districts. The amendment will consider improving the management direction of portions of the Forest Plan and affirm continuation of other aspects of the Forest Plan's management direction for the next 10–15 years. No irreversible or irretrievable commitment of resources (site specific actions) will be taken as a result of this decision.

DATES: The public is asked to provide any information they believe the Forest Service should consider and to submit any issues regarding alternatives or potential impacts by October 15, 1999. The agency expects to file the draft EIS with the Environmental Protection Agency and make it available for public comment in January, 2000. The agency expects to file the final EIS in October 2000.

MEETINGS: The Humboldt-Toiyabe National Forest will hold several public meetings to discuss the proposed Forest Plan amendment. Comments from the public, other agencies and tribal councils are welcomed. Dates, locations and topics to be discussed for these meetings are: July 8, 1999, 6:00 to 9:00 pm at the Tonopah Convention Center, Tonopah, NV, Topic: Access, Roadless Areas and Transportation Systems; August 19, 1999, 6:00 to 9:00 pm at the Eureka Opera House, Eureka, NV, Topic: Livestock Grazing, Wild Horses and Wildlife; September 9, 1999, 6:00 to 9:00 pm at the Austin Community Hall, Austin, NV, Topic: Recreation Opportunities and Scenic Values; September 30, 1999 6:00 to 9:00 pm at the Hadley Community Center, Hadley, NV, Topic: Mining and Associated Activities; and October 21, 1999, 6:00 to 9:00 pm at the Hadley Community Center, Hadley, NV, Topic: Community Well Being. Additional meetings to be held in Reno and Las Vegas will be scheduled for October, 1999.

COMMENTS: Written comments on the information presented here should be submitted to the Central Nevada Planning Team, Attn. Dave McMorran, USDA Forest Service, Humboldt-Toiyabe National Forest, P.O. Box 539, Ely NV 89301. Comments should be received by October 15, 1999.

ADDITIONAL INFORMATION: For additional information contract Dave McMorran, Ecosystem Planner, Humboldt-Toiyabe National Forest, P.O. Box 539, Ely, NV 89301, (775) 289–3031.

RESPONSIBLE OFFICAL: The Regional Forester for the Intermountain Region located at 324 25th Street, Odgen, Utah 84401 is the responsible official for the action.

SUPPLEMENTARY INFORMATION: The proposed amendment will address management of National Forest System lands in the Monitor and Hot Creek Mountain Ranges, which includes portions of Nye, Eureka and Lander Counties, Nevada. This area is part of the Austin and Tonopah Ranger Districts.

The substantive changes that will be addressed in the amendment of the Forest Plan are described in the regulations implementing the National Forest Management Act (NFMA). The amendment process begins with monitoring and evaluation of Forest Plan implementation (36 CFR 219.12(k)). It includes public involvement in monitoring and identification of opportunities for improvements to improve management.

This NOI signals the development of an EIS for the amendment of the Forest Plan. Based upon monitoring and evaluation results and the information obtained in the Analysis of the Management Situation (AMS), Humboldt-Toiyabe National Forest is proposing to make several improvements to the long-term management direction for the Monitor and Hot Creek Mountain Ranges. The public is invited to comment on the preliminary alternatives which have been identified.

Proposed Action

The proposed action is to amend the Toiyabe Land and Resource Management Plan to improve management direction. The purpose of the proposed action is to provide long term management direction for the Monitor and Hot Creek Mountain Ranges. The proposed action is needed because existing guidance is more than a decade old. That guidance does not reflect the substantial additions to the National Forest System in the area, the rapidly growing and diversifying population, or the advances in science that have occurred over the last decade. Four alternatives have been prepared to address the topics outlined below. A preferred alternative will be selected during the preparation of the draft EIS based on public comments from this scoping process and the analysis of environmental impacts of the alternatives.

Amendment Topics

Based on the analysis of the existing direction, monitoring and evaluation of resource conditions, and public comments, the following topics have been identified as having a need for change in management direction: Heritage Resources, American Indian Religious and Cultural Use, Watershed Protection, Species and Ecosystem Viability, Wilderness Management, Roadless Areas, Access, Transportation Systems, Recreation, Visual Resources, Forest Products Management, Livestock Grazing, Wild Horses, Wildlife, and Mining.

Publc Comments on the Draft EIS

The Draft Environmental Impact Statement is expected to be available for public review and comment in January, 2000. The comment period on the draft environmental impact statement will be

at least 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. Reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the comment period so that substantive comments are made available to the Forest Service when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be specific and refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft statement or the merits of the alternatives discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: July 1, 1999.

Monica Schwalbach,

Acting Forest Supervisor, Humboldt-Toiyabe National Forest.

[FR Doc. 99–18010 Filed 7–16–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Snowcreek Golf Course Expansion Project, Inyo National Forest, Mono County, California

AGENCY: Forest Service, USDA.

ACTION: Withdrawal of record of decision for the proposed snowcreek golf course expansion project.

SUMMARY: Notice is hereby given that the Forest Service, USDA, will withdraw the Record of Decision of June 20, 1997 signed by Dennis W. Martin, Forest Supervisor. No implementation of this decision has ever taken place.

This action is taking place because we have decided to explore other options to address the needs of the Town of Mammoth Lakes for additional golfing opportunities.

FOR FURTHER INFORMATION CONTACT: Direct questions about the withdrawal to Glen Stein, Forest Planner, Inyo National Forest, by mail at Inyo National Forest, 873 N. Main Street, Bishop, California 93514, or by phone at (760) 873–2400.

Dated: July 13, 1999.

Bill Bramlette,

Deputy Forest Supervisor, Inyo National Forest.

[FR Doc. 99–18362 Filed 7–16–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Florida

AGENCY: Natural Resources Conservation Service (NRCS) in Florida, U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Florida for review and comment.

SUMMARY: It is intention of NRCS in Florida to issue the following conservation practice standards for Florida: Hedgerow Planting (Code 422); Incinerator (Code 769); Wetland Wildlife Habitat Management, in Section IV of the FOTG.

DATES: Comments will be received on or before August 18, 1999.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to T. Niles Glasgow, State Conservationist, Natural Resources Conservation Service (NRCS), P.O. Box 141510, Gainesville, Florida 32614–1510. Copies of the practice standards will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS in Florida will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS in Florida regarding disposition of those comments and a final determination of change will be made.

Dated: June 30, 1999.

Jesse T. Wilson,

Acting State Conservationist, Natural Resources Conservation Service, Gainesville, Florida.

[FR Doc. 99–17472 Filed 7–16–99; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Census Bureau

Quarterly Survey of Residential Alterations and Repairs

ACTION: Proposed collection; Comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 17, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to George A. Roff, Jr., U.S. Census Bureau, Room 2126 Building 4, Washington, DC 20233–6916 on (301) 457–1605.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is the preeminent collector and provider of timely, relevant and quality data about the people and economy of the United States. Economic data are the Census Bureau's primary program commitment during nondecennial census years. The Census Bureau, under the authority of Title 13, United States Code, Section 182, conducts this survey which allows us to prepare estimates of the expenditures for residential improvement and repairs. This segment of the construction industry amounted to over $120 billion in 1998. A portion of these data are collected on form SORAR–705, which is mailed quarterly to owners of rental or vacant residential properties. Since residential improvement and repairs are a large and growing economic activity, any measure of the construction industry is incomplete without inclusion of these data.

The Census Bureau uses the information to publish improvement and repair expenditures for rental or vacant properties. Data on improvement and repairs to owner-occupied properties are collected in the Consumer Expenditures Survey. Combined published estimates are used by a variety of private businesses and trade associations for marketing studies, economic forecasts and assessments of the construction industry. They also provide all levels of government with a tool to evaluate economic policy and measure progress towards established goals. For example, the Bureau of Economic Analysis (BEA) uses the improvement statistics to develop the structures component of gross private domestic investment in the national income and product accounts.

II. Method of Collection

The universe for this survey are the owners or designated representatives of the more than 40 million rental and vacant units in the United States. A sample of these owners—i.e., those identified in the Consumer Expenditures Survey—is mailed a questionnaire to report detailed improvement and repair expenditures for their entire property. Approximately 2,800 owners are queried each quarter.

The sample design uses a rotation procedure which brings one-fourth of the sample (approximately 700 properties) into the survey each quarter and takes one-fourth out of the survey each quarter. The data collected are adjusted for unreturned or unusable forms by region and metropolitan statistical area (MSA) status. The weights are adjusted so that sample counts of renter occupied and vacant housing units agree with independently derived controls from the Current Population Survey.

III. Data

OMB Number: 0607–0130.

Form Number: SORAR–705.

Type of Review: Regular Review.

Affected Public: Individuals or Households, Businesses or Other For-Profit Organizations, and State, Local or Tribal Governments.

Estimated Number of Respondents: 2,800 per quarter.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 2,800.

Estimated Total Annual Cost: The only cost to respondents is that of their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 12, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–18264 Filed 7–16–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Income and Program Participation (SIPP) Wave 1 of the 2000 Panel

ACTION: Proposed Collection; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 17, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Judith H. Eargle, Census Bureau, FOB 3, Room 3379, Washington, DC 20233–0001, (301) 457–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of 3 to 4 years. The 2000 panel is currently scheduled for one year which will include 3 waves beginning February 2000. The duration of the 2000 panel is subject to approval of a budget initiative which may lengthen the panel to 3 years. Respondents are interviewed once every four months in monthly rotations. Approximately 11,500 households are in the 2000 panel.

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The survey is molded around a central ''core'' of labor force and income questions that will remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs, such as obtaining information on taxes, the ownership and contributions made to the Individual Retirement Account, Keogh and 401K plans, examining patterns in respondent work schedules, and child care arrangements. These supplemental questions are included with the core and are referred to as ''topical modules.''

The topical modules for the 2000 Panel Wave 1 collect information about:

- Recipiency History
- Employment History

Wave 1 interviews will be conducted from February 2000 through May 2000.

II. Method of Collection

All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2000 panel, respondents are interviewed a total of 3 times (3 waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Number: Not Available.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 24,150.

Estimated Time Per Response: 30 minutes per person.

Estimated Total Annual Burden Hours: 24,400.

Estimated Total Annual Cost: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for the Office of Management and Budget approval of this information collection; they also will become a matter of public record.

Dated: July 13, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–18265 Filed 7–16–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

[Docket No. 990517135–9135–01]

Change in Report Series from Print Publication to CD–ROM and Internet Access

AGENCY: Census Bureau, Commerce.

ACTION: Notice of Publication Program Change.

SUMMARY: The Census Bureau will cease printed publication of the ''Census Catalog and Guide'' with the 1998 edition. This publication's information, and additional data, will be available as the ''Product Catalog'' on the Internet at www.census.gov. Also, the information will be distributed annually on CD–ROM.

EFFECTIVE DATE: August 18, 1999.

FOR FURTHER INFORMATION CONTACT: Barbara Aldrich, Marketing Services Office/Customer Services Center, U.S. Census Bureau, Washington, DC 20233, telephone: 301–457–1225.

SUPPLEMENTARY INFORMATION: The ''Census Catalog and Guide'' is a comprehensive description of all data products issued by the Census Bureau. The catalog provides abstracts of CD–ROMs, publications, maps, computer tapes, diskettes, and items available via the Internet. These abstracts include the data time, the geographic scope, and the subject content, along with ordering information. For additional information about the catalog, please contact the official named above.

Dated: July 14, 1999.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 99–18314 Filed 7–16–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–809]

Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation

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

EFFECTIVE DATE: July 19, 1999.

FOR FURTHER INFORMATION CONTACT: Lyn Baranowski or Carrie Blozy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3208 or (202) 482-0165, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1998).

Final Determination

We determine that hot-rolled flat-rolled carbon-quality steel products (''hot-rolled steel'') from the Russian Federation (''Russia'') are being sold in the United States at less than fair value

(''LTFV''), as provided in section 735 of the Act. The estimated margins are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

Case History

Petitioners in this investigation are Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Ispat Inland Steel, LTV Steel Company, Inc., National Steel Corporation, California Steel Industries, Gallatin Steel Company, Geneva Steel, Gulf States Steel Inc., IPSCO Steel Inc., Steel Dynamics, Weirton Steel Corporation, the Independent Steelworkers Union, and the United Steelworkers of America.

Respondents in this investigation are JSC Severstal (''Severstal''), Novolipetsk Iron & Steel Corporation (''NISCO''), and Magnitogorsk Iron & Steel Works (''MMK'').

Since the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation,* 64 FR 9312 (February 25, 1999) (''*Preliminary Determination*''), the following events have occurred:

On March 1 and March 2, 1999, respectively, respondents NISCO and MMK submitted letters informing the Department that they were withdrawing from further participation in the proceeding. On March 8, 1999, NISCO submitted a letter alleging clerical errors in the preliminary determination.

In April 1999, we conducted sales and factors of production verifications of Severstal's responses to the antidumping questionnaires (*see Verification Report for Severstal* dated April 14, 1999 (''*Verification Report*'')). Petitioners and Severstal submitted case briefs on April 19, 1999, and rebuttal briefs on April 26, 1999.

On April 12, 1999, General Motors Corporation (''GM'') requested a scope exclusion for hot-rolled carbon steel that both meets the standards of SAE J2329 Grade 2 and is of a gauge thinner than 2 mm with a 2.5 percent maximum tolerance. On April 22, 1999, petitioners requested that certain ASTM A570–50 grade steel be excluded from the investigation. We adjusted the scope of this investigation pursuant to the decisions detailed in the *Scope Amendments Memorandum,* dated April 28, 1999.

On July 12, 1999, the Department signed a suspension agreement with the Ministry of Trade of the Russian Federation (the Agreement). If the ITC determines that material injury exists, the Agreement shall remain in force but the Department shall not issue an antidumping order so long as (1) the Agreement remains in force, (2) the Agreement continues to meet the requirements of subsections (d) and (l) of the Act, and the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms.

On July 7, 1999, we received a request from petitioners requesting that we continue the investigation. Pursuant to this request, we have continued and completed the investigation in accordance with section 734(g) of the Act.

Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*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 thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of HTSUS definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below 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
0.012 percent of boron, 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 of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max.

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches;
Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16% ..	0.70–0.90% ..	0.025% Max	0.006% Max	0.30–0.50% ..	0.50–0.70% ..	0.25% Max ...	0.20% Max ...	0.21% Max.

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V(wt.)	Cb
0.10–0.14%	1.30–1.80%	0.025% Max.	0.005% Max.	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max	0.10 Max ...	0.08% Max.

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% Max	1.40% Max.	0.025% Max.	0.010% Max.	0.50% Max.	1.00% Max.	0.50% Max.	0.20% Max.	0.005% Min.	Treated	0.01–0.07%.

Width = 39.37 inches; Thickness = 0.181 inches maximum;
Yield Strength = 70,000 psi minimum for thicknesses ≤0.148 inches and 65,000 psi minimum for thicknesses >0.148 inches; Tensile Strength = 80,000 psi minimum.

- Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm^2 and 640 N/mm^2 and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm^2 and 690 N/mm^2 and an elongation percentage ≥ 25 percent for thicknesses of 2mm and above.
- Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.
- Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this investigation, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is January 1 through June 30, 1998.

Nonmarket Economy Country Status

The Department has treated Russia as a nonmarket economy (''NME'') country in all past antidumping duty investigations and administrative reviews (*see, e.g., Titanium Sponge from the Russian Federation: Final Results of Antidumping Administrative Review,* 64 FR 1599 (January 11, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation,* 62 FR 61787 (November 19, 1997); *Notice of Final Determination of Sale at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation,* 60 FR 16440 (March 30, 1995); *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Ferrovanadium and Nitridid Vanadium from the Russian Federation,* 60 FR 438 (January 4, 1995)). A designation as an NME remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act). Therefore, for this final determination, the Department is continuing to treat Russia as an NME.

Separate Rates

The Department presumes that a single dumping margin is appropriate for all exporters in an NME country. *See Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). The Department may, however, consider requests for a separate rate from individual exporters. Severstal, NISCO, and MMK have each requested a separate, company-specific rate. Because NISCO and MMK withdrew from this proceeding, we were only able to verify information provided by Severstal and thus, we are only considering granting Severstal's request for a separate rate for this final determination. To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test

arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) and amplified in *Silicon Carbide.* Under the separate rates criteria, the Department assigns separate rates in NME cases only if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over export activities. For a complete analysis of separate rates, *see Memorandum to Edward C. Yang from Lesley Stagliano Re: Separate Rates for Exporters that Submitted Questionnaire Responses (''Separate Rates Memo''),* dated February 22, 1999.

1. Absence of De Jure Control

An individual company may be considered for separates rates if it meets the following *de jure* criteria: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Severstal has placed on the administrative record a number of documents to demonstrate absence of *de jure* control. These documents include laws, regulations, and provisions enacted by the central government of Russia, describing the deregulation of Russian enterprise as well as the deregulation of the Russian export trade, except for a list of products that may be subject to central government export constraints. Severstal claims that the subject merchandise is not on this list. This information supports a final finding that there is an absence of *de jure* government control for Severstal. *See Separate Rates Memo.*

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices (''EP'') are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. Severstal has reported that it is a publicly-owned company and that there is not aggregate government ownership greater than 25 percent.

Severstal has asserted that the company establishes its prices in negotiation with its customers, and that theses prices are not subject to review or guidance from any government organization. Furthermore, Severstal's management has the authority to negotiate and sign contracts, also without review or guidance from outside organizations. Severstal stated that it can retain all export earnings, and that there are no restrictions on the use of the company's export revenues or utilization of profits. Severstal further reported that its management is appointed by the company's shareholders, and that the government has no role in, and is not advised of, the selection of its management. At verification for Severstal, we verified reported information substantiating Severstal's separate rates claim (*see Verification Report* at 4–5).

In addition, the respondent's questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters. This information supports a final finding that there is an absence of *de facto* governmental control of the export functions of Severstal. Consequently, for this final determination, we determined that Severstal meets the criteria for application of a separate rate. For a further discussion of this issue, *see Separate Rates Memo.*

Russia-Wide Rate

After sending questionnaires to the 16 companies identified as potential respondents in the petition, we received complete Section A responses from only three producers—Severstal, MMK and NISCO. In the *Respondent Selection Memorandum* from Edward Yang to Joseph Spetrini dated November 19, 1998, we limited our examination of producers of subject merchandise to these three companies. However, two of the companies (MMK and NISCO) subsequently withdrew from the investigation. Furthermore, U.S. import statistics indicate that the total quantity and value of U.S. imports of hot-rolled steel from Russia is greater than the total quantity and value of hot-rolled steel reported by Russian companies that submitted responses that were subsequently verified (*see Memorandum on Final Determination of Critical Circumstances* from Edward Yang to Joseph Spetrini dated July 12, 1999 (''*Final Critical Circumstances Memo*'')). Accordingly, we are applying a single antidumping rate—the Russia-wide rate—to all exporters in Russia based on our presumption that those respondents who failed to respond to the initial questionnaire or withdrew from the investigation (*i.e.,* MMK and NISCO) constitute a single enterprise under common control by the Russian government. *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China,* 61 FR 19026 (April 30, 1996) (''*Bicycles*''). The Russia-wide rate applies to all entries of subject merchandise except for entries from Severstal.

Application of Facts Available

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Thus, pursuant to section 776(a) of the Act, the Department is required to apply, subject to section 782(d), facts otherwise available. Pursuant to section 782(e), the Department shall not decline to consider such information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Facts Available

Severstal

Section 776(a)(2)(B) of the Act requires the Department to use facts available when a party does not provide the Department with information in the form and manner requested or when necessary information is not available on the record. In this case, we find that Severstal failed to provide the Department with normal value data in the form and manner requested and that factors of production (FOP) data for each specific control number (CONNUM) were not available on the record.

As described below (*see* Comment 2), Severstal did not report CONNUM-specific FOP data as requested in the original and supplemental questionnaires and instead explained that the limitations of its accounting system prevented it from reporting FOPs

on a CONNUM-specific basis. Therefore, we find that the application of facts available for Severstal in the final determination is appropriate because Severstal's FOP data: (1) is not allocated sufficiently to discrete grades or qualities, resulting in NVs which are not accurate reflections of the grades to which they relate; and (2) does not measure the factors relevant to individual products actually being produced. We note that we were unable to adjust the reported FOPs due to the broad basis on which the costs were accumulated and the lack of information on the record on how to adjust these costs. As a result, the normal values calculated from Severstal's reported FOP database cannot serve as a reliable basis for reaching a final determination (*see* section 782(e)(3) of the Act), and we have instead relied on facts available for Severstal for this final determination.

Although the reported FOPs were not on a CONNUM-specific basis, we found that the FOPs reported by Severstal were consistent with the data kept by the company in the normal course of business. Also, in the aggregate, we did not find any reason to suggest that the reported costs did not accurately reflect the costs associated with all subject merchandise in its entirety. Therefore, as facts available, we have calculated one weighted-average normal value and compared all U.S. prices to the single normal value.

Notwithstanding the Department's decision to use Severstal's reported FOP data in this manner, this decision does not represent an endorsement by the Department of Severstal's methodology for reporting factor data. As explained in detail below in Comment 2, there are serious flaws in Severstal's methodology which render ineffective the Department's established methodology of calculating dumping margins on the basis of comparisons of sales prices for individual U.S. products to product-specific normal values. In particular, the Department is advising Severstal that the reporting methodology used in this investigation will be unacceptable for future segments of this proceeding. The use of Severstal's factor data in an administrative review, in which assessment rates for antidumping duties are calculated, could result in an understated margin due to the effects of averaging Severstal's FOP data into one normal value. In such future segments, Severstal risks the application of adverse facts available in the event that it fails to report FOP data that (1) is allocated sufficiently to discrete grades or qualities; (2) yields NVs which are reflective of the grades to which they relate; and (3) measures the factors of production of merchandise actually being produced.

Russia-Wide Rate

Section 776(a)(2)(A) of the Act requires the Department to use facts available when a party withholds information which has been requested by the Department. Additionally, section 782(i)(1) of the Act provides that the Department must rely on verified information for making a final determination in an antidumping duty investigation. In this case, some exporters of the single enterprise failed to respond to the Department's request for information and MMK and NISCO withdrew from the investigation prior to verification of their questionnaire responses. Thus, consistent with section 782(e)(2) of the Act, we have declined to consider information submitted by either MMK or NISCO (including information regarding their eligibility for separate rates) because it could not be verified. Pursuant to section 776(a) of the Act, in reaching our final determination, we have used total facts available for the Russia-wide rate because certain entities did not respond and we could not verify MMK's and NISCO's questionnaire responses.

Adverse Facts Available

Russia-Wide Rate

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may employ adverse inferences when an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See* also ''Statement of Administrative Action'' accompanying the URAA, H.R. Rep. No. 103–316, 870 (''SAA''). The statute and SAA provide that such an adverse inference may be based on secondary information, including information drawn from the petition.

Because certain exporters in the single entity did not respond to our questionnaire and others (*i.e.*, MMK and NISCO) withdrew from this proceeding, we consider the single entity to be uncooperative. Therefore, the Department has determined that, in selecting from among the facts available, an adverse inference is appropriate. Consistent with Department practice in cases in which a respondent has been uncooperative, as adverse facts available, we have applied a margin based on information in the petition (*see* Comment 1 below and *Initiation Checklist: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan, Brazil, and the Russian Federation, Attachment: Revised NVs and Margins for Russia* (October 19, 1998) (''*Initiation Checklist*'')).

Section 776(c) of the Act provides that, when the Department relies on secondary information, such as the petition, as facts available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used for corroboration may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see id.*).

In order to determine the probative value of the petition margins for use as adverse facts available for the purposes of this determination, we have examined evidence supporting the petition calculations. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the U.S. price and normal value calculations on which the petition margin was based. In corroborating U.S. price data, we compared the data used in the petition to the reported sales database of Severstal, the only Russian respondent whose questionnaire response was verified. In corroborating NV information, we made certain adjustments to account for surrogate values used in the final determination. Based on this analysis, we have corroborated the highest margin in the petition, as adjusted by the Department for this final determination. *See Facts Available Corroboration Memorandum*, date July 12, 1999.

For these reasons, we have chosen the highest petition margin, as adjusted, as the basis for using total adverse facts available for the single Russian entity. *See Facts Available Corroboration Memorandum*. The revised highest petition rate, which we have used as the Russia-wide rate, is 184.56 percent.

Fair Value Comparisons

To determine whether sales of hot-rolled steel products from Russia to the United States by Severstal were made at less than fair value, we compared the EP to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice.

Export Price

For Severstal, we preliminarily calculated EP in accordance with section 772(a) of the Act because the subject merchandise was sold to the first

unaffiliated purchaser in the United States prior to importation and constructed export price (''CEP'') methodology was not otherwise indicated. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the NV based on factors of production.

We calculated EP based on either packed FOB prices or FCA (free carrier) prices to unaffiliated trading companies. When appropriate, for FOB sales, we made deductions from the starting price for brokerage and handling. These services were assigned a surrogate value based on public information from *Certain Circular Welded Carbon Steel Pipe and Tube from Turkey. See Memorandum to Edward C. Yang; Re: Factor Valuation for Severstal, MMK, and Novolipetsk* (''*Factor Valuation Memo*''), dated February 22, 1999. We also made adjustments for foreign inland freight, which was valued using Polish transportation rates, since public information on Turkish values was unavailable. Because the mode of transportation reported by Severstal is proprietary, for a further discussion, *see Factor Valuation Memo* (proprietary version).

In a pre-verification correction, Severstal reported that certain sales were erroneously included in the sales database due to miscoding of the specification date. For the final determination, we excluded these sales for purposes of our margin calculation. *See Calculation Memorandum for the Final Determination for JSC Severstal from Lyn Baranowski to The File dated July 12, 1999* (''*Final Calculation Memo*'').

Normal Value

A. Factors of Production

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

Factors of production include: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs, including depreciation. We calculated NV based on factors of production reported by Severstal with the following exceptions: Severstal's ''charge by-products,'' packing bands, and cleaning gas. For further discussions of these exceptions, *see Factor Valuation Memo, Final Calculation Memo.* We valued all the input factors using publicly available information as discussed in the ''Surrogate Country'' and ''Factor Valuations'' sections of this notice.

At verification, we discovered that Severstal did not include labor costs for supervisors, specialists, and administrative personnel in their calculation of labor expenses. We also note that there is no indication that the overhead ratio derived from the Turkish data is inclusive of factory overhead that includes these kind of employees. As facts available, we have adjusted the reported labor factor in the manner explained in the *Final Calculation Memo.*

At verification, we discovered that EAF slab inputs were overreported while BOF slab inputs were underreported at hot-shop two (*see Verification Report* at 16–17). We have determined that because the change has a minimal effect and the misreported slab inputs effectively offset one another, we will continue to value these inputs as reported. *See Final Calculation Memo.*

At verification, we additionally found that Severstal underreported the amount of recycled materials at two shops: at hot-shop two for certain products and at the sintering shop (*see* Verification Report at 17). We have continued to value the by-product as reported by Severstal, because the use of the reported values is conservative. *See Final Calculation Memo.*

We also discovered at verification that Severstal excluded one supplier of iron ore from its calculation of iron ore usage at the sintering shop, thereby underreporting iron ore usage for every CONNUM (*see* Verification Report at 17). Because of the complex calculations this change involves and because of its minimal effect, we have used the reported iron ore usage rates. *See Final Calculation Memo.*

We found at verification that Severstal underreported natural gas usage at hot-shop one (*see* Verification Report at 19), a change which affects all cost codes. As facts available, we recalculated natural gas usage for one cost code and applied the percent change for that cost code to all other cost codes for natural gas input. *See Final Calculation Memo.*

We also found at verification that Severstal underreported the benzoil by-product credit at the coke furnace. Because of the complex calculations this change involves and its minimal effect, and because the use of the reported by-product credit is more conservative, we have used the reported benzoil by-product credit. *See Final Calculation Memo.*

Finally, we note that in the preliminary determination, we included packing labor, as reported by Severstal, in overall packing cost. However, we have since found that Severstal included packing labor in the reported direct labor factor. Therefore, to avoid double-counting of packing labor, we reduced Severstal's direct labor factor by the packing labor factor. *See Final Calculation Memo* for additional details.

B. Factor Valuations

In the preliminary determination, we used Turkey as the surrogate country but said that we would re-evaluate that choice for the final determination. Although there is now more Polish information on the record, we are continuing to use Turkey as the surrogate country (*see* Comment 4).

The selection of the surrogate values was based on the quality and contemporaneity of the data. When possible, we valued material inputs on the basis of tax-exclusive domestic prices in the surrogate country. When we were not able to rely on domestic prices, we used import prices to value factors. When appropriate, we adjusted import prices to make them delivered prices. For those values not contemporaneous with the POI, we adjusted for inflation using producer or wholesale price indices, as appropriate, published in the International Monetary Fund's International Financial Statistics.

To value coal, iron ore concentrate, iron ore pellets, recycled materials, and scrap, we used public information published by the United Nations Trade Commodity Statistics for 1997 (''UNTCS''). Severstal did not provide information on the record regarding iron content for iron ore pellets; however, we determined at verification the iron content of Severstal's iron ore. For the final determination, we have continued to value iron ore pellets based on the same data as was used for the preliminary determination, because the iron content of the pellets for this data is comparable to the iron ore pellets used by Severstal. *See Factor Valuation Memo*, Attachment 6.

For limestone, coal tar, and kerosene, we used information from 1996 UNTCS. For packing, Severstal reported that it uses a certain material for bands, and we discovered at verification that the same material is used for fasteners. Therefore, we have used the 1996 UNTCS data for valuing bands and fasteners for the final determination.

We have valued by-products in the production of hot-rolled steel reported

by Severstal. We have valued non-solid by-products at their natural gas equivalents. We have valued solid by-products based on 1996 and 1997 UNTCS data.

For some of the energy inputs reported (natural gas, blast furnace gas, coke oven gas, and electricity), we relied on public information from ''Energy Prices and Taxes: 2nd Quarter 1998,'' published by the International Energy Agency, OECD.

For movement, because we were unable to obtain publicly available Turkish values, we used Polish transport information to value transportation for raw materials. Since the mode of transportation reported by Severstal is proprietary, for a full discussion of this issue, *see Factor Valuation Memo* (proprietary version).

For labor, we used the Russian regression-based wage rate at Import Administration's homepage, Import Library, Expected Wages of Selected NME Countries, revised in May 1999. Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of this wage rate data on Import Administration's homepage is found in the *1998 Year Book of Labour Statistics*, International Labour Office (''ILO'') (Geneva: 1998), Chapter 5B: Wages in Manufacturing. This value differs from that used in the preliminary determination, because it reflects a more contemporaneous period.

As in the preliminary determination, to value overhead, general expenses and profit, we used public information reported in the 1997 financial statements of Eregli Demir ve Celik Fabrikalari TAS (''Erdemir''), a Turkish steel producer. We adjusted Erdemir's depreciation expenses for the effects of high inflation, and we reduced its financial expenses by including estimated short-term interest income and excluding estimated long-term foreign exchange losses. For a further discussion of this issue, see Attachment 10 of the *Factor Valuation Memo*.

For the final determination, we adjusted Erdemir's profit ratio to account for the adjustment made to the financial expense ratio, as explained above. For a further explanation, *see* Comment 4 below and the *Memorandum from Lyn Baranowski and Bill Jones to Rick Johnson* dated July 12, 1999 (''*Final Cost Memo*'').

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Severstal for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records and original source documents provided by respondents. Our findings are contained in the *Verification Report*.

Critical Circumstances

Section 735(a)(3) of the Act provides that, in a final determination, the Department will determine whether: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

1. History or Knowledge of Dumping and Material Injury

In determining whether there is a history of dumping and material injury by reason of dumped imports, the Department considers evidence of an existing antidumping order on hot-rolled steel from Russia in the United States or elsewhere to be sufficient. In this case, petitioners alleged that Chile, Indonesia, and Mexico all have current antidumping duty orders covering hot-rolled steel from Russia. Our research shows that the Chilean antidumping order is no longer in effect; therefore, we are not considering it for purposes of this determination. However, presently, there are antidumping duty orders in effect in Indonesia and Mexico on Russian hot-rolled steel. As a result, we find that with respect to hot-rolled steel from Russia, there is a history of dumping causing material injury. Since we have found a history of dumping causing material injury with respect to Russia, there is no need to examine importer knowledge.

2. Massive Imports

In order to determine whether imports of the merchandise have been massive over a relatively short period, in accordance with 19 CFR 351.206(h), we consider: (1) volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by the imports.

When examining volume and value data, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition. Consistent with 19 CFR 351.206(h), unless imports in the comparison period have increased by at least 15 percent over the imports during the base period, we normally will not consider the imports to have been ''massive.'' In addition, pursuant to 19 CFR 351.206(i), the Department may use an alternative period if we find that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely. In this case, petitioners argue that prior to the filing of the petition, importers, exporters, or producers of Russian hot-rolled steel had reason to believe that an antidumping proceeding was likely. We find that press reports, particularly in March and April 1998, indicate that, by the end of April 1998, importers, exporters, or producers knew or should have known that a proceeding was likely concerning hot-rolled products from Russia (*see Final Critical Circumstances Memo*). Therefore, to determine whether imports of subject merchandise have been massive over a relatively short period, we examined Severstal's export volumes from May–September 1998, as compared to December 1997–April 1998 and found that there were massive imports from Severstal over this period. Because this analysis involves proprietary information, *see* the *Final Critical Circumstances Memo* for additional details.

Concerning seasonal trends, we have no reason to believe that seasonal trends affected the import levels in this case. Therefore, in determining whether imports were massive over the ''relatively short period,'' we did not analyze the affects of seasonal trends.

When examining the share of domestic consumption accounted for by the imports from Severstal, we find that Severstal accounted for an increasing percentage of the U.S. market from the period December 1997–April 1998 when compared to May 1998–September 1998. As this analysis involved proprietary information, please refer to the *Final Critical Circumstances Memo* for additional details.

Based on the history of dumping causing material injury with respect to Russia and the massive imports noted above, the Department determines that critical circumstances exist for Severstal.

3. Russia-Wide Entity Results

With respect to companies subject to the Russia-wide rate (which will apply to NISCO, MMK, and companies which

did not participate in the investigation), we have determined that there is a history of dumping and material injury by reason of dumped imports because we found evidence of existing antidumping duty orders on hot-rolled steel from Russia in Indonesia and Mexico (*see* discussion above). Since we have found a history of dumping causing material injury with respect to Russia, there is no need to examine importer knowledge.

In order to determine whether imports of the merchandise have been massive over a relatively short period, in accordance with 19 CFR 351.206(h), we have examined the volume and value of the imports in question in the manner described above and find that there was a 98 percent increase in imports from the Russia-wide entity from May-September 1998, as compared to December 1997-April 1998. *See Final Critical Circumstances Memo* for an additional description.

Concerning seasonal trends, we have no reason to believe that seasonal trends affected the import levels in this case. Therefore, in determining whether imports were massive over the ''relatively short period,'' we did not analyze the affects of seasonal trends.

When examining the share of domestic consumption accounted for by the imports from the Russian entity, we find that imports from Russia accounted for an increasing percentage of the U.S. market from the period December 1997—April 1998 when compared to May 1998-September 1998. Based on our analysis of these criteria, we have determined that there were massive imports from the Russia-wide entity over this period.

Based on the history of dumping causing material injury with respect to Russia and the massive imports noted above, the Department determines that critical circumstances exist for the Russia-wide entity.

Interested Party Comments

Comment 1: Adverse Facts Available for MMK and NISCO

Petitioners assert that the Department should draw an adverse inference from MMK's and NISCO's withdrawal and base the final margins for these companies on the highest individual margins calculated for each in the Department's preliminary determination. Specifically, petitioners maintain that the statute requires that the Department ''use the facts otherwise available in reaching the applicable determination'' when an interested party ''provides such [necessary] information but the information cannot be verified as provided in section 1677m(i) of this title.'' 19 U.S.C. 1677e(a) (section 776(a) of the Act). Likewise, citing the *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Venezuela,* 63 FR 8946, 8947 (February 23, 1998) (''*Steel Wire Rod from Venezuela*'') and *Final Determination of Sales at Less Than Fair Value: Vector Supercomputers From Japan,* 62 FR 45623, 45623, 45625–45 (August 28, 1997) (''*Vector Supercomputers*''), petitioners contend that it is the Department's longstanding practice to use total facts available to establish the dumping margin when the party prevents the Department from verifying its data and withdraws from participation in an investigation. Finally, petitioners argue that in its application of facts available, the Department should draw an adverse inference based on MMK's and NISCO's failure to cooperate to the best of their ability. They claim that the statute and Departmental practice support drawing an adverse inference when a respondent has withdrawn, citing 19 U.S.C. 1677e(b) (section 776(b) of the Act); *Steel Wire Rod from Venezuela* at 63 FR 8947; and *Vector Supercomputers* at 62 FR 45625–45626. Also, petitioners maintain that central to the Department's use of facts available is the need to ensure that a respondent does not benefit from its refusal to cooperate. Citing *Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review; Roller Chain, Other than Bicycle, from Japan,* 62 FR 60472, 60477 (November 10, 1997), petitioners assert that in considering whether the selected facts available are sufficiently ''adverse,'' one factor the Department considers is the ''extent to which a party may benefit from its own lack of cooperation.'' Without the application of adverse inferences, petitioners assert that MMK and NISCO stand to benefit from their refusal to cooperate.

Respondents MMK and NISCO did not comment.

Department's Position

We agree in part with petitioners. We find that, with respect to MMK and NISCO, for the reasons discussed above in the Facts Available section, we are applying facts available and have determined that an adverse inference is appropriate. However, we disagree with petitioners' proposal to use the highest individual margins calculated in the preliminary determination. Under section 782(i)(1) of the Act, the Department must rely on verified information for making a final determination in an antidumping duty investigation. MMK's and NISCO's withdrawal prior to verification of their questionnaire responses prevents the Department from using their information to calculate a weighted-average margin for our final determination. In addition, the Department does not normally use any of such information as facts available. We also note that because MMK's and NISCO's information could not be verified, they are not entitled to a separate rate in this proceeding. As such, MMK and NISCO are part of the Russia-wide entity, as explained above in the *Facts Available* section of this notice. Moreover, contrary to petitioners' claims, using MMK's and NISCO's unverified information as the basis for the final margin could potentially benefit them by assigning a margin lower than what would have been calculated using verified information. As noted above, in cases such as this one, the Department relies on the facts otherwise available, normally data from the petition, in making its determination. In this instance, we have no basis to depart from this practice. Therefore, we find that the highest rate alleged in the petition, as corroborated by the Department, is the appropriate facts available rate in this determination.

Comment 2: Severstal's Factors of Production Methodology

Petitioners state that section 776 of the Act mandates that the Department employ total facts available if ''necessary information is not on the record,'' respondent's information ''cannot be verified,'' or if respondent ''fails to provide information...in the form and manner requested'' (*see* 19 U.S.C. 1677e(a)). Petitioners claim that in this proceeding, each of these statutory criteria is satisfied and the Department must employ facts available for Severstal as a result.

First, petitioners claim that for some of its U.S. sales, Severstal failed to report yield strength, despite being instructed to do so twice by the Department (referencing *Sections C and D Questionnaire* (October 30, 1998) (*Questionnaire*) at C–10 and V–4 and the *Sections C and D Supplemental Questionnaire* (January 4, 1999) (*Supplemental Questionnaire*) at number 10). Petitioners argue that Severstal's explanation that yield strength was not reported when the relevant specification did not require yield strength is unpersuasive; a qualified metallurgist, they claim, could determine the likely yield strength of every ASTM grade reported by

Severstal. Alternatively, petitioners cite what they claim to be a standard reference work which would permit extrapolation of the yield strength of numerous steel products (*Modern Steels and Their Properties: Carbon and Alloy Steel Bars*, 6th Ed., Bethlehem Steel Corporation (1961)). Petitioners suggest applying facts available to Severstal's U.S. sales dataset by matching all sales where Severstal reported a ''4'' for yield strength to COSTCODE ''1,'' the COSTCODE which contains the highest reported factor usage amounts in the factors of production (FOP) database.

Second, Severstal's failure to report CONNUM-specific (model-specific) FOPs, as requested by the Department (*see* the *Questionnaire* at C–42 and D–3 and the *Supplemental Questionnaire* at number 38) merits facts available treatment, petitioners contend. Petitioners point out that products were assigned to seven cost codes based on broad categories which do not match the Department's model match criteria. Petitioners assert that Severstal's cost codes do not account for yield strength, width, pickling, or edge trimming. Additionally, petitioners contend that Severstal does not classify its products based on the characteristics of merchandise actually produced. Instead, products are classified on the basis of the requirements contained in the order specification and costed in this manner. Costs, therefore, reflect merchandise grouped together at the time the order is placed, and do not reflect the cost of the merchandise actually produced, which can vary from the original order.

Petitioners assert that Severstal's claim that it was unable to report CONNUM-specific factors is unavailing. Petitioners state that most companies, in the normal course of business, do not maintain data that corresponds to the product groups identified by the Department for purposes of the margin calculation. Respondents routinely allocate costs maintained in their normal accounting records to CONNUMs, petitioners argue. According to petitioners, Severstal has made no attempt to allocate costs in this manner, and therefore the Department should not allow Severstal to be exempt from these fundamental reporting requirements. Petitioners assert that these requirements are consistent with instructions to every respondent in antidumping proceedings (citing *Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Mexico,* 64 FR 76, 77–78 (January 4, 1999)).

Petitioners argue that Severstal could have derived the total volume of each input used to produce subject merchandise and, using information on which CONNUMs require more or less of a given input, could have arrived at an allocation which would allow CONNUM-specific factor reporting. Severstal's failure to attempt this kind of exercise indicates that Severstal did not act to the best of its ability in reporting factors, petitioners assert.

Another point raised by petitioners is that there are numerous inconsistencies with respect to Severstal's assignment of cost codes to CONNUMs. For example, petitioners assert that Severstal has assigned distinct grades and qualities of steel to the same cost code, indicating that the cost associated with producing each of these grades is the same. Additionally, petitioners contend that Severstal has assigned distinct grades to one CONNUM, indicating that the physical characteristics of these grades are the same. Petitioners also contend that the factor amounts (and resulting total manufacturing costs and normal values) reported by Severstal do not appear to bear any relationship to the products for which they were reported. Finally, petitioners maintain that Severstal's reporting of its internal product information is inconsistent between cost codes and the corresponding product codes.

In summary, petitioners believe that 1) Severstal's reported factors and costs bear no relationship to CONNUMs; 2) Severstal has failed to provide information requested by the Department; and 3) the information that Severstal did provide is inconsistent, inaccurate, and unreliable. As a result, petitioners argue that the normal values derived from Severstal's factors ''cannot serve as a reliable basis for reaching the applicable determination'' and that the submitted costs cannot ''be used without undue difficulties'' (citing section 776 of the Act). Therefore, petitioners maintain that total adverse facts available is warranted for Severstal in this proceeding.

Concerning the reporting of yield strength for U.S. sales, Severstal contends that reported yield strength plays no role in the calculation of Severstal's margin and, therefore, Severstal's failure to report yield strength for all sales does not effect the outcome of this proceeding. Severstal maintains that because U.S. sales are not matched to home market sales on the basis of physical characteristics in an NME case, precise reporting of all the product characteristics used to generate CONNUMs is not necessary. Severstal additionally states that the Department verified that yield strength plays no role in the calculation of FOPs and that Severstal did report yield strength to the best of its ability. Severstal states that although a metallurgist could have determined likely yield strength for the sales for which no yield strength was reported, Severstal, in accordance with the Department's instructions, reported yield strength only where there was documentary evidence for such an assignment, and not based on unverifiable estimates by Severstal personnel. As such, Severstal urges the Department to dismiss petitioners' request for facts available treatment due to the failure to report yield strength for all U.S. sales.

Severstal claims that petitioners' second argument, that the Department should apply total adverse facts available to Severstal's cost system, should be rejected by the Department. Severstal first states that it reported its factors of production to the greatest level of detail permitted by the applicable Factory Cost Ledgers. Severstal asserts that it accurately assigned the factors to individual U.S. sales by identifying the physical characteristics of the merchandise sold against the definition of the products included within its product groups. Severstal states that it assigned FOPs to individual transactions on the basis of cost codes because that is most representative of the manner in which it conducts business. Severstal contends that it cannot allocate factors calculated according to the internal product groups to individual CONNUMs. Should the Department decide to calculate an average cost on the basis of CONNUM, Severstal argues that it would need only to calculate a simple average of the cost codes assigned to transactions with the same CONNUM in Severstal's U.S. sales database (consistent with the approach taken for the preliminary determination).

Severstal argues that if petitioners are suggesting that a more complex method of allocating factors to individual CONNUMs is possible in this case, then petitioners misunderstand the record in this case. Severstal states that: (1) Its records permit it to identify the volume of inputs in each of the cost code groupings included in the Factory Cost Ledgers; (2) it does not know whether the production of certain CONNUMs requires more or less of a given output; and (3) it is impossible, based on their system, for the company to rank the factor inputs required to produce each of the reported CONNUMs. Severstal contends that petitioners offer many proposals concerning what Severstal should have done in the abstract, but do not offer any suggestions regarding how these proposals would be implemented. Severstal states that its cost system

simply does not have a framework that would allow it to allocate its factors to CONNUMs.

Severstal states that the inconsistencies to which petitioners refer each have logical explanations. Where Severstal has assigned distinct grades and qualities to the same cost code, Severstal states that the Department verified that these grades are pooled within the same cost code category in the normal course of business. Where Severstal has assigned distinct grades to the same CONNUM, Severstal states that it is possible for different grades to have the same physical characteristics, which is the basis for assigned CONNUMs. Pursuant to petitioners' claim that the factor input amounts do not appear to have any relationship to the product to which they relate, Severstal asserts that its dataset reveals that some of the individual FOPs assigned to the cost codes do differ and that in these cases, the fact that the total manufacturing costs are similar is pure coincidence. Concerning petitioners' argument that there are inconsistencies in Severstal's reporting of cost codes and product codes, Severstal states that the inconsistency to which petitioners refer is simply caused by petitioners' misunderstanding of the cost code group to which they refer.

In summary, Severstal argues that the Department should find that: (1) Severstal does not maintain FOP information on a CONNUM-specific basis; (2) it submitted factors data to the greatest level of detail permitted by its normal books and records; and 3) Severstal's reporting system is complete and reliable. As such, Severstal contends that the Department should reject petitioners' demand for adverse facts available treatment for Severstal in the final determination.

Department's Position

We agree, in part, with petitioners and disagree with respondents. We determine that the application of facts available is appropriate, because Severstal repeatedly failed to provide CONNUM-specific FOP data and the data which it did supply did not reasonably reflect the actual costs of producing the subject merchandise during the POI.

For purposes of calculating margins in an NME proceeding, the Department first calculates weighted-average U.S. prices by model (*i.e.*, by CONNUM) and compares these prices to NVs by CONNUM created from a respondent's FOP data. The respondent's U.S. sales database includes product characteristic data, which the Department instructs respondent to use in reporting CONNUM-specific FOP data. In both the original and supplemental questionnaires in this proceeding, the Department instructed Severstal to report CONNUM-specific FOP data; however, Severstal stated that its accounting system did not allow it to develop CONNUM-specific FOP data. In fact, for 61 distinct CONNUMs (as defined in accordance with the Department's instructions), Severstal calculated only seven discrete sets of factors and assigned each CONNUM one (or more) of these seven sets of factors. At verification, the Department found that, even when using Severstal's own overly general FOP reporting methodology, Severstal could have calculated eleven discrete sets of factors based on the system it employed to report FOP data; however, Severstal chose to combine several of its internal product classification categories to report only seven.

The Department's review of Severstal's accounting system revealed that the company does not assign product-specific costs to each of the models reported in the sales database. In order to comply with the Department's CONNUM-specific FOP reporting requirements, an allocation of usages to grades would have been necessary (although not necessarily sufficient). Severstal failed to develop a reasonable allocation methodology for purposes of this proceeding and instead reported FOPs based on internally recorded costs. Specifically, at verification, the team found that, in its normal course of business, Severstal pools its costs into broad categories. These categories do not correspond to international commercially-acceptable standards (upon which the Department's product concordance is based). For example, merchandise which was reported as ''commercial'' quality in Severstal's U.S. sales database is assigned to multiple sets of cost categories. The considerable overlap in Severstal's internal designations and Severstal's failure to develop a methodology to relate internal costs to the Department's product concordance characteristics (such as ''quality'') resulted in FOP reporting which has little to do with the reported product characteristics for the U.S. sales. For an in-depth discussion of this issue, *see Final Calculation Memo* (proprietary version) and the attached tables. It is clear that a comparison of normal values calculated from overly general, and often inconsistent, factor information would result in an inaccurate margin calculation.

Given the nature of the FOP data on the record, it is not feasible for the Department to develop accurate CONNUM-specific FOPs using Severstal's data. The normal values calculated for the preliminary determination, which are based on Severstal's reported factor information, are not accurate depictions of the costs for merchandise to which they purport to relate. Specifically, the Department's analysis of Severstal's normal values reveals anomalies in the relative costs, based on the steelmaking process. For specific examples of anomalies in the relative costs, *see Final Calculation Memo* (proprietary version). These anomalies result directly from the reported FOPs. This review of Severstal's normal values indicates that Severstal's cost reporting system did not accurately associate cost differences (and thus usages) to particular grades and qualities of steel.

An additional problem is that Severstal's cost system does not track costs of merchandise actually produced; rather, it tracks the cost of merchandise as ordered by the customer. At verification, we found that when a product is ordered, it is assigned a product grouping and costed within the assigned grouping, regardless of the actual production or chemical composition of the finished product. Specifically, the Department verified one instance in which two customers ordered products which were categorized within separate cost categories. However, notwithstanding the merchandise's chemical composition at the time of production and shipment (the mill certificates indicate that the merchandise was, in all relevant aspects, identical), each product was costed within the product group it was assigned when the customer placed the order. *See Final Calculation Memo.* Therefore, we conclude that Severstal's reported ''product-specific'' FOP data, do not reflect merchandise actually produced.

In sum, Severstal did not report CONNUM-specific FOP data as requested in the original and supplemental questionnaires and instead explained that the limitations of their accounting system prevented them from reporting FOPs on such a basis. Severstal made no attempt to develop an alternative methodology that would allow the company to assign production factors on a more consistent, product-specific basis, despite the Department's expressed concern with the overly generalized FOP methodology used. Therefore, we find that the application of facts available for Severstal in the final determination is appropriate because Severstal's FOP data: (1) Is not allocated sufficiently to discrete grades

or qualities, resulting in NVs which are not accurate reflections of the grades to which they relate; and (2) does not measure the FOPs of merchandise actually being produced. As a result, the normal values calculated from Severstal's FOP database, as reported, cannot serve as a reliable basis for reaching a final determination (*see* 776(e)(3) of the Act), and we are instead relying on facts available for Severstal for this final determination in the manner described above (*see* Facts Available section of this notice).

With respect to petitioners' argument that the Department should apply total adverse facts available, we find that the use of adverse facts available is not appropriate in this case notwithstanding the deficiencies in Severstal's Section D response. As stated above, the Department verified that, in its normal course of business, Severstal records costs on the basis of the above-described product groups. Thus, while necessary information is not available on the record to calculate CONNUM-specific normal values for Severstal, we cannot conclude that Severstal failed to cooperate by not acting to the best of its ability. That is, the Department finds no reason to conclude that Severstal did not make a good faith effort to report the requested FOP data utilizing an internal system which it believed to be adequate. As noted above, the need to resort to facts available stems from the fact that the data Severstal provided, calculated based on an inadequate internal accounting system, is unuseable.

We also disagree with petitioners' argument that the Department should apply adverse facts available for those sales where there is no specified minimum yield strength by assigning to them the cost code with the highest reported factor of production inputs. As noted by Severstal, it relied on ASTM grade descriptions to determine the yield strength of the merchandise sold to the United States, and in cases where the ASTM description did not include a description of yield strength of the covered product, it coded those sales as having no specified yield strength. At verification, the Department asked Severstal personnel why there was no specified yield strength for the ASTM A–569 specification despite the fact that the ASTM book maintained by the Department specifies a yield strength for A–569. We verified that the ASTM A–569 specification used during the POI (1993 version) does not require yield strength. *See Verification Report* at pg. 10. Based on the above, we do not find that application of adverse facts available is appropriate for those sales with no specified yield strength. Furthermore, the Department's decision to calculate one weighted-average normal value renders the lack of a yield strength insignificant.

Comment 3: Surrogate Freight Value

Petitioners argue that, should the Department not employ total adverse facts available for Severstal, then it must revise the surrogate rail freight information. Petitioners argue that due to the size of Russia as compared to Poland, a rate schedule for a country the size of Russia would include rates for distances greater than 1200 kilometers. Accordingly, petitioners contend that it is inappropriate to base the freight rates for distances greater than 1200 kilometers on rates that reflect the limited traveling distances within Poland. For the final determination, petitioners urge the Department to recalculate the freight rate for distances exceeding 1200 kilometers by dividing the per-metric ton rate by 1200 and multiplying the resulting amount by the relevant distance.

Severstal first argues that the tariff chart used to derive the freight rates clearly shows that as the distance over which freight is transported increases, the per-kilometer tariff rate decreases. Therefore, Severstal argues, the Department's use of the per-kilometer rate equivalent to 1200 kilometers used to value shipments which travel more than 1200 kilometers is appropriate; the incrementally smaller per-kilometer tariff for shipments at greater distances properly reflects the fact that as the distance increases, the shipping expense declines.

Second, Severstal contends that to calculate and apply a per-kilometer freight value to transportation in Russia based on the distance categories in Poland would improperly penalize Russia for its size. Severstal maintains that the Department should not assume that the per-kilometer freight cost incurred in the shorter distances in smaller countries would apply to the distances in Russia.

Finally, Severstal argues that nothing in the information obtained from the Polish source suggests that if longer distances existed in Poland, the tariffs that would apply to shipments over those longer distances would be calculated as a straight per-kilometer amount based on the tariff for 1200 kilometer shipments. Severstal states that the evidence on the record suggests that for distances greater than 1200 kilometers, the flat rate shown in the Polish tariff chart applies. In Severstal's opinion, the Department should maintain the methodology established for the preliminary determination in valuing surrogate freight expenses.

Department's Position

We agree with respondents that our calculation of surrogate freight rates in the preliminary determination was appropriate based on the information on the record for this proceeding. Because none of the relevant distances exceed 1200 kilometers, this issue with respect to Severstal is moot (*see Final Calculation Memo*). For the final determination, we have continued to apply the same methodology adopted in the preliminary determination in valuing surrogate freight.

Comment 4: Surrogate Country Selection

Severstal argues that the Department should use Poland as the primary surrogate country for the final determination in this proceeding. Severstal notes that in the preliminary determination, the Department relied on information from Turkey as the primary surrogate, stating that although Turkey and Poland are economically comparable and are both significant producers of subject merchandise, Turkey was preferable due to data (specifically, financial data) availability. Severstal notes that it submitted information clarifying the data from Poland on both February 2 and April 2, 1999. Additionally, the April 2, 1999 submission contains a complete set of surrogate values which are reasonably contemporaneous and publicly available, Severstal maintains. Therefore, Severstal urges the Department to reconsider the selection of surrogate country.

Severstal argues that Poland is superior to Turkey as a surrogate country when examining other criteria used by the Department in past cases. Specifically, Severstal contends that the distribution of the labor force in Poland is more similar to that in Russia than is the labor force distribution in Turkey.

Moreover, Severstal maintains that financial data from Erdemir, upon which the Department relied in the preliminary determination, is flawed for a number of reasons. First, Severstal argues that the depreciation figure used is inflated because a substantial portion of the amortization amount resulted from the revaluation of assets required to counteract the impact of hyperinflation in 1997. Although the Department adjusted depreciation for the preliminary determination, Severstal contends that the Department should not burden itself with the complexities that arise from the use of a hyperinflationary economy like Turkey

as the primary surrogate when an alternative exists that meets all the criteria for an acceptable surrogate and is not hyperinflationary.

Second, Severstal argues that the depreciation would need to be additionally reduced to account for an additional adjustment noted in the Auditor's Opinion of Erdemir's financials. Severstal notes that the Department instructed petitioners to recalculate depreciation to account for this reduction for the purposes of initiation (*see Supplemental Questionnaire on Petition on Certain Hot-Rolled Carbon Steel Flat Products from the Russian Federation*, 8–9 and Attachment L (October 9, 1998) (*Supplemental Questionnaire on Petition*)), and petitioners recalculated depreciation accordingly. However, for the preliminary determination, Severstal argues, the Department did not reduce depreciation to account for this reduction. Severstal argues that the Department's failure to do so should be corrected for the final determination.

Additionally, Severstal contends that the financial ratio calculated by petitioners was ''swollen'' due to aberrational foreign exchange differences. Although Severstal admits that the Department corrected for this problem in the preliminary determination, Severstal again contends that the Department should not burden itself with the complexities that arise from the use of a hyperinflationary economy like Turkey as the primary surrogate when an alternative exists that meets all the criteria for an acceptable surrogate and is not hyperinflationary.

Severstal also argues that the financing expenses portion of the financial ratio and the development expenses were aberrational due to the massive construction and development projects ongoing at Erdemir. Severstal contends that Erdemir is not an appropriate surrogate due to the fact that its productive assets are new and expanding while Severstal's assets are contracting. Erdemir's data, in Severstal's view, is aberrational when compared to the Russian industry and should therefore not be used for the final determination (citing *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Poland*, 59 FR 37205, 37207 (July 9, 1993), *Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 59 FR 58818, 58820 (November 15, 1994), *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61964, 61987 (November 20, 1997) and *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 62 FR 61754, 61764 (November 19, 1997)).

Severstal argues that the Department should not accept Erdemir's data for the overhead expense ratio calculation, because that calculation is based on what Severstal believes to be unsubstantiated and unaudited figures contained in a fax from Erdemir to counsel for petitioners. Severstal maintains that this overhead data does not meet the Department's preference for publicly available information.

Severstal argues that the reliance on Erdemir's expense category for the overhead expense ratio calculation may double-count some of the expenses (all energy inputs other than natural gas, fuel oil, and electricity, which are broken out separately) that Severstal has reported as individual FOPs. Severstal speculates that the other energy types not specifically listed are included in either the ''general materials'' or ''other operating expenses'' figures in Erdemir's chart. Severstal contends that the inclusion of the entire amount of the two expense categories as well as Severstal's full range of energy factors would effectively double-count all of the energy categories listed by Severstal beyond the three mentioned in Erdemir's list (natural gas, fuel oil, and electricity).

For the above reasons, Severstal urges the Department to select Poland as the primary surrogate country in this proceeding.

Petitioners argue that the Department's use of Turkey as the surrogate country in this proceeding is within its statutory mandate, citing 19 U.S.C. 1677b(c)(4) (section 773(c)(4) of the Act). Specifically, petitioners submit that Turkey is: (1) at a level of economic development comparable to Russia; and (2) a significant producer of hot-rolled steel. Furthermore, data from Turkey is publicly available, fulfilling another of the Department's preferences in selecting surrogate values, petitioners claim.

Petitioners maintain that Severstal's data supporting its argument that the distribution of Poland's labor force is more similar to Russia's than is Turkey's is unavailing. Specifically, they state that Severstal's argument that the Turkish economy is less developed than the Polish economy is contradicted by Severstal's statement that the Turkish steel industry is new and expanding.

Concerning the merits of the financial data, petitioners believe that Erdemir's financial data is much more reliable than that of the Polish producer, Sendzimira. Petitioners submit that there is no indication that the untranslated Sendzimira financial report submitted on April 2, 1999 was ever made available to the public, raising the issue of whether the information contained therein is publicly available. Regardless of its availability, petitioners argue that there is no indication that any of the Sendzimira information was examined by an independent auditor and therefore there is no confirmation that the data conforms with Poland's generally accepted accounting principles (GAAP). Additionally, petitioners argue that the financial statements are not accompanied by notes, which are necessary to understand the methods used to derive the information provided in the financial statements.

Third, petitioners point out that Sendzimira's financial information does not segregate the manufacturing and non-manufacturing components of expenses, and many of the expense accounts (such as labor and other operating costs) are incurred for both manufacturing and non-manufacturing costs. Petitioners claim that it is necessary to segregate the manufacturing and non-manufacturing components because the depreciation, SG&A and interest expense ratios used by the Department are derived from only the manufacturing expenses (*i.e.*, cost of sales) portion. An accurate calculation of financial ratios depends on accurate identification of the expenses, argue petitioners.

In addition, petitioners argue that Severstal overstated manufacturing expenses and understated SG&A in the worksheets in which it calculated financial ratios. As a result, petitioners argue, Sendzimira's financial statements are inaccurate, incomplete, and invalid and should be rejected for the final determination.

Unlike the Polish financial data, petitioners argue, Erdemir's financial data are audited, accompanied by notes, and separately identify many detailed accounts on the income statement. First, petitioners refute Severstal's argument that there are anomalies within Erdemir's financial data which render the data unuseable. Petitioners state that Erdemir's currency exchange losses and its adjustment of depreciable assets to account for inflation reflect ordinary financial activity, for which the Department made simple adjustments in the preliminary determination.

Concerning the calculation of depreciation, petitioners state that the Department already adjusted Erdemir's depreciation ratio to account for the effects of inflation in the preliminary

determination. Petitioners also argue that the Department should not reduce Erdemir's depreciation expense to account for an item mentioned in the company's auditor's letter, as requested by Severstal. Petitioners contend that, as they informed the Department in the supplemental questionnaire response on the petition (*see* the submission dated October 9, 1998 at pp. 8–9), this item in the auditor's statement indicates that Erdemir's change in depreciation practice was not approved by the Turkish tax authorities and as a result, the lower depreciation figure was not employed in reporting depreciation on the financial statement. Petitioners, therefore, claim that Severstal's requested adjustment to depreciation is inappropriate.

Concerning the calculation of financial expenses, petitioners state that the Department already adjusted Erdemir's financial expense ratio to account for non-current assets (principal foreign exchange differences) in the preliminary determination. Petitioners therefore claim that Severstal's requested adjustment to the financial expenses ratio is inappropriate.

Concerning the calculation of overhead, petitioners contend that the information upon which the Department relied to calculate overhead in the preliminary determination is as publicly available as is the Polish financial information placed on the record by Severstal. Moreover, petitioners argue that this information is the only information on the record relating to factory overhead.

With regard to Severstal's claim that the Department's overhead calculation may double-count energy costs, petitioners argue that there is no evidence that the ''other operating expenses'' category includes any additional sources of energy. Petitioners state that it is likely that Erdemir grouped the costs of all energy sources into three major categories (natural gas, electricity, and fuel oil), which it separately identified in its breakout of the components of cost of sales. Petitioners argue that natural gas, fuel oil, and electricty account for a substantial percent of energy costs included in the calculation of normal value and that the energy costs not broken out on Erdemir's financials could not exceed the remaining portion not accounted for in the cost buildup of NV.

Finally, petitioners note that the Department should have made an upward adjustment to Erdemir's profit amount in the preliminary determination to offset the Department's downward adjustment to Erdemir's reported financial expense and request that the Department, to the extent that it makes a downward adjustment to Severstal's financial expense amount in the final determination, make a corresponding upward adjustment to Erdemir's profit amount.

Department's Position

In determining a surrogate country for use in a NME proceeding, the Department, in accordance with section 773(c)(4) of the Act, shall value a respondent's factors of production at the prices or costs in a surrogate country that is at a comparable level of economic development and is a significant producer of comparable merchandise. In the event that more than one country satisfies both of the statutory criteria, the Department may choose a single country on the basis of data availability. For the preliminary determination in the instant case, we used Turkey as the primary surrogate country, stating that the data from Turkey is superior to that from Poland (*see Preliminary Determination* at 64 FR 9315). However, we stated in the *Preliminary Determination* that we would reexamine this issue for this final determination should parties submit additional information.

Having examined the new information placed on the record concerning the Sendzimira financial statements, we have decided to continue to use Turkey as the primary surrogate country for the final determination. In this case, we find that the financial statements from the Turkish producer Erdemir are more reliable than those from the Polish producer Sendzimira.

First, concerning the distribution of the labor forces, the Department considered all of the countries included in the *Memorandum from Jeff May to Rick Johnson on Nonmarket Economy Status and Surrogate Country Selection* dated December 21, 1998 (''*Policy Surrogate Memo*'') to be equally comparable in terms of economic development (*see* page 1 of *Policy Surrogate Memo*). We did not determine any country included in the *Policy Surrogate Memo* to be preferable for surrogate country purposes to any other included therein on the basis of distribution of labor forces. Furthermore, as noted in the *Surrogate Country Selection Memorandum* dated February 22, 1999 (''*Surrogate Country Selection Memo*''), the Department finds that the fact that the World Bank did not indicate the percentage of the Russian labor force in agriculture in its World Development Report for 1998/99 to be a strong indicator of the lack of knowledge concerning the present labor distribution in Russia. *See Surrogate Country Selection Memo*.

Concerning the Erdemir financial statements, we first note that many of the alleged problems with Erdemir's financial data that Severstal cites were remedied by the Department for the preliminary determination. Specifically, in the preliminary determination, the Department: (1) adjusted the depreciation figure to account for the revaluation of assets required to counteract the impact of hyperinflation in 1997; and (2) adjusted Erdemir's financial expense ratio to account for non-current assets (principal foreign exchange differences).

Concerning Severstal's argument that depreciation should be further adjusted to account for an additional adjustment noted in the Auditor's Opinion, we agree with petitioners that although we adjusted depreciation in this manner for the initiation of this investigation, we now find that the statement in the Auditor's Opinion at issue indicates that Erdemir revised its useful life estimates in 1996 but then reverted to the original useful lives because it was unable to obtain approval from the Turkish tax authorities for the revision. Thus, we believe that the amount reported for depreciation on the financial statements reflects the useful lives of Erdemir's fixed assets. The depreciation expense listed on the financial statements, therefore, should not be reduced because Erdemir has not received approval for the revisions to the useful lives of its assets.

We find that Severstal's argument that Erdemir is not an appropriate surrogate because its assets are expanding due to construction and development projects, and that this data, therefore, is aberrational, is unavailing. First, we note that whether a country's economy is growing or shrinking is one of the factors examined when developing a list of economically comparable countries. Additionally, there is no evidence on the record that the kinds of activities that Erdemir engaged in during 1997 are not representative of the kinds of activities that a steel producer in a country of Turkey's level of economic development would undertake in the normal course of business. Furthermore, nothing in the statute, the Department's regulations or past Department practice obligates the Department to consider the specific activities in which a producer engages for any given year when analyzing its data for purposes of surrogate country suitability. We also note that a review of the financial statements from Sendzimira shows that this company was also expanding, engaging in significant capital

investments in 1997. Specifically, the Financial and Economic Results portion of the financial statements (*see* the February 2, 1999 submission) refers to ''very high costs of the on-going modernization'' and discusses construction and modernization projects completed in 1997.

Concerning the calculation of overhead and the Department's use of a fax from Erdemir to petitioners' counsel, we find that because it is the only source of information on the record which specifically breaks out factory overhead, it is appropriate to use this information for the final determination. We also note that the fax at issue comes directly from Erdemir, as certified by petitioners.

Concerning the potential double-counting of energy expenses raised by Severstal, we find that there is no evidence that either ''other operating expenses'' or ''general materials'' contains costs for energy sources. Moreover, percent usage of all energy fields accounted for by natural gas, fuel oil, and electricity is further indication that any double-counting, if it exists, is negligible. *See Final Calculation Memo* for a further description, because this analysis involves proprietary information.

With regard to the profit rate calculation, we agree with petitioners that because of the adjustment the Department made to the financial expense ratio, we should have taken this adjustment into account when calculating Erdemir's profit ratio, and have done so for the final determination. *See Final Cost Memo* for a further description of this adjustment.

Concerning the relative useability of the Polish and Turkish financial data, although we believe that both sets of financial statements at issue are useable, we believe that Erdemir's are ultimately preferable given the following problems associated with the Polish financial data.

First, neither the financial statements nor the detailed schedules in the Polish financial statements are audited, and thus, there is no confirmation that the data was prepared in accordance with Poland's GAAP. Although it is not required that financial statements be audited, the Department has established a clear preference to use audited financial statements when available (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737, 9740 (1997) (noting Department's preference for audited financials over the same company's tax returns)).

Second, neither the financial statements nor the detailed schedules in the Polish financial statements break out expenses between manufacturing and non-manufacturing (*i.e.*, G&A) expenses. This methodology could result in some G&A expenses being classified by Sendzimira as cost of manufacturing (COM), thus understating G&A in the normal value calculation, since these G&A expenses would be excluded from the derivation of the G&A ratio.

Third, Sendzimira was a government-owned and -operated entity for one third of the year, and, although the financial data breaks out amounts incurred before and after the government ceded control, we normally prefer to use a full year's worth of operations to calculate costs in order to eliminate fluctuations that may occur over shorter periods (*see, e.g., Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 37014 (1997). We also note that the financial statements indicate that privatization is not yet complete.

Therefore, for all of the above reasons, we are continuing to use Turkey as the surrogate country in this investigation.

Comment 5: Severstal's Pre-Verification Corrections

Severstal argues that the Department should correct two clerical errors submitted at the beginning of verification. The first clerical error was one affecting the FOP calculations for two of the reported seven cost codes.

Severstal argues that because the Department has accepted the underlying correction to the factual data (namely, revised Exhibit D–7), the Department must make revisions in the calculation of the FOPs for both cost codes. Severstal alleges that the information it attempted to provide at verification (Exhibit D–9) was minor in nature because it provides corrected calculations of the FOPs based on mathematical manipulations of the data already submitted. Exhibit D–9, Severstal argues, serves as a ''bridge'' from the data submitted in various exhibits to the FOP information included on the Section D computer file. Severstal claims that the Department's refusal to accept the information violates the Court of Appeals' standard for accepting corrections submitted by respondents in *NTN Bearing Corp.* v. *United States* (74 F.3d 1204 (Fed. Cir. 1995) (*NTN*)). Severstal maintains that if the Department persists in its refusal to accept the revised Exhibit D–9 that Severstal attempted to submit at verification, then the Department must determine the impact that the March 24 correction has on the calculation of the FOPs for the two cost codes and create its own corrected version of Exhibit D–9 for the cost codes.

Severstal contends that the Department should correct a second clerical error described by Severstal at the outset of verification, namely, the inclusion of data for two cost codes as one (reported aggregately as cost code 5). Severstal argues that information on the record clearly shows the error, no new information was submitted, and Exhibits D–7, D–8, and D–22 contain breakouts for the cost code which was inadvertently combined. Therefore, Severstal argues, only the mathematical manipulations necessary to generate the factors of production (Exhibit D–9) are required to calculate the FOPs for this cost code.

Severstal contends that the identity of the CONNUMs affected by this error are readily identifiable in Severstal's sales database, because it would be impossible for sales of merchandise which was reported with the relevant product code to be combined with factors information for the relevant cost code.

Severstal also maintains that the error in pooling the factor data for the cost code at issue was a result of the conditions surrounding this investigation, including the accelerated schedule imposed by the Department and the response deadlines. Severstal argues that the Department adopted this schedule in response to political pressures in the United States, which is inappropriate for the fundamental purpose underlying the antidumping process (*see, e.g., D&L Supply Co.* v. *United States*, 113 F.3d 1220, 1223 (Fed. Cir. 1997), *Borlem S.A.—Empreedimentos Industriais* v. *United States*, 913 F.2d 933, 939 (Fed. Cir. 1990), *NTN*, and *Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990)). Severstal suggests that should the Department refuse to accept this clerical error on the basis that it is not ''minor'' in nature, the Department will be compounding the difficulties imposed on the respondent by its artificially accelerated schedule.

Petitioners argue that the Department was correct in rejecting Severstal's efforts to submit a substantially revised FOP dataset. Concerning the first clerical error, petitioners argue that Severstal's March 24, 1999 submission gave no indication that the error discovered in Exhibit D-7 affected more than just Exhibit D–7. At verification, petitioners argue, Severstal confronted the Department verifiers with a new

exhibit showing that the one number corrected in the March 24 submission actually affected a huge range of other figures on the record (*i.e.*, all the reported FOPs for cost codes 1 and 2). This correction, petitioners claim, would result in the revision of the normal values associated with many of Severstal's U.S. sales. Concerning the second clerical error, petitioners maintain that the creation of an entirely new cost code (and an eighth set of FOP data) would impact a significant portion of Severstal's U.S. sales.

Petitioners argue that a major revision to most of Severstal's FOP data would render meaningless the Department's verification, since the Department would not have been able to examine the new calculations or data prior to its verification. Petitioners state that respondent bears the burden of preparing and providing the Department with an accurate submission within the statutory deadline (*see NSK Ltd.* v. *United States*, 825 F. Supp. 315, 318–319 (CIT 1993)) and cannot expect the Department to serve as a surrogate to guarantee the correctness of submissions (*see Murata Mfg. Co., Ltd.* v. *United States*, 820 F.Supp. 603, 607 (CIT 1993)).

Petitioners argue that the U.S. Court of Appeals, in *NTN*, considered three primary factors for determining whether to allow untimely clerical error corrections requested by respondents: first, the correction must not require the Department to begin anew, thus wasting effort; second, it must not delay the final determination; and third, the parties must have exercised due care during the course of the proceeding. Petitioners contend that Severstal meets none of these criteria. First, petitioners assert that the corrections would require much more than a mathematical adjustment, as Severstal claims. The effect of the change is significant and pervasive, in petitioners' opinion; such an effect would fundamentally change the Department's analysis and overall understanding of the dataset, requiring the Department to ''begin anew.'' Petitioners point out that Severstal devoted over a page in their case brief describing the calculations required to adjust the data for one single product.

Second, petitioners argue that accepting the new FOP dataset would delay the final determination. Because the Department is required to verify information in an antidumping duty investigation, verification of this information would require the Department to re-verify Severstal's response once it had become familiar with the data, which is a time-consuming undertaking.

Third, petitioners maintain that Severstal has not exercised due care in its preparation of questionnaire responses. Petitioners believe that Severstal's data contains inaccuracies and inconsistencies, and lacks specificity. In addition, petitioners contend that corrected data was not submitted until over two months after it was due under the Department's extended questionnaire deadline. In petitioners' opinion, Severstal should have evaluated its reported data well before its preparation for verification.

Petitioners conclude that the Department was well within its statutory requirements to reject the revised Exhibit D–9 and new cost code information.

Department's Position

We agree in part with both petitioners and respondents.

Concerning Severstal's first clerical error, the error affecting the FOP calculations for two of the reported seven cost codes, we agree with respondent. The information (revised Exhibit D–7) affected two of the reported seven cost codes. This underlying error was obviously clerical in nature and represented a minor change to the pre-existing Exhibit D–7. We find that in this case, the change did not require the Department to begin anew and did not delay the final determination, and that Severstal informed the Department of this error prior to verification.

As a result, we have used information on revised FOPs for cost codes 1 and 2 for our final determination. Please refer to the *Final Calculation Memo* for additional details.

However, concerning Severstal's second clerical error, the inclusion of data for two cost codes as one, we agree with petitioners. We find that Severstal failed to provide the Department with necessary information related to components of each cost code to which this clerical error relates.

In its original Section D response dated December 21, 1998, Severstal reported seven discrete cost codes and did not provide the Department with any narrative description of the reported cost code categories.

The March 15, 1999 verification outline informed Severstal that ''at verification, the Department cannot accept new information or revisions to previously submitted information which would substantially alter some or all of the questionnaire responses'' and that the Department considered appropriate reporting of FOP data, based on internal cost codes, to be central to the calculation of a valuable margin. Consequently, Severstal was made aware of the importance the Department placed on this issue prior to the deadline for submitting new factual information in this proceeding (under section 351.301(b)(1) of the Department's regulations, Severstal had until seven days before the date on which verification began, or March 29, 1999, to submit new factual information), and did not inform the Department at that time of any revisions to the factors associated with the cost code at issue. At verification, Severstal attempted to provide information to the Department which would have created an eighth cost code, which represented a major revision to Severstal's questionnaire response.

Moreover, because Severstal did not provide the Department with both a narrative description of the cost code and the worksheets demonstrating the calculations needed to derive the factors associated with the cost code, it was impossible for the Department to determine that Severstal maintained an additional unreported cost code. As the Court held in *NSK*, ''an error in the original information submitted by a respondent must be obvious from the administrative record in existence at the time the error is brought to the ITA's attention.'' Unlike the clerical error discussed above, because information was not provided for the affected cost code, the correction respondent attempted to make was not obvious from the administrative record at the time the error was brought to the Department's attention.

Moreover, we disagree with Severstal's argument that it is being unfairly penalized as a result of the ''artificially accelerated schedule.'' We note that the Department has acted in accordance with the governing statute and regulations in this case. Specifically, the Department has afforded respondent sufficient time, including several extensions, to answer its questionnaires, and also has afforded respondent the opportunity, as provided in section 782(d) of the Act of the statute, to address deficiencies.

For the reasons discussed above, we have disallowed Severstal's reported clerical error, the inclusion of data for two cost codes as one, because the information included therein constituted substantial new factual information which was submitted in an untimely fashion. Additionally, because we verified that Severstal relied upon a complete universe of data relating to subject merchandise to report its FOPs, no adjustment is necessary to account for the unreported cost code described above, due to the Department's

calculation of normal value, as discussed above in Comment 2.

Comment 6: Preliminary Critical Circumstances Determination

Severstal argues that because the Department's preliminary critical circumstances determination (*see Preliminary Determination of Critical Circumstances: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan and the Russian Federation,* 63 FR 65750 (November 30, 1998) (''*Preliminary Critical Circumstances Determination*'')) was issued more than two months before the Department's preliminary determination in this proceeding, the Department was compelled to rely on information from a period long before the period used in every other antidumping investigation. As a result, Severstal contends that the Department's haste in issuing an early preliminary critical circumstances decision has generated an unlawful determination.

Specifically, in examining whether there were massive imports, Severstal contends that the Department deviated from standard practice (to compare import volumes 90 days after the filing of the petition to the volume entered 90 days prior to filing of the petition) and instead accepted petitioners' urgings to use the end of April 1998 as the benchmark, thus comparing import volumes 5 months before and after April 30, 1998 to determine if the increase was ''massive.'' Severstal notes that the Department stated that the April 1998 date was selected based on the press coverage during that period, stating that there were significant increases in imports of hot-rolled steel from Russia and that an antidumping case might be filed by the domestic industry on hot-rolled steel. *See Preliminary Critical Circumstances Determination*. Severstal submits that the press reports do not form the basis upon which importers should have been aware of the likelihood of cases filed against hot-rolled steel from Russia. Similarly, the Department cannot assume, in Severstal's opinion, that the press reports themselves caused the massive imports (in the same way that a petition may trigger a sudden, massive increase). Severstal argues that the most the Department can deduce is that importers, exporters and foreign producers were aware that the U.S. industry was engaging in the common tactic of threatening future trade cases if market conditions did not improve. Severstal contends that these press reports are routinely used as a tactical weapon by competitors to gain market share. These kinds of press articles, Severstal maintains, cannot serve as a basis of legal liability under the critical circumstances element of the antidumping law.

Furthermore, Severstal argues that the Department's action cedes a vital element of the critical circumstances determination to the domestic industry, which is now empowered to issue press reports in a strategic manner. Severstal asserts that these kinds of press reports are commonplace and often do not lead to the filing of an antidumping investigation. The critical circumstances provision of the antidumping law is too significant for the Department to permit petitioners to manipulate the temporal trigger for liability with press releases, argues Severstal. In its opinion, the Department should base a final critical circumstances determination on data before and after the date of the filing of the petition.

Petitioners argue that the Department's determination of critical circumstances with respect to hot-rolled steel from Russia was anchored firmly in the Department's statutory and regulatory requirements. Petitioners additionally contend that the Department's analysis is in full accord with its legal mandates.

In choosing to base its analysis of whether there were massive imports on a date earlier than the filing of the petition, the Department was well within its statutory and regulatory mandate. Specifically, petitioners cite section 351.206(i) of the Department's regulations, which state that ''if the Secretary finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of a proceeding, that a proceeding was likely, then the Secretary may consider a period of not less than three months from that earlier time.'' Thus, according to petitioners, the Department's regulations are clear that the Department does not need to use the date the proceeding begins.

Petitioners argue that there was a link between the news coverage regarding potential antidumping cases and the subsequent massive increase in Russian steel imports, as the Department acknowledged in its *Preliminary Critical Circumstances Determination*. For the above reasons, petitioners urge the Department to maintain its critical circumstances finding in the final determination.

Department's Position

We agree with petitioners that in issuing an early preliminary critical circumstances determination, the Department acted within statutory and regulatory authority. As the statute (*see* sections 705(a)(2)(B) and 735(a)(3)(B) of the Act), our regulations (*see* 19 CFR 351.206(i)), and the Policy Bulletin (*see Changes in Policy Regarding Timing of Issuance of Critical Circumstances Determinations,* October 15, 1998 (63 FR 55364)) make clear, the Department may issue a preliminary critical circumstances determination prior to making a preliminary determination of dumping, assuming adequate evidence of critical circumstances is available. Moreover, if the facts of a case show that importers, exporters, or producers had reason to believe that a case was likely to be filed, the regulations provide that an earlier base period can be used to measure the existence of massive imports.

In this case, consistent with the above cited provisions, we have found that press articles from March and April 1998 indicated that a dumping investigation on hot-rolled steel from Russia was likely, thus giving importers, exporters, or producers reason to believe so. Therefore, we have measured imports using the April 30, 1998 date as the end of the benchmark period for purposes of determining whether there were ''massive imports.'' Consistent with this analysis, we found that there were massive imports after the April 30, 1998 date.

In conclusion, we find that our analysis and resulting preliminary determination of critical circumstances was in full accord with both the governing statute and regulations.

Continuation of Suspension of Liquidation

On July 12, 1999, the Department signed a suspension agreement with the Ministry of Trade of the Russian Federation (the Agreement). Therefore, we will instruct Customs to terminate the suspension of liquidation of all entries of hot-rolled steel from Russia. Any cash deposits of entries of hot-rolled steel from Russia shall be refunded and any bonds shall be released.

On July 7, 1999, we received a request from petitioners requesting that we continue the investigation. Pursuant to this request, we have continued and completed the investigation in accordance with section 734(g) of the Act. We have found the following weighted-average dumping margins:

Company	Margins (percent)
JSC Severstal	73.59
Russia-Wide Rate	184.56

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. Because our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the Agreement will have no force of effect, and the investigation shall be terminated. *See* Section 734(f)(3)(A) of the Act. If the ITC determines that such injury does exist, the Agreement shall remain in force but the Department shall not issue an antidumping order so long as (1) the Agreement remains in force, (2) the Agreement continues to meet the requirements of subsections (d) and (l) of the Act, and the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms. See section 734(f)(3)(B) of the Act.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: July 12, 1999.

Bernard Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–18371 Filed 7–16–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–809]

Suspension of Antidumping Duty Investigation: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation

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

SUMMARY: The Department of Commerce (''the Department'') has suspended the antidumping duty investigation involving hot-rolled flat-rolled carbon-quality steel products (''hot-rolled steel'') from the Russian Federation (''Russia''). The basis for this action is an agreement between the Department and the Ministry of Trade of the Russian Federation (''MOT'') accounting for substantially all imports of hot-rolled steel from Russia, wherein the MOT has agreed to restrict exports of hot-rolled steel from all Russian producers/exporters to the United States and to ensure that such exports are sold at or above the agreed reference price.

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Jean Kemp or Rick Johnson at (202) 482-1131 and (202) 482–3818, respectively, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 1998, the Department initiated an antidumping duty investigation under section 732 of the Tariff Act of 1930 (''the Act''), as amended, to determine whether imports of hot-rolled steel from Russia are being or are likely to be sold in the United States at less than fair value (63 FR 56607 (October 22, 1998)). On November 16, 1998, the United States International Trade Commission (''ITC'') notified the Department of its affirmative preliminary finding of threat of material injury in this case (*see* ITC Investigation Nos.701-TA–384 and 731-TA–806–808). Additionally, on November 25, 1998, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of the subject merchandise from Russia (63 FR 65221). On February 22, 1999, the Department preliminarily determined that hot-rolled steel is being, or is likely to be sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act (64 FR 9312 (February 25, 1999)).

The Department and the MOT initialed a proposed agreement suspending this investigation on February 22, 1999. On February 23, 1999, we invited interested parties to provide written comments on the agreement. We received comments from petitioners (Bethlehem Steel Corp., Ispat Inland Inc., LTV Steel Company, Inc., National Steel Corp., U.S. Steel Group (a Unit of USX Corp.), California Steel Industries, Gallatin Steel Company, Geneva Steel, Gulf States Steel Inc., Ipsco Steel Inc., Steel Dynamics, Weirton Steel Corporation, and Independent Steelworkers Union), respondents in the investigation (JSC Severstal, Novolipetsk, and Magnitorgorsk) and other interested parties (Caterpillar Inc., Nucor Corporation, and Thyssen Inc., NA). We have taken these comments into account in the final version of the suspension agreement.

The Department and MOT signed the final suspension agreement on July 12, 1999.

Scope of Investigation

For a complete description of the scope of the investigation, *see, Agreement Suspending the Antidumping Investigation on Hot-Rolled Flat-Rolled Carbon Quality Steel Products from the Russian Federation,* Appendix III, signed July 12, 1999, attached hereto.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. In accordance with section 734(l) of the Act, we have determined that the agreement will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation (*see Price Suppression Memorandum,* dated July 12, 1999), that the agreement is in the public interest, and that the agreement can be monitored effectively (*see Public Interest Memorandum,* dated July 12, 1999). We find, therefore, that the criteria for suspension of an investigation pursuant to section 734(l) of the Act have been met. The terms and conditions of this agreement, signed July 12, 1999, are set forth in Appendix 1 to this notice.

Pursuant to section 734(f)(2)(A) of the Act, the suspension of liquidation of all entries of hot-rolled steel from Russia entered, or withdrawn from warehouse, for consumption, as directed in our notices of *Preliminary Determination of Sales at Less than Fair Value: Hot-Rolled Flat-Rolled Carbon Quality Steel Products from the Russian Federation* (64 FR 9312 (February 25, 1999)), *Postponement of Final Determination of Antidumping Duty Investigation of Hot-Rolled Flat-Rolled Carbon-Quality Steel From the Russian Federation* (64 FR 24329 (May 6, 1999)), and *Postponement of Final Determination of Antidumping Duty Investigation of Hot-Rolled Flat-Rolled Carbon-Quality Steel From the Russian Federation* (64 FR 31179 (June 10, 1999)) is hereby terminated. Any cash deposits on entries of hot-rolled steel from Russia pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: July 12, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

Appendix 1—Agreement Suspending the Antidumping Investigation on Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation

For the purpose of encouraging free and fair trade in certain hot-rolled flat-rolled carbon quality steel products (''Hot-Rolled Steel'') from the Russian Federation (''Russia''), establishing more normal market relations, and preventing the suppression or undercutting of price levels of the like product in the United States, the United States Department of Commerce (''DOC'') and the Ministry of Trade of the Russian Federation (''MOT'') of Russia enter into this suspension agreement (''the Agreement'').

MOT will restrict exports of hot-rolled steel from all Russian producers and exporters to the United States, as provided below. DOC, pursuant to the U.S. antidumping law (see Appendix II), on the Effective Date of this Agreement, will suspend its antidumping investigation of Hot-Rolled Steel from Russia and instruct the U.S. Customs Service (''Customs'') immediately to terminate the suspension of liquidation and release any cash deposit or bond posted for entries of Hot-Rolled Steel covered by this Agreement.

Accordingly, DOC and MOT agree as follows:

I. Definitions

For purposes of this Agreement, the following definitions apply:

A. ''Apparent U.S. Domestic Consumption'' means apparent U.S. domestic consumption determined using official statistics of the U.S. Bureau of the Census regarding imports and exports, and data from the American Iron and Steel Institute regarding domestic shipments, based on the methodology described in Appendix IV of this Agreement.

B. ''Date of Export'' of Hot-Rolled Steel into the United States shall be the date on which MOT issued the Export License.

C. ''Date of Sale'' means the date on which price and quantity become firm, e.g., the date the contract is signed or the specification date if the price and quantity become firm on that date, as reflected in Russian producers' records kept in the ordinary course of business.

D. ''Effective Date'' of this Agreement means July 12, 1999.

E. ''Export License'' is the document issued by MOT that serves as both an export limit certificate and a certificate of origin.

F. ''Hot-Rolled Steel'' means the certain hot-rolled, flat-rolled, carbon quality steel products from Russia described in Appendix III.

G. ''Indirect Exports'' means exports of Hot-Rolled Steel from Russia to the United States through one or more third countries, whether or not such exports are further processed, provided that the further processing does not result in a substantial transformation or a change in the country of origin.

H. ''Moratorium Period'' means February 22, 1999, through December 31, 1999.

I. ''Party to the Proceeding'' means any producer, exporter, or importer of Hot-Rolled Steel, union of workers engaged in the production of Hot-Rolled Steel, associations of such parties, or the government of any country from which such merchandise is exported, that actively participated in the antidumping investigation, through written submission of factual information or written argument, as described in more detail in Appendix II.

J. ''Export Limit Period'' means one of the following periods:

Initial Export Limit Period—The Initial Export Limit Period shall begin on January 1, 2000, and end on December 31, 2000.

Subsequent Export Limit Periods—The Subsequent Export Limit Periods shall consist of each subsequent one-year period, the first of which will begin the day after the Initial Export Limit Period ends and end one year later.

K. ''Reference Price'' means the floor price calculated by DOC for sales of Hot-Rolled Steel for export to the United States, as described in Section III.

L. ''United States'' means the customs territory of the United States of America (the 50 States, the District of Columbia and Puerto Rico) and foreign trade zones located within the territory of the United States.

M. ''U.S. Purchaser'' means the first purchaser in the United States that is not affiliated with the Russian producer or exporter and all subsequent purchasers, from trading companies to consumers.

N. ''Violation'' means noncompliance with the terms of this Agreement, whether through an act or omission, except for noncompliance that is inconsequential, inadvertent, or does not substantially frustrate the purposes of this Agreement.

II. Export Limits

A. No Hot-Rolled Steel covered by this Agreement, whether exported directly or indirectly from Russia, shall be entered into the United States unless, when cumulated with all prior entries of Hot-Rolled Steel exported from Russia during the Export Limit Period in which that Hot-Rolled Steel was exported, it does not exceed the export limits set forth below.

1. The export limit for the Moratorium Period shall be zero.

2. The export limit for the Initial Export Limit Period (January 1, 2000, to December 31, 2000) shall be 325,000 metric tons of Hot-Rolled Steel.

3. The export limit for each subsequent Export Limit Period shall be as follows:

January 1, 2001, to December 31, 2001—500,000 MT
January 1, 2002, to December 31, 2002—675,000 MT
January 1, 2003, to December 31, 2003—725,000 MT

4. The export limit for each subsequent Export Limit Period will be adjusted by:

(a) First, the export limit for the previous Export Limit Period shall be increased by three per cent of that export limit;

(b) Second, the number obtained under paragraph (a) shall be increased or decreased by the result of multiplying the export limit for the previous Export Limit Period by the percent change (up to three percent) in apparent U.S. domestic consumption of Hot-Rolled Steel during the most recent 12 months for which data is available at the time the DOC makes this calculation, compared to the previous 12 months (as described in Appendix IV).

(c) Third, if MOT has elected to adopt a premium Reference Price for any Export Limit Period under Paragraph III.F., the export limit calculated pursuant to paragraphs (a) and (b) above shall be augmented by an additional allowance of five percent. This additional allowance shall apply only during the Export Limit Period in which the premium Reference Price applies.

5. DOC shall determine export limits for each Subsequent Export Limit Period no later than 60 days prior to the beginning of that Export Limit Period.

B. When Hot-Rolled Steel is imported into the United States and is subsequently re-exported, or re-packaged and re-exported, or further processed (but still covered by this Agreement) and re-exported, the amount re-exported shall be deducted from the amounts of exports that have been counted against the export limit for the Export Limit Period in which the re-export takes place. The deduction will be applied only after DOC has received, and has had the opportunity to verify,

evidence demonstrating the original importation, any repackaging or further processing, and subsequent exportation.

C. MOT will not issue Export Licenses authorizing the exportation to the United States of Hot-Rolled Steel covered by this Agreement in any half of any Export Limit Period that exceeds 60 percent of the export limit for that Export Limit Period.

D. Notwithstanding any other provision of this Agreement, up to 15 per cent of the export limit for any Export Limit Period may be carried over to the Subsequent Export Limit Period and up to 15 per cent of the export limit for any Export Limit Period may be carried back to the last 60 days of the previous Export Limit Period. Any carried over or carried back allowance shall be counted against the export limit for the subsequent or previous Export Limit Period, respectively.

E. If any Hot-Rolled Steel from Russia is entered into the United States during the Moratorium Period, DOC shall notify MOT of those entries and provide to MOT all of the information concerning those entries that DOC is able to disclose consistent with U.S. law. MOT shall respond within 15 days. If DOC determines that entries of Hot-Rolled Steel from Russia have occurred during the Moratorium Period, DOC shall provide MOT with an opportunity for prompt consultations, which shall be completed within 60 days after DOC notifies MOT of the excessive entries. Once the consultations have been completed, unless DOC has concluded that entries did not occur during the Moratorium Period, DOC shall count against the export limit for the Initial Export Limit Period (and, if necessary, Subsequent Export Limit Period(s)) twice the volume of the entries during the Moratorium Period. Where a Russian producer or exporter was responsible for the entries during the Moratorium Period, MOT shall deny that producer or exporter Export Licenses for one year following the last date of entry. Where any other entity was involved with the entries, MOT shall, for one year after the last date of entry, deny Export Licenses for the distribution of any Hot-Rolled Steel involving that entity.

F. If DOC receives information indicating that Hot-Rolled Steel from Russia may have entered into the United States in excess of the export limits established in Section II.A or below the reference price established in Section III.C, DOC shall notify MOT of those entries and provide to MOT all of the information concerning those entries that DOC is able to disclose consistent with U.S. law. MOT shall respond within 15 days. If the information continues to indicate that these entries were in excess of the export limits or below the reference price, DOC shall provide MOT with an opportunity for prompt consultations, which shall be completed within 60 days after DOC's initial notification. Once the consultations have been completed, unless DOC concludes that the entries were not in excess of the export limits or below the reference price, DOC shall count against the export limit for either the current or subsequent Export Limit Period, as appropriate, 125 percent of the volume of the entries in excess of the export limits or below the reference price. When a Russian producer or exporter was responsible for the entries in excess of the export limits or below the reference price, MOT shall deny that producer or exporter Export Licenses for six months following the last date of entry. When any other entity was involved with the entries in excess of the export limits or below the reference price, MOT shall, for one year after the last date of entry, deny Export Licenses for the distribution of any Hot-Rolled Steel involving that entity. The provisions of this section do not supercede the provisions of section IX of this Agreement if DOC determines that the entries were in excess of the export limits or below the reference price.

III. Reference Price

A. MOT will ensure that Hot-Rolled Steel covered by this Agreement will not be sold at a price below the reference price in effect on the Date of Sale.

B. DOC shall issue Reference Prices for each quarter of each calendar year 30 days before the beginning of that quarter.

C. The Reference Prices for the first quarter of the Initial Export Limit Period shall be as follows:

Grade(s)	Price per metric ton
A36, A568, A569	$255
A572, A607, A715	280

D. Until such time as DOC and MOT agree, after consultations, upon Reference Prices for other grades of Hot-Rolled Steel, only the above grades may be exported to the United States. Consultations regarding Reference Prices for other grades of Hot-Rolled Steel shall be held within 30 days of a request and shall be completed within 15 days.

E. Thirty days before the start of each quarter of each Export Limit Period (beginning with the second quarter of 2000) the Reference Price will be increased or decreased to reflect the change in the weighted-average unit import values for Hot-Rolled Steel from all countries not subject to antidumping duty orders or investigations over the most recent three months for which data is available, as compared to the previous three months. If the weighted-average unit import value for such Hot-Rolled Steel during the last of those three months has risen or fallen by more than six percent from the average of the first two of those months, the Reference Price will be adjusted on the basis of the last month, but that adjustment may not raise or lower the Reference Price by more than 10 percent. The source of the unit import values will be publicly available import statistics from the U.S. Bureau of the Census. DOC will provide MOT with the worksheets supporting its calculation of each quarterly Reference Price at the time it provides the Reference Price to MOT.

F. At the time DOC calculates the Reference Price for the first quarter of each Subsequent Export Limit Period under Paragraph III.E, MOT may elect to adopt a premium reference price that will apply throughout that Subsequent Export Limit Period. The premium reference price must be a minimum of ten percent above the Reference Price DOC calculates under Paragraph III.E. If MOT agrees to adopt a premium Reference Price, DOC will calculate adjustments to the Reference Price for the remaining three quarters of the Subsequent Export Limit Period on the basis of the premium price determined for the first quarter of the Subsequent Export Limit Period. The Reference Price for the first quarter of any Subsequent Export Limit Period following an Export Limit Period in which a premium Reference Price has applied, however, shall be determined on the basis of whatever non-premium Reference Price would have applied during the last quarter of the previous Export Limit Period if MOT had not elected to use a premium Reference Price for that Export Limit Period. If MOT adopts a premium Reference Price for any Export Limit Period, the export limit for that period will be increased as provided in Paragraph II.A.4(c).

G. Reference Prices are F.O.B. port of export. If the sale for export is on terms other than F.O.B. port of export, MOT will ensure that the F.O.B. port of export price is not lower than the Reference Price.

IV. Implementation

A. The United States shall require presentation of an original stamped

Export License as a condition for entry into the United States of Hot-Rolled Steel covered by this Agreement, except where there are multiple shipments under a single license. For multiple shipments at multiple ports or multiple entries at one port, the original license shall be presented with the first entry and the volume entered at that time will be noted on the original license. Customs will provide the importer with a certified copy for presentation to Customs with the importer's next entry under that license. Subsequent entries at that port can be made from copies of the original which reflect all of the deductions made from the original license.

B. Export Licenses must contain, for each grade of Hot-Rolled Steel covered by the license, the quantity in metric tons, dimensions (gauge, width, and length (in the case of coils, length, if appropriate)) unit price, and F.O.B. sales value. If necessary, additional information may be included on the Export License or, if necessary, a separate page attached to the Export License. DOC will deduct the quantity listed on each Export License from the export limit for the Export Limit Period in which the Date of Export falls. However, if the bills of lading for all of the shipments under an Export License establish that the actual imports into the United States under that license were less than the total volume listed on the license, DOC will reflect the actual amount as having been deducted from the volume listed on the export license, but, notwithstanding the carry-over and carry-back limitations in Paragraph II.D, will authorize MOT to issue a new Export License in the same or Subsequent Export Licensing Period authorizing additional exports equal in volume to the volume of the undershipment. Exports under such additional licenses will be counted against the export limit for the Export Limit Period containing the Date of Export of the undershipment. The United States will prohibit the entry of any Hot-Rolled Steel from Russia not accompanied by an original stamped Export License, except as provided in Paragraph A.[1]

C. MOT will ensure compliance with all of the provisions of this Agreement. In order to ensure such compliance, MOT will take at least the following measures:

1. Ensure that no steel subject to this Agreement is exported from Russia for entry into the United States during the Moratorium Period and that no steel subject to this Agreement is exported from Russia for entry into the United States during any Export Limit Period that exceeds the export limit for that Export Limit Period or that is priced below the Reference Price in effect on the date of sale.

2. Establish an export limit licensing and enforcement program for all direct and indirect exports of Hot-Rolled Steel to the United States no later than 120 days after the Effective Date.

3. Require that applications for Export Licenses be accompanied by a report containing all of the information listed in part A of Appendix I (Exports to the United States).

4. Refuse to issue an Export License to any applicant that does not permit full verification and reporting under this Agreement of all of the information in the application.

5. Issue Export Licenses sequentially, endorsed against the export limit for the relevant Export Limit Period, and reference any notice of export limit allocation results for the relevant Export Limit Period. Export Licenses shall remain valid for entry into the United States for six months. DOC and MOT may agree to an extension of the validity of the Export License in extraordinary circumstances.

6. Issue Export Licenses in the English language and, at the discretion of MOT, also in the Russian language.

7. Issue Export Licenses no earlier than 90 days before the day on which the Hot-Rolled Steel is accepted by a transportation company, as indicated in the bill of lading or a comparable transportation document, for export.

8. Collect all existing information from all Russian producers, exporters, brokers, if applicable, traders of Hot-Rolled Steel, and their relevant affiliated parties, as well as relevant trading companies/resellers utilized by Russian producers, on the sale of Hot-Rolled Steel, and report such information pursuant to Article VI of this Agreement.

9. Permit full verification of all information related to the administration of this Agreement on an annual basis or more frequently, as DOC deems necessary, to ensure that MOT is in full compliance with this Agreement and that all Russian producers and exporters are in compliance with the requirements that MOT has placed upon them under this Agreement. This requirement applies to both Russian State documents and non-State documents, such as sales contracts. Such verifications will take place in association with scheduled consultations whenever possible.

10. Ensure compliance with all procedures established in order to effectuate this Agreement by any official Russian institution, chamber, or other authorized Russian entity, and any Russian producer, exporter, broker, and trader of Hot-Rolled Steel, their relevant affiliated parties, and any relevant trading company or reseller utilized by a Russian producer to make sales to the United States.

11. Impose strict measures, such as prohibition from participation in the export limits allowed by the Agreement, in the event that any Russian entity does not comply in full with the requirements established by MOT pursuant to this Agreement.

V. Anticircumvention

A. MOT will take all necessary measures to prevent circumvention of this Agreement, including at least the following:

1. Require that all Russian exporters of Hot-Rolled Steel agree, as a condition of being permitted to export any Hot-Rolled Steel, regardless of destination, not to engage in any of the following activities:

a. Exporting to the United States Hot-Rolled Steel subject to this Agreement that is not accompanied by an Export License issued pursuant to this Agreement.

b. Transshipping Hot-Rolled Steel that is subject to this Agreement to the United States through third countries unaccompanied by an Export License.

c. Arranging for processing of Hot-Rolled Steel subject to this Agreement either in Russia or in any third country for exportation to the United States not accompanied by an Export License, but only if such processing is covered by the definition of ''indirect exports'' in Section I (G).

d. Exchanging (''swapping'') Hot-Rolled Steel subject to this Agreement for non-subject Hot-Rolled Steel, so as to cause the non-subject steel to be entered into the United States in place of the subject Hot-Rolled Steel, thereby evading the export limits under this Agreement. ''Swaps'' include, but are not limited to:

i. Ownership swaps—involve the exchange of ownership of Hot-Rolled Steel without physical transfer. These may include exchange of ownership of Hot-Rolled Steel in different countries, so that the parties obtain ownership of products located in different countries, or exchange of ownership of Hot-Rolled Steel produced in different countries, so that the parties obtain ownership of products of different national origin.

ii. Flag swaps—involve the exchange of indicia of national origin of Hot-

[1] The validity of an Export License will not be affected by a subsequent change of an HTS number.

Rolled Steel, without any exchange of ownership.

iii. Displacement Swaps—involve the sale or delivery of Hot-Rolled Steel from Russia to an intermediary country (or countries) which, regardless of the sequence of events, results in the ultimate sale or delivery into the United States of displaced hot-rolled steel, where the Russian exporter knew or had reason to know that the export sale would have that result.

2. Require that all Russian exporters of Hot-Rolled Steel agree, as a condition of being permitted to export any Hot-Rolled Steel, regardless of destination, require all of their customers to agree, as part of the contract for sale:

a. Not to engage in any of the activities listed in Section V.A.1 of this Agreement. This requirement does not apply to exports to the United States that are accompanied by a valid Export License.

b. To include that same requirement in any subsequent contracts for the sale or transfer of such steel, and to report to MOT subsequent arrangements entered into for the sale, transfer exchange, or loan to the United States of Hot-Rolled Steel covered by this Agreement.

3. When MOT has received an allegation that circumvention has occurred, including an allegation from DOC, MOT shall promptly initiate an inquiry, normally complete the inquiry within 45 days and notify DOC of the results of the inquiry within 15 days after the conclusion of the inquiry.

4. If MOT determines that a Russian entity has participated in a transaction circumventing this Agreement, MOT shall impose penalties upon such company including, but not limited to, denial of access to export certificates for Hot-Rolled Steel under this Agreement.

5. If MOT determines that a Russian entity has participated in the circumvention of this Agreement, MOT shall count against the export limit for the Export Limit Period in which the circumvention took place an amount of Hot-Rolled Steel equivalent to the amount involved in such circumvention and shall immediately notify DOC of the amount deducted. If sufficient tonnage is not available in the current Export Limit Period, then the remaining amount shall be deducted from the subsequent Export Limit Period or Periods.

6. If MOT determines that a company from a third country has circumvented the Agreement and DOC and MOT agree that no Russian entity participated in or had knowledge of such activities, then the Parties shall hold consultations for the purpose of sharing information regarding such circumvention and reaching mutual agreement on the appropriate measures to be taken to eliminate such circumvention. If the Parties are unable to reach mutual agreement within 45 days, then DOC may take appropriate measures, such as deducting the amount of Hot-Rolled Steel involved in such circumvention from the export limit for the then-current Export Limit Period or a subsequent Period. Before taking such measures, DOC will notify MOT of the facts and reasons constituting the basis for DOC's intended action and will afford MOT 15 days in which to comment.

B. DOC will direct the U.S. Customs Service to require all importers of Hot-Rolled Steel into the United States, regardless of the stated country of origin of those imports, to submit a written statement, on the last day of every quarter, listing all entries of such merchandise and certifying that the Hot-Rolled Steel imported during that quarter was not obtained under any arrangement in circumvention of this Agreement. Where DOC has reason to believe that such a certification has been made falsely, DOC will refer the matter to the U.S. Customs Service or U.S. Department of Justice for further action.

C. DOC will investigate any allegations of circumvention which are brought to its attention, both by asking MOT to investigate such allegations and by itself gathering relevant information. MOT will respond to requests from DOC for information relating to the allegations under Section VI.A.4. In distinguishing normal arrangements, swaps, or other exchanges in the Hot-Rolled Steel market from arrangements, swaps, or other exchanges which would result in the circumvention of the export limits established by this Agreement, DOC will take the following factors into account:

1. Existence of any verbal or written arrangement leading to circumvention of this Agreement;

2. Existence and function of any subsidiaries or affiliates of the parties involved;

3. Existence and function of any historical and traditional patterns of production and trade among the parties involved, and any deviation from such patterns;

4. Existence of any payments unaccounted for by previous or subsequent deliveries, or any payments to one party for Hot-Rolled Steel delivered or swapped by another party;

5. Sequence and timing of the arrangements; and

6. Any other information relevant to the transaction or circumstances.

D. In the event that DOC determines that a Russian entity has participated in circumvention of this Agreement, DOC and MOT shall hold consultations for the purpose of sharing evidence regarding such circumvention and reaching mutual agreement on an appropriate resolution of the problem. If DOC and MOT are unable to reach mutual agreement within 60 days, DOC may take appropriate measures, such as deducting the amount of Hot-Rolled Steel involved in such circumvention from the export limit for the current Export Limit Period (or, if necessary, the Subsequent Export Limit Period) or instructing the U.S. Customs Service to deny entry to any Russian Hot-Rolled Steel sold by the entity found to be circumventing the Agreement. Before taking such measures, DOC will notify MOT of the basis for DOC's intended action and will afford MOT 30 days in which to comment. DOC will enter its determinations regarding circumvention into the record of the Agreement. MOT may request an extension of up to 15 days for any of the deadlines mentioned in this Section.

VI. Monitoring and Notifications

A. MOT will collect and provide to DOC such information as is necessary and appropriate to monitor the implementation of, and compliance with, this Agreement, including the following:

1. Thirty days following the allocation of export rights for any Export Limit Period, MOT shall notify DOC of each allocation recipient and the volume granted to each recipient. MOT also shall inform DOC of any changes in the volume allocated to individual quota recipients within 60 days of the date on which such changes become effective.

2. MOT shall collect and provide to DOC information on exports to the United States in the format in Appendix I to this Agreement, and on the aggregate quantity and value of exports of Hot-Rolled Steel to all other countries. In addition to this information, MOT will also provide a list of heat numbers for each shipment to the United States. This information will be subject to verification. This information will be based on semi-annual periods (January 1 through June 30 and July 1 through December 31), and will be provided no later than 90 days following the end of each half-year period, beginning on September 30, 1999.

3. Upon request by DOC, MOT shall also collect and provide to DOC, within 45 days of the request, transaction-specific data for sales of Hot-Rolled Steel within the Russian home market

or to any third country or countries, in the format provided in Appendix I.

4. Within 15 days of a request from DOC for information concerning alleged circumvention or other violation of this Agreement, MOT shall share with DOC all information received or collected by MOT regarding its inquiries, its analysis of such information, and the results of such inquiries.

5. MOT will inform DOC of any violations of any provisions of this Agreement that come to its attention and of the measures taken with respect thereto.

6. MOT and DOC recognize that the effective monitoring of this Agreement may require that MOT provide information additional to that identified above. Accordingly, after consulting with MOT, DOC may establish additional reporting requirements consistent with the U.S. antidumping law, as appropriate, during the course of this Agreement. MOT shall also collect and provide to DOC, within 45 days of the request, any such additional information requested by DOC.

B. MOT may request an extension of up to 30 days of any deadline in this section.

C. DOC may disregard any information submitted after the deadlines set forth in this Section or any information which it is unable to verify to its satisfaction.

D. DOC shall provide MOT with the following information relating to implementation and enforcement of this Agreement.

1. Semi-annual reports indicating the volume of U.S. imports of Hot-Rolled Steel subject to this Agreement, together with such additional information as is necessary and appropriate to monitor compliance with the export limits. Such reports and information shall be provided within 120 days after the end of the last semi-annual period.

2. Notice of any violations of any term of this Agreement.

E. DOC will also monitor the following information relevant to this Agreement, and provide such information that is public to MOT upon request.

1. Publicly available data as well as U.S. Customs entry summaries and other official import data from the U.S. Bureau of the Census, on a monthly basis, to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

2. U.S. Bureau of the Census computerized records, which include the quantity and value of each entry. Because these records do not provide other specific entry information, such as the identity of the producer/exporter which may be responsible for such sales, DOC may request the U.S. Customs Service to provide such information. DOC may request other additional documentation from the U.S. Customs Service.

F. DOC may also request the U.S. Customs Service to direct ports of entry to forward an Antidumping Report of Importations for entries of Hot-Rolled Steel during the period this Agreement is in effect.

VII. Disclosure and Comment

A. DOC shall make available to representatives of each Party to the Proceeding, under appropriately-drawn administrative protective orders consistent with U.S. laws and regulations, business proprietary information submitted to DOC semi-annually or upon request pursuant to this Agreement, and in any administrative review of this Agreement.

B. Not later than 45 days after the date of disclosure under Section VII.A, the Parties to the Proceeding may submit written comments to DOC, not to exceed 30 pages.

C. At the end of the Moratorium Period and each Export Limit Period, each Party to the Proceeding may request a hearing on issues raised during the Moratorium Period or the preceding Export Limit Period. If such a hearing is requested, it will be conducted in accordance with U.S. laws and regulations.

VIII. Consultations

A. If, in response to a request by MOT at any time, DOC determines that the Reference Price calculated under Section III prevents Russian producers from participating in the U.S. market, MOT and DOC will promptly enter into consultations in order to review the market situation and the appropriateness of the Reference Price level.

B. MOT and DOC shall hold consultations concerning the implementation, operation (including the calculation of Reference Prices) and enforcement of this Agreement each year during the anniversary month of this Agreement.

C. Additional consultations on any aspect of this Agreement shall be held as soon as possible, but no later than 30 days, after a request by either MOT or DOC.

D. If DOC receives information indicating that there has been a violation of this Agreement, DOC shall promptly request special consultations with MOT. Such consultations shall begin no later than 21 days after the day of DOC's request, and must be completed within 40 days after commencement. After completion of the consultations, DOC will provide MOT 20 days within which to provide comments.

E. Two years after the effective date of this Agreement, DOC and MOT shall enter into additional consultations to review the extent to which this Agreement is accomplishing the purposes set forth in the preamble and make any revisions consistent with U.S. law that are appropriate in light of their mutual conclusions.

IX. Violations

A. DOC will investigate any information relating to circumvention or other violations of this Agreement which is brought to its attention, both by asking MOT to investigate such allegations and by itself gathering relevant information. Prior to making a determination that a violation has occurred, DOC will engage in consultations with MOT, pursuant to Section V.D or VIII.D. of this Agreement.

B. DOC will determine whether a violation has occurred within 30 days after the date for submission of comments by MOT upon the allegation under Section VIII.D.

C. If DOC determines that this Agreement is being or has been violated, DOC will take such action as it determines is appropriate under U.S. law and regulations.

X. Duration

A. This Agreement will remain in force until the underlying antidumping proceeding is terminated in accordance with U.S. antidumping law.

B. DOC will, upon receiving a proper request made by MOT, conduct an administrative review of this Agreement under U.S. laws and regulations.

C. MOT or DOC may terminate this Agreement at any time upon written notice to the other party. Termination shall be effective 60 days after such notice is given. Upon termination of this Agreement, the provisions of U.S. antidumping law and regulations shall apply. In addition, DOC shall terminate this agreement if MOT withdraws from ''The Agreement Concerning Trade In Certain Steel Products From The Russian Federation.'' Termination shall be effective 60 days after the written notice of MOT's withdrawal.

XI. Other Provisions

A. DOC finds that this Agreement is in the public interest, that effective monitoring of this Agreement by the United States is practicable, and that this Agreement will prevent the

suppression or undercutting of price levels of United States domestic Hot-Rolled Steel products by imports of the Hot-Rolled Steel subject to this Agreement.

B. DOC does not consider any of the obligations concerning exports of Hot-Rolled Steel to the United States undertaken by MOT pursuant to this Agreement relevant to the question of whether firms in the underlying investigation would be entitled to separate rates, should the investigation be resumed for any reason.

C. The English and Russian language versions of this Agreement shall be authentic, with the English version being controlling.

D. All provisions of this Agreement, including the provisions of the Preamble, shall have equal force.

E. For all purposes hereunder, the signatory Parties shall be represented by, and all communications and notices shall be given and addressed to:

DOC:

U.S. Department of Commerce, Assistant Secretary for Import Administration, International Trade Administration, Washington, D.C. 20230

MOT:

Department for State Regulation of External Economic Activities, Ministry of Trade of the Russian Federation, 18/1 Ovchinnikovskaya naberezhnaya, Moscow, 1 13324, Russia

Signed on this 12th of July, 1999.

For DOC:

Robert S. LaRussa,

Assistant Secretary for Import Administration.

For MOT:

Roald Piskoppel,

Deputy Minister Ministry of Trade of the Russian Federation.

Appendix I

In accordance with the established format, MOT shall collect and provide to DOC all information necessary to ensure compliance with this Agreement. This information will be provided to DOC on a semi-annual basis.

MOT will collect and maintain data on exports to the United States on a continuous basis. Sales data for the home market, and data for exports to countries other than the United States, will be reported upon request.

MOT will provide a narrative explanation to substantiate all data collected in accordance with the following formats.

A. Exports to the United States

MOT will provide all Export Licenses issued to Russian entities, which shall contain the following information with the exception that information requested in item #9, date of entry, item #110, importer of record, item #116, final destination, and item #117, other, may be omitted if unknown to MOT and the licensee.

1. Export License/Temporary Document: Indicate the number(s) relating to each sale and or entry.
2. Description of Merchandise: Include the 10 digit HTS category, the ASTM or equivalent grade, and the width and thickness of merchandise.
3. Quantity: Indicate in metric tons.
4. F.O.B. Sales Value: Indicate value and currency used.
5. Unit Price: Indicate unit price per metric ton and currency used
6. Date of Sale: The date all essential terms of the order (i.e, price and quantity) become fixed.
7. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
8. Date of Export: Date the Export License/ Temporary Document is Issued.
9. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.
10. Importer of Record: Name and address.
11. Trading Company: Name and address of trading company involved in sale.
12. Customer: Name and address of the first unaffiliated party purchasing from the Russian exporter.
13. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated to the Russian exporter.
14. Allocation to Exporter: Indicate the total amount of quota allocated to the individual exporter during the Relevant Period.
15. Allocation Remaining: Indicate the remaining export limit allocation available to the individual exporter during the export limit period.
16. Final Destination: The complete name and address of the U.S. purchaser.
17. Other: The identity of any party(ies) in the transaction chain between the customer and the final destination/ U.S. purchaser.

B. Exports Other Than to the United States

Pursuant to Section VI, paragraph A, MOT will provide country-specific volume and value information for exports of Hot-Rolled Steel to third countries, upon request, regardless of whether MOT licenses exports of Hot-Rolled Steel to such country(ies). The following information shall be provided except that information requested in item #16, date of entry, #17, importer of record, and item #110, other, may be omitted if unknown to MOT and the Russian licensee.

1. Export License/Temporary Document: Indicate the number(s) relating to each sale and/or entry, if any.
2. Quantity: Indicate in original units of measure sold and/or entered in metric tons.
3. Date of Sale: The date all essential terms of the order (i.e., price and quantity) become fixed.
4. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
5. Date of Export: Date Export License/ Temporary Document is issued, if any.
6. Date of Entry: Date the merchandise entered the third country or the date a book transfer took place.
7. Importer of Record: Name and address.
8. Customer: Name and address of the first unaffiliated party purchasing from the Russian exporter.
9. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated.
10. Other: The identity of any party(ies) in the transaction chain between the customer and the final destination.

C. Home Market Sales

Pursuant to Section VII, paragraph A, the MOT will provide home market volume and value information for sales of Hot-Rolled Steel, upon request. The following information shall be provided with the exception of item #6, other, if unknown to MOT and the Russian producer/exporter.

1. Quantity: Indicate in original units of measure sold and/or entered in metric tons.
2. Date of Sale: The date all essential terms of order (i.e., price and quantity) become fixed.
3. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
4. Customer: Name and address of the first unaffiliated party purchasing from the Russian exporter.
5. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated.
6. Other: The identity of any party(ies) in the transaction chain between the customer and the final destination.

Appendix II

Section 734 (1) of the Tariff Act of 1930 as amended, provides, in part, as follows:

(1) Special Rule for Non-Market Economy Countries.

(I) In General.—The administering authority may suspend an investigation under this subtitle upon acceptance of an agreement with a non-market economy country to restrict the volume of imports into the United States of the merchandise under investigation only if the administering authority determines that

(A)—such agreement satisfies the requirements of subsection (d), and

(B)—will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation.

(2) Failure of Agreements—If the administering authority determines that the agreement accepted under this subsection no longer prevents the suppression or undercutting of domestic prices of merchandise manufactured in the United States, the provisions of subsection (I) shall apply.

Section 771(9) of the Tariff Act of 1930, as amended, provides in part, as follows:

(9) Interested Party—The term ''interested party'' means—

(A) A foreign manufacturer, producer, or exporter, or the United States importer, of subject merchandise under this title or a trade or business association a majority of the

members of which are producers, exporters, or importers of such mer chandise,

(B) The government of a country in which such merchandise is produced or manufactured or from which such merchandise is exported,

(C) A manufacturer, producer, or wholesaler in the United States of a domestic like product,

(D) A certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product,

(E) A trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States,

(F) An association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) with respect to a domestic like product, and

* * * * *

Appendix III

For the purposes of this Agreement, ''Hot-rolled steel'' means certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness.

Universal mill plate (*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 thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this agreement.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this agreement, regardless of HTSUS definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below 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
0.012 percent of boron, 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 of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this agreement unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this agreement:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including *e.g.*, ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max.

Width = 44.80 inches maximum;
Thickness = 0.063—0.198 inches;
Yield Strength = 50,000 ksi minimum;
Tensile Strength = 70,000—88,000 psi.

Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16%	0.70–0.90% ..	0.025% Max	0.006% Max	0.30–0.50% ..	0.50–0.70% ..	0.25% Max ...	0.20% Max ...	0.21% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;

Yield Strength = 80,000 ksi minimum;
Tensile Strength = 105,000 psi Aim.

Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V(wt.)	Cb
0.10–0.14%	1.30–1.80%	0.025% Max.	0.005% Max.	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max	0.10 Max ...	0.08% Max.

Width = 44.80 inches maximum;
Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum;
Tensile Strength = 105,000 psi Aim.

Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% Max	1.40% Max.	0.025% Max.	0.010% Max.	0.50% Max.	1.00% Max.	0.50% Max.	0.20% Max.	0.005% Min.	Treated	0.01–0.07%.

Width = 39.37 inches;
Thickness = 0.181 inches maximum;
Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses >0.148 inches;
Tensile Strength = 80,000 psi minimum.

Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm² and 640 N/mm² and an elongation percentage ≥26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm² and 690 N/mm² and an elongation percentage ≥25 percent for thicknesses of 2mm and above.

Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

• Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inches nominal), mill edge and skin passed, with a minimum copper content of 0.20 percent.

The covered merchandise is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered include: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the covered merchandise is dispositive.

Appendix IV

For purposes of this Agreement, Apparent U.S. Domestic Consumption will be estimated as follows, using data provided by the American Iron and Steel Institute and the U.S. Bureau of the Census in the following manner:

Apparent Consumption =
Domestic Shipments of Hot-Rolled Steel [2]
+Imports of Hot-Rolled Steel [3]
−Exports of Hot-Rolled Steel [4]

The definition of shipments used here, while as close as practically possible, is not identical to the imports as defined in Paragraph I.F and Appendix III of this Agreement.

[FR Doc. 99–18372 Filed 7–16–99; 8:45 am]

BILLING CODE 3510–DS–P

[2] Hot-Rolled Steel = Carbon Plates In Coils (AISI Data) + Carbon Hot-Rolled Sheets (AISI Data) + Carbon Hot-Rolled Strip (AISI Data).

[3] Imports of Hot-Rolled Steel = Carbon Plates In Coils (AISI Data) + Carbon Hot-Rolled Sheets (AISI Data) + Carbon Hot-Rolled Strip (AISI Data) + Imports of HTS Numbers 7225303050, 7225307000, 7225407000, 7226917000, 7226918000 (Data from the U.S. Bureau of the Census on Imports for Consumption, as reported by the International Trade Commission's Trade DataWeb).

[4] Exports of Hot-Rolled Steel = Carbon Plates in Coils (AISI Data) + Carbon Hot-Rolled Sheets (AISI Data) + Carbon Hot-Rolled Strip (AISI Data).

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Laos

July 13, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: July 21, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, 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.

The current limit for Categories 340/640 is being increased for recrediting of unused carryforward.

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 53878, published on October 7, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 13, 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 September 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Laos and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on July 21, 1999, you are directed to increase the current limit for Categories 340/640 to 167,513 dozen [1], as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and the Lao People's Democratic Republic.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–18299 Filed 7–16–99; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1998.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Oman

July 13, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 21, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, 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.

The current limits for certain categories are being adjusted for swing, special shift and carryover.

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 60306, published on November 9, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 13, 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 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Oman and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999.

Effective on July 21, 1999, you are directed to adjust the current limits for the following categories, as provided for under the current bilateral textile agreement between the Governments of the United States and the Sultanate of Oman:

Category	Adjusted twelve-month limit [1]
334/634	160,580 dozen.
335/635	268,159 dozen.
338/339	616,454 dozen.
340/640	286,380 dozen.
341/641	222,814 dozen.
347/348	1,065,332 dozen.
647/648/847	359,756 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–18298 Filed 7–16–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–17]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–17, with attached transmittal, policy justification, Sensitivity of Technology, and Sec. 620C(d) of the Foreign Assistance Act of 1961.

Dated; July 13, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

1 JUL 1999
In reply refer to:
I-99/05463

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-17, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Greece for defense articles and services estimated to cost $52 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

A.R. KELTZ
ACTING DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 99-17

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser**: Greece

(ii) **Total Estimated Value**:

Major Defense Equipment*	$49 million
Other	$ 3 million
TOTAL	$52 million

(iii) **Description of Articles or Services Offered**: Three hundred fifty-eight M26A1 Extended Range Rocket pods (six rockets per pod) with M77 grenades for the Multiple Launch Rocket System, production verification testing, spare and repair parts, support vehicles, publications and technical documentation, support and test equipment, and other related elements of program support.

(iv) **Military Department**: Army (XJO and XIR, Amd 1)

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid**: None

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold**: See annex attached

(vii) **Date Report Delivered to Congress**: 1 JUL 1999

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Greece - Extended Range Rocket Pods for the Multiple Launch Rocket Systems

The Government of Greece (GOG) has requested a possible sale of 358 M26A1 Extended Range Rocket (ERR) pods (six rockets per pod) with M77 grenades for the Multiple Launch Rocket System, production verification testing, spare and repair parts, support vehicles, publications and technical documentation, support and test equipment, and other related elements of program support. The estimated cost is $52 million.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the military capabilities of Greece and enhancing weapon system standardization and interoperability of this important NATO ally.

The GOG will use these ERR pods with their MLRS which have already been delivered in FY 95 and FY 97. Greece has previously purchased ERR pods and, therefore, will have no difficulty absorbing these additional pods. The pods will be provided to Greece in accordance with and subject to the limitations on use and transfer of the Arms Export Control Act, as embodied in the terms of sale. This sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question.

The prime contractor will be Lockheed Martin Vought Systems, Dallas, Texas. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Greece.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 99-17

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The highest level of classified information required to be released for training, operation and maintenance of the Multiple Launch Rocket System (MLRS) Extended Range Rocket (ERR) pods is Confidential. The highest level of information which could be revealed through reverse engineering or testing of the end item is Secret. MLRS-ERR technical data and information includes Confidential and Secret reports and data, as well as performance and capability data, classified Confidential/Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Greece can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

Certification Under Section 620C(d) Of The Foreign Assistance Act of 1961, As Amended

Pursuant to § 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (sec. 1-201(a)(13)) and the Secretary of State's memorandum of March 30, 1999, I hereby certify that the furnishing to Greece of 358 M26A1 ERR pods (six missiles per pod) with M77 grenades for use in the MLRS systems, production verification testing, spare and repair parts, support vehicles, publications and technical documentation, support and test equipment, and other related elements of program support is consistent with the principles contained in § 620(b) of the Act.

This certification will be made part of the notification to Congress under § 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

John D. Holum
Senior Adviser for Arms Control and International Security

[FR Doc. 99–18251 Filed 7–16–99; 8:45 am]
BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92–463, as amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: July 29, 1999 (800 a.m. to 1600 p.m.).

ADDRESSES: The Defense Intelligence Agency, 3100 Clarendon Blvd, Arlington, VA 22201–5300.

FOR FURTHER INFORMATION CONTACT: Maj. Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328, (202) 231–4930. .

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–18253 Filed 7–16–99; 8:45 am]

BILLING CODE 5001–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

AGENCY: Office of the Secretary, DOD.

ACTION: Notice.

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8 a.m. to 5 p.m. on September 9, 1999, and from 8:00 a.m. to 5:00 p.m. on September 10, 1999. The meeting will be held at The Morrison House, 116 South Alfred Street, Alexandria, Virginia 22314. The purpose of the meeting is to review planned changes and progress in developing paper-and-pencil and computerized enlistment tests and renorming of the tests. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Assistant Secretary of Defense (Force Management Policy), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271, no later than August 9, 1999.

Dated: July 13, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–18252 Filed 7–16–99; 8:45 am]

BILLING CODE 5000–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend record systems.

SUMMARY: The Department of the Air Force proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on August 18, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 588–6187.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice as amended, published in its entirety.

Dated: July 13, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AFAA C

SYSTEM NAME:

Employee Training and Career Development File *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and insert '10 U.S.C. 8013, Secretary of the Air Force.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and insert 'The Auditor General, Secretary of the Air Force (SAF/AG), 1120 Air Force Pentagon, Washington, DC 20330-1120.'

* * * * *

F036 AFAA C

SYSTEM NAME:

Employee Training and Career Development File.

SYSTEM LOCATION:

Air Force Audit Agency Training Division (AFAA/RMT), March Air Force Base, CA 92518-1852.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Audit Agency military and civilian employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include but are not limited to: Correspondence and application documents requesting, approving, disapproving, recommending and coordinating the assignment of personnel to: Long-term, full-time training programs; short-term government and non-government schools, seminars, short courses and symposiums; certified public accounting review courses; certified internal auditor review courses; non-government job-related, off-duty training, and the grades, completion certificate, and budget information related thereto. Includes information on prior academic achievements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force.

PURPOSE(S):

Provides basis for determining those selected for training programs; record of individuals who applied for the

programs; progress reports of those in the programs; and history of the training received by employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information is given to the Office of Personnel Management through the Air Force Civilian Personnel Management Information System, and, in the case of CPA candidates, to state boards of accountancy.

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, and on computer and computer output products.

RETRIEVABILITY:

Retrieved by name, course name or course number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

The Auditor General, Secretary of the Air Force (SAF/AG), 1120 Air Force Pentagon, Washington, DC 20330-1120.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Auditor General, Secretary of the Air Force (SAF/AG), 1120 Air Force Pentagon, Washington, DC 20330-1120.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Auditor General, Secretary of the Air Force (SAF/AG), 1120 Air Force Pentagon, Washington, DC 20330-1120 and the Director of Resource Management, Headquarters Air Force Audit Agency, (HQ AFAA/RM), Washington, DC 20330-1126.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from individual, source of training, school, and automated system interface.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–18254 Filed 7–16–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend record systems.

SUMMARY: The Department of the Air Force proposes to amend systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on August 18, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 588–6187.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below followed by the notices as amended, published in their entirety.

Dated: July 13, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AFRE B

SYSTEM NAME:

Personnel Files on Statutory Tour Officers *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Personnel Division, Office of Air Force Reserve (AF/REP), Headquarers, U.S. Air Force, Washington, DC 20330-2404 and Air Force Personnel Center (AFPC/DPWR), Randolph Air Force Base, TX 78150-4717.

* * * * *

F036 AFRE B

SYSTEM NAME:

Personnel Files on Statutory Tour Officers.

SYSTEM LOCATION:

Personnel Division, Office of Air Force Reserve (AF/REP), Headquarers, U.S. Air Force, Washington, DC 20330-2404 and Air Force Personnel Center (AFPC/DPWR), Randolph Air Force Base, TX 78150-4717.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Air Force Reserve Officers applying for or selected for assignment as statutory tour officer.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application for extended active duty with United States Air Force, military career brief, resume of prior military and civilian experience, officer effectiveness report overall rating, correspondence and special orders relative to the tour.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 10211, Policies and regulations: Participation of reserve officers in preparation and administration.

PURPOSE(S):

Documentary support of tour applications; approval/disapproval; initiation, termination and extension of statutory tours; historical reference not to exceed two years after tour termination; used by Air Force Manpower and Personnel Center/Assistant for Personnel Plans, Programs

and Analysis, Reserve Forces Division (AFPC/DPWR); used for AFPC/DPWR as record of approval/disapproval, authority to issue Department of the Air Force Special Orders (DAFSOs); by Office of the Air Force Reserve (AF/RE), Director Air National Guard, National Guard Bureau (NGB/CF) and SAF/MRR as record of approval/disapproval.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and computers for local statistical analysis.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by authorized personnel who are properly screened and cleared for need-to-know and stored in security file containers/cabinets. Database is password access only.

RETENTION AND DISPOSAL:

Retained in office files until reassignment or separation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Air Force Reserve, Headquarters United States Air Force, Washington, DC 20330-2404.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Chief of Air Force Reserve, Headquarters United States Air Force, Washington, DC 20330-2404.

Include full name and Social Security Number. Individuals may visit the Personnel Division, Office of Air Force Reserve, 2404 Air Force Pentagon, Washington, DC 20330-2404. Military identification card or driver's license required for identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Chief of Air Force Reserve, Headquarters United States Air Force, Washington, DC 20330-2404.

Include full name and Social Security Number. Individuals may visit the Personnel Division, Office of Air Force Reserve, 2404 Air Force Pentagon, Washington, DC 20330-2404. Military identification card or driver's license required for identification.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from source documents such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 AFRE C

SYSTEM NAME:

Files on Reserve General Officers; Colonels Assigned to General Officer Positions *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters United States Air Force, Personnel Directorate (HQ USAF/REP) Washington, DC 20330-1150.'

* * * * *

F036 AFRE C

SYSTEM NAME:

Files on Reserve General Officers; Colonels Assigned to General Officer Positions.

SYSTEM LOCATION:

Headquarters United States Air Force, Personnel Directorate (HQ USAF/REP) Washington, DC 20330-1150.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Air Force Reserve General Officers and Colonels assigned to General Officer positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Resume of prior military and civilian experience, correspondence and Special Orders, Record of Reserve participation, personnel data listings, last five officer effectiveness reports, record of personal interview and assignment recommendation made by Chief, Air Force Reserve.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force.

PURPOSE(S):

To determine qualifications for initial/continued assignment to General Officer positions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and computers for local statistical analysis.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in security file containers/cabinets. Database is password access only.

RETENTION AND DISPOSAL:

Retained in office files until reassignment or separation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Air Force Reserve, Headquarters United States Air Force (HQ USAF/REP), Washington, DC 20330-2404.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Chief of Air Force Reserve (HQ USAF/REP), Headquarters United States Air Force, Washington, DC 20330-2404.

Full name and Social Security Number must be provided. Individuals

may visit the Personnel Division Office of Air Force Reserve (HQ USAF/REP), 2404 Air Force Pentagon, Washington, DC 20330-2404.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Chief of Air Force Reserve, Headquarters United States Air Force, Washington, DC 20330-2404.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from source documents such as reports from individual officers, and from personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–18255 Filed 7–16–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend record systems.

SUMMARY: The Defense Logistics Agency proposes to amend two systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on August 18, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Logistics Agency proposes to amend four systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the systems of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record systems being amended are set forth below, as amended, published in their entirety.

Dated: July 13, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S200.10 DLA-M

SYSTEM NAME:

Information Military Personnel Records *(February 22, 1993, 58 FR 10854).*

CHANGES:

SYSTEM IDENTIFIER:

Delete 'DLA-M' and replace with 'CAH.'

SYSTEM NAME:

Delete 'Information' and replace with 'Individual'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete 'and reserve' from entry.

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Files include name; rank; Social Security Number; home and address of record; general and special orders; evaluations; and details pertaining to classification, duties, assignment, promotion, proposed disciplinary actions, advancement, performance, training, education, qualifications, readiness, personal affairs, and benefits/entitlements.'

* * * * *

PURPOSES(S):

Delete entry and replace with 'The records are maintained as a local repository of documents generated during the service member's assignment at DLA. The files are used to manage, administer, and document the service member's assignment; to provide career advice to service members; and to advise local Commanders and the Director of incidents.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Upon reassignment from DLA, records are offered to the military service concerned.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete 'Special' and replace with 'Information is provided by the individual, rating officials, and taken from'.

* * * * *

S200.10 CAH

SYSTEM NAME:

Individual Military Personnel Records.

SYSTEM LOCATION:

Staff Director, Human Resources, Military Personnel (CAHM), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty personnel assigned to DLA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files include name; rank; Social Security Number; home and address of record; general and special orders; evaluations; and details pertaining to classification, duties, assignment, promotion, proposed disciplinary actions, advancement, performance, training, education, qualifications, readiness, personal affairs, and benefits/entitlements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Part II, Personnel; 5 U.S.C. 302(b)(1), Delegation of authority; and E.O. 9397 (SSN).

PURPOSE(S):

The records are maintained as a local repository of documents generated during the service member's assignment at DLA. The files are used to manage, administer, and document the service member's assignment; to provide career advice to service members; and to advise local Commanders and the Director of incidents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Retrieved alphabetically by last name.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties. The computerized files are password protected with access restricted to authorized users.

RETENTION AND DISPOSAL:

Upon reassignment from DLA, records are offered to the military service concerned.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Human Resources, Military Personnel (CAHM), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, or to the Privacy Act Officer of the DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, or to the Privacy Act Officer of the DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is provided by the individual, rating officials, and taken from orders, service records, in/out processing documents, and computer listings.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S200.20 DLA-M

SYSTEM NAME:

Active Duty Military Personnel Data Bank System *(February 22, 1993, 58 FR 10854).*

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete 'DLA-M' and replace with 'CAH'.

* * * * *

PURPOSES(S):

Delete entry and replace with 'The records are maintained to ensure effective personnel management and to assist assigned personnel in their career management. The data is also used for statistical studies and reports on force effectiveness, contingency planning, training requirements, and manpower deficiencies. Rating official data is included in the database for management oversight purposes; however, the files are not retrieved or retrievable by rater name, social security number, or other rater attributes'.

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties. The computerized files are password protected with access restricted to authorized users.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Upon reassignment from DLA, records are offered to the military service concerned.'

* * * * *

S200.20 DLA-M

SYSTEM NAME:

Active Duty Military Personnel Data Bank System.

SYSTEM LOCATION:

Staff Director, Human Resources, Military Personnel (CAHM), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military personnel assigned to the Defense Logistics Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains name, grade, Social Security Number, organization, position data, branch of service and specialty, dates of rank, civilian and professional education, position requirements, dates of assignment and rotation, and retirement and separation data. The system also contains the rater's name, grade, service, Social Security Number, and rotation date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Part II, Personnel; 5 U.S.C. 302(b)(1), Delegation of authority; and E.O. 9397 (SSN).

PURPOSE(S):

The records are maintained to ensure effective personnel management and to assist assigned personnel in their career management. The data is also used for statistical studies and reports on force effectiveness, contingency planning, training requirements, and manpower deficiencies. Rating official data is included in the database for management oversight purposes; however, the files are not retrieved or retrievable by rater name, social security number, or other rater attributes

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Retrieved alphabetically by last name.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who

must access the records to perform their duties. The computerized files are password protected with access restricted to authorized users.

RETENTION AND DISPOSAL:

Upon reassignment from DLA, records are offered to the military service concerned.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Human Resources, Military Personnel (CAHM), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the heads of the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, or to the Privacy Act Officer of the DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, or to the Privacy Act Officer of the DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is provided by the individual and taken from military personnel records and position distribution reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–18256 Filed 7–16–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; Commander, Navy Recruiting Command

AGENCY: Department of the Navy, DOD.

ACTION: Notice of proposed information collection.

SUMMARY: The Commander, Navy Recruiting Command announces a proposed extension of an approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 17, 1999.

ADDRESSES: Send written comments and recommendations on the proposed information collection to Commander, Navy Recruiting Command, 5722 Integrity Drive, Millington, TN 39054.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, contact Mr. Dave Garrison at (901) 874–9119/9120.

SUPPLEMENTARY INFORMATION:

Form Title and OMB Number: Application for Commission or Warrant Rank, USN or USNR; OMB Control No. 0703–0029

Needs and Uses: All persons interested in entering the U.S. Navy or Naval Reserve in a commissioned status must provide various personal data in order for a Selection Board to determine their qualifications for naval service and for specific fields of endeavor which the applicant intends to pursue. This information is used to recruit and select applicants who are qualified for commission in the U.S. Navy or Naval Reserve.

Affected Public: Individuals or households.

Annual Burden Hours: 23,400.

Number of Respondents: 11,700.

Responses per Respondent: 1.

Average Burden per Response: 2 hours.

Frequency: On occasion.

(Authority: 44 U.S.C. Sec. 3506(c)(2)(A)).

Dated: July 8, 1999.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 99–18327 Filed 7–16–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Air Station, Agana, Guam

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice is an amended Determination of Surplus for the remaining areas at the former NAS Agana identified for release in the BRAC 93 program. The amended declaration includes additional property, which was previously the subject of federal transfer requests which have been withdrawn, and corrects the area (acreage) of the surplus property. Information is provided regarding (a) the redevelopment authority that has been established to plan the reuse of the Naval Air Station, Agana, Guam, (b) the surplus property that is located at that base closure site, and (c) the timely election by the redevelopment authority to proceed under new procedures set forth in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

FOR FURTHER INFORMATION CONTACT: For further general information, contact Rich A. Engel, Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, 1322 Patterson Avenue SE Suite 1000, Washington, DC 20374–5065, telephone (202) 685–9203, or J. M. Kilian, Director, Real Estate Division, Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, HI 96860–7300, telephone (808) 471–3217. For more detailed information regarding particular properties identified in this Notice (i.e. acreage, floor plan, sanitary facilities, exact street address, etc.), contact Ken Alexanderson, Realty Specialist, Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, HI, 96860–7300, telephone (808) 474–5926.

SUPPLEMENTARY INFORMATION: In 1991, the Naval Air Station, Agana, Guam,

was designated for realignment pursuant to the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510, as amended. Further, in 1995, this designation was revised to reflect complete closure. Pursuant to this revised designation, the remaining land and facilities at these installations were on October 5, 1995, declared surplus to the Federal Government and available for use by (a) non-federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless provider groups pursuant to the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended.

Election to Proceed Under New Statutory Procedures

Subsequently, the Base Closure Community redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421) was signed into law. Section 2 of this statute gives the redevelopment authority at base closure sites the option of proceeding under new procedures with regard to the manner in which the redevelopment plan for the base is formulated and how requests are made for future use of the property by homeless assistance providers and non-federal public agencies. Also, pursuant to paragraph (7)(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, following information regarding the redevelopment authority for and surplus property at the Naval Air Station, Agana, Guam is published in the **Federal Register**.

Redevelopment Authority

The redevelopment authority for the Naval Air Station, Agana, Guam for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, the local redevelopment Authority is the Government of Guam, represented by the Guam Economic Development Authority: BRAC GOVGUAM Steering committee, Office of the Governor, P.O. Box 2950, Agana, Guam 96932. The point of contact is Mr. Joe T. San Agustin, Administrator, BRAC GOVGUAM Steering committee, telephone (671) 475–1080.

Surplus Property Descriptions

The following is a listing of the remaining land and facilities at the Naval Air Station, Agana, Guam which were declared surplus to the federal government on March 18, 1999.

Approximately 1,939 acres of which 1,731 acres are fee simple and 208 acres are encumbered by easements for flight clearance and drainage purposes. In general, all areas will be available upon the closure of the Naval Air Station, Agana anticipated for July 1999.

Buildings

The following is a summary of the buildings and improvements located at the Naval Air Station, Agana: 433 structures/improvements consisting of 1,850,648 square feet.

Naval Air Station Agana Facility

Improvements

Residential Facilities

176 duplex housing units (352 total units) former enlisted housing area 3 hotel-type units consisting of 74 single rooms (including some suites) with restaurant/bar 17 bachelor enlisted housing barracks buildings containing approximately 396 rooms.
All operational and administrative buildings, including aircraft hangers aircraft operating areas, including runways, taxiways and aircraft parking areas.
Warehouses
Chapel
Messhall (restaurant type facility)
Retail store
Medical facility
Coin operated laundry
Two child development centers

Recreational Facilities

Two clubs (with restaurant/bar)
Bowling alley
Gymnasium
Four tennis courts
Two ball fields
Basketball/volleyball courts
Swimming pool
Two hobby shops
Theater

Related Utility Systems

Electric
Water
Sewer
Telephone
Other miscellaneous facilities

Expressions of Interest

Pursuant to paragraph 7(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Air Station, Agana, Guam, shall submit to the redevelopment authority a notice of interest, of such governments, representatives and parties in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant paragraphs 7(C) and (D) of said Section 2905(b), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in Guam the date by which expressions of interest must be submitted.

Dated: July 8, 1999.

Michael I. Quinn,

CDR, JAGC, USN, Alternate Federal Register Liaison Officer.

[FR Doc. 99–18326 Filed 7–16–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; Smart Surfaces, LLC

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Smart Surfaces, LLC., a revocable, nonassignable, exclusive license in the United States to practice the Government-Owned inventions described in U.S. Patent No. 5,449,553 entitled ''Nontoxic Antifouling Systems'' issued September 12, 1995 and U.S. Patent No. 5,593,732 entitled ''Nontoxic Antifouling Systems'' issued January 14, 1997; in the field of manufacture and application of fouling release coatings to boat and ship hulls and power plant cooling tunnels.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than September 17, 1999.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, S.W., Washington, D.C. 20375–5320.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, S.W., Washington, D.C. 20375–5320, telephone (202) 767–7230.

(Authority: 35 U.S.C. 207, 37 CFR Part 404).

Dated: July 8, 1999.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 99–18328 Filed 7–16–99; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Submission of OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: On July 8, 1999, a 60-day notice inviting comment from the public was inadvertently published for the Program for North America Mobility in Higher Education (A Special Focus Competition for FIPSE) in the **Federal Register** (64 FR 130) dated July 8, 1999. This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collection (1890–0001). Therefore, this notice amends the public comment period for this program to 30 days. The Leader, Information Management Group, Office of the Chief Information Officer, hereby issues a correction notice on the submission for OMB review as required by the Paperwork Reduction Act of 1995. Since an incorrect public notice was published on July 8, the Department of Education is correcting the end date to the 30 days as required for discretionary grants instead of 60 days.

DATES: Interested persons are invited to submit comments on or before August 18, 1999.

ADDRESSES: Written comment 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. Requests for copies of the proposed information collection request should be addressed to Vivian Reese, 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 *vivian—reese@ed.gov* or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Joseph Schubart (202) 708–9266.

Dated: July 13, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

[FR Doc. 99–18290 Filed 7–16–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–329–001]

Chandeleur Pipe Line Company; Notice of Compliance Filing

July 13, 1999.

Take notice that on July 8, 1998, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Second Revised Sheet No. 18, to be effective July 2, 1999 in order to implement the GISB Standards adopted under Order No. 587–K.

Chandeleur states that the revised tariff sheet are being filed in compliance with the Commission's Letter Order No. 587–K issued June 22, 1999 in the above-referenced docket.

Chandeleur states that it is serving copies of the filing to its customers, State Commissions and interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18260 Filed 7–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–434–000]

Gulf States Transmission Corporation; Notice of Tariff Filing

July 13, 1999.

Take notice that on July 8, 1999, Gulf States Transmission Corporation (Gulf States), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, with an effective date of August 1, 1999:

Fourth Revised Sheet No. 51
Second Revised Sheet No. 51B
First Revised Sheet No. 53A
First Revised Sheet No. 53B
Second Revised Sheet No. 53C
Fourth Revised Sheet No. 58G

Gulf States states that the tendered sheets are filed in compliance with Order No. 587–K issued in Docket No. RM96–1–011 by the Federal Regulatory Energy Commission on April 2, 1999, and implement Version 1.3 of the standards promulgated by the Gas Industry Standards Board.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18262 Filed 7–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–433–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 13, 1999.

Take notice that on July 8, 1999, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff First Revised Sheet No. 451, with a proposed effective date of August 7, 1999.

National Fuel states that the purpose of the instant filing is to revise the minimum bidding periods for open seasons for available firm capacity pursuant to GT&C Section 26 of its tariff. The revised tariff sheet specifies minimum bidding periods of one (1) business day for capacity which will be available for less than five months, three (3) business days for capacity that will be available for five months or more but less than twelve months, and five (5) business days for capacity that will be available for twelve months or longer.

National Fuel states that copies of this filing were served upon its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18261 Filed 7–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–364–003 and RP99–251–003]

South Georgia Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

July 13, 1999.

Take notice that on July 2, 1999, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Substitute, First Revised Sheet No. 88, to become effective September 1, 1999.

South Georgia states that the purpose of this filing is to comply with the Commission's letter order dated June 18, 1999 in the above-referenced dockets. Sea Robin has stated that it will provide shippers with notice of scheduled quantities at delivery points that are being bumped.

South Georgia states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18258 Filed 7–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–363–003 and RP99–253–005]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

July 13, 1999.

Take notice that on July 2, 1999, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, First Substitute, First Revised Sheet No. 155, to become effective September 1, 1999.

Southern states that the purpose of this filing is to comply with the Commission's letter order dated June 17, 1999 in the above-referenced dockets.

Southern has stated that it will provide shippers with notice of scheduled quantities at delivery points that are being bumped.

Southern states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www/ferc/fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18257 Filed 7–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–432–000]

West Texas Gas, Inc.; Notice of Gas Cost Reconciliation Report

July 13, 1999.

Take notice that on July 1, 1999, West Texas Gas, Inc. (WTG) submitted for filing, pursuant to Section 19 of the

General Terms and Conditions of its FERC Gas Tariff its annual purchased gas cost reconciliation for the period ending April 30, 1999. Under Section 19, any difference between WTG's actual purchased gas costs and its spot market-based pricing mechanism is refunded or surcharged to its two jurisdictional customers annually, with interest. The report indicates that WTG undercollected its actual costs by $50,798 during the reporting period.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 19, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18259 Filed 7–16–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–62–001, *et al.*]

Aquila Energy Marketing Corporation, et al.; Electric Rate and Corporate Regulation Filings

July 12, 1999.

Take notice that the following filings have been made with the Commission:

1. Aquila Energy Marketing Corporation v. Niagara Mohawk Power Corporation, Niagara Mohawk Energy Marketing Corporation

[Docket No. EL99–62–001]

Take notice that on July 6, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing its First Compliance Report in the above-referenced docket. Niagara Mohawk states that this filing was submitted to comply with the Commission's June 18, 1999 Order, 87 FERC ¶ 61,328 (1999), in the above-referenced docket.

Niagara Mohawk states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: August 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, Power Authority of the State of New York and New York Power Pool

[Docket Nos. ER97–1523–000, OA97–470–000, and ER97–4234–000 (not consolidated)]

Take notice that on July 6, 1999, the Member Systems of the New York Power Pool (Member Systems), tendered for filing a revised New York State Reliability Council Agreement (NYSRC Agreement).

The Member Systems state that this filing was made in compliance with the Commission's Order dated April 30, 1999. *See Central Hudson Gas & Electric Corp., et al.,* 87 FERC ¶ 61,135 (1999).

A copy of this filing was served upon all persons on the Commission's official service list(s) in the captioned proceeding(s), and the respective electric utility regulatory agencies in New York, New Jersey, and Pennsylvania.

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk Power Corporation

[Docket No. ER99–3493–000]

Take notice that on July 6, 1999, Niagara Mohawk Power Corporation (NMPC) tendered for filing with the Federal Energy Regulatory Commission an executed form of Service Agreement between NMPC and H.Q. Energy Services (US), Inc. (Purchaser). The Service Agreement specifies that the Purchaser has signed on to, and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, original Volume No. 2. This Tariff, approved by FERC on April 15, 1994 and which as an effective date of March 13, 1993, will allow NMPC and the purchaser to enter into separately scheduled transactions under which NMPC will sell to the Purchaser capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence for the purchaser.

NMPC is: (a) Requesting an effective date of July 1, 1999 for the agreement, and (b) requesting waiver of the Commission's notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State public Service Commission and the Purchaser.

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Utilities Service Company

[Docket No. ER99–3494–000]

Take notice that on July 6, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement to provide Non-Firm Point-To-Point Transmission Service to Avista Energy Inc. under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to Avista Energy Inc.

NUSCO requests that the Service Agreement become effective July 30, 1999.

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Northeast Utilities Service Company

[Docket No. ER99–3495–000]

Take notice that on July 6, 1999, Northeast Utilities Service Company (NUSCO) tendered for filing with the Federal Energy Regulatory Commission, a Service Agreement to provide Firm Point-To-Point Transmission Service to TransAlta Energy Marketing (U.S.) Inc. under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to TransAlta Energy Marketing (U.S.) Inc.

NUSCO requests that the Service Agreement become effective July 30, 1999.

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. San Diego Gas & Electric Company

[Docket No. ER99–3496–000]

Take notice that on July 6, 1999, San Diego Gas & Electric Company (SDG&E) tendered for filing revisions to its Transmission Owner Tariff to implement the planned sale of Firm Transmission Rights by the California Independent System Operator.

Copies of this filing have been served upon the California Public Utilities Commission, the California Independent

System Operator, California Independent System Operator-registered Scheduling Coordinators, Pacific Gas and Electric Company, and Southern California Edison Company.

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Madison Gas and Electric Company

[Docket No. ER99–3497–000]

Take notice that on July 6, 1999, Madison Gas and Electric Company (MGE) tendered for filing a service agreement under MGE's Power Sales Tariff with Kansas City Power and Light company.

MGE requests an effective date of July 1, 1999.

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–3498–000]

Take notice that on July 6, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Aquila Power Corporation (Aquila).

Con Edison states that a copy of this filing has been served by mail upon Aquila

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Company

[Docket No. ER99–3499–000]

Take notice that on July 6, 1999, Northeast Utilities Service Company (NUSCO) tendered for filing, an Executed Service Agreement to provide Non-Firm Point-To-Point Transmission Service to TransAlta Energy Marketing (U.S.) Inc. under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to TransAlta Energy Marketing (U.S.) Inc.

NUSCO requests that the Service Agreement become effective July 30, 1999.

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Pacific Gas and Electric Company

[Docket No. ER99–3500–000]

Take notice that on July 6, 1999, Pacific Gas & Electric Company (PG&E) tendered for filing proposed revisions to its Transmission Owner Tariff to implement the planned sale of Firm Transmission Rights proposed by the California Independent System Operator Corporation.

Copies of this filing have been served upon the California Public Utilities Commission, the California Independent System Operator Corporation, the California Independent System Operator, Southern California Edison Company, San Diego Gas and Electric Company, and the active parties to the proceeding that addresses the non-rates terms and conditions of the Transmission Owner Tariffs and Wholesale Distribution Tariffs of PG&E, San Diego Gas & Electric Company, and Southern California Edison Company, Docket Nos. ER97–2358–002, *et al.*, ER97–2364–002, *et al.*, and ER97–2355–002, *et al.*, respectively.

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Southern California Edison Company

[Docket No. ER99–3501–000]

Take notice that on July 6, 1999, Southern California Edison Company (SCE) tendered for filing revisions to its Transmission Owner Tariff to implement the planned sale of Firm Transmission Rights by the California Independent System Operator.

Copies of this filing have been served upon the California Public Utilities Commission, the California Independent System Operator, California Independent System Operator-registered Scheduling Coordinators, Pacific Gas and Electric Company, and San Diego Gas & Electric Company.

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Berkshire Power Company, LLC

[Docket No. ER99–3502–000]

Take notice that on July 6, 1999, Berkshire Power Company, LLC (Berkshire Power) tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1.

Berkshire Power proposed that its Rate Schedule No. 1 become effective upon commencement of service of the Berkshire Power Plant (the Plant), a generation project currently being developed by Berkshire Power in the State of Massachusetts. The Plant will commence the sale of test power on July 23, 1999, but will not be commercially operable until November 1, 1999.

Berkshire Power intends to sell energy and capacity from the Plant at market-based rates, and on such terms and conditions to be mutually agreed to with the purchasing party.

Comment date: July 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. 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, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–18311 Filed 7–16–99; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6379–7; Docket No. A–99–23]

Petition to Delist Methanol From the List of Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of a complete petition.

SUMMARY: This notice announces the receipt of a complete petition from the American Forest and Paper Association (AF&PA) requesting EPA to remove the chemical methanol (CAS No. 67–56–1) from the list of hazardous air pollutants HAPs) contained in section 112(b)(1) of the 1990 Clean Air Act (Act). We have determined that the AF&PA's original petition submittal dated March 8, 1996 and the supplemental materials provided by AF&PA through February 18, 1999 will support an assessment of the human health impacts associated with people living in the vicinity of facilities emitting methanol. In addition, the data submitted by AF&PA will support an assessment of the environmental impacts associated with

emissions of methanol to the ambient air and deposited onto soil or water. Consequently, we have concluded that AF&PA's petition is complete as of February 18, 1999, the date of the last supplement, and is ready for public comment and the technical review phase of our delist petition evaluation process.

This notice invites the public to comment on the petition and to provide additional data, beyond that filed in the petition, on sources, emissions, exposure, health effects and environmental impacts associated with methanol that may be relevant to our technical review.

DATES: Comments and additional data will be accepted if received on or before August 18, 1999.

ADDRESSES:

Documents

A copy of the complete petition is contained in a docket available at the Air and Radiation Docket and Information Office, 401 M Street SW, Room M–1500 (6102), Waterside Mall, Washington DC 20460. The docket number for this action is A–99–23. The docket is an organized file of all the information received and considered in making the decision on the completeness of AF&PA's petition. The main purpose of the docket is to allow you to readily identify and locate documents that record the process we followed in making our decision. You may inspect the petition and copy it for offsite review between 8:30 a.m. and 5:30 p.m. EST, Monday through Friday. A reasonable fee may be charged for copying.

Comments and Data Submissions

Comments and additional data should be submitted (in duplicate if possible) to: The Docket Clerk, Air and Radiation Docket and Information Office, 401 M Street SW, Room M–1500 (Mail Code 6102), Waterside Mall, Washington DC 20460.

FOR FURTHER INFORMATION CONTACT: Chuck French, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–0467, electronic mail address: french.chuck@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. What Is the List of Hazardous Air Pollutants?

Hazardous air pollutants include a wide variety of organic and inorganic substances released from large and small industrial operations, fossil fuel combustion, gasoline and diesel-powered vehicles, and many other sources. The HAPs have been associated with a wide variety of adverse health effects, including cancer, neurological effects, reproductive effects, and developmental effects. The health effects associated with the various HAPs may differ depending upon the toxicity of the individual HAP and the particular circumstances of exposure, such as the amount of chemical present, the length of time a person is exposed, and the stage in life of the person when the exposure occurs. The list of HAPs, which includes methanol, can be found in section 112(b)(1) of the Act. The HAPs list provides the basis for research, regulation, and other related EPA activities under section 112 of the Act.

B. What Is a HAP Delist Petition?

A HAP delist petition is a formal request to the EPA from an individual or group to remove a specific HAP from the HAPs list. The removal of a HAP from the list eliminates it from consideration in EPA's program to promulgate national, technology-based emissions control standards. This technology-based standards program is commonly referred to as the maximum achievable control technology (MACT) program.

Petitions to add or delete chemicals from the HAPs list are allowed under section 112(b)(3)(A) of the Act. The Act specifies that any person may petition the Administrator to modify, by addition or deletion, the list of HAPs, and the EPA Administrator is required to either grant or deny a petition to delist a specific HAP within 18 months of the receipt of a complete petition.

To delete a substance from the HAPs list, section 112(b)(3)(C) requires that the petitioner must provide adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, and bio-accumulation or deposition of the substance may not reasonably be anticipated to cause any adverse effects to human health or adverse environmental effects.

C. How Does EPA Review a Petition To Delist a HAP?

The petition review process proceeds in two phases: a completeness determination and a technical review. During the completeness determination, we conduct a broad review of the petition to determine whether or not all the necessary subject areas are addressed and whether reasonable information and analyses are presented for each of these subject areas. Once the petition is determined to be complete, we place a notice of receipt of a complete petition in the **Federal Register**. That **Federal Register** notice announces a public comment period on the petition and starts the technical review phase of our decision-making process. The technical review involves a more thorough scientific review of the petition to determine whether the data, analyses, interpretations, and conclusions in the petition are appropriate and technically sound. The technical review will also determine whether or not the petition satisfies the necessary requirements of section 112(b)(3)(C) and adequately supports a decision to delist the HAP. All comments and data submitted during the public comment period are considered during the technical review.

D. How Is the Decision To Delist a HAP Made?

The decision to either grant or deny a petition is made after a comprehensive technical review of both the petition and the information received from the public to determine whether the petition satisfies the requirements of section 112(b)(3)(C) of the Act. If the Administrator decides to grant a petition, a notice of proposed rulemaking is published in the **Federal Register**. That notice proposes a modification of the HAPs list and presents the reasoning for doing so. However, if the Administrator decides to deny a petition, a notice setting forth an explanation of the reasons for denial will be published instead. A notice of denial constitutes final Agency action of nationwide scope and applicability and is subject to judicial review as provided in section 307(b) of the Act.

II. Completeness Determination and Request for Public Comment

On March 8, 1996, we received a petition from the AF&PA to remove methanol (methyl alcohol, methyl hydroxide, wood alcohol, wood spirit) (CAS No. 67–56–1) from the HAPs list. The petition was presented on behalf of the producers and consumers of methanol in the United States. After our initial review of the petition, we determined that additional information was needed on estimated ambient air concentrations of methanol as well as on the derivation of the safe exposure level (SEL) for methanol. The petitioner submitted several additional documents in 1997 and early 1998 to address the information gaps. After further review, we determined that the additional documents that AF&PA submitted

improved the petition, but that there were still information gaps, particularly in the identification of sources, exposure modeling assessment, and atmospheric chemistry. The petitioner submitted additional documents in 1998 and early 1999 to address these remaining information gaps.

After reviewing all of the supplemental information, we have now determined that the essential subject areas have been addressed and that the petition is complete and ready for technical review. The AF&PA's last supplement which occurred February 18, 1999 marked the start of the 18 months decision period. Today's notice initiates our comprehensive technical review of the petition and invites public comment on the substance of the petition as described above.

III. Description of the Petition

The complete petition provided by AF&PA contains the following information:

A. Background data on methanol, including chemical and physical properties data and production and use data.

B. A review of available scientific literature documenting human, animal, in vitro, and other toxicity studies concerning methanol, with copies of the relevant literature citations.

C. A review of available scientific literature concerning environmental effects of methanol, with copies of the relevant literature citations.

D. An assessment of the human heath and environmental effects of methanol including AF&PA's proposed calculation of the air inhalation SEL. The petition asserts that the proposed SEL is a quantitative estimate of an inhalation exposure to humans that is likely to be without appreciable risk of adverse impacts over a lifetime.

E. A characterization of the fate of methanol emitted to the atmosphere including atmospheric residence time, solubility, information on atmospheric transformations, and potential degradation or transformation products.

F. A screening assessment to demonstrate that only sources emitting greater than 500 tons per year (tpy) have a theoretical possibility of exceeding the SEL.

G. Estimated emissions of methanol for sources that emit greater than 500 tpy of methanol derived from the toxic release inventory (TRI), as well as other data sources such as State air toxics emissions inventories. The TRI is an emissions inventory database developed under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986.

H. Tiered air dispersion modeling that provides estimates of the ambient concentrations of methanol adjacent to facilities that emit over 500 tpy of methanol and the potential human exposures to methanol due to these emissions. Tiered modeling involves the use of successive modeling techniques to move from conservative ''worst case'' estimates of the ambient concentrations of a substance emitted from a source toward more realistic site specific estimates of the ambient concentrations.

I. Characterization of the potential exposures and risks from methanol to human health and the environment.

The petition describes methanol as a simple alcohol containing one carbon atom. Methanol is reported to occur naturally as an emission resulting from metabolism in vegetation, microorganisms, and insects. It has also been found in volcanic gases. Methanol is produced during the natural biodegradation of organic wastes of all kinds, including sewage and wastewater sludge, by microorganisms normally found in the environment.

In the original petition submittal (dated March 8, 1996), it is stated that based on the 1993 TRI, 2,303 facilities reported emissions of methanol for a total of 86,155 tons of methanol emitted to the air in the United States in 1993. Based on the 1993 TRI data, the paper and allied products industry accounted for about 52 percent of the methanol emissions. The next largest source category was the chemical and allied products industry which accounted for 25 percent of the methanol emissions. Six facilities reported emissions over 1,000 tpy, 195 facilities reported emissions over 100 tpy and 828 facilities reported emissions over 10 tpy. Subsequent petition submittals present emissions estimates based on more recent data sources (e.g., the 1995 TRI) for sources emitting greater than 500 tpy of methanol.

The petition presents the derivation of a SEL of 83 milligrams of methanol per cubic meter of air (i.e., 83 mg/m^3). The petitioner asserts that exposures below this SEL can be expected to produce no potential adverse human effects from lifetime inhalation exposures. The petition claims the SEL is based on standard EPA methodology, which incorporates the identification of the most sensitive toxic endpoint and the corresponding no-observable-adverse-effect-level (NOAEL) (in this case an exposure level of 1,300 mg/m^3 for pregnant mice), adjustment of the NOAEL from an animal exposure concentration to an equivalent human exposure concentration, and application of appropriate uncertainty factors. To determine the human equivalent concentration of methanol, the petition used the NOAEL derived from the mouse study and converted it to a human-equivalent NOAEL following EPA guidelines by multiplying the animal species NOAEL by the ratio of a breathing rate divided by the body weight of the animal species to the same parameters for humans. The human-equivalent NOAEL, along with uncertainty factors, was then used to determine the SEL.

The petition asserts that inhalation is the only significant route of human exposure to methanol emissions. Since methanol rapidly biodegrades and volatilizes in water, it is highly unlikely that humans are exposed to significant amounts of methanol through fallout or impaction upon soils or directly upon water bodies. Using the TRI data as input in a tiered air dispersion modeling approach, the petition develops estimates of the maximum annual and 24-hour concentrations anticipated to occur at the boundaries of facilities known to emit methanol in excess of 500 tpy. The maximum predicted 24-hour concentration for any of these facilities was about 7.5 mg/m^3. After comparing the estimated exposure levels to the SEL, the AF&PA concludes that concentrations of methanol anticipated to occur due to emissions from these sources cannot reasonably be anticipated to cause either acute or chronic adverse health effects to people living nearby these facilities.

The petition also provides data to support the AF&PA's position that in the concentrations expected to occur in the environment, methanol is nontoxic to plants and animals. It is readily degradable through natural process and does not tend to accumulate in living organism.

Dated: July 9, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 99–18356 Filed 7–16–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6379–9]

National Environmental Justice Advisory Council's (NEJAC) International Subcommittee; Notification of Environmental Justice Roundtable on the U.S.-Mexico Border, Open Meeting and Public Comment Period(s) and Concurrent Meeting of NEJAC's Enforcement Subcommittee (All Times are Pacific Daylight Time)

The National Environmental Justice Advisory Council (NEJAC) and the Environmental Protection Agency will sponsor a Roundtable on Environmental Justice on the U.S.-Mexico Border, August 19, 20, 21, 1999, in National City, California. A broad range of

stakeholders and constituent groups from all the border states are invited to participate in the Roundtable to help develop a framework and general recommendations to address environmental justice issues on the U.S.-Mexico border. Roundtable activities will include public comment/community participation periods, speaker presentations, and panel-led discussions pertaining to environmental justice issues on the border. At general and break-out group sessions participants will dialogue, analyze, and develop policy recommendations on environmental justice, health, labor, immigration and environment, Indigenous People's issues, and trade and environment on the U.S.-Mexico border. The Roundtable will start with a public comment period 7:00 p.m. to 9:30 p.m., Thursday, August 19, 1999. On Friday, August 20, general sessions and break-out groups will meet from 9:00 a.m. to 6:00 p.m., with an additional public comment period from 7:00 p.m. to 9:00 p.m., if necessary. The Roundtable will conclude on Saturday, August 21, 9:00 a.m. to 12:30 p.m., with a general session at which reports from break-out groups and next steps will be discussed. A report and recommendations from the Roundtable proceedings will be prepared by the International Subcommittee and submitted to NEJAC for review and consideration before forwarding them to the Administrator of the U.S. EPA.

Members of the public who wish to make a brief oral presentation should contact Tetra Tech EM Inc. by August 9 to have time reserved on the agenda. Individuals or groups making oral presentations will be limited to a total time of five minutes. We should receive written comments of any length by August 9. Comments received after that date will be provided as logistics allow. Send your written comments to Tetra Tech EM Inc., 1881 Campus Commons, Suite 200, Reston, Virginia 20191.

A limited number of scholarships are available for representatives of impacted border community groups to participate in the Roundtable. For more information or to pre-register, please call the NEJAC Registration Toll-Free Hotline Telephone number at 1–888–335–4299 (English & Spanish). For scholarship information, please call ICMA, Amparo Macias (Spanish) or Angele White (English) toll-free on 1–877–278–0083.

Concurrent Meeting of NEJAC Enforcement Subcommittee: August 20, 21, 1999

The NEJAC Enforcement Subcommittee will hold a meeting concurrent with the International Roundtable in San Diego. The Subcommittee will meet on both August 20 and 21 to discuss a variety of environmental enforcement issues. For additional information, please contact Shirley Pate at (202) 564–2607 or via e-mail at *pate.shirley@epa.gov*.

Dated: July 12, 1999.

Alan D. Hecht,

Acting Assistant Administrator, Office of International Activities.

[FR Doc. 99–18357 Filed 7–16–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 8, 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 September 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 Commissions, 445 12th Street, S.W., Room 1–A804, 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: 3060–0584.

Title: Administration of U.S. certified accounting authorities in maritime mobile and maritime mobile-satellite radio services.

Form Number: FCC Form 44 and FCC Form 45.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals and households; businesses and other for-profit.

Number of Respondents: 25.

Estimated Time Per Response: Three hours per response for Application for Certification of Accounting Authority form; one hour per response for the Annual Statistical Report of Settlement Operations form; and one hour per response for the Report of Additions/Modifications/Deletions to Inventory.

Frequency of Response: Semi-Annually; Annually; One time.

Total Annual Burden: 150.

Needs and Uses: The Commission will use the information in this information collection to determine eligibility of applicant; to create internal studies and to ensure compliance. The Commission will also use the information to identify the accounting authorities of U.S. licensed vessels and to update the reporting of changes in accounting authority functions to the International Telecommunication Union for inclusion in their List of Ship Stations Report. The Report and Order is modified to reduce a monthly reporting of changes to the inventory of ships for which the accounting authority performs settlements to a semi-annual requirement. A requirement for this information was included in the Notice of Proposed Rulemaking, 58 FR 246, December 27, 1993; however, the burden of the requirement was not adequately addressed at that time.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–18249 Filed 7–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting Notice

Deletion of Agenda Items From July 14th Meeting

The following items have been deleted from the list of agenda items scheduled for consideration at the July 14, 1999, Open Meeting and previously listed in the Commission's Notice of July 7, 1999. Items 1 and 2 have been adopted by the Commission.

Item No.	Bureau	Subject
1	Common Carrier	Title: 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms (CC Docket No. 98–171). Summary: The Commission will consider a Report and Order that would simplify reporting requirements for contributors to the numbering administration, local number portability, Telecommunications Relay Services, and universal service support mechanisms.
2	Common Carrier	Title: Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase I. Summary: The Commission will consider a Notice of Proposed Rulemaking that commences Phase I of a comprehensive review of its accounting and reporting requirements.
3	Wireless Telecommunications.	Title: Amendment of the Commission's Rules regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands (ET Docket No. 95–183, RM–8553); and Implementations of Section 309(j) of the Communications Act—Competitive Bidding, 37.0–38.6 GHz 38.6–40.0 GHz Bands (PP Docket No. 93–253). Summary: The Commission will consider a Memorandum Opinion and Order addressing petitions for reconsideration regarding licensing and service rules in the 39 GHz service.

Federal Communications Commission.

Magalie Romas Salas,

Secretary.

[FR Doc. 99–18506 Filed 7–15–99; 3:35 pm]

BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Center for Disease Control and Prevention (CDC)

Agency for Toxic Substances and Disease Registry (ATSDR)

The Research Agenda Subcommittee of the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following conference call meeting.

Name: Research Agenda Subcommittee of the Board of Scientific Counselors, ATSDR.

Time and Date: 1:30p.m.-3p.m., July 30, 1999.

Place: The Conference Call will originate from the Agency for Toxic Substances and Disease Registry, in Atlanta, Georgia. Please see ''Supplementary Information'' for details on accessing the conference call.

Status: Open to the public, limited only by the availability of telephone ports. (There will be 10 telephone ports available.)

Purpose: This subcommittee will advise the Board of Scientific Counselors and the Agency on areas of emphasis and focus for the ATSDR five-year environmental public health research agenda. The subcommittee will report jointly to the Board of Scientific Counselors and the ATSDR Associate Administrator for Science.

Matters to be Discussed: The conference call agenda is to establish a plan of action for the beginning and intermediate phase of developing the ATSDR five-year environmental public health research agenda.

Supplementary Information: This conference call is scheduled to begin at 1:30 p.m., EDT. To participate in the conference call, please dial 1–800–713–1971 and enter conference code 950512. You will then be automatically connected to the call.

For Further Information Contact: Robert F. Spengler, Sc.D., Executive Secretary, BSC, ATSDR, M/S E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, Telephone 404/639–0708, e-mail: rys2@cdc.gov.

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 CDC and ATSDR.

Dated: July 12, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–18294 Filed 7–16–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notices of Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Study Protocol Peer Review Meeting: Evaluation of Factors Affecting Disease Transmission in Commercial Aircraft Cabins.

Time and Date: 9 a.m.–3 p.m., August 3, 1999.

Place: NIOSH, Alice Hamilton Laboratory, Conference Room C, 5555 Ridge Avenue, Cincinnati, Ohio 45213, telephone 515/841–4106.

Status: Open to the public, limited by the space available. The meeting room accommodates approximately 100 people.

Purpose: The purpose of this meeting is to obtain expert input regarding technical and scientific aspects of the study ''Evaluation of Factors Affecting Disease Transmission in Commercial Aircraft Cabins'' being conducted at NIOSH. Designated reviewers will individually critique the study protocol and provide comments on the conduct of the study. Viewpoints and suggestions from industry, labor, academia, other government agencies and the public are invited.

Matters to be Discussed: The agenda will include opening remarks/introductions, project overview, individual comments from formal reviewers, and a general discussion.

Contact Person for More Information: Ms. Jennifer Topmiller, Engineering Control Technology Branch, Division of Physical

Sciences and Engineering, NIOSH, CDC, 4676 Columbia Parkway, M/S R–5, Cincinnati, Ohio 45226, telephone 513/841–4292.

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.

Dated: July 9, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–18293 Filed 7–16–99; 8:45 am]

BILLING CODE 4160–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2097]

Agency Information Collection Activities: Proposed Collection; Comment Request; Medical Devices; Humanitarian Use Devices

AGENCY: Food and Drug Administration, HHS.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for Humanitarian Use Devices, 21 CFR part 814 subpart H.

DATES: Submit written comments on the collection of information by September 17, 1999.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–26; Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. A collection of information is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices; Humanitarian Use Devices—21 CFR Part 814—Subpart H (OMB No. 0910–0332—Extension)

This collection implements the humanitarian use device (HUD) provision under section 520(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(m)) and 21 CFR part 814 subpart H. Under section 520(m) of the act, FDA is authorized to exempt an HUD from the effectiveness requirements of sections 514 and 515 of the act (21 U.S.C. 360d and 360e) provided that the device: (1) Is used to treat or diagnosis a disease or condition that affects fewer than 4,000 individuals in the United States; (2) would not be available to a person with such a disease or condition unless the exemption is granted, and there is no comparable device, other than another HUD approved under this exemption, available to treat or diagnosis the disease or condition; and (3) the device will not expose patients to an unreasonable or significant risk of illness or injury, and the probable benefit to health from using the device outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment.

The information collection herein will allow FDA to determine whether to: (1) Grant HUD designation of a medical device, (2) exempt a HUD from the effectiveness requirements in sections 514 and 515 of the act provided that the device meets requirements set forth in section 520(m) of the act, and (3) grant marketing approval(s) for the HUD. Failure to collect this information would prevent FDA from making these determinations. Also, this information enables FDA to determine whether the holder of a humanitarian device exemption (HDE) is in compliance with the HDE requirements.

Description of Respondents: Businesses or others for-profit.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMANITARIAN DEVICE EXEMPTION SPONSORS[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
814.102	20	1	20	40	800
814.104(b) and 814.104(c)	15	1	15	320	4,800
814.106	15	4	60	50	3,000
814.108	12	1	12	80	960
814.116(d)(3)	1	1	1	1	1
814.124(a)	5	1	5	1	5
814.124(b)	1	1	1	2	2
814.126(b)(1)	15	1	15	120	1,800

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMANITARIAN DEVICE EXEMPTION SPONSORS[1]—Continued

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Total					11,368

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

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR HUMANITARIAN DEVICE EXEMPTION SPONSORS[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
814.126(b)(2)	15	1	15	2	30
Total					30

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

A. Explanation of Report Burden Estimate:

Generally, the information requested from respondents represents an accounting of information already in the possession of the applicant.

In the original publication in the **Federal Register** of the final rule for HUD's on June 26, 1996, FDA based its estimates on comments received to the proposed rule, industry contact, and internal FDA benchmark factors (such as the number of PMA's processed). The numbers generated in the current estimate as shown in Tables 1 and 2 of this document and described in the following paragraphs, are based upon those prior estimates, and they have only been modified if actual numbers over the past 3 years have indicated a significantly different trend.

The first HUD rule became effective in fiscal year 1997, and FDA has only a few years of actual data to compare to original estimated numbers. Although actual numbers are less than the estimated numbers for this information collection, FDA believes that as manufacturers become more familiar with the program, FDA will experience a larger number of submissions under the provisions discussed as follows:

§ 814.102—It is estimated that 20 sponsors per year will submit a request for HUD designation. It is estimated to require 40 staff hours to complete each HUD designation request.

§ 814.104—FDA estimates 15 sponsors per year will submit an HDE application after receiving HUD designation. FDA estimates that it will require an average of 320 staff hours to complete each HDE application. § 814.110(a) requires that a new indication for use of a HUD approved under this part be submitted as a new HDE application complying with § 814.104. All burden under this section is included under the estimate for § 814.104.

§ 814.106—It is estimated that 4 times per year FDA will request or the sponsor will submit additional information or resubmit an HDE or HDE supplement for approximately 15 of the submitted HDE applications. FDA estimates that it will require the respondents to take an average of 50 staff hours to complete each amendment or resubmitted application. If the FDA refuses to file the HDE application, requests for an informal conference (under § 814.112(b)) will be processed as an HDE amendment. Responses to approvable and not approvable letters (§ 814.116(b), (c), and (d)) will be processed as HDE amendments. A request for an opportunity for an informal hearing, prior to FDA issuing an order withdrawing approval, under § 814.118(d), will be processed as an HDE amendment. Because FDA only tracks amendments, and not the reasons for the amendment, the burden estimates for the sections listed in the Tables 1 and 2 of this document are included in the burden estimate for § 814.106.

§ 814.108—FDA anticipates that it will receive approximately 12 supplements for the submitted HDE applications. It is estimated that it will take approximately 80 staff hours to complete each supplemental application.

§ 814.116(d)(3)—FDA believes that it will receive approximately 1 request to withdraw an HDE application per year, based on withdrawals submitted in FY 1997 and FY 1998. FDA estimates it will take no longer than 1 staff hour to complete each written withdrawal notice.

§ 814.124(a)—FDA anticipates that 5 physicians will use HUD's in emergency situations before obtaining institute and review board (IRB) approval. FDA estimates that notification under this section will take an average of 1 hour per response.

§ 814.124(b)—FDA anticipates that one holder of an approved HDE will notify FDA of IRB withdrawal of approval. FDA estimates that it will take an average of 2 staff hours to notify FDA of IRB withdrawal.

§ 814.126(b)(1)—Following FDAMA, § 814.126 was amended to incorporate section 520(m)(5) of the act (21 U.S.C. 360j), which provides FDA the authority to require an HDE applicant to demonstrate continued compliance with the HDE requirements, if the agency believes that such a demonstration is necessary to protect the public health or has reason to believe that the criteria for the HDE exemption are no longer met. FDA amended this section to delete the requirement of an annual report and to include instead a periodic reporting requirement that will be established by the approval order for the HDE. This provision permits the agency to obtain sufficient information for it to determine whether there is reason to question the continued exemption of the device from the act's effectiveness requirements.

FDA anticipates that because of this amendment, the 15 HDE holders will remain active and therefore, estimates that 15 periodic reports will be received. FDA also estimates that it will take an average of 120 staff hours to complete a periodic report as a result of this amendment.

B. Explanation of Recordkeeping Burden Estimate:

§ 814.126(b)(2)—FDA anticipates that 15 HDE holders per year will maintain records of certain required information. It is estimated that it will take an average of 2 staff hours to maintain this information.

Dated: July 12, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–18234 Filed 7–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1833]

SoloPak Laboratories, Inc.; Withdrawal of Approval of 1 New Drug Application and 38 Abbreviated New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of June 21, 1999 (64 FR 33097). The document announced the withdrawal of approval of 1 new drug application (NDA) and 38 abbreviated new drug applications (ANDA's) held by SoloPak Laboratories, Inc. The document omitted language explaining that the sponsor voluntarily removed the products from the market because of discrepancies concerning the data submitted to support continued approval of the applications. This document corrects that omission.

EFFECTIVE DATE: JULY 19, 1999.

FOR FURTHER INFORMATION CONTACT: Olivia A. Pritzlaff, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

In FR Doc. 99–15581, appearing on page 33097 in the **Federal Register** of Monday, June 21, 1999, the following correction is made: Onpage 33098, immediately preceding the table, add the following two paragraphs to read as follows:

Recently, FDA became aware of discrepancies concerning the data submitted to support continued approval of the following ANDA's held by SoloPak:

ANDA 88–457; Heparin Lock Flush Solution USP, 10 units/milliliter (mL); and

ANDA 88–519; Phenytoin Sodium Injection USP, 50 milligrams (mg)/mL.

After careful review of inspectional findings, the agency determined that there was sufficient justification to initiate proceedings to withdraw approval of the two products listed above. SoloPak was notified in writing of the determinations and, in accordance with § 314.150(d) (21 CFR 314.150(d)), was offered an opportunity to permit FDA to withdraw the applications. Subsequently, in letters dated December 15, 1998, and March 31, 1999, SoloPak requested withdrawal under § 314.150(d) of the applications listed in the following table, thereby waiving its opportunity for a hearing.

Dated: July 8, 1999.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 99–18235 Filed 7–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of July 6, 1999 (64 FR 36361). The document announced that FDA is being restructured to create a more streamlined and efficient Office of the Commissioner that will provide leadership without compromising programmatic effectiveness. The restructuring document, which became effective on June 20, 1999, was published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

In FR Doc. 99–17019, appearing on page 36361 in the **Federal Register** of Tuesday, July 6, 1999, the following correction is made:

1. On page 36362, in the first column, in the fourth paragraph, beginning in the twelfth line ''Center for Devices and Radiological Health'' is corrected to read ''Center for Drug Evaluation and Research.''

Dated: July 12, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy Coordination.

[FR Doc. 99–18236 Filed 7–16–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Availability of New E-mail Service for Government-Owned Inventions Available for Licensing and Cooperative Research Opportunities

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The Office of Technology Transfer (OTT), National Institutes of Health desires to announce the availability of a new e-mail service concerning government-owned inventions available for licensing and cooperative research opportunities.

OTT has initiated a Techbrief e-mail list service to inform companies, institutions and anyone interested in biomedical technology transfer about NIH and FDA technologies available for licensing, as well as Cooperative Research and Development (CRADA) opportunities with PHS scientists.

ADDRESSES: Persons may subscribe to the list at no charge upon request to: Dr. George Keller, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852 (telephone: (301) 496–7735, extension 246; fax: (301) 402–0220, e-mail: gk40j@nih.gov). Please include: company affiliation, title, address, phone and fax numbers, and e-mail address. A convenient form is available at the OTT web site: http://www.nih.gov/od/ott/.

Dated: July 12, 1999.

Jack Spiegel, PhD.,

Director, Division of Technology Development & Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 99–18373 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of

federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Quantitative Assessment of Changes in Tissue Status in Disease, Development, Aging, or Degeneration Using Diffusion Tensor Magnetic Resonance Imaging

Peter J. Basser (NICHD), Sinisa Pajevic (CIT)

DHHS Reference No. E–192–99/0 filed 21 May 1999

Licensing Contact: John Fahner-Vihtelic; 301/496–7735, ext. 270; e-mail: jf36z@nih.gov

This invention significantly enhances the quality and utility of diffusion tensor magnetic resonance imaging (DT–MRI) data. The patent application for the invention describes quantitative statistical methodology to extract novel clinical and biological information from DT–MRI data. These parametric and non-parametric statistical methods help distinguish changes in tissue state from background noise inherent in all MRI measurements. The invention also includes hypothesis tests to determine the statistical significance of changes observed in MRI ''stains'' (e.g., the Trace of the diffusion tensor, Trace (D), and the mean apparent diffusion coefficient, ADC), which are widely used in the diagnosis of stroke. Further, this invention describes how to detect systematic artifacts in each pixel of a diffusion weighted image (e.g., artifacts caused by patient motion). Indeed, this new statistical methodology for analyzing and interpreting diffusion tensor MIR data should improve the efficacy of drug screening studies, as well as streamline multi-site and longitudinal studies designed to assess the safety and efficacy of drugs undergoing clinical evaluation.

Magnetic Resonance Tracking of Magnetically Labeled Cells

J. Bulte, I. Duncan, and J. Frank (CC)

DHHS Reference No. E–013–99/0 filed 21 May 1999

Licensing Contact: Leopold J. Luberecki, Jr., J.D.; 301/496–7735, ext. 223; e-mail: LL87A@NIH.GOV

Demyelination is a common pathological finding in human neurological diseases and frequently persists as a result of failure of endogenous repair. It has recently been demonstrated that transplanted oligodendrocytes and their precursor cells can remyelinate axons. The survival, acute dispersion, and migratory pattern of these cell lines is crucial for the extent and limit of remyelination. Presently, the assessment of survival and migratory pattern is unpredictable and requires invasive, irreversible procedures. This invention describes a real time in vivo imaging of neural cells using nuclear magnetic resonance (NMR) imaging. The technique involves an ex vivo delivery of the contrasting agent into the target cells, which are then either injected or transplanted into the subject. These target cells can then be non-invasively monitored for their translocation. This technique has been successfully applied to the imaging of spinal cord samples and has potential for monitoring the treatment of neurodegenerative diseases and for monitoring the successful delivery and location of genetically modified cells for treatment of Parkinson's Disease. It may also have possible applications in the monitoring of cellular differentiation.

Oligodeoxynucleotide and Its Use To Induce an Immune Response

Dennis Klinman (FDA), Daniela Verthelyi (FDA), Kenji Ishii (NINDS)

Serial No. 60/128,898 filed 12 Apr 1999

Licensing Contact: Peter Soukas; 301/496–7056, ext. 268; e-mail: ps193c@nih.gov

This invention comprises oligodeoxynucleotides (ODNs) having at least 10 nucleotides with an unmethylated central CpG motif that are immunostimulatory in humans. The inventors have shown that the various ODNs of this invention (having different CpG notifs and backbones) induce immune responses from human non-B and B cells. The motif that stimulates non-B cells induces production and release of multiple T cell cytokines and chemokines; specifically, the Th1 cytokine IFN–γ, which facilitates the development of a cytotoxic T cell response. In contrast, the motif that stimulates B cells induces production and release of various cytokines, including, but not limited to IL–6, which supports a Th2 antibody response. The inventors have generated in vitro and ex vivo data showing the ODNs of this invention have utility in precisely regulating the type and magnitude of the immune response in human cells. The present invention has multiple therapeutic uses, including but not limited to cancer, vaccine adjuvants, treating autoimmune disorders and immune system deficiencies, as well as an anti-infective agent and in combination with any antisense therapy.

Methods of Treating Colitis Using STAT–4 Antisense Oligonucleotide

Warren Strober, Ivan Fuss, Markus Neurath, Atsushi Kitani (NIAID)

Serial No. 60/125,877 filed 24 Mar 1999

Licensing Contact: Richard U. Rodriguez; 301/496–7056, ext. 287; e-mail: rr154z@nih.gov

This invention described in this patent application relates to compositions and methods which can be used to treat diseases such as Crohn's disease, a form of inflammatory bowel disease. This disease has been linked to the interferon gamma (IFNγ) response induced by interleukin 12 (IL–12) production. Recent work has shown that IFNγ production is also a product of the activation of the signal transduction molecule Signal Transducer and Activator of Transcription-4 (STAT–4). Therefore, regulation of IFNγ production rather than IL–12 production may be a more effective means of treatment.

The methods and compositions described in this patent application are antisense oligonucleotides derived from STAT–4 which inhibit the STAT–4 pathway. The antisense compositions have been studied in animal models, IL–10 knockout mice and mice having TNBS colitis. In these studies local administration of the antisense oligonucleotides rapidly reversed intestinal inflammation.

Ac-HEHA and Related Compounds, Methods of Synthesis and Methods of Use

Martin W. Brechbiel, Kim Deal (NCI) Serial No. 60/125,764 filed 23 Mar 1999 Licensing Contact: Girish C. Barua; 301/496–7056 ext. 263; e-mail: gb18t@nih.gov

The invention is directed to a chelation complex comprising ^{225}Actinium (^{225}Ac) and 1,4,7,10,13,16-hexaazacyclohexadecane-N,N′,N″,N‴,N⁗,N′′′′′-hexaacetic acid (HEHA) as well as bi-functional complexes consisting of ^{225}Ac, HEHA and targeting agents in various combinations. Radioisotopes are chosen, in part, by the type of disease to be treated, and two important functions are tissue penetration of the emitted particles and

the toxicity of the treatment agents. ^{225}Ac, an alpha-emitter, offers high cytotoxicity with a short tissue range, and HEHA chelates ^{225}Ac in such a manner as to provide increased in vivo stability to enable its use as a radiotherapeutic agent. Additionally, ^{225}Ac's radioactive decay chain ends in a non-radiocative material. A targeting agent can be conjugated to ^{225}Ac–HEHA in order to selectively affect a defined population of cells through a receptor, a substrate, an antigenic determinant or any other binding site on the target cell population. Therefore, the invention yields improvements over existing related technologies for the radiotherapeutic treatment of disease states such as cancer. The disclosed complexes could also be used in radioimaging, decontamination and detoxification protocols.

Low Level Exposure to Extract of Neurotoxin for Protection From Brain Injury

WB Jonas (OD) and FC Tortella (U.S. Army) Serial No. 09/271,009 filed 17 Mar 1999 Licensing Specialist: Leopold J. Luberecki, Jr., J.D.; 301/496–7735 ext. 223; e–mail: LL87A@NIH.GOV

Approximately 438,000 persons will suffer a stroke per year; approximately 200,000 deaths can be attributed to stroke, thereby ranking stroke as the third leading cause of death in the United States. Strokes may affect anyone, but strokes strike approximately two-thirds of those individuals over 65 years of age. Reducing brain damage due to strokes or ischemic events would save many lives and significantly reduce the associated long-term health care costs associated of a stroke victim. This technology embodies an injectable preparation of the plant-derived neurotoxin and combinations with low doses of the amino acid glutamate, and has been shown to have the ability to reduce the damage in an animal stroke model by 50%. In addition to the neuroprotective qualities when given post trauma, a formulation, in preliminary tests, indicates that the neurotoxin may have preventive neuroprotective qualities when given prior to the trauma. This would be very beneficial for individuals at high risk.

A Novel Chimeric Protein for Prevention and Treatment of HIV Infection

Edward A. Berger (NIAID), Christie M. Del Castillo Serial No. 60/124,681 filed 16 Mar 99 Licensing Contact: Carol Salata; 301/496–7735 ext. 232; e-mail: cs253n@nih.gov

This invention relates to bispecific fusion proteins effective in viral neutralization. Such proteins have two different binding domains, an inducing-binding domain and an induced-binding domain, functionally linked by a peptide linker. More specifically, the invention is a genetically engineered chimeric protein containing a region of CD4 attached via a flexible polypeptide linker to a human single chain MAb directed against CD4-induced, highly conserved HIV gp120 determinants involved in binding to coreceptor. The molecule is expected to have the properties of a potent, broadly cross-reactive neutralizing antibody against HIV. This novel agent will have considerable potential in the prevention of infection during or immediately following HIV exposure (e.g. vertical transmission; post-exposure prophylaxis) and possibly in the treatment of chronic infection. Such proteins, nucleic acid molecules encoding them, and their production and use in preventing or treating viral infections are claimed.

UPA, a Universal Protein Array System for Quantitative Detection of Protein-Protein, Protein-DNA, Protein-RNA and Protein-Ligand Interactions

Dr. Hui Ge (NICHD), Serial No. 60/123,586 filed 08 Mar 1999, Licensing Contact: Marlene Shinn; 301/496–7057 ext. 285; e-mail: ms482m@nih.gov

The Universal Protein Array (UPA) system is a newly developed research tool for the analysis and screening of potential drug targets. This technology uses the three dimensional structure of active proteins (without denaturation and renaturation) to determine specific protein-protein, protein-DNA, protein-RNA, protein-ligand or protein-chemical interactions. Unlike most conventional DNA chips or DNA microarrays currently on the market, the UPA system requires no sophisticated equipment and is in fact more sensitive than existing methods. The UPA system is able to analyze thousands of protein samples in a single experiment, thereby making it a highly efficient way to screen proteins for potential drug targets. Also, because it can be used multiple times for different targets, it is economically affordable for most laboratories or hospitals.

In addition to being useful as a screening tool, the UPA system can also be used to study gene regulation pathways such as transcription, RNA processing, replication, translation, and signal transduction, to name a few. The technology found in the UPA system could also potentially be commercialized in a kit form and be applied to the diagnosis of disease states in patients in the clinical setting.

Methods for Mitochondrial Gene Therapy

Steven J. Zullo (NIMH), Jerome M. Eisenstadt, Wayne A. Fenton, DHHS Reference No. E–121–99/0 filed 08 Mar 1999, Licensing Contact: Dennis Penn; 301/496–7056 ext. 211; e-mail: dp144q@nih.gov

Although the role of the mitochondrion in providing energy for the cell by the process of oxidative phosphorylation has been known for a long time, the role of the mitochondrial genome and the consequences of defects in the mitochondrial genome are just being understood. These mutations or defects in the mitochondrial genome are responsible for many diseases, conditions, or syndromes.

This invention is directed to methods for functionally complementing at least one defect, mutation, or deletion in the mitochondrial genome which comprises: (1) Selecting a mitochondrial gene; (2) determining the nucleic acid sequence of the gene; (3) optionally, where the nucleic acid sequence encodes a protein and at least one of the codons encoding the protein has a different meaning in the mitochondrial genetic code and the universal genetic code, mutating the nucleic acid sequence to reflect the difference between the mitochondrial and universal genetic codes so that, in the mutated sequence, a polypeptide that is expressed as the result of nuclear transcription of the nucleic acid sequence, and cytoplasmic translation of the messenger RNA, has the same amino acid sequence as the polypeptide originally expressed in the mitochondrion; (4) optionally, attaching the coding sequence of a functional mitochondrial protein targeting sequence to the nucleic acid sequence for nuclear expression; (5) operatively linking the protein targeting sequence, if present, and the nucleic acid sequence to at least one control element that provides constitutive expression to generate a nucleic acid construct; and (6) inserting the nucleic acid construct into the nuclear genome of a eukaryotic cell for expression of the nucleic acid segment in the cell to provide functional complementation of at least one defect, mutation, or deletion in the mitochondrial genome. The method can also be used for the total replacement of mitochondrial genome function, including the use of transgenic techniques.

Monoclonal Antibodies Specific and Inhibitory to Human Cytochrome P450 2C8, 2C9, 2C18 And 2C19—New Avenues for Drug Discovery

Harry V. Gelboin, Frank J. Gonzalez, Kristopher W. Krausz, (NCI),

DHHS Reference No. E–077–99/0 filed 12 Feb 99

Licensing Contract: Dennis Penn; 301/496–7056 ext. 211; e-mail: dp144q@nih.gov

The cytochrome P450 family of enzymes has primary responsibility for the metabolism of xenobiotic drugs and non-drug carcinogens and environmental chemicals, as well as some endobiotics. This laboratory has isolated monoclonal antibodies (MAbs) that are specific to and inhibit the ten major human cytochrome P450s (CYPs) that are responsible for the metabolism of most drugs. The MAb based analytic system identifies the P450s responsible for metabolism of a drug and is thus an entirely new system for Drug Discovery. Drug-drug toxicity can be due to drug partners competing for an individual P450 and be a cause of drug toxicity. Certain drugs given to genetically polymorphic individuals that are defective in a specific P450 can cause serious toxicity to the defective individual. In one case 6–10% of the world population are missing an important P450 (2D6).

The 2C family of cytochrome P450s metabolizes a very large and extensive number of drugs which include tolbutamide, S-Warfarin, mephenytoin, diazepam and taxol. The invention reports the production of inhibitory MAbs to the P450 2C family. The invention describes MAb 5–1–5 and 281–1–1 that specifically inhibit CYP 2C8. MAb 292–2–3 that specifically inhibit CYP 2C9 and MAb 592–2–5 that specifically inhibit both CYP 2C9 and 2C18. MAb 5–7–5 specifically inhibits CYP 2C9, 2C18, and 2C19. In addition MAb 1–68–11 previously reported specifically inhibits all four members of the 2C family, 2C8, 2C9, 2C18, and 2C19. The MAbs may be used as diagnostic probes identifying the single or several P450s responsible for a drugs metabolism and also yield important information on inter-individual differences. The MAb system identifies and characterizes the P450 based metabolism of drugs currently in use and drugs in the screening and development stages of Drug Discovery.

Dated: July 13, 1999.

Jack Spiegel, Ph.D.

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 99–18374 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the US Government and is available for licensing in the US in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and a copy of the U.S. patent application listed below may be obtained by contacting Susan S. Rucker, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 245; fax: 301/402–0220; e-mail:sr156v@nih.gov. A signed Confidential Disclosure Agreement will be required to receive a copy of the patent application.

Immunoadhesins and Methods of Production Thereof

KG Csaky, E Anglade, DM Sullivan (all of NEI), WJ Larochelle (NCI)

Serial No. 08/814,567 filed 10 Mar 97

This patent application relates to the field of immunoadhesins. Immunoadhesins, also known as immunoligands, Ig- or Fc- fusion proteins or chimeras are chimeric molecules comprised of a non-immunoglobulin binding region (e.g., cell surface receptor, ligand, cell adhesion molecule) and an antibody constant domain. Such molecules can be used to identify receptors or ligands, in structure-function studies or as therapeutic agents.

In particular, the application describes a method for producing immunoadhesins which utilizes a replication-deficient adenoviral expression system. This system addresses some of the defects of other immunoadhesion production systems utilizing transfection of plasmid DNA in either a transient or stable system by providing efficient, high level gene expression, appropriate assembly/post-translation modification and ease of purification. Particular immunoadhesins which have been produced using this system are incorporate IL–10, IL–2, IL–13, IL2ra, IL–1ra, mutant IL–4, ICAM, TGF–1β1, or TGF-$\beta 1^{223,225}$ as the non-immunoglobulin portion.

This research has been published, in part, in Anglade, et al. ''Interleukin-10 immunoadhesin production by a replication-defective adenovirus'' J. Immunol. Methods 202(1): 41–8 (March 10, 1997).

Dated: July 13, 1999.

Jack Spiegel, Ph.D.,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 99–18375 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Review Group; Subcommittee A—Cancer Centers.

Date: August 5–6, 1999.

Time: 7:00 PM to 1:00 PM.

Agenda: to review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact: David E. Maslow, PHD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard—EPN

643A, Bethesda, MD 20892–7405, 301/496–2330.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18275 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Human Genome Research Institute Special Emphasis Panel, July 22, 1999, 8:30 AM to July 23, 1999, 6 PM, Hyatt Regency, One Metro Center, Bethesda, MD, 20814 which was published in the **Federal Register** on July 1, 1999, 64 FR 35673.

The meeting will be held in its entirety on July 23 instead of July 22–23. The meeting is closed to the public.

Dated: July 9, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18270 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: August 4, 1999.

Time: 8:30 am to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, 4300 Military Road, NW, Chevy Chase, MD 20015.

Contact Person: Katherine Woodbury, PHD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 9, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18269 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Clinical Trials and Clinical Markers for Immunologic Diseases.

Date: July 29–30, 1999.

Time: 2 PM to 5 PM.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Bethesda, Versailles Room 4, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Madelon C. Halula, Acting Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (301) 496–2550, mh30x@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 12, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–18271 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Cooperative Clinical Trial: Pediatric Renal Transplantation.

Date: July 29, 1999.

Time: 9 AM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday in Bethesda, Versailles Room 4, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Madelon C. Halula, Acting Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (301) 496–2550, mh30×@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 12, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–18273 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Immunological Phenotyping of Mouse Mutants.

Date: August 5, 1999.

Time: 8 A.M to 5 P.M.

Agenda: To review and evaluate grant applications.

Place: Sheraton Crystal City Hotel, Crystal III Room, 1800 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Allen C. Stoolmiller, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (301) 496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 8, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–18276 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; ZDK1 GRB–8 (01).

Date: July 27, 1999.

Time: 12:00 pm to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 6AS–25N, 45 Center Drive, MSC 6600, Bethesda, MD 28092 (Telephone Conference Call).

Contact Person: Roberta J. Haber, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–25N, National Institutes of Health, Bethesda, MD 20892, (301) 594–8898.

Name of Committee: National Institutes of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; ZDK1 GRB–7 (02)P.

Date: July 28–30, 1999.

Time: 7:30 pm to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hotel Inter-Continental Chicago, 505 North Michigan Avenue, Chicago, IL 60611–3807.

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

Name of Committee: National Institutes of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; ZDK1 GRB1 (01)S.

Date: August 2–3, 1999.

Time: 8:00 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Carolyn Miles, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–43A, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 8, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–18277 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; P01 Grant Application Review.

Date: July 19–20, 1999.

Time: 7:30 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: Providence Biltmore Hotel, Kennedy Plaza, Providence, RI 02903.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18278 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Fetal and Adult Adaptations to Long-Term Hypoxemia.

Date: July 29–30, 1999.

Time: 7:30 PM to 2:00 PM.

Agenda: To review and evaluate contract proposals.

Place: San Bernardino Hilton Hotel, 285 E. Hospitality Lane, San Bernardino, CA 91408.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18279 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Studies of Language, Cultures, and Tools.

Date: July 12–13, 1999.

Time: 7:30 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Sheraton Gateway Hotel, 1900 Sullivan Road, Atlanta, GA 30034.

Contact Person: Gopal M. Bhatnagar, Phd, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18280 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(b)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions and disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: July 29–30, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Mariott Wardman Park Hotel, 2660 Woodley Road N.W., Washington, DC 20008.

Contact Person: Paul A. Sheehy, Phd, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93–853, Clinical Research Related to Neurological Disorders; 93.853, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 12, 1999.

LaVerne Y. Stringfield,

Committee Management Offier, NIH.

[FR Doc. 99–18282 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Genetics.

Date: July 23, 1999.

Time: 8:30 PM to 5:00 PM.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Arthur L. Zachary, PhD, Scientific Review Administrator, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS13, Bethesda, MD 20892, (301) 594–2886.

This notice is being published less than 15 days to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Development Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: July 12, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–18284 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting.

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Special Emphasis Panel.

Date: August 12–13, 1999.

Time: 9 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, NW, Washington, DC 20037.

Contact Person: Sheila O'Malley,, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 12, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–18285 Filed 9–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 21, 1999.

Time: 1:30 pm to 3 pm.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd. Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael J. Moody, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–3367.

This notice is being published less than 15 days to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: August 10, 1999.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Ave. NW, Washington, DC 20037.

Contact Person: Gerald E. Calderone, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 12, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–18286 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, July 29, 1999, 9:00 AM to July 30, 1999, 5:00 PM, Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD, 20815 which was published in the **Federal Register** on July 2, 1999, 64 FR 36026.

The meeting will now be held August 9, 1999, 9:00 AM to adjournment on August 10, at the Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, NW, Washington, DC 20037. The meeting is closed to the public.

Dated: July 12, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–18287 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel ''Medication Discovery Using Rat Models of Relapse to Cocaine Self-Administration''.

Date: July 22, 1999.

Time: 9 AM to 1 PM.

Agenda: To review and evaluate contract proposals.

Place: Ramada Hotel Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: July 12, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–18288 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 15, 1999.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institute of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael J. Moody, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–3367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 12, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–18289 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 18, 1999.

Time: 6:30 p.m. to 10:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Bethesda, MD 20814.

Contact Person: Bruce Maurer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda MD 20892, (301) 435–1167.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 19–20, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Bethesda, MD 20814.

Contact Person: Bruce Maurer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 22–23, 1999.

Time: 8:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Nancy Hicks, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda MD 20892, (301) 435–0695.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.893, National Institutes of Health, HHS)

Dated: July 12, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18272 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 9, 1999.

Time: 8:00 a.m. to 6;00 p.m.

Agenda: To provide concept review of proposed grant applications.

Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.

Contact Person: Gopal C. Sharma, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7816, Bethesda, MD 20892, (301) 435–1783.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 12, 1999.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To provide concept review of proposed grant applications.

Place: Embassy Suites Chevy Chase Pavilion, 4300 Military Road, NW, Wisconsin at Western Avenue, Washington, DC 20015.

Contact: Eugene Vigil, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 19–20, 1999.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2400 M Street, NW., Washington, DC 20037.

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Genome Study Section, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6172, MSC 7890, Bethesda, MD 20892, 301–435–1045, corsaroc@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–HEM–1(02).

Date: July 19, 1999.

Time: 8:00 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientifice Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7840, Bethesda, MD 20892, (301) 435–1195.

This notice is being published less then 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 20–21, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Bethesda, MD 20814.

Contact Person: Joan Hanley-Hyde, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5016, MSC 7852, Bethesda, MD 20892, (301) 435–1192.

This notice is being published less then 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 21, 1999.

Time: 1:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892.

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientifice Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less then 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 21, 1999.

Time: 2:00 PM to 5:30 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Bethesda, MD 20814.

Contact Person: Joan Hanley-Hyde, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5016, MSC 7852, Bethesda, MD 20892, (301) 435–1192.

This notice is being published less then 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cell Development and Function Initial Review Group International and Cooperative Projects Study Section.

Date: July 22–23, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.

Contact Person: Sandy Warren, DMD Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MDC 7840, Bethesda, MD 20892, (301) 435–1019.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 22–23, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Inn, 1310 Wisconsin Ave., N.W., Washington, DC 20007.

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 60461, MSC 7890, Bethesda, MD 20892, 301–435–1159, ameros@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG–1 AARR 1 (04).

Date: July 22, 1999.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call)

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 22, 1999.

Time: 2:45 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call)

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levinv@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93,892, 93.893, National Institutes of Health, HHS)

Dated: July 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18274 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 29–30, 1999.

Time: 8:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.

Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, (301) 435–1728.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 7, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18281 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for discussion of personal qualifications and performance, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Governors of the Warren Grant Magnuson Clinical Center Executive Committee.

Date: July 30, 1999.

Time: 9:00 AM to 10:00 AM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individuals.

Place: National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Maureen E. Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/496–2897.

Dated: July 12, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–18283 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Glycoprotein Hormone Superagonists

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: U.S. Patent Application Serial No. 09/185,408 filed May 6, 1996 entitled ''Glycoprotein Hormone Superagonists'', to University of Maryland, having a place of business in Baltimore, Maryland. The United States of America is the assignee of the patent rights in this invention.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before September 17, 1999 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Charles Maynard, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056, ext. 243; Facsimile: (301) 402–0220; e-mail: CM251n@NIH.GOV.

SUPPLEMENTARY INFORMATION: This invention relates generally to modified glycoprotein hormones and specifically to modifications to a human glycoprotein, which create superagonist activity. Glycoprotein hormones comprise a family of hormones, which are structurally related heterodimers consisting of a species common α sub-unit and a distinct β sub-unit that confers the biological activity for each hormone. However, this invention is not limited to specific hormones, specific subjects such as humans as well as non-humans mammals, specific amino acids, specific clinical conditions, specific analogs, or specific methods.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 12, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–18376 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Opportunity for Licensing: Vasostation, an Inhibitor of Endothelial Cell Growth and Angiogenesis

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institute of Health (NIH), Public Health Service (PHS), Department of Health and Human Services (DHHS), seeks licensee(s) to develop a therapeutic anti-angiogenic agent(s) that would be effective in the treatment of a variety of disease states, in particular, cancer. Scientists at the Food and Drug Administration (FDA) have isolated at NH_2-terminal fragment (1–180 a.a.), vasostatin, from calreticulins which can inhibit endothelial cell proliferation in vitro, suppress neovascuriztion in vivo and prevent or reduce growth of experimental tumors while having minimal effect on other cell types. Vasostatin is the most conserved domain among calrecticulins so far cloned and has no homology to other protein sequences. Data suggests that the antitumor effects of vasostatin are related to inhibition of *new* blood vessel formation rather than a detrimental effect on established tumor vasculature.

The NIH seeks licensee(s), who in accordance with requirements and regulations governing the licensing of government-owned inventions (37 CFR § 404), has the most meritorious plan for the development of a therapeutic agent(s) to meet the needs of the public and with the best terms for the government. NIH intends to grant the selected firm(s) a world-wide royalty-bearing license(s) to practice the inventions embodied in USSN 60/103,438 from Dr. Giovanna Tosato and Dr. Sandra Pike entitled ''Use of Calreticulin and Calreticulin Fragments to Inhibit Endothelial Cell Growth and Angiogenesis, and Suppress Tumor Growth'' (DHHS Ref. No. E–082–98/0). The patent rights in these inventions have been assigned to the United States of America.

EFFECTIVE DATE: In view of the priority for developing new antitumor agents, all proposals for either exclusive or non-exclusive licensing must be received on or before September 17, 1999.

ADDRESSES: Licensing information, copy of the U.S. patent application referenced above or a copy of the NIH License Application may be obtained by contacting Richard U. Rodriguez, M.B.A., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7056 ext 287, fax 301/402–0220; and E-mail rr154z@nih.gov). A signed Confidential Disclosure Agreement is required to receive a copy of any patent application.

SUPPLEMENTARY INFORMATION: Vasostatin has key differences from other inhibitors of angiogenesis, for example, angiostatin, thrombospondin and endostatin. It is small, soluble, stable for greater than 9 months in aqueous solution and is easily produced and delivered. By comparison, angiostatin, endostatin and thrombospondin can be difficult to isolate, purify and deliver. Additionally, studies have shown that the effective dose of vasostatin is 4–10 fold lower than the effective doses of endostatin and angiostatin. Therefore, this new and potent and anti-angiogenic molecule should prove highly useful for the prevention and treatment of human disease states that involve mis-regulated endothelial cell proliferation and/or angiogenesis.

In addition to the criteria set forth in 37 CFR § 404.7(a)(1) (ii)–(iv), the NIH is particularly interested in the following capabilities:

1. Prior manufacturing experience for GMP (Good Manufacturing Practice) production of a therapeutic agent(s) and a production plan for said agent(s);

2. Experience in preclinical and clinical drug development;

3. Experience in the evaluation, monitoring and interpretation of data for investigational biologics under an IND;

4. Experience in the evaluation, monitoring and interpretation of data from Phase I and Phase II clinical studies;

5. Ability to produce, package, market and distribute pharmaceutical products in the United States;

6. Willingness to sustain the cost of vasostatin development as outlined above (i.e., bulk drug synthesis, data management, animal studies, clinical studies, etc.);

7. Agreement to be bound by DHHS rules involving human and animal studies; and

8. An aggressive development plan that includes appropriate milestones and deadlines for preclinical and clinical development and for marketing approval.

Dated: July 12, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–18377 Filed 7–16–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10c of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–013804.

Applicant: Michael Barrett, Finley, California

The applicant requests a permit to import 4.3 Hawaiian goose (*Branta sandvicensis*), 1.1 Blyth's tragopan (*Tragopan blythii*), and 2.0 Cabot's tragopan (*Tragopan caboti*) from Qualicum Beach, British Columbia, Canada, for scientific research and enhancement of the survival of the species through captive propagation.

PRT–013176.

Applicant: University of New Mexico, Albuquerque, NM

The applicant request a permit to import wild and captive bred samples from chimpanzees (*Pan troglodytes*), bonobo chimpanzee (*Pan paniscus*), gorilla (Gorilla gorilla), and orangutan (Pongo pygmaeus) from various countries for the purpose of scientific research.

PRT–011201.

Applicant: Denver Museum of Natural History

The applicant requests a permit to import and re-export museum artifacts made by the indigenous peoples of Brazil that contain jaguar (*Panthera onca*) and harpy eagle (*Harpia harpyja*), for enhancement of survival of the species.

PRT–012019 and 012020.

Applicant: Hawthorn Corporation, Grayslake, IL

The applicant requests a permit to re-export and re-import wild Asian elephants (*Elephas maximus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This

notification covers activities conducted by the applicant over a three year period.

PRT–014554.

Applicant: San Diego Wild Animal Park, Escondido, CA

The applicant requests a permit to import one captive-held Somali wild ass (*Equus africanus somalicus*) from Hai Bar Reserve, Israel for the purpose of enhancement of the species through captive breeding.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT 014704

Applicant: The Toledo Zoo, Toledo, OH

Permit Type: Import for Public Display.

Name and Number of Animals: Polar Bear (*Ursus maritimus*), 1.

Summary of Activity to be Authorized: The applicant requests a permit to import 1 captive born female polar bear for public display purposes and scientific study.

Source of Marine Mammals: Born 12 November 1997, Cologne Zoo, Cologne, Germany.

Period of Activity: Up to 5 years, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

PRT–013353

Applicant: Randy Pope, Reno, NV

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 13, 1999.

Pamela Hall,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–18233 Filed 7–16–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Applicant: Hayworth, Meyer, and Boleyn, Inc. (HAB.), Frankfort, Kentucky (Peggy A. Measel, P.I.)

The applicant requests a permit to take (capture and release) endangered Gray bats (*Myotis grisescens*) and Indiana bats (*Myotis sodalis*) in the State of Indiana. Activities are proposed for the enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5343); FAX: (612/713–5292).

Dated: July 13, 1999.

T.J. Miller,

Acting Program Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 99–18363 Filed 7–16–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–26–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting notice of meeting.

SUMMARY: This notice announces a meeting of the Arizona Resource Advisory Council. The one-day business meeting will be held on August 20, 1999 Wilcox, Arizona. The RAC meeting will be begin at 9:30 a.m. and will conclude at approximately 3:00 p.m. The meeting will be held at the Best Western-Plaza Inn located at 1100 W. Rex Allen Drive. The agenda items to be covered at the meeting include review of April 9, and June 11, 1999, meeting minutes; BLM State Director's Update on legislation, regulations and statewide planning efforts; Briefings on the Empire-Cienega Plan Amendment, FWS Proposal to designate Pygmy-owl and Huachuca Water Umbel Critical Habitat, and San Pedro River Water Issues and Visitor Use Information; Updates on Secretarial Initiatives, regarding Proposed Arizona National Monument and Empire Cienega National Conservation Area, and proposed legislation; Update on Wild Horse and Burro Herd Management Areas, Update Proposed Field Office Rangeland Resource Teams; Reports from BLM Field Office Managers; Reports by the Standards and Guidelines; Recreation and Public Relations, Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion on future meetings. A public comment period will be provided at 11:30 a.m. on August 20, 1999, for any interest publics who wish to address the Council. For Further Information Contact: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Gary D. Bauer,

Acting Arizona State Director.

[FR Doc. 99–18295 Filed 7–16–99; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–1410–01; WYW–143283]

Notice of Realty Action; Direct Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Direct Sale of Public Lands in Carbon County.

SUMMARY: The following public land in Carbon County has been examined and found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713:

Sixth Principal Meridian, Wyoming

T. 13 N., R. 91 W.,
Sec. 31, lot 6 and N½NE¼.

These lands contain approximately 120 acres.

FOR FURTHER INFORMATION CONTACT: Larry Jackson, Natural Resource Specialist, Bureau of Land Management, Rawlins Field Office, P.O. Box 2407 Rawlins, Wyoming 82301 307–328–4231.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface estate of the above-described lands, to the Baggs Solid Waste Disposal District, pursuant to Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713. The Disposal District wishes to acquire the land for landfill expansion purposes, because the current landfill is nearing its capacity.

The proposed direct sale to the Baggs Solid Waste Disposal District would be made at fair market value.

The proposed direct sale is consistent with the Great Divide Resource Management Plan and would serve important public objectives which cannot be achieved prudently or feasibly elsewhere. The lands contain no other known public values. The planning document and environmental assessment covering the proposed sale is available for review at the Rawlins Field Office, Bureau of Land Management, 1300 North Third Street, Rawlins, Wyoming.

Conveyance of the above public lands will be subject to:

1. Reservation of a right-of-way to the United States for ditches and canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. Reservation of all minerals pursuant to section 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719.

3. All valid existing rights documented on the official public land records at the time of conveyance.

4. The patentee shall comply with all applicable Federal and State laws, including laws dealing with the disposal, placement, or release of hazardous substances.

The public lands described above shall be segregated from all forms of appropriation under the public land laws, including the mining laws, upon publication of this notice in the **Federal Register**. The segregative effect will end upon issuance of the patent or 270 days from the date of the publication, whichever comes first.

For a period of forty-five (45) days from the date of issuance of this notice, interested parties may submit comments to the Bureau of Land Management, Rawlins Field Office, 1300 North Third Street, P.O. Box 2407, Rawlins, Wyoming 82301. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposed realty action will become final.

Dated: July 9, 1999.

Kurt J. Kotter,

Field Manager.

[FR Doc. 99–18266 Filed 7–16–99; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–269–270 (Review) and 731–TA–311–317 and 379–380 (Review)]

Brass Sheet and Strip From Brazil, Canada, France, Germany, Italy, Japan, Korea, The Netherlands, and Sweden

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the countervailing duty and antidumping duty orders on brass sheet and strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on brass sheet and strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183), Office of Investigations, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On May 6, 1999, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (64 F.R. 27294, May 19, 1999). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Participation in the Reviews and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons,

or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the reviews will be placed in the nonpublic record on November 23, 1999, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on December 15, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 7, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 10, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is December 3, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is December 23, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the review on or before December 23, 1999. On January 21, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 25, 2000, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: July 13, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–18332 Filed 7–16–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–828 (Preliminary)]

Bulk Acetylsalicylic Acid (Aspirin) From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from China of bulk acetylsalicylic acid (aspirin), provided for in subheadings 2918.22.10 and 3003.90.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV). [2]

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Commissioner Carol T. Crawford determines that there is a reasonable indication that an industry in the United States is materially injured by reason of the subject imports from China that are alleged to be sold in the United States at LTFV.

Background

On May 28, 1999, a petition was filed with the Commission and the Department of Commerce by Rhodia, Inc., Cranbury, NJ, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of bulk aspirin from China. Accordingly, effective May 28, 1999, the Commission instituted antidumping investigation No. 731-TA–828 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 7, 1999 (64 FR 30355). The conference was held in Washington, DC, on June 18, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 12, 1999. The views of the Commission are contained in USITC Publication 3211 (July 1999), entitled Bulk Acetylsalicylic Acid (Aspirin) from China: Investigation No. 731-TA–828 (Preliminary).

By order of the Commission.
Issued: July 13, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–18335 Filed 7–16–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–367–370 (Review)]

Color Picture Tubes From Canada, Japan, Korea, and Singapore

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the antidumping duty orders on color picture tubes from Canada, Japan, Korea, and Singapore.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on color picture tubes from Canada, Japan, Korea, and Singapore would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: July 12, 1999.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–205–3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.

On June 3, 1999, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (64 FR 31609, June 11, 1999) . A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Participation in the Reviews and Public Service List—

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the reviews will be placed in the nonpublic record on December 13, 1999, and a public version will be issued thereafter, pursuant to § 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on January 13, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 29, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 4, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing .

Written Submissions

Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.65 of the Commission's rules; the deadline for

filing is December 22, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.67 of the Commission's rules. The deadline for filing posthearing briefs is January 24, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before January 24, 2000. On February 9, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 11, 2000, but such final comments must not contain new factual information and must otherwise comply with § 207.68 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: July 13, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–18336 Filed 7–16–99; 8:45 am]

BILLING CODE 7020–02–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–397–400 (Preliminary) and 731–TA–842–845 (Preliminary)]

Certain Crude Petroleum Oil Products From Iraq, Mexico, Saudi Arabia, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: July 13, 1999.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On June 29, 1999, the Commission established a schedule for the conduct of the subject investigations (64 FR 36919, July 8, 1999). Subsequently, the Department of Commerce extended the date for its initiation of the investigations from July 19 to August 9, 1999. The Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's new schedule for the investigations is as follows: Requests to appear at the conference must be filed with Fred Ruggles not later than August 9; the conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on August 12; and the deadline for filing written briefs is August 17, 1999.

For further information concerning these investigations see the Commission's notice cited above and the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: July 14, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–18338 Filed 7–16–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–827 (Preliminary)]

Nitrile Rubber From Korea

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Korea of acrylonitrile-butadiene rubber (nitrile rubber),[2] provided for in subheading 4002.59.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On May 27, 1999, a petition was filed with the Commission and the Department of Commerce by Zeon Chemicals, L.P., Louisville, KY, and Uniroyal Chemical Company, Inc., Middlebury, CT, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of nitrile rubber from Korea. Accordingly, effective May 27, 1999, the Commission instituted antidumping investigation No. 731-TA–827 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 4, 1999 (64 FR 30059). The conference was held in

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] For purposes of this investigation, Commerce has defined ''nitrile rubber'' as the synthetic rubber produced by the copolymerization of butadiene and acrylonitrile, not in latex form, and not containing additives, rubber processing chemicals, and/or other materials used for further processing beyond the copolymerization process.

Washington, DC, on June 17, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 12, 1999. The views of the Commission are contained in USITC Publication 3210 (July 1999), entitled Nitrile Rubber from Korea: Investigation No. 731–TA–827 (Preliminary).

By order of the Commission.

Issued: July 13, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–18334 Filed 7–16–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–69]

Certain Steel Wire Rod

Determination

On the basis of the information in the investigation, the Commission—

(1) Was equally divided on the question of whether certain steel wire rod [1] is being imported into the United States in such increased quantities as to be a substantial cause of serious injury or the threat of serious injury to the domestic industry producing an article like or directly competitive with the imported article pursuant to section 202(b) of the Trade Act of 1974; [2]

(a) Chairman Lynn M. Bragg, Vice Chairman Marcia E. Miller, and Commissioner Stephen Koplan made an affirmative determination; [3]

(b) Commissioners Carol T. Crawford, Jennifer A. Hillman, and Thelma J. Askey made a negative determination. In light of their negative determination, Commisssioners Crawford, Hillman, and Askey do not believe any import relief is appropriate in this investigation;

(2) Makes negative findings, [4] pursuant to section 311(a) of the North American Free-Trade Agreement (NAFTA) Implementation Act (19 U.S.C. 3371(a)), with respect to imports of certain steel wire rod from Canada and Mexico.

Recommendations With Respect To Remedy

Vice Chairman Marcia E. Miller and Commissioner Stephen Koplan recommend:

(1) That the President impose an additional duty on imports of certain steel wire rod that are the subject of this investigation, as follows:

First year: 15.0 percent *ad valorem;*
Second year: 13.0 percent *ad valorem;*
Third year: 11.0 percent *ad valorem;* and
Fourth year: 9.0 percent *ad valorem;*

(2) That the additional duty apply to imports of certain steel wire rod from beneficiary countries of the Caribbean Basin Economic Recovery Act;

(3) That the additional duty not apply to certain specialty steel wire rod items, specifically, tire cord quality wire rod, pipe wrap quality wire rod, and valve spring quality wire rod;

(4) Having made negative findings with respect to imports of certain steel wire rod from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, that such imports be excluded from the additional duty; and

(5) That the additional duty not apply to any imports of certain steel wire rod entered duty-free from beneficiary countries under the Andean Trade Preference Act, or to imports of certain steel wire rod from Israel.

Chairman Lynn M. Bragg recommends:

(1) That the President impose a duty, in addition to the current rate of duty, for a four-year period, on all imports of steel wire rod that are the subject of this investigation without exclusion except as provided below, as follows:

First year: 7 percent *ad valorem;*
Second year: 6.5 percent *ad valorem;*
Third year: 6.0 percent *ad valorem;* and
Fourth year: 5.5 percent *ad valorem;*

(2) That the additional duty described above apply to imports of steel wire rod from Canada under section 311(a) of the NAFTA Implementation Act;

(3) Having made a negative finding with respect to imports of steel wire rod from Mexico under section 311(a) of the NAFTA Implementation Act, that such imports be excluded from the increase in duty described above;

(4) That the additional duty described above apply to imports of steel wire rod entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act, but that it not apply to imports of steel wire rod entered duty-free from beneficiary countries under the Andean Trade Preference Act or imports of steel wire rod from Israel.

Background

Following receipt of a properly filed petition on January 12, 1999, by counsel on behalf of Atlantic Steel Industries, Inc., Atlanta, GA; Birmingham Steel Corp., Birmingham, AL; Connecticut Steel Corp., Wallingford, CT; Co-Steel Raritan, Perth Amboy, NJ; GS Industries, Inc., Georgetown, SC; Keystone Steel & Wire Co., Peoria, IL; North Star Steel Co., Minneapolis, MN; North Star Steel Texas Inc., Beaumont, TX; Northwestern Steel & Wire Co., Sterling, IL; the Independent Steel Workers Alliance, Bartonville, IL; and the United Steelworkers of America AFL-CIO, Pittsburgh, PA, the Commission instituted investigation No. TA–201–69, Certain Steel Wire Rod, under section 202 of the Trade Act of 1974 to determine whether certain steel wire rod is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Notice of the institution of the Commission's investigation and of the scheduling of public hearings to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 27, 1999 (64 F.R. 4123). The hearing in connection with the injury phase of the investigation was held on April 15, 1999, and the hearing on the question of remedy was held on June 8, 1999. Both hearings were held in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

[1] The imported article covered by this investigation is defined as hot-rolled bars and rods, in irregularly wound coils, of circular or approximately circular solid cross section, having a diameter of 5 mm or more but less than 19 mm, of non-alloy or alloy steel, except such bars and rods of free-machining steel or of alloy steel containing by weight 24 percent or more of nickel. Free-machining steel is any steel product containing by weight one or more of the following elements, in the specified proportions: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium. Certain steel wire rod is provided for in subheadings 7213.91, 7213.99, 7227.20 and 7227.90.60 of the Harmonized Schedule of the United States (HTS). The scope of this investigation does not cover concrete reinforcing bars and rods, or bars and rods of stainless steel or tool steel, which are provided for in other HTS subheadings.

[2] Section 330(d)(1) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1)) provides that when the Commission is equally divided on the question of injury under section 202(b) of the Trade Act of 1974, ''then the determination agreed upon by either group of commissioners may be considered by the President as the determination of the Commission.''

[3] Chairman Lynn M. Bragg made an affirmative determination of threat of serious injury. Vice Chairman Marcia E. Miller and Commissioner Stephen Koplan made an affirmative determination of serious injury. Commissioners Carol T. Crawford, Jennifer A. Hillman, and Thelma J. Askey made a negative determination.

[4] Chairman Lynn M. Bragg dissenting with respect to Canada. Only Commissioners making an affirmative determination, i.e., Chairman Bragg, Vice Chairman Marcia E. Miller, and Commissioner Stephen Koplan, were required to make findings with respect to imports of certain steel wire rod from Canada and Mexico.

The Commission transmitted its determination in this investigation to the President on July 12, 1999. The views of the Commission are contained in USITC Publication 3207 (July 1999), entitled Certain Steel Wire Rod: Investigation No. TA–201–69.

By order of the Commission.

Issued: July 13, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–18333 Filed 7–16–99; 8:45 am]

BILLING CODE 7020–02–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–115 (Review)]

Synthetic Methionine From Japan

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping finding on synthetic methionine from Japan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on August 3, 1998 (63 FR 41290) and determined on November 5, 1998 that it would conduct a full review (63 FR 63748, November 16, 1998). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on December 31, 1998 (63 FR 72327). The hearing was held in Washington, DC, on May 18, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 12, 1999. The views of the Commission are contained in USITC Publication 3205 (July 1999), entitled Synthetic Methionine from Japan: Investigation No. AA1921–115 (Review).

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

By order of the Commission.

Issued: July 14, 1999

Donna R. Koehnke,

Secretary.

[FR Doc. 99–18337 Filed 7–16–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review; Agency Information Collection Activities: Revision to Existing Collection in Use Without an OMB Control Number; Comment Request

ACTION: Notice of information collection under review; Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals.

Office of Management and Budget approval is being sought for the information collection listed below. This information collection was previously published in the **Federal Register** on May 3, 1999, at 64 FR 23685, allowing for a 60-day comment period.

The purpose of this notice is to allow an additional 30 days for public comments until August 18, 1999.

Written comments and or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Office, Washington, DC 20530. Additionally, comments may also be submitted to the Department of Justice, Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530.

The agency requests written comments and suggestions from the public and affected agencies concerning this existing collection of information in use without an OMB Control Number. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the 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 Collection

(1) *Type of Information Collection:* Revisions to existing collection in use without an OMB Control Number.

(2) *Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals.

(3) *Agency form number, if any, and the applicable component of the Department of Justice Sponsoring the collection:* Form EOIR–27, Executive Office for Immigration Review, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* The information collected on EOIR–27 will be used (i) to determine whether or not a responding attorney or representative is duly authorized to represent aliens before the Board of Immigration Appeals, (ii) provide the responding represented party an opportunity to expressly consent to such representation and to the release of Executive Office for Immigration Review records to the representative as required by law, and (iii) to notify the Immigration and Naturalization Service and the Executive Office for Immigration Review of such representation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* <26,000 responses per year at 6 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,600 annual burden hours.

If additional information is required, contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: July 14, 1999.

Robert B. Briggs,

Clearance Officer, U.S. Department of Justice.

[FR Doc. 99–18315 Filed 7–16–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act and Resource Conservation and Recovery Act

Notice is hereby given that a proposed consent decree in *United States* v. *Denver Water Board*, Civil Action No. 99–S–1156, was lodged on June 15, 1999 with the United States District Court for the District of Colorado. The United States filed this action pursuant to the Clean Water Act and the Resource Conservation and Recovery Act to obtain civil penalties and an injunction to address the illegal disposal of hazardous wastes and discharges to the South Platte River. The Consent Decree requires the Board to pay a penalty of $48,000, and to implement supplemental environmental projects including the construction of a new paint shop that will reduce the amount of hazard wastes being produced, construction of a new car wash that will reduce the amount of water and detergent being used, construction of a waste storage and training area, and the re-vegetation of certain banks of the South Platte River. In addition, the Consent Decree requires the Board to comply with the Clean Water Act and Resource Conservation and Recovery Act by, among other things, taking steps to characterize its wastes and post required information in hazardous waste storage areas.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Denver Water Board*, DOJ Ref. #90–5–1–1–4492.

The proposed consent decree may be examined at the office of the United States Attorney, 1961 Stout Street, Suite 1200, Denver, Colorado 80294; the Region VIII Office of the Environmental Protection Agency, 999 18th Street, Denver, Colorado 80202; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $8.75 (25 cents per page reproduction costs) for each decree, payable to the Consent Decree Library.

Joel M. Gross

Chief, Environmental Section, Environment and Natural Resources Division.

[FR Doc. 99–18088 Filed 7–16–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 13, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ({202} 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: State Alien Labor Certification Activity Report.

OMB Number: 1205–0319.

Frequency: Semi-annually.

Affected Public: Federal Government; State, Local, or Tribal govt.

Number of Respondents: 54.

Estimated Time Per Respondent: 2 hours.

Total Burden Hours: 216 hours.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: This form will be used to collect information from State Employment Security Agencies on the activities they perform under the alien certification reimbursable grant. The information collected will be used for program management, budget formulation, State funding distribution, and monitoring for compliance with the grant's Statement of Work.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–18317 Filed 7–16–99; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before September 2, 1999. Once the appraisal

of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Commerce, United States Travel and Tourism Administration (N1–377–99–1, 1 item, 1 temporary item). Newspaper and press clipping files, dating from 1963–1973, consisting of newspaper clippings and scrapbooks of articles and press clippings relating to United States Travel Service activities to encourage and promote travel in the United States. The newspaper clippings and articles were used to provide information to foreign and domestic travel editors, travel companies, and travel agents.

2. Department of Defense, Office of the Inspector General, (N1–509–99–4, 15 items, 12 temporary items). Electronic copies of documents created using electronic mail and word processing relating to White House and Congressional correspondence and to legislation reviews. There are minor changes in cutoff dates for recordkeeping copies of routine White House correspondence and routine Congressional correspondence that were previously approved for disposal. There are minor changes in the transfer dates for previously approved permanent recordkeeping copies of policy-related White House correspondence, historically valuable Congressional correspondence, and legislation reviews.

3. Department of Health, Education, and Welfare, Agency-wide (N1–235–99–1, 18 items, 9 temporary items). Older records accumulated by the Department of Health, Education, and Welfare and its predecessor agencies, approximately 1938–1981, which relate to administrative matters. Included are records relating to budget, personnel, and other housekeeping activities, files on terminated contracts and grants, liquidated Federal Credit Union case files, and card files containing data on State agencies involved in social welfare activities. Records proposed for permanent retention include drafts of manuals relating to claims matters, correspondence and reports from the Office of the Secretary, subject files of the President's Council on Physical Fitness and Sports, and records documenting the activities of the Office of Family Benefits Planning, the Office of Native American Programs, the Administration on Aging, and the Grants and Contracts Management Division.

4. Department of Justice, Agency-wide (N1–60–99–7, 5 items, 4 temporary items). General correspondence files associated with selected categories of the Department's filing system, including Amicus Participation in Private Antitrust Suits, Unfair Immigration Employment Practices, Criminal Environmental Matters, Childhood Vaccine Injury, Inter-American Convention on Letters Rogatory and Additional Protocol, Radiation Exposure Compensation Act, Public Accommodations under Americans with Disabilities Act (Title III), Money Laundering Control Act/Bank Secrecy Act, State/Local Governments under Americans with Disabilities Act (Title II), Freedom of Access to Clinic Entrances Act of 1994, Pattern and Practice of Police Misconduct, and Church Arson Prevention Act of 1996. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are the recordkeeping copies of general correspondence associated with file categories that pertain to executive orders and presidential proclamations, policies and procedures, and definitions and interpretations.

5. Department of Justice, INTERPOL-United States National Central Bureau (N1–60–99–8, 3 items, 3 temporary items). Reduction of the retention period for Interpol Case Files which were previously scheduled for disposal. Included are paper, electronic, and microfilm versions of fingerprint records, photographs, investigative reports and case notes, log sheets, letters, and memoranda.

6. Department of Justice, Immigration and Naturalization Service (N1–85–99–3, 4 items, 4 temporary items). Case files relating to complaints against non-agency attorneys for unethical activities or unprofessional behavior. Files

contain records of investigations, State Bar grievance proceedings, criminal convictions, copies of petitions, court transcripts, and Executive Office for Immigration Review pleadings. Also included are electronic copies of documents created using electronic mail and word processing.

7. Department of Labor, Employment and Training Administration (N1–369–97–1, 4 items, 3 temporary items). Incoming and outgoing correspondence of the Deputy and Deputy Assistant Secretary of Labor for the Employment and Training Administration. Files proposed for disposal include electronic copies of documents created using electronic mail and word processing, an electronic correspondence tracking system, and routine correspondence, such as requests for general information, invitations, thank you letters, and requests for publications. Recordkeeping copies of correspondence relating to significant issues and the mission of the agency are proposed for permanent retention.

8. Federal Energy Regulatory Commission, Office of the Chief Information Officer (N1–138–98–2, 3 items, 3 temporary items). Notices issued and comments received relating to information proposed for collection by the agency. Included are electronic copies of records created using electronic mail and word processing.

9. Federal Energy Regulatory Commission, Office of Electric Power Regulation (N1–138–98–5, 2 items, 2 temporary items). Annual one-page reports filed by persons holding interlocking positions in public utilities and certain other entities, such as financial institutions.

10. Federal Energy Regulatory Commission, Office of the Chief Information Officer (N1–138–98–16, 3 items, 3 temporary items). Surveys measuring the public's satisfaction with services provided in the agency's public reference room and records maintenance center. Included are electronic copies of records created using electronic mail and word processing.

11. Tennessee Valley Authority, Resource Group (N1–142–97-26, 2 items, 1 temporary item). Contracts, proposals, announcements, training documents, and related records for energy projects completed by agency employees at non-agency sites. Similar records for projects at agency sites are proposed for permanent retention.

12. United States Agency for International Development, Bureau for Administrative Services (N1–286–99–1, 4 items, 4 temporary items). System data, input data, output data, and documentation for an electronic system used to track the status of correspondence that originates in or is sent to the Office of the Administrator, Deputy Administrator, Acting Administrator, Chief of Staff, or Executive Secretary.

13. United States Agency for International Development, Bureau for Administrative Services (N1–286–99–2, 3 items, 3 temporary items). System data, input data, and documentation for the agency's electronic telephone directory system. The system allows users to search by name, location, and telephone number.

Dated: July 12, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–18310 Filed 7–16–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection was originally published on May 11, 1999. No comments were received.

DATES: Comments will be accepted until August 18, 1999.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0144.

Form Number: NA.

Type of Review: Revision to the currently approved collection.

Title: Examination Survey.

Description: To provide federal credit unions with an opportunity to give NCUA feedback on its examination procedures. NCUA uses the information to evaluate and improve the examination process.

Respondents: Federal credit unions.

Estimated No. of Respondents/Recordkeepers: 6,799.

Estimated Burden Hours Per Response: 5 minutes.

Frequency of Response: Reporting and Annually.

Estimated Total Annual Burden Hours: 567.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on July 13, 1999.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–18312 Filed 7–16–99; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

TIME AND DATE: 10 a.m., Thursday, July 22, 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 Federal Credit Union to Convert to a Community Charter.
2. Three (3) Appeals from Federal Credit Unions of the Regional Director's Denial of Community Charters.
3. Advance Notice of Proposed Rulemaking: Part 704, NCUA's Rules and Regulations, Corporate Credit Unions.
4. Proposed Rule: Request for Comments Regarding Section 701.34, NCUA's Rules and Regulations, Secondary Capital Accounts.
5. Final Rule: Adoption of Part 715 and Amendments to Parts 701 and 741, NCUA's Rules and Regulations, Supervisory Committee Audits.
6. Reprogramming of NCUA's 1999 Budget.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, July 22, 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 & Regulations. Closed pursuant to exemption (8).
2. Y2K Delegations. Closed pursuant to exemptions (2), (8), (9)(A)(ii), and (9)(B).
3. Five (5) Personnel Matters. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–18460 Filed 7–15–99; 2:21 pm]

BILLING CODE 7535–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Meeting Notice

Agenda

TIME AND DATE: 9:30 a.m., Wednesday, July 21, 1999.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, DC 20594.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: 7055b Railroad/Highway Accident Report: Collision of Northern Indiana Commuter Transportation District Train 102 with a Tractor-trailer on June 18, 1998 in Portage, Indiana.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100. Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314–6220 by Friday, July 16, 1999.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

July 14, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99–18390 Filed 7–14–99; 4:36 pm]

BILLING CODE 7533–01–P

NORTHEAST DAIRY COMPACT COMMISSION

Notice of Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of meeting.

SUMMARY: The Compact Commission will hold its monthly meeting to consider matters relating to administration and enforcement of the price regulation, including the reports and recommendations of the Commission's standing Committees.

DATES: The meeting is scheduled for 1 p.m. on Wednesday, August 4, 1999.

ADDRESSES: The meeting will be held at Briggs Opera House (Northern Stage Company), South Main Street, White River Junction, Vermont.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, VT 05602. Telephone (802) 229–1941.

Authority: 7 U.S.C. 7256.

Dated: July 13, 1999.

Kenneth M. Becker,

Executive Director.

[FR Doc. 99–18296 Filed 7–16–99; 8:45 am]

BILLING CODE 1650–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 17a–22, SEC File No. 270–202, OMB Control No. 3235–0196

Rule 17Ab2–1 and Form CA–1, SEC File No. 270–203, OMB Control No. 3235–0195

Rule 15c2–5, SEC File No. 270–195, OMB Control No. 3235–0198

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 a request for extension of the previously approved collections of information discussed below.

Rule 17a–22 under the Securities Exchange Act of 1934 (''Exchange Act'')[1] requires all registered clearing agencies to file with the Commission three copies of all materials they issue or make generally available to their participants or other entities with whom they have a significant relationship. The filings with the Commission must be made within ten days after the materials are issued, and when the Commission is not the appropriate regulatory agency, the clearing agency must file one copy of the material with its appropriate regulatory agency. The Commission is responsible for overseeing clearing agencies and uses the information filed pursuant to Rule 17a–22 to determine whether a clearing agency is implementing procedural or policy changes. The information filed aides the Commission in determining whether such changes are consistent with the purposes of Section 17A of the Exchange Act. Also, the Commission uses the information to determine whether a clearing agency has changed its rules without reporting the actual or prospective change to the Commission as required under Section 19(b) of the Exchange Act.

The respondents to Rule 17a–22 generally are registered clearing agencies.[2] The frequency of filings made by clearing agencies pursuant to Rule 17a–22 varies, but on average there are approximately 200 filings per year per clearing agency. Because the filings consist of materials that have been prepared for widespread distribution, the additional cost to the clearing agencies associated with submitting copies to the Commission is relatively small. The Commission staff estimates that the cost of compliance with Rule 17a–22 to all registered clearing agencies is approximately $4,930. This represents one dollar per filing in postage, or a total of $3,400. The remaining $1,530 (or approximately 31% of the total cost of compliance) is the estimated cost of additional printing, envelopes, and other administrative expenses. (The estimated total cost per response is $1.45 per page representing $1.00 per page in postage plus $0.45 for printing, envelopes, and other administrative expenses.)

Rule 17Ab2–1 and Form CA–1 require clearing agencies to register with the Commission and to meet certain requirements with regard to, among other things, a clearing agency's organization, capacities, and rules. The information is collected from the clearing agency upon the initial application for registration on Form CA–1. Thereafter, information is collected by amendment to the initial Form CA–1 when material changes in circumstances necessitates modification of the information previously provided to the Commission.

The Commission uses the information disclosed on Form CA–1 to (i) determine whether an applicant meets the standards for registration set forth in Section 17A of the Securities Exchange Act of 1934 (''Exchange Act''), (ii) enforce compliance with the Exchange Act's registration requirement, and (iii) provide information about specific registered clearing agencies for compliance and investigatory purposes. Without Rule 17Ab2–1, the Commission could not perform these duties as statutorily required.

[1] 15 U.S.C. 78a *et seq.*

[2] Respondents include temporarily registered clearing agencies. Respondents also may include clearing agencies granted exemptions from the registration requirements of Section 17A, conditioned upon compliance with Rule 17a–22.

There are currently 15 registered clearing agencies, three clearing agencies that have been granted an exemption from registration, and two entities with pending applications for an exemption from clearing agency registration. The Commission staff estimates that each initial Form CA–1 requires approximately 130 hours to complete and submit for approval. Hours required for amendments to Form CA–1 that must be submitted to the Commission in connection with material changes to the initial CA–1 can vary, depending upon the nature and extent of the amendment. Since the Commission only receives an average of one submission per year, the aggregate annual burden associated with compliance with Rule 17Ab2–1 and Form CA–1 is 130 hours. Based upon the staff's experience, the average cost to clearing agencies of preparing and filing the initial Form CA–1 is estimated to be $16,391.

Rule 15c2–5 prohibits a broker-dealer from arranging or extending a loan to customers, not subject to Regulation T (12 CFR 220), in connection with the offer or sale of securities unless, before entering the transaction, the broker-dealer: (i) delivers to the customer a written statement containing specific information concerning the terms, obligations, risks and charges of the loan; (ii) obtains from the customer sufficient financial information to determine that the entire transaction is suitable for the customer, and (iii) retains on file and makes available to the customer a written statement setting forth the broker-dealer's basis for determining that the transaction was suitable. The collection of information required by the Rule is necessary to execute the Commission's mandate under the Exchange Act to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers.

There are approximately 50 respondents that require an aggregate total of 600 hours to comply with the Rule. Each of these approximately 50 registered broker-dealers makes an estimated 6 annual responses, for an aggregate total of 300 responses per year. Each response takes approximately 2 hours to complete. Thus, the total compliance burden per year is 600 burden hours. The approximate cost per hour is $25.00 (based on an annual salary of $52,000 for clerical labor), resulting in a total compliance cost of $15,000 (600 hours @ $25.00 per hour).

Although Rule 15c2–5 does not specify a retention period or record keeping requirement under the Rule, nevertheless broker-dealers are required to preserve the records for a period no less than six years pursuant to Rule 17a–4(c). The information required under Rule 15c2–5 is necessary for broker-dealers to engage in the lending activities prescribed in the Rule. Rule 15c2–5 does not assure confidentiality for the information retained under the Rule.[3]

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 control number.

General Comments regarding the estimated burden hours 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, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 12, 1999.

Margaret H. Mcfarland

Deputy Secretary.

[FR Doc. 99–18306 Filed 7–16–99; 8:45 am]

BILLING CODE 8010–01–M

[3] The records required by Rule 15c2–5 would be available only to the examination of the Commission staff, state securities authorities and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522, and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda rising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements filed during the week ending July 9, 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–99–5939.

Date Filed: July 8, 1999.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR-ME 0080 dated 6 July 99—r1, PTC2 EUR-ME 0081 dated 6 July 99—r2—r12, PTC2 EUR-ME 0082 dated 2 July 99—r13, TC2 Europe-Middle East Expedited Resolutions, Intended effective dates: 14 August/15 August/1 October 1999.

Docket Number: OST–99–5940.

Date Filed: July 8, 1999.

Parties: Members of the International Air Transport Association.

Subject: CTC COMP 0191 dated 16 June 1999 (issuance), CTC COMP 0201 dated 9 July 1999 (technical correction/adoption), Mail Vote 012—Resolution 010nn Special Cargo Amending Resolution Except to/from USA/US Territories (to delete rates covered by nil add-ons), Intended effective date: 1 October 1999.

Docket Number: OST–99–5941.

Date Filed: July 8, 1999.

Parties: Members of the International Air Transport Association.

Subject: CTC COMP 0192 dated 16 June 1999 (issuance), CTC COMP 0202 dated 9 July 1999 (adoption), Mail Vote 013—Resolution 010oo, Special Cargo Amending Resolution to/from USA/US Territories (to delete rates covered by nil add-ons), Intended effective date: 1 October 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–18323 Filed 7–16–99; 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 July 9, 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–99–5945.

Date Filed: July 9, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: August 6, 1999.

Description: Application of Pan American Airways Corp. pursuant to 49 U.S.C. Sections 204.5(a) and 204.7(b), requests that it be granted authority to resume its currently suspended scheduled service operations. Pan Am requests the Department to issue an expedited order authorizing Pan Am to resume scheduled interstate and overseas air transportation operations with respect to persons, property and mail without limitation.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–18322 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Task 1b Meeting on Icing Terminology

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's task 1b team to discuss the FAA's proposed changes to current icing terminology as well as the FAA's proposal to include a table of icing effects and changes to the pilot reporting format in the Aeronautical Information Manual (AIM).

DATES: July 28–29, 1999, at 9 a.m.

ADDRESSES: The meeting will be held at the Hyatt Arlington Hotel Rosslyn, 1325 Wilson Blvd. Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Dan Meier, Flight Standards, AFS–220, FAA, 800 Independence Avenue, SW, Washington, DC 20591, Telephone (202) 267–3749, FAX (202) 267–5229.

SUPPLEMENTARY INFORMATION: The meeting will be held on July 28 & 29, 1999, at the Hyatt Arlington Hotel Rosslyn, 1325 Wilson Blvd. Arlington, VA. The telephone number for the Hyatt Arlington is (703) 525–1234.

The agenda will include:

- Opening remarks.
- Discussion of the FAA proposed changes to icing terminology and the Aeronautical Information Manual.

Attendance is open to the public, but will be limited to space available. The public must make arrangements by July 26, 1999, to present oral statements at the meeting. Written statements may be presented to the task 1b team any time by providing 16 copies at the meeting or to Dan Meier at the Federal Aviation Administration, AFS–220, 800 Independence Ave., SW, or via FAX at (202) 267–5229.

Issued in Washington, DC, on July 14, 1999.

L. Nicholas Lacey,

Director, Flight Standard Service, Federal Aviation Administration.

[FR Doc. 99–18343 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–03–C–00–DRO) To Impose Only and Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Durango-La Plata County Airport, Submitted by the Durango-La Plata County Airport, Durango, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose only and impose and use PFC revenue at Durango-La Plata County Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before August 18, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan E. Wiechmann, Manager; Denver Airports District Office, DEN-ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ron Dent, A.A.E., Director of Aviation, at the following address: Durango-La Plata County Airport, 1000 Airport Road, Durango, CO 81301.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Durango-La Plata County Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN-ADO; Federal Aviation Administration; 26805 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (99–03–C–00–DRO) to impose only and impose and use PFC revenue at Durango-La Plata County Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 12, 1999, the FAA determined that the application to impose only and impose and use the revenue from a PFC submitted by the Durango-La Plata County Airport, Durango, Colorado, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 14, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 2000.

Proposed charge expiration date: September 1, 2003.

Total requested for approval: $763,627.00.

Brief description of proposed project: Impose and use projects: Construct connector Taxiway ''A2''; Acquire rotary snowblower; Update airport master plan; Install glycol retrieval system; Replace aircraft rescue and fire fighting (ARFF) vehicle; Replace snowplow blades; Impose only projects: Rehabilitate and friction course Runway 2/20; Install distance remaining signs.

Class or classes of air carriers, which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW, Suite 315, Renton, WA 98055–4056. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Durango-La Plata County Airport.

Issued in Renton, Washington on July 12, 1999.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 99–18353 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–99–5942]

Notice of Request for Clearance of a New Information Collection: Graduated Commercial Driver's License (CDL) Survey

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements in section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995,

this notice announces the intention of the FHWA to request the Office of Management and Budget (OMB) to approve a new information collection to query the motor carrier (truck and bus) industry, drivers, driver training schools, insurance companies, and driver licensing and law enforcement agencies about the need for, benefits of, potential acceptance of, institutional barriers and practicality of a graduated commercial driver licensing system and the likely improvements in highway safety, employment opportunities and transportation efficiency.

DATES: Comments must be submitted on or before September 17, 1999.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, Transportation Specialist, (202) 366–4001, Driver Division, Office of Motor Carrier Research and Standards, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Graduated Commercial Driver's License (CDL) Survey.

Background: Conference Report 104–286 to accompanying H.R. 2002 to the Department of Transportation Appropriation Bill (Pub. L. 104–50) directed the FHWA to contract, during FY 1996, with the American Trucking Associations Foundation, Inc., Transportation Research Institute (TRI) to perform applied research to address a number of highway safety issues, such as: driver fatigue and alertness; the application of emerging technologies to ensure safety, productivity and regulatory compliance; and commercial driving licensing, training and education. The amount allocated was to be not less than $4 million. A survey of industry opinion pertaining to a graduated CDL is one of these projects under the congressionally-mandated cooperative agreement with the TRI.

Section 4019 of the Transportation Equity Act for the 21st Century (Pub. L. 105–179) directed the Secretary of Transportation to identify the benefits and costs of a graduated CDL system as part of a review of the current CDL testing procedures and to identify methods to improve the testing and licensing standards. The trucking industry alone projects a need for 300,000 new and replacement drivers every year until the turn of the century. In addition to those newly entering the truck driving field, others are constantly transitioning from one type of commercial motor vehicle operation to another. For example, moving from straight trucks to combinations, from tractor-semis to doubles or even triples, from hauling general commodities to motor vehicles or even hazardous materials, moving from school buses to transit buses or motorcoaches, or moving back and forth between various trucks and buses.

A graduated or provisional CDL program might go beyond today's CDL requirements to provide for safe introduction of younger drivers into the industry and assure the measured progression of drivers, by proper training and supervision, into more complex driving jobs.

Before considering the recommendation and development of a provisional CDL program, it is necessary to better identify the need for and quantify the potential benefits and costs of such a program. TRI, in cooperation with representatives of all segments of the truck and bus industries, will survey representatives of the motor carrier (truck and bus) industry, drivers, driver training schools, insurance companies, and driver licensing and law enforcement agencies, using approximately 15 short response questions with the ability to add narrative comments, about the need for, benefits of, potential acceptance of, institutional barriers and practicality of a graduated commercial driver licensing system and the likely improvements in highway safety, employment opportunities and transportation efficiency. The questions for the written survey will be based on information gathered during previously conducted focus group sessions and will include the importance of certain elements in a graduated driver licensing program such as training, driving record, driving experience, age, testing and restrictions.

The study data will be compiled and statistically evaluated. The results of the evaluation and conclusions will be presented in a final report which will address the potential benefits, costs and feasibility of implementing a graduated or provisional CDL program. The results will be used by the FHWA in evaluating the potential for pilot testing the graduated CDL concept and developing a rulemaking based on the results of the pilot study.

Respondents: The respondents to the planned survey will include approximately 2,000 selected representatives of the motor carrier (truck and bus) industry, drivers, driver training schools, insurance companies, and driver licensing and law enforcement agencies.

Average Burden Per Response: The estimated average burden per response is 15 minutes. This includes the time needed for reading the survey instructions, searching existing data sources, completing the survey instrument and returning the information by mail or transmission by facsimile.

Estimated Total Annual Burden: The estimated total annual burden is 500 hours.

Frequency: The survey will be conducted once.

Public Comments Invited

Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB clearance of this information collection.

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*. For Internet users, all comments received will be available for examination at the universal source location: *http://dms.dot.gov*. Please follow the instructions on-line for additional information and guidance.

Authority: 49 U.S.C. 31136, 31301 *et seq.*, and 31502; and 49 CFR 1.48.

Issued on: July 14, 1999.

Michael J. Vecchietti,

Director, Office of Information and Management Services.

[FR Doc. 99–18342 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–4973; Notice 2]

Nissan Motors Corp. U.S.A.; Grant of Application for Decision of Inconsequential Noncompliance

Nissan Motor Corporation U.S.A. (Nissan) of Gardena, California, has determined that some of its vehicles fail to meet the display requirements of paragraph S3.1.4.1 of Federal Motor Vehicle Safety Standard (FMVSS) No. 102, ''Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,'' and has filed an appropriate report pursuant to 49 CFR part 573 , ''Defects and Noncompliance Reports.'' Nissan has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 ''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

A notice of receipt of the application was published in the **Federal Register** (64 FR 3739) on January 25, 1999. Opportunity was afforded for public comment until February 24, 1999. No comments were received.

Under S3.1.4.1 of FMVSS No. 102, if a vehicle's transmission shift lever sequence includes a park position, identification of the shift lever positions (including the positions in relation to each other and the position selected) shall be displayed in view of the driver under two conditions: if the ignition is in a position where the transmission can be shifted, or if the transmission is not in park.

From September 1997 to August 1998, Nissan produced approximately 22,000 Frontier trucks that use an electronic display in the instrument panel to indicate transmission gear position. In these vehicles, when the ignition key is in either the ''OFF'' or ''ACCESSORY'' position, the selected gear position is not displayed. ''OFF'' refers to the range of movement of the ignition key between the ''LOCK'' and ''ACCESSORY'' positions. The gear selector lever can be moved while the ignition switch is in ''OFF'' or ''ACCESSORY.'' There is no detent for ''OFF'' as the key is rotated nor is ''OFF'' labeled on the ignition switch. There is a detent for ''ACCESSORY'' and it is labeled on the ignition switch. Nissan states that the affected vehicles comply with all other requirements of FMVSS No. 102.

Nissan supports its application for inconsequential noncompliance with the following statements:

The situation involving the Frontier trucks is essentially the same as that described in an inconsequentiality petition filed by General Motors Corporation in 1993 and granted by NHTSA. See 58 FR 16735, March 30, 1993 and 58 FR 33296, June 16, 1993. The petitioner in that matter stated that, on certain of its vehicles, the PRNDL display would not be illuminated if the transmission was left in a position other than ''PARK'' when the ignition key was turned ''OFF.'' The petitioner noted that the vehicles in question complied with FMVSS 102 during normal ignition activation and vehicle operation. In that matter, NHTSA concluded that since the noncompliance did not occur during times that the affected vehicles were operated, ''the noncompliance presents no discernible threat to safety.'' See 58 FR 33297.

As NHTSA noted in proposing the current version of the standard (49 FR 32409, August 25, 1988), the purpose of the display requirement is to ''provide the driver with transmission position information for the vehicle conditions where such information can reduce the likelihood of shifting errors.'' In all but the rarest circumstances, the primary function of the transmission display is to inform the driver of gear selection and relative position of the gears while the engine is running.

In the case of the Nissan trucks, the selected gear position and PRNDL display are always visible when the engine is running. The selected gear position is not shown in the instrument panel electronic display if the engine is turned off. If the ignition key is rotated to the ''ON'' position, the selected gear position immediately illuminates. If the transmission is in ''PARK'' and the engine is started, the selected gear position becomes immediately visible.

If the driver seeks to start the truck when the transmission is not in the ''PARK'' or ''NEUTRAL'' position, ignition would be impossible, as required under FMVSS 102. As soon as the ignition key is rotated to the ''ON'' or ''START'' position, the selected gear would become immediately apparent as the display is illuminated under these conditions. This means that the engine will only start under the condition that the PRNDL and selected gear position are visible to the driver.

Because the movement of the shift lever to place the transmission in ''PARK'' is the same on all vehicles using a column-mounted shift lever, that is, pulled toward the driver and then moved all the way to the left, most drivers do not rely on the PRNDL display to ensure the transmission is in ''PARK.'' This means that it is highly unlikely a driver attempting to place the transmission in ''PARK'' would fail to do so even if the gear position was not visible on the PRNDL display.

If the driver were to attempt to remove the key before exiting the vehicle while erroneously believing that the transmission is in ''PARK'' (with the ignition key being in the ''OFF'' or ''ACCESSORY'' position), it would be impossible to remove the key from the ignition. This would alert drivers that the transmission was not in ''PARK'' and cause them to put it in ''PARK'' so that they could remove the key. If the driver opens the door before attempting to remove the key, the FMVSS 114 audible warning would sound when the door is opened, providing further indication of the improper gear selection. As stated by NHTSA, exiting the vehicle in these circumstances ''would be limited to the rare situation.'' See 54 FR 29042, 29044 (July 11, 1989).

Nissan believes that the theoretical risk of one of the subject vehicles rolling away after the driver exits the vehicle because they failed to place the transmission in ''PARK'' and/or to engage the parking brake while leaving the key in the ignition switch in the ''OFF'' or ''ACCESSORY'' position so that the selected gear is not displayed in the PRNDL is no higher than in a vehicle in which the PRNDL display is working properly.

Although there may be rare circumstances when it would be useful to know the gear position when the engine is off, this information is provided by the shift lever position. Moreover, the electronic display can be illuminated simply by turning the key to the ''ON'' position. As noted above and as stated in the final notice granting the General Motors petition, ''in all but the rarest circumstances, the primary function of the PRNDL display is to inform the driver of gear selection and relative position of the gears while the engine is running.'' See 58 FR 33297.

The gear selector lever on these trucks cannot be moved from the ''PARK'' position if the key is not in the ignition switch. Therefore, the fact that the selected gear is not displayed in the PRNDL with the ignition key in the ''OFF'' or ''ACCESSORY'' position has no relevance when the key is not in the switch.

Nissan has no record of any customer complaint or accident report that could be associated with or attributed to this condition.

We have reviewed the application and agree with Nissan that the noncompliance is inconsequential to motor vehicle safety. Because all of the approximately 22,000 vehicles comply with the display requirements of FMVSS No. 102 during normal ignition activation and vehicle operation, the vehicle's ignition would have to be in the ''OFF'' or ''ACCESSORY'' positions for the noncompliance to occur. Of these two positions, ''OFF'' has no detent, but ''ACCESSORY'' does. Because ''OFF'' has no detent position,

we agree with Nissan that it is highly unlikely that a driver would actually leave the ignition in this position.

The only situations in which the noncompliance would affect the vehicle operator would be if the operator turns the ignition switch to the ''OFF'' or ''ACCESSORY'' position without the transmission being placed in the ''PARK'' position. In this situation, the operator would not be able to remove the key from the ignition due to the transmission shift interlock. We agree with Nissan that, if this situation occurs, only two scenarios are possible. The operator will exit the vehicle without the key or the operator will remain in the vehicle.

In the first situation, if the operator attempts to exit the vehicle without the key, an audible warning, as required in FMVSS No. 114, will sound, alerting the operator that the key is in the ignition. We believe that the audible warning signal requirement of FMVSS No. 114 should reduce the possibility of the operator leaving the vehicle without the key.

In the second situation, if the driver remains in the vehicle, he or she will attempt to restart the vehicle. However, the engine cannot be started if the vehicle's transmission is not in the ''PARK'' position. But, since turning the ignition forward to the ''ON'' position will activate the PRNDL display, the operator will be alerted that the transmission is not in the ''PARK'' position.

Further, as Nissan points out, we granted a similar application from General Motors Corporation (GM) in 1993 (58 FR 33296). In this case, certain GM vehicles were found to be out of compliance with the display requirements of FMVSS No. 102, namely, the PRNDL displays on the subject GM vehicles would not be illuminated if the transmission was left in a position other than ''PARK'' when the ignition was in the ''OFF'' position. We did conclude that, because the noncompliance did not occur during times of operation, ''the noncompliance presents no discernible threat to safety.''

In view of the arguments offered by Nissan, we do not deem this noncompliance to be a serious safety problem warranting notification and remedy. Accordingly, we have decided that the applicant has met its burden of persuasion that the noncompliance it described above is inconsequential to motor vehicle safety. Therefore, its application is granted and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118 and from remedying the noncompliance as required by 49 U.S.C. 30120.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: July 14, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–18309 Filed 7–16–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub.L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the Fund) within the Department of the Treasury is soliciting comments concerning its streamlining surveys of prior CDFI Fund applicants and awardees.

DATES: Written comments should be received on or before September 17, 1999 to be assured of consideration.

ADDRESSES: Direct all comments, in writing, to the Director, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW, Suite 200 South, Washington, DC 20005, Facsimile (202) 622–7754.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed, in writing, to the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW, Suite 200 South, Washington, DC 20005, or by calling (202) 622–8662.

SUPPLEMENTARY INFORMATION:

Title: Streamlining Surveys.

OMB Number: 1505–0171.

Abstract: The Fund continually seeks to improve its processes and procedures so that it may better meet the needs of CDFI Fund applicants while minimizing the burden on applicants and Fund staff. To assist in this effort, each year the Fund will send out one or more brief surveys to a sample of applicants and/or awardees to get their feedback on particular Fund programs.

Current Actions: The Fund is in the process of improving the application process to the Core and Intermediary Components of the CDFI Program. The Fund is sending surveys to past applicants and awardees for comments regarding the process.

Type of review: Extension with change.

Affected Public: Community development financial institutions, insured depository institutions, microenterprise organizations and organizations that provide support to microenterprise organizations.

Estimated Number of Respondents: 60.

Estimated Annual Time Per Respondent: 0.5 hours.

Estimated Total Annual Burden Hours: 30 hours.

REQUESTS FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: 12 U.S.C. 4703, 4718; chapter X, Pub.L. 104–19, 109 Stat. 237 (12 U.S.C. 4703 note).

Dated: July 13, 1999.

Maurice A. Jones,

Deputy Director for Policy and Programs, Community Development Financial Institutions Fund.

[FR Doc. 99–18303 Filed 7–16–99; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF VETERANS AFFAIRS

Rehabilitation Research and Development Service Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs gives notice under Pub. L. 92–463

(Federal Advisory Committee Act) as amended, by section 5(c) of Pub. L. 94–409 that a meeting of the Rehabilitation Research and Development Service Scientific Merit Review Board will be held at the Crowne Plaza Hotel, 1001 14th Street, NW, Washington, DC on July 28 through July 29, 1999.

The session on July 28th and July 29th, are scheduled to begin at 8:30 a.m. and end at 6:30 p.m. The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public for the July 28th session from 8:30 a.m. to 9 a.m. for the discussion of administrative matters, the general status of the program, and the administrative details of the review process. On July 28th, from 9 a.m. through July 29th, the meeting is closed during which the Board will be reviewing research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which would lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 552b(c)(6), and (c)(9)(B) and the determination of the Secretary of the Department of Veterans Affairs under sections 10(d) of Pub. L. 92–463 as amended by section 5(c) of Pub. L. 94–409.

Those who plan to attend the open session should contact Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service (122P), Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, phone (202) 275–0023.

Dated: July 13, 1999.

By Direction of the Secretary.

Marvin R. Eason,

Acting, Committee Management Officer.

[FR Doc. 99–18380 Filed 7–16–99; 8:45 am]

BILLING CODE 8320–01–M

federal register

Monday
July 19, 1999

Part II

Environmental Protection Agency

National Air Toxics Program: The Integrated Urban Strategy; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6376–7; Docket No. A–97–44]

National Air Toxics Program: The Integrated Urban Strategy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document provides an overview of EPA's national effort to reduce air toxics, including stationary and mobile source standards, cumulative risk initiatives, assessment approaches, and education and outreach. This national air toxics program includes activities under multiple Clean Air Act (Act) authorities to reduce air toxics emissions from all sources, including major industrial sources, smaller stationary sources, and mobile sources such as cars and trucks. By integrating activities under different parts of the Act, EPA can better address cumulative public health risks and adverse environmental impacts posed by exposures to multiple air toxics in areas where the emissions and risks are most significant.

In addition, this document describes a new major component of our national effort, the Integrated Urban Air Toxics Strategy (Strategy) developed under the authority of sections 112(k) and 112(c)(3) of the Act. The Strategy reflects the public comments received on the draft Strategy, which was published on September 14, 1998 (63 FR 49240).

The Strategy includes a description of risk reduction goals; a list of 33 hazardous air pollutants (HAPs) judged to pose the greatest potential threat to public health in the largest number of urban areas, including 30 HAPs specifically identified as being emitted from smaller industrial sources known as ''area'' sources; and a list of area source categories which emit a substantial portion of these HAPs, and which are being considered for regulation under section 112(d). Because mobile sources are an important contributor to the urban air toxics problem, the Strategy also describes actions under Title II (including section 202(l)) of the Act to reduce toxics from these sources, including those which address diesel particulate matter (PM).

The Strategy by itself doesn't automatically result in regulation or control of emissions. The EPA will perform further analyses of HAP emissions, control methods, and health impacts, as appropriate, for stationary and mobile sources. These analyses will inform any ultimate regulatory requirements that EPA develops under the Strategy.

ADDRESSES: A docket containing information relating to the development of this notice (Docket No. A–97–44) is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday except for Federal holidays, in the Air and Radiation Docket and Information Center (MC–6102), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; telephone (202) 260–7548. The docket office may charge a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: Laura McKelvey, Office of Air Quality Planning and Standards (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone number (919) 541–5497, electronic mail address: McKelvey.Laura''epa.gov.

SUPPLEMENTARY INFORMATION:

Plain Language

In compliance with President Clinton's June 1, 1998 Executive Memorandum on Plain Language in Government Writing, this package is written using plain language. Thus, the use of ''we'' in this package refers to EPA. The use of ''you'' refers to the reader and may include State, local or Tribal government agencies, industry, environmental groups, or other interested individuals.

Executive Order 12866

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

This notice was submitted to OMB for review. Any written comments from OMB and written EPA responses are available in the docket.

Docket

The docket is an organized file containing information related to the development of the Strategy. The main purpose of this docket is to allow you to readily identify and locate documents relevant to the development of the Strategy. The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, which is listed in the **ADDRESSES** section of this document.

Electronic Access and Filing Addresses

You can get this notice and other background information in Docket No. A–97–44 by contacting our Air and Radiation Docket and Information Center (see **ADDRESSES**), or by visiting our website at ''http://www.epa.gov/ttn/uatw/urban/urbanpg.html'' for electronic versions of the notice and other information. For assistance in downloading files, call the TTN HELP line at (919) 541–5384.

Outline

The information in this document is organized as follows:

I. National Efforts to Reduce Air Toxics
- A. What is our overall air toxics program?
- B. Why are we concerned about urban air in particular?
- C. What is the Integrated Urban Air Toxics Strategy?

II. Federal Activities Related to the Integrated Urban Air Toxics Strategy
- A. What HAPs pose the greatest threat in urban areas?
- B. How does EPA plan to address requirements for area sources of HAPs?
- C. What regulatory actions will EPA take to implement the Strategy?
- D. How do the various Federal authorities help EPA implement the Strategy?

III. State, Local and Tribal Activities
- A. Why are State, local and Tribal programs integral to the process?
- B. What are the objectives of State, local and Tribal activities?
- C. What were comments on the State/local/Tribal programs and how are they being addressed in the Strategy development?
- D. How can State, local or Tribal agencies participate in the Strategy?
- E. What elements should a State, local or Tribal program contain?

IV. Assessment Activities
- A. How will we assess progress toward goals?
- B. What methods, tools, and data will we use to estimate risk?
- C. What is our overall risk assessment approach for the Strategy?
- D. How will we design future assessments?

V. Knowledge and Tools

A. How will we review and expand ambient monitoring networks?
B. How will we update and maintain the emission inventory?
C. What air quality and exposure models will we use to implement the Strategy?
D. What are the research needs and what is EPA doing to address them?
VI. Public Participation and Communication
A. How will we encourage stakeholder involvement?
B. What is our overall timeline for action?
C. What reports will we prepare to communicate with the public?
Appendix A. Summary of other authorities, laws, rules, and programs to help reduce HAP emissions

I. National Efforts to Reduce Air Toxics

The 1990 Clean Air Act Amendments provided the foundation for our current air toxics program. This program is designed to characterize, prioritize and equitably address the serious impacts of HAPs on the public health and the environment through a strategic combination of regulatory approaches, voluntary partnerships, ongoing research and assessments, and education and outreach. Since 1990, we've made considerable progress in reducing emissions of air toxics [1] through regulatory, voluntary and other programs. To date, our overall air toxics program, summarized in section I.A., has focused on reducing emissions of toxic air pollutants from major stationary sources through the implementation of technology-based emissions standards as required in section 112(d). These actions have resulted, or are projected to result, in substantial reductions in HAP emissions.[2] Additionally, actions to address mobile and stationary sources under other Clean Air Act programs are achieving reductions in HAP emissions (for example, the phase-out of lead from gasoline). However, we expect that the emission reductions that will result from these other actions are only part of what will be necessary to protect public health and the environment from toxic air pollutants. In identifying additional steps, we'll use a risk-based focus to develop, implement and facilitate additional Federal and local regulatory and voluntary measures.

In considering additional steps towards protecting human health and the environment, we need to identify and focus on issues of highest priority. Current information indicates that there are potentially significant health risks associated with air toxics exposures affecting large numbers of people in urban areas, as discussed in section I.B. Recognizing this, Congress instructed us to develop a strategy for air toxics in urban areas that includes specific actions to address the large number of smaller, area sources,[3] and that contains broader risk reduction goals encompassing all stationary sources. More specifically, section 112(k)(1) states:

> The Congress finds that emissions of hazardous air pollutants from area sources may individually, or in the aggregate, present significant risks to the public health in urban areas. Considering the large number of persons exposed and the risks of carcinogenic and other adverse health effects from hazardous air pollutants, ambient concentrations characteristic of large urban areas should be reduced to levels substantially below those currently experienced.

As the ambient concentrations of HAPs in urban areas result from a combination of different sources (e.g., area, major,[4] and mobile [5]) emitting many of the same pollutants, we need to recognize contributions from all types of sources in achieving the reductions in ambient concentrations referred to in this subsection. Therefore, in addition to addressing specific statutory requirements for area sources, we've devised an integrated strategy for reducing cumulative public health risks in urban areas posed by the aggregated exposures to air toxics from all sources. The Integrated Urban Air Toxics Strategy (the Strategy) presented here, and summarized in section I.C. below, is one part of our overall national effort to reduce toxics. The basic components of the Strategy consist of the same basic elements as those of the overall air toxics program but with a specific focus on the particular needs of urban areas.

Before we describe the national efforts to control air toxics in more detail, we want to provide a brief overview of what air toxics are, their health and environmental effects, and their sources. These topics are discussed in more detail later in the notice, but their introduction here will help ensure that the remaining discussion in section I is based on a common understanding of the nature of the air toxics problem.

- What are air toxics?

The Act identifies 188 compounds as HAPs. They include pollutants like benzene found in gasoline, perchloroethylene emitted from dry cleaners, methylene chloride used as an industrial solvent, heavy metals like mercury and lead, polychlorinated biphenyls (PCBs), dioxins and some pesticides. These pollutants may cause cancer or other serious effects in humans or in the environment. Health concerns result from both short-and long-term exposures to these pollutants. They may disperse locally, regionally, nationally, or globally and after deposition may persist in the environment and/or bioaccumulate in the food chain, depending on their characteristics (such as vapor pressures, atmospheric transformation rates). Although not specifically listed as a HAP in section 112(b) of the Act, diesel emissions contain many HAPs, and are thus collectively considered under our overall program and the Strategy.

- What health and environmental effects do they cause?

Hazardous air pollutants can cause many health effects. More than half are known or suspected to be human carcinogens. Many are known to have respiratory, neurological, immune or reproductive effects, particularly for more susceptible or sensitive populations, such as children. Many of the HAPs are known to also cause adverse effects in many fish and animal species, including toxicity in fish or causing reproductive decline in bird species, including endangered species. These environmental effects may be felt by individual species within a single level of the food chain or by the entire ecosystem where multiple species are affected.

- What are the sources of air toxics?

There are literally millions of sources of air toxics, including large industrial complexes like chemical plants, oil refineries and steel mills; small (area) sources such as dry cleaners, gas stations, and small manufacturers; and mobile sources including cars, trucks, buses, and nonroad vehicles like ships and farm equipment.

[1] Our use of the terms ''air toxics'' or ''toxic air pollutants'' in this notice refers specifically to those pollutants which are listed under section 112(b) of the Act as ''hazardous air pollutants'' or HAPs. There are currently 188 HAPs listed.

[2] We project that by 2002, the full implementation of section 112(d) maximum achievable control technology (MACT) standards adopted to date will yield emissions reductions of approximately one million tons of HAPs per year. Within the next six years, completion and full implementation of section 112(d) technology-based standards for the remaining stationary source categories listed pursuant to section 112(c) will contribute additional emissions reductions.

[3] Area sources are those stationary sources that emit, or have the potential to emit, less than 10 tons per year of any one HAP or less than 25 tons per year of a combination of HAPs. Examples include hospital sterilizers and small publicly owned treatment works.

[4] Major stationary sources are sources that emit, or have the potential to emit, more than 10 tons per year of any one HAP or 25 tons per year of a combination of HAPs. Examples include chemical plants, oil refineries, aerospace manufacturers and steel mills.

[5] Mobile sources include motor vehicles (e.g., cars and trucks) and off-road equipment (e.g., construction equipment and lawn mowers), and their fuels.

A. What is Our Overall Air Toxics Program?

Our overall approach to reducing air toxics reflects the mandates under the Act to develop technology-based standards and then subsequently to implement a risk-based program to ensure the protection of public health and the environment. For example, in amending the Act in 1990, Congress required us to establish national standards to reduce emissions of air toxics from stationary and mobile sources. Under section 112(d), Congress emphasized the implementation of technology-based standards for stationary source categories emitting air toxics. These emission standards are known as maximum achievable control technology (MACT) standards, and generally available control technology (GACT) standards. Section 112(k) requires us to list area source categories and to ensure 90 percent of the emissions from area sources are subject to standards pursuant to section 112(d). In addition, under section 202, Congress requires us to set standards to control HAPs from motor vehicles and their fuels.

Further, the Act contains additional provisions that have a risk-based focus. Section 112(f) of the Act requires us to evaluate the risk remaining after implementation of MACT standards (i.e., the ''residual risk'') in order to evaluate the need for additional stationary source standards to protect public health and the environment.

Under section 112(k), the Act specifically mandated that we develop a Strategy (the subject of this notice) to address public health risks posed by air toxics from area sources in urban areas and report to Congress on this issue. In addition, section 112(k) of the Act also mandates that the Strategy achieve a 75-percent reduction in cancer incidence attributable to HAPs emitted by stationary sources.

Other sections of the Act call for study of other types of specific air toxics problems including a focus on certain HAPs that persist and bioaccumulate in the environment. These studies include the deposition of air toxics to Great Waters,[6] HAP emissions from electric utilities, and the health and environmental effects of mercury emissions, in particular.[7]

Our current national air toxics goal was developed to meet requirements of the Government Performance and Results Act (GPRA), which requires us to report on the status of our progress in implementing our programs. That goal is to reduce air toxics emissions by 75 percent from 1993 levels and to significantly reduce the risk to the public of cancer and other serious adverse health effects caused by airborne toxics. Because our knowledge and tools to assess the impacts of these emissions on public health and the environment were limited when we set this current goal, it reflects the straightforward intent to reduce total air toxics emissions as a means to reduce risks associated with exposure to air toxics. However, as we extend our knowledge, develop better assessment tools and begin to address the risks associated with these emissions as required by the Clean Air Act, we intend to modify our goal to one directed specifically at risk reductions associated with exposure to air toxics. In working toward such a risk-based goal, we'll focus particularly on populations and areas disproportionately impacted, including, for example, densely populated areas, children at risk of developmental effects and people who are highly exposed to water and food affected by air toxics (e.g., subsistence fishers living near contaminated water bodies). For more information on assessments, see section IV for an explanation of the assessment methods.

We intend to progress toward the program goal through a combination of our authorities, regulatory activities and voluntary initiatives. The overall approach to reducing air toxics consists of the following four key components:

- *Source-specific standards and sector-based standards.* As previously mentioned, section 112 specifies MACT/GACT standards, and residual risk standards, as well as those area source standards which are contemplated by the Integrated Urban Air Toxics Strategy. Additionally, section 129 requires standards for solid waste incineration and section 202(l) requires EPA, based on the mobile-source related Air Toxics Study, to promulgate reasonable requirements to control HAPs from motor vehicles and their fuels.
- *National, regional, and community-based initiatives to focus on multi-media and cumulative risks.* Section 112(k)(4) requires us to ''encourage and support area wide strategies developed by the State or local air pollution control agencies.'' Our risk initiatives will include State, local and Tribal program activities consistent with the Integrated Urban Air Toxics Strategy on the local level as well as Federal and regional activities associated with the multimedia aspects of HAPs, such as the Great Waters program[8] and initiatives concerning mercury, and other persistent bioaccumulative toxics (PBTs). Other Agency initiatives include collaboration between the air and water programs on the impact of air deposition on water quality (e.g., by accounting for the contribution of air deposition to the total maximum daily load (TMDL) of pollutants to a water body), and collaboration between offices within EPA's air program to assess the risks from exposures to air toxics indoors and to develop non-regulatory, voluntary programs to address those risks.
- *National air toxics assessments (NATA).* National air toxics assessments will help us identify areas of concern, characterize risks, and track our progress toward meeting our overall air toxics program goals, as well as the risk-based goals of the various activities and initiatives within the program, such as the Integrated Urban Air Toxics Strategy. The NATA activities include expansion of air toxics monitoring, improving and periodically updating emissions inventories, national- and local-scale air quality, multi-media and exposure modeling (including modeling which considers stationary and mobile sources), continued research on health effects and exposures to both ambient and indoor air, and use and improvement of exposure and assessment tools. These activities will provide us with improved characterizations of air toxics risk and risk reductions resulting from emissions control standards and initiatives for both stationary and mobile source programs.
- *Education and outreach.* In light of the scientific complexity inherent in air toxics issues, we recognize that the success of our overall air toxics program depends in part on our ability to communicate effectively with the public about air toxics risks and activities necessary to reduce those risks. This includes education and outreach efforts on air toxics in the ambient as well as indoor environments.

Following is a more detailed discussion of the activities under each of the four components of the national program.

[6] The Great Lakes, Chesapeake Bay, Lake Champlain and coastal waters are collectively referred to as the ''Great Waters.''

[7] These studies are required by sections 112(m), 112(n)(1)(A), and 112(n)(1)(B), respectively.

[8] Under section 112(m) of the Act, we assess and report to Congress on the deposition of air pollutants in the Great Lakes, Chesapeake Bay, Lake Champlain, and coastal waters. The third report to Congress on ''The Deposition of Air Pollutants to the Great Waters'' will be released later this year.

1. Source-specific Standards and Sector-based Standards

Maximum achievable control technology. The 1990 Clean Air Act Amendments required us to use a ''technology-based'' and a performance-based approach to significantly reduce emissions of air toxics from major sources of air pollution. These reductions are to be followed by a risk-based approach to address any remaining, or residual risks. Under the ''technology-based'' approach we develop standards for controlling the ''routine'' emissions of air toxics from each major source within an industry group (or ''source category''). These standards—known as ''maximum achievable control technology (MACT) standards''—are based on emissions levels that are already being achieved by the better controlled sources in an industry. This approach assures citizens nationwide that each major source of HAPs will be required to employ effective measures to limit its emissions.

Under this program, we listed for regulation 174 source categories that emit the 188 HAPs listed under section 112(b). To date, we've promulgated 43 standards regulating 78 source categories. We've proposed an additional 7 standards covering 8 source categories. Five source categories have been delisted. We're continuing to develop standards to cover the remaining source categories.

Combustion standards. We've also issued final rules to control emissions of certain air toxics from certain types of solid waste combustion facilities. These rules, required under section 129 of the Act, set emission limits for new solid waste combustion facilities and provide emissions guidelines for existing solid waste combustion facilities. These rules affect municipal waste combustors and hospital/medical/infectious waste incinerators, which account for 30 percent of the national mercury emissions to the air. By the time these rules are fully implemented we expect them to reduce mercury emissions from these sources by about 90 percent from current levels, and reduce dioxin/furan emissions by more than 95 percent from current levels. We're working on additional rules to address industrial and commercial waste incinerators, other solid waste incinerators and small municipal waste combustor units.

Residual risk. The residual risk program, required under section 112(f) of the Act, is designed to assess the risk from source categories after MACT standards are implemented. If we find a remaining, or residual, risk, we're required, within 8 years of the promulgation of the MACT standard, to set additional standards if the level of residual risk doesn't provide an ''ample margin of safety to protect public health'' or ''to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.'' [9]

In analyzing residual risk, we'll conduct risk assessments consistent with the Agency's human health and ecosystem risk assessment technical guidance and policies. We'll use a tiered approach, usually first conducting a screening level assessment for a source category, and move to a refined assessment only where the risks identified in the screening assessment appear unacceptable. Depending on the characteristics of the HAPs, these assessments will address single or multiple pathways of exposure as well as human and ecological endpoints.

Risk management decisions will be consistent with Agency policies. For carcinogens, we'll use a linear dose-response model unless data support nonlinear mechanisms. We'll follow the Agency's mixtures guidelines where a source category emits multiple HAPs.

For non-cancer effects, we'll use the EPA reference concentration or comparable criteria from other government agencies. As with the cancer effects, we'll follow the mixtures guidelines for emissions of multiple non-carcinogens.

In general, we'll base decisions on exposures predicted from modeling HAP emissions in air and, where appropriate, other media. Where available, we'll include monitoring data as part of our analysis for refined assessments. We'll estimate the size and characteristics of the exposed population, and conduct uncertainty and variability analysis where appropriate.

Currently we're conducting analyses on 13 of the earliest standards that we promulgated. We're conducting these analyses on a source category basis. Depending on the outcome of these analyses, we may find it necessary to modify our residual risk approach.

Mobile source standards. We started enforcing the first federal emission standards for passenger cars in 1968. Since then, acting under specific mandates from the Congress and under general authority, we've developed emission standards for all types of highway vehicles, their fuels, and engines used in virtually all varieties of mobile or portable nonroad equipment such as tractors, construction vehicles, recreational and commercial vessels, and lawn and garden equipment. We've also made the emission standards more stringent over time. New highway vehicles using gasoline are now all equipped with advanced catalysts and computer-controlled fuel systems. Diesel vehicles and most nonroad engines have been substantially redesigned to meet our emission standards as well. Diesel buses in urban areas are subject to a special limit on their emissions of particulate matter. All gasoline and highway diesel fuel used in the United States is subject to emission-reducing standards for volatility and sulfur, respectively. About one-quarter of the gasoline used in the United States is now subject to our reformulated gasoline program, and has lower volatility, reduced concentrations of benzene and other aromatics, and other beneficial changes. In May of this year, we proposed stringent new standards for all cars and light trucks, and the gasoline they use. At the same time we issued an advanced notice of proposed rulemaking to solicit information relating to control of diesel fuel quality. This year, we're also reviewing our standards for heavy-duty highway vehicles. In 2001, we'll do the same for heavy-duty nonroad engines.

To date, most of our emission standards have been aimed at improving urban air quality for the criteria pollutants carbon monoxide, ozone, and PM10. However, the emission control equipment on engines and vehicles, along with the fuel changes that have been needed to meet our emission standards, are also effective at reducing emissions of many HAPs. Our requirement to reduce and then end the use of lead additives in gasoline is an example of a standard that specifically reduced emissions of toxic pollutants. The reformulated gasoline program is another example, as it includes a performance standard for the emissions of several important HAPs.

Because of the time it takes for older vehicles to retire and be replaced with newer vehicles that comply with the latest emission standards, total mobile source toxics emissions will decline for many years into the future.

While the toxic reductions from our emission standards have been large, prior to 1990 we had no specific directions from Congress for a planned program to control toxic emissions from mobile sources. However, section 202(l), added by the Clean Air Act Amendments of 1990, requires us to complete a study of motor vehicle-related air toxics, and to promulgate

[9] The Residual Risk Report to Congress, March 3, 1999, describes our approach on risk assessment methods for use across the air toxics program, and our approach for conducting residual risk analyses. (EPA–453–/R–99–001)

requirements for the control of HAPs from motor vehicles based on that study. We completed the required study in 1993, and are presently preparing an update to that study, and considering rulemaking under section 202(l)(2). In addition, the 1990 Amendments give us discretionary authority to control toxic emissions from nonroad mobile engines. We plan to study the role of nonroad engines in the air toxics problem over the next couple of years, and may propose standards if appropriate.

2. National, Regional, and Community-based Initiative to Focus on Multi-media and Cumulative Risks

The Clean Air Act requires a number of risk studies to help us better characterize risk to the public and the environment from HAPs. Information from these studies will provide information for rulemaking in some cases but will also provide information to support national and local efforts to address risks through other voluntary and pollution prevention programs. The following paragraphs describe these studies.

Utility study. Section 112(n)(1)(A) of the Act requires ''a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of pollutants listed under subsection [112(b)].'' We completed this study in February of 1998. We're currently collecting additional information to support a determination on whether regulations are appropriate and necessary to address risks from HAPs from these sources. We expect all test reports required under our information requests by May 31, 2000. We'll use this information to conduct additional analysis of the emissions of mercury from utilities and potential control technologies. In addition, we'll continue the analysis of health-related issues. We plan to make our determination about the need for regulation by December 15, 2000.

Great Waters Program. Section 112(m) requires us to monitor, assess and report on the deposition of HAPs to the ''Great Waters,'' which include the Chesapeake Bay, Lake Champlain, the Great Lakes, National Estuary Programs, and National Estuarine Research Reserves. We're required to assess deposition to these waters by: establishing a deposition monitoring network; investigating the sources of pollution; improving monitoring methods; evaluating adverse effects; and sampling for the pollutants in aquatic plants and wildlife. Pollutants of concern to the Great Waters include mercury, lead, cadmium, nitrogen compounds, polycylic organic matter/polynuclear aromatic hydrocarbons (POM/PAHs), dioxin and furans, PCBs and seven banned or restricted pesticides.

We're also required to provide an update to Congress every two years on any new information relating to deposition of HAPs to the Great Waters. We issued the first two reports to Congress in 1994 and 1997. In addition, in March 1998, we made a determination under section 112(m)(6) that we have enough authority under the Act to address the HAPs impacting the Great Waters. The third report to Congress is scheduled for September 1999, and will focus on the contribution of atmospheric deposition, environmental and public health effects, sources of pollution, and exceedences of standards.

As part of the Great Waters Program, we're funding special monitoring studies at 13 different coastal areas. In addition, we're expanding the National Atmospheric Deposition Program to include more coastal sites for long-term deposition records. We'll continue to develop a coastal monitoring network and to improve air deposition monitoring methods.

In an effort to coordinate programs under the Clean Air Act and the Clean Water Act, we're conducting a pilot study to link air dispersion and deposition models with watershed fate and transport models. The results of this study will help us to improve our multimedia analysis efforts and will allow us to look at the connection between our legal authorities under the two Acts.

Mercury study. Section 112(n)(1)(B) requires that we issue a report to Congress on the sources and impacts of mercury. We released the report in December 1997. The report included an assessment of the emissions of mercury from all known anthropogenic sources in the United States, the health and environmental implications of these emissions, and the availability and cost of control of these emissions.

Urban Air Toxics Strategy. Section 112(k) of the Act requires us to develop a strategy to identify and address risks to the public in urban areas. We'll describe the Integrated Urban Air Toxics Strategy in more detail in later sections of this document.

3. National Air Toxics Assessments (NATA)

As mentioned previously, in order for the national air toxics program to move to a more risk-based program, it's imperative that we have strong analytical tools to support activities to identify risks, to track progress toward risk goals and to help prioritize our efforts to address emissions and risks from air toxics. Several assessment activities are under way to support the national air toxics program, as described in the following paragraphs.

Federal air toxics monitoring. Ambient air toxics information is a key component in supporting assessment activities, helping to determine exposure, tracking progress of the air toxics program goals, and evaluating models and other assessment tools. Because of the importance of this information, we're currently developing an approach to monitoring air toxics nationally and locally with State and local agencies. We envision a monitoring network with some monitors operated on the national level to track overall national trends. This monitoring network may include both new monitoring sites located for air toxics monitoring, as well as information leveraged from other national monitoring networks including Photochemical Assessment Monitoring Stations (PAMS) (which collect at least eight HAPs) and the PM2.5 sites (which collect most of the metals). We'll also compile data from the State toxics monitoring networks.

In order to optimize our monitoring resources, we're working with our regulatory partners to expand monitoring networks by adding new sites; merging existing Federal and States sites where appropriate (e.g., PACS, PM2.5 and Speciation Trends sites); targeting urban population-oriented sites; developing a common Acore'' list of compounds to monitor; and implementing a phased approach to expanding the number of sites and compounds to fill the data gaps.

Emissions inventories. Over the past several years we've worked to build a program for a national inventory of air toxics emissions. We now have data sets for the 1990 to 1993 period and a draft for 1996. The 1996 National Toxics Inventory (NTI) will be used as part of the NATA for modeling and data analyses. It includes information generated from MACT standards development, as well as information provided by 36 States and various industries. The 1996 NTI is currently under review by the State and local agencies. We expect the 1996 NTI to be final in the fall of 1999.

Modeling. The NATA will include modeling efforts using information from the emissions inventory and supported by the monitoring data. We're working toward a future focus on integrated multi-media/multipathway assessments. We intend to conduct assessments on the national, regional, and local scales

to support activities at all levels of the air toxics program. Initially we'll use the Assessment System for Population Exposure Nationwide (ASPEN) model (used in the Cumulative Exposure Project) to conduct national level assessments.

In the fall and winter of 1999, we'll conduct national level assessments to estimate ambient concentrations of HAP and predict the exposures that would result. This information will be released in the spring of 2000. These assessments are described in more detail in section IV.D.

In addition, we intend to use air quality and exposure models for source-specific assessments and to look at selected urban areas. In the near future, we expect to use the Total Risk Integrated Model (TRIM) to address local or neighborhood scale applications. This model will have the capability to address human health and ecological impacts. We expect this to be available late in 2000. In addition, we're working on a Models-3/Community Multi-scale Air Quality (CMAQ) Modeling System. Initially, this model will support assessments on the urban- to regional-scale. Eventually, however, it will be used for neighborhood-scale assessments. By the end of 2000, we expect to have an operational evaluation of the model using mercury and some semi-volatile compounds, with a final evaluation completed by 2001. This model includes capabilities to address ozone and PM, together with air toxics, and will be able to link with a human exposure model.

4. Education and Outreach

We believe that public participation is vitally important in the implementation of the overall air toxics program. We're committed to work with cities, communities, State, local and Tribal agencies, and other groups and organizations that can help implement our approach to reducing toxics emissions. For example, we expect to work with the cities, our regulatory partners, and other interested stakeholders in the national air toxics assessments that will be conducted. In addition, we'll continue to work with stakeholders on regulation development. We intend to involve local communities and industries in development of local risk initiatives such as the total maximum daily load (TMDL) initiatives.

B. Why Are We Concerned About Urban Air in Particular?

In urban areas, toxic air pollutants raise concerns because sources of emissions and people are concentrated in the same geographic area, leading to large numbers of people exposed to the emissions of many HAPs from many sources. Additionally, while urban exposures to some pollutants may be fairly similar across the country, studies in a number of urban areas indicate that exposures to other pollutants, and any associated risks, may vary significantly from one urban area to the next. The tools we rely on in our efforts to better characterize urban health risks from air toxics each have associated uncertainties, which may add to our concerns. We intend our NATA activities to improve our ability to describe these uncertainties and where possible, reduce them. As currently available, the various types of information (e.g., emissions, ambient air quality monitoring and modeling) that will be central to our NATA activities illustrate the importance of focusing on urban areas.

First, our baseline national emissions inventory [10] for the air toxics program indicates that the vast majority of HAP emissions (approximately 75 percent of the total HAP emissions of all 188 HAPs from all sources) are within counties with urban areas.[11] Additionally, a greater number of different HAPs may be emitted from the multiple sources present in urban areas than from the more limited number and variety of sources present in rural areas. This is particularly important because even in cases where individual pollutant levels are low enough that exposure to any one pollutant wouldn't be expected to pose harm, some pollutants may work together such that their potential for harm increases and exposure to the mixture poses harm. Thus, depending on exposure levels and characteristics of the pollutants, multiple pollutant exposures, which may be prevalent in urban populations, may pose increased public health risks.

Second, ambient air monitoring information collected by States in certain metropolitan areas during the 1990s demonstrate the simultaneous presence of many HAPs in urban air and, thus, the potential for urban population exposures to multiple HAPs. In assessing the implications of these monitored HAP concentrations for potential public health concerns, we combined the measured ambient HAP concentrations with quantitative estimates of each HAP's cancer potency. This limited evaluation of a subset of the small number of HAPs monitored indicates the presence of HAPs in some cities that when evaluated cumulatively is suggestive of upper bound estimates of additional cancer risks at or above one in ten thousand.[12] This type of limited evaluation can provide indications of potential public health concerns, but should not be considered a characterization of actual health risks.

Third, an early effort by the Agency to model ambient HAP concentrations on a national scale performed for EPA's Cumulative Exposure Project (CEP) suggests that HAP exposures are prevalent nationwide, and that for some HAPs, in some locations, concentrations are significantly higher than the concentrations that, if exposures are continuous over a lifetime, are associated with a one-in-one million lifetime excess cancer risk.[13, 14] As stated above, estimated concentrations greater than risk-based concentrations should be viewed as indicators of a potential public health problem and not as characterizations of actual health risks. Illustrating the need for special attention in urban areas, the early modeling analysis found that for 75 percent of the HAPs modeled, the average estimated concentrations in urban census tracts [15] were greater, and in some cases much greater, than the overall national average concentrations.

The concentration of activities in urban areas leads to the presence of multiple emission sources and

[10] The baseline national toxics inventory (NTI) that we've compiled over the past few years is representative of the years 1990–93. We believe that this is an appropriate baseline because these years represent the ''pre-MACT'' emissions for HAP sources. This baseline inventory contains information on major, area and mobile sources for all 188 HAPs and provides information on whether the emissions are urban or rural. A subset of this baseline inventory is information collected and extensively reviewed by the public to support analyses for this Strategy and regulatory actions under section 112(c)(6).

[11] In estimating the amount of emissions from urban areas, we've totaled emissions from all U.S. counties that include a metropolitan statistical area with a population greater than 250,000 or for which more than 50 percent of the population has been designated ''urban'' by the U.S. Census Bureau. For a more detailed description of emissions allocation, see the emissions information prepared to support this Strategy (''Emissions Inventory of 40 Candidate Section 112(k) Pollutants; Supporting Data for EPA's 112(k) Regulatory Strategy''), available at www.epa.gov/ttn/uatw/112k/112kfac.html.

[12] The technical support documentation for this assessment analysis is available from the public docket and includes a presentation of ambient monitoring data in 17 cities for a variety of HAPs. Also presented are the upper bound estimates of excess cancer associated with continuous lifetime exposures at those concentrations.

[13] SAIC. 1998. Final Report, Modeling cumulative outdoor concentrations of hazardous air pollutants.

[14] Woodruff, et al. 1998. Public Health Implications of 1990 Air Toxics Concentrations across the United States. Environ. Health Persp. 106(5):245–251.

[15] Census tracts with residential population density greater than 750 persons per square kilometer.

proportionately higher emissions of multiple HAPs. Many of these emission sources are area or mobile sources, and their emissions are more likely to be released at ground level, where people are more likely to be exposed to them. Because approximately 80 percent of the U.S. population lives in metropolitan areas,[16] exposures resulting from urban air toxics emissions may pose a significant risk to public health. Additionally, the prevalence of minority and low income communities in urban industrial and commercial areas, where ambient concentrations of HAPs may be greater, increases the likelihood of elevated HAP exposures among these subgroups. The potential for air toxics in urban areas, either directly or indirectly, to contribute to elevated health risks among these and other subgroups (especially including children, the elderly and persons with existing illness or other potential vulnerability) demonstrates the need to assess risk distributions across urban populations in order to address disproportionate impacts of air toxics hazards.[17]

As described earlier in this notice, we have been and are continuing to develop various Federal standards for stationary and mobile sources as part of the air toxics program and under other Clean Air Act authorities. These standards, as well as standards developed by State and local authorities, are expected to improve air quality in urban areas. As part of the air toxics program, we will be assessing what additional actions, both at the national and local level, are needed to further improve air quality in urban areas. This is a primary focus of the Integrated Urban Air Toxics Strategy, described more fully in the rest of this notice. We will include State and local authorities, and in particular mayors, in planning activities to assess local air quality and to address concerns.

C. What is the Integrated Urban Air Toxics Strategy?

The Strategy presented in this notice has been developed in response to the requirements of sections 112(k) and 112(c)(3) of the Act, and also reflects activities to control mobile source emissions required under section 202(l). As stated previously, the Strategy represents an integration of our authorities to identify and address risks from both stationary and mobile sources. In this section of the notice, we describe the goals and major components of the Strategy, while later sections describe more fully those components. Additionally, section 112(k) of the Act also requires us to report to Congress, on two occasions, regarding actions taken under the Strategy and current information regarding public health risks posed by HAP emissions in urban areas. We're currently preparing the first of these two reports to Congress, and its release is planned for later this year.

1. Goals of the Strategy

Our goals for the Strategy reflect both statutory requirements stated in section 112(k) and the goals of our overall air toxics program. These goals consist of the following:

- *Attain a 75-percent reduction in incidence of cancer attributable to exposure to HAPs emitted by stationary sources.* This is relevant to all HAPs from both major and area stationary sources, in all urban areas nationwide. Reductions can be the result of actions by Federal, State, local and/or Tribal governments, achieved by any regulations or voluntary actions.
- *Attain a substantial reduction in public health risks posed by HAP emissions from area sources.* This includes health effects other than cancer posed by all HAPs. Reductions can be the result of actions by Federal, State, local and/or Tribal governments, achieved by any regulations or voluntary actions.
- *Address disproportionate impacts of air toxics hazards across urban areas.* This will necessarily involve consideration of both stationary and mobile source emissions of all HAPs, as well as sources of HAPs in indoor air. We intend to characterize exposure and risk distributions both geographically and demographically. This will include particular emphasis on highly exposed individuals (such as those in geographic Ahot spots'') and specific population subgroups (e.g., children, the elderly, and low-income communities).

The Act includes certain specific requirements for the Strategy. First, we're required to identify at least 30 HAPs, ''which, as the result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas'' (section 112(k)(3)(B)(i) of the Act). Second, we're required to assure that sources accounting for 90 percent of the emissions of identified area source HAPs are subject to standards (section 112(k)(3)(B)(ii) and section 112(c)(3)). These steps will contribute to our progress toward the Strategy's goals.

In meeting the Strategy's goals, we'll consider reductions in HAPs resulting, not only from actions under our overall air toxics program (e.g., MACT, residual risk standards, mobile source emission controls) and measures resulting from programs to attain the national ambient air quality standards for particulate matter and ozone (as well as our other regulatory programs), but also from State, local and Tribal measures. Further, we'll consider cumulative risks presented by exposures to emissions of HAPs from sources in the aggregate. This is consistent with the language of section 112(k)(1) of the Act, quoted earlier. Further, consistent with the direction of section 112(k)(4) to encourage and support area-wide strategies developed by State or local air pollution control agencies, we'll work with State, local, and Tribal air pollution control programs for additional progress toward these goals.

Continuous advances in our knowledge and activities within the broader air toxics program, both of which are expected to contribute especially relevant information, will be integral to the implementation of the Strategy. For example, certain air toxics, such as mercury, may be deposited from the air into soil and/or water, taken up by organisms into the food chain, and bioaccumulate so that concentrations increase through each level of the food chain. The result is that humans and wildlife can be exposed to these ''air'' toxics by eating contaminated food, especially predatory fish from affected water bodies. We're concerned about individuals in urban areas that eat more than the average amount of fish from local sources, including urban subsistence fishers. Under the Great Waters program, we monitor air toxics deposition and evaluate potential adverse effects on public health and the environment including those related to contaminated ecosystems and fish. This information will assist us in assessing the potential for certain HAPs to pose multipathway health risks to urban residents of coastal areas (e.g., risks from both inhalation of HAPs and consumption of fish contaminated by deposition of HAPs to waterways).

The indoor environments program is another Agency activity with particular relevance to the Strategy because people in urban settings spend as much as 80

[16] U.S. Department of Commerce, 1997, *Population Profile of the United States.* Current population reports, special studies P23–194. Economic and Statistics Administration, Bureau of the Census, Washington, D.C.

[17] The reader should note that all of these examples illustrate that there are different ways of representing urban areas. These are all individually valid, but the result is that different definitions lead to different approximations of the affected population. In the remainder of the Strategy, we'll explain which definition we're using in each particular context.

to 90 percent of their time indoors.[18] Additionally, outdoor air is brought indoors through infiltration and mechanical ventilation and there are also many sources of air toxics indoors. As part of this Strategy, EPA will assess the current information on indoor emissions and air concentrations of air toxics, and will use the data, to the extent possible, to estimate exposures to air toxics in indoor environments. As we continue to develop and enhance our knowledge of exposures and risks from indoor air toxics through the indoor environments program, we'll seek to include information on indoor exposures in our characterization of risk associated with outdoor sources and in the development of risk management options for air toxics. We also intend to conduct additional research on indoor air exposures to HAPs and on the relative significance of outdoor and indoor concentrations of HAPs, as well as on the relationship between outdoor emission sources and indoor concentrations of HAPs.

2. Developing the Strategy

To address the problem of exposure to air toxics in urban areas, we published a draft strategy on September 14, 1998 (63 FR 49240) that addressed the urban air toxics risks from both stationary and mobile sources. We asked for, and received, extensive public comment on the draft strategy. We received over 120 letters and heard from numerous speakers at stakeholder meetings in Alexandria, VA; Durham, NC; Chicago, IL; and San Francisco, CA, as well as at other meetings including a public meeting in New York City and meetings with the National Environmental Justice Advisory Council. As discussed throughout the following sections of this notice, we considered these comments in developing the final Strategy. Comment letters, meeting summaries, and material developed to analyze and respond to comments are in the public docket (Docket No. A–97–44).

The Strategy being published today will produce a set of actions in response to the cumulative public health risks presented by exposures to emissions of multiple HAPs from multiple sources. We believe that by considering urban air toxics emissions from all sources, we'll better understand and address the relative risks posed by any one pollutant and/or source category. Thus, by integrating activities under different parts of the Act, we can more realistically address aggregate exposure in areas where the emissions and risks are most significant and controls are the most cost effective.

3. Components of the Strategy

Consistent with the broader overall air toxics program (described in section I.A.), the Strategy is made up of four interrelated parts or components for addressing the public health risk associated with urban air toxics. Information from each of the four components provides feedback to the others to inform the decisions needed to make progress toward meeting our goals.

The first component includes our regulatory tools and programmatic activities for source-specific and sector-based standard setting, as well as those of States, local agencies, and Tribes, which contribute to reductions in emissions of air toxics from major, area, and mobile sources. This component includes activities such as selecting urban HAPs, setting emission standards, conducting studies, developing policies, and conducting enforcement and compliance assistance activities. These actions result in emission reductions, as well as associated reductions in risk. Sections II and III of this document describe the regulatory activities we'll pursue to implement the Strategy.

The second component of the Strategy involves local and community-based initiatives to focus on multi-media and cumulative risks within urban areas. These may include activities such as pilot projects to identify and address risk, and may rely on some of the assessment activities and tools described below. Section III of this document describes the nature of some of these activities.

The third component is the urban component of NATA, which will provide us with meaningful information and allow us to describe progress that we've made in meeting our overall program and strategy-specific goals. We'll identify the pollutants and sources that contribute to any failures in meeting our risk reduction goals, and provide meaningful information to support regulatory and policy decisions needed to move us closer to meeting them. Section IV of this document, Assessment Activities, describes how we'll design and conduct these assessments. These activities rely on our improving base of knowledge (e.g., concerning health effects and exposure characteristics) and tools (e.g., emissions inventories, monitoring networks, and computer models), which are described in section V, along with our plans for their improvement and related research.

The fourth component, communicating about risk through education and outreach to the public, ensures that the activities we undertake are responsive to your concerns. We'll depend on stakeholder involvement at the national and local levels to implement the Strategy. Section VI explains how we'll communicate with the public on these issues.

We've formulated an integrated Strategy to characterize, prioritize, and equitably address the public health impacts of HAPs in urban areas. The Strategy relies on a strategic combination of regulatory approaches and voluntary partnerships, both of which are based on ongoing research and assessments, and include educational outreach. Sections II through VI of this document explain how the components described above work, how they'll be expanded and improved, and how we expect to meet our goals to reduce risk from HAPs.

4. Overview of the Strategy

The Integrated Urban Air Toxics Strategy, in conjunction with the overall air toxics program, will continue to lower human exposure to air toxics by reducing emissions. Progress will be achieved by:

- Completing MACT standards.
- Addressing residual risk.
- Implementing the urban air toxics strategy.
- Enhancing our ability to characterize risk and estimate exposures.
- Developing new tools for monitoring progress with the goals of the air toxics program.
- Developing a monitoring network.
- Effectively implementing and enforcing standards.

We'll achieve these objectives by following the guiding principles of the air toxics program:

- Working cooperatively and effectively with State and local communities.
- Focusing on communities, susceptible populations, and sensitive ecosystems.
- Providing cost-effective, common-sense solutions to problems, through flexible strategies.
- Developing and executing an effective education and outreach program.

[18] The indoor environments program is a non-regulatory program, working under the authority of Superfund Amendments and Reauthorization Act (SARA) Title IV to perform research and provide information to the public on the health problems associated with air pollutants in the indoor environment. Most of the guidance provided by the indoor environments program focuses on reducing pollutants throughout buildings through proper building design, operation, and maintenance, including management of indoor sources. The program works through an extensive network of partners in providing training and information on indoor air environmental issues throughout the United States.

The Strategy will bring together the four basic components (standards, initiatives, assessment, and outreach). It will be an iterative and evolving process that will use existing programs and tools to target risk reduction and to continually assess risk and measure progress.

II. Federal Activities Related to the Integrated Urban Air Toxics Strategy

A. What HAPs Pose the Greatest Threat in Urban Areas?

This section provides further discussion of what air toxics are, the concerns they present, and describes how we evaluated and selected a list of HAPs to guide our actions under the Strategy. In brief, we evaluated the health effects information available for the 188 HAPs, estimated emissions from all known sources using a variety of techniques, assessed available air quality monitoring data, reviewed existing studies, and produced a list of pollutants based on the relative hazards they pose in urban areas, considering toxicity, emissions, and related characteristics. From this effort, we established a list of urban HAPs which pose the greatest threats to public health in urban areas, considering emissions from major, area and mobile sources. Among these urban HAPs are a subset of the 30 HAPs having the greatest emissions contribution from area sources (the ''area source HAPs'').

1. Air Toxics Defined

Section 112(b) of the Act identifies 188 toxic chemicals as HAPs. Hazardous air pollutants include a wide variety of organic and inorganic substances released from industrial operations (both large and small), fossil fuel combustion, gasoline and diesel-powered vehicles, and many other sources. The major categories of toxic air pollutants include volatile organic compounds (known as VOCs), metals and inorganic chemicals, and semi-volatile organic chemicals. Volatile chemicals are usually released into the air as vapor, while semi-volatile organics and metals may be released in the form of particles. Additionally, 17 of the 188 HAPs are defined as chemical groups rather than unique chemicals. In evaluating the health effects, emissions and monitoring information for these chemical groups we made specific decisions regarding our treatment of the available information for the group or the individual chemicals represented by the group (see the technical support document in the public docket for the identification of the urban HAPs).

Of the 17 chemical groups, polycyclic organic matter (POM) posed particular complications. Polycyclic organic matter is defined in section 112(b) of the Act as organic compounds with more than one benzene ring and a boiling point greater than or equal to 100 °C, which encompasses a complex mixture of thousands of polynuclear aromatic hydrocarbons (PAH). Among the many PAH constituents of POM are seven compounds (benzo[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, chrysene, dibenzo[a,h]anthracene, and indeno[1,2,3-c,d]pyrene) that we've identified as probable human carcinogens. For the evaluation of POM as a potential public health threat in urban areas, and for the subsequent source category analysis, we used this group (referred to as 7-PAH) as a surrogate for the much larger, more complex and diverse mixture of POM.

The 188 HAPs have been associated with a wide variety of adverse health effects, including cancer, neurological effects, reproductive effects and developmental effects. Additionally, the specific health effects associated with the various HAPs may differ, depending on the particular circumstances of exposure (e.g., the amount of chemical, the length of time a person is exposed, the stage in life of the person exposed). We've classified many of the HAPs as ''known,'' ''probable,'' or ''possible'' human carcinogens and have included this information in our Integrated Risk Information System.[19] The HAPs can also be described with regard to the part of the human body to which they pose threats of harm. For example, neurotoxic pollutants cause harm to the nervous system. Other effects include cardiovascular, and respiratory effects, as well as effects on the immune system and reproductive system. The severity of harm can range from headaches and nausea to respiratory arrest and death. The level of severity differs both with the amount and length of exposure and the chemical itself (e.g., how it interacts with individual components of the nervous system). Some chemicals pose particular hazards to people of a certain age or stage in life or even based on their ethnic background. For example, some HAPs are developmental toxicants. That is, exposure to certain amounts of these chemicals during a woman's pregnancy or exposure of infants or children can prevent normal development into a healthy adult. Other HAPs are reproductive toxicants, meaning they may have the potential to affect the ability of adults to conceive or give birth to a healthy baby.

In addition, we're currently investigating the health risks associated with the mixture of compounds that comprise diesel exhaust which originates primarily from mobile sources. While not specifically listed as one of the 188 HAPs, diesel exhaust includes many HAPs, including chemicals that fall into the group of POM chemicals, as well as some HAP metals and volatile organic compounds. In addition, we're concerned about the potential health risks from the particulate matter component of diesel exhaust. Diesel particles are characteristically small and fall within the size range of inhalable particles addressed by the national ambient air quality standards for particulate matter.[20] Our draft health assessment of diesel emissions identifies lung cancer as well as several other adverse respiratory health effects, including respiratory tract irritation, immunological effects, and changes in lung function, as possible concerns for long-term exposures to diesel exhaust.[21] If new diesel engine models are used in an increasing share of the light duty fleet,[22] concerns regarding potential

[19] The Integrated Risk Information System (IRIS), prepared and maintained here at EPA, is an electronic data base containing information on human health effects that may result from exposure to various chemicals in the environment. IRIS was initially developed in response to a growing demand for consistent information on chemical substances for use in risk assessments, decision-making and regulatory activities. The information in IRIS is intended for those without extensive training in toxicology, but with some knowledge of health sciences. Further information about IRIS, including the information it contains, can be found on the IRIS website at http://www.epa.gov/iris.

[20] Inhalable particles are defined as particles of aerodynamic diameter less than or equal to 10 micrometers.

[21] Health Assessment Document for Diesel Emissions, SAB Review Draft, U.S. Environmental Protection Agency, Washington, D.C. EPA/600/8–90–057C, February 1998. The evidence comes from studies involving occupational exposures and/or high exposure animal studies. The Health Assessment, when completed, will recommend how the data should be interpreted for lower environmental levels of exposure. The draft Health Assessment is currently being revised to address comments from a peer review panel of the Clean Air Science Advisory Committee (CASAC Review of the Draft Diesel Health Assessment Document, U.S. Environmental Protection Agency Science Advisory Board, Washington, D.C. EPA–SAB–CASC–99–001. The CASAC will review these revisions later this year.)

[22] Diesel engines in highway and nonroad mobile sources are numerous and widespread. Heavy-duty highway and nonroad diesel engines are the largest sources of diesel exhaust emissions. While diesel engines are used in a relatively small number of cars and light-duty trucks today, vehicle and engine manufacturers are developing new engine models that may be used in an increasing share of the light-duty fleet, particularly light-duty trucks.

health risks from diesel exhaust will become more significant.

As described above, HAPs and mixtures containing HAPs have the potential to pose a variety of health risks depending on their chemical characteristics, as well as the circumstances of human exposure. In the following two sections, we describe our identification of HAPs of particular concern in urban areas nationally.

2. The URBAN HAPs

Although information is limited regarding actual health risks posed by specific HAP emissions, the availability of various other types of information is sufficient to achieve our objective of identifying those HAPs posing the greatest potential public health concern in the largest number of urban areas. For the purpose of meeting the requirements of section 112(k) and section 112(c)(3), we've listed in Table 1 the 33 HAPs that, on a national scale, we believe pose the greatest threat to public health in the largest number of urban areas. Of these 33 HAPs, 29 appeared on the draft urban HAPs list published in our September 14, 1998 **Federal Register** document (63 FR 49240). Changes to the list resulted from changes made to the method for urban HAPs selection, the input data and the final selection criteria upon consideration of comments received on the draft list and its supporting methodology. [23]

TABLE 1.—LIST OF URBAN HAPS FOR THE INTEGRATED URBAN AIR TOXICS STRATEGY

["Urban HAPs List"]

HAP	CAS No.+ HAP
acetaldehyde	75070
acrolein	107028
acrylonitrile	107131
arsenic compounds	
benzene	71432
beryllium compounds	
1,3-butadiene	106990
cadmium compounds	
carbon tetrachloride*	56235
chloroform	67663
chromium compounds	
coke oven emissions*	8007452
1,2-dibromoethane*	106934
1,2-dichloropropane (propylene dichloride)	78875
1,3-dichloropropene	542756
ethylene dichloride (1,2-dichloroethane)	107062
ethylene oxide	75218
formaldehyde	50000
hexachlorobenzene	118741
hydrazine	302012
lead compounds	
manganese compounds	
mercury compounds	
methylene chloride (dichloromethane)	75092
nickel compounds	
polychlorinated biphenyls (PCBs)	1336363
polycyclic organic matter (POM)	
quinoline	91225
2,3,7,8-tetrachlorodibenzo-p-dioxin (and congeners and TCDF congeners)	1746016
1,1,2,2-tetrachloroethane	79345
tetrachloroethylene (perchloroethylene)	127184
trichloroethylene	79016
vinyl chloride	75014

+ Chemical Abstracts System number.
* HAPs with less significant emissions contributions from area sources.

This list of 33 urban HAPs includes not only those with emissions from area sources, but reflects the integrated nature of the Strategy by including those posing public health concerns in urban areas regardless of emissions source type. Included among the 33 urban HAPs are the 30 HAPs with greatest emissions contributions from area sources (i.e., the area source HAPs'').

In response to publication of our draft list of urban HAPs, we received comments regarding our inclusion of HAPs emitted predominantly from non-area sources. Several commenters said that it was inappropriate to include HAPs for which area source contribution was low or negligible. Although section 112(k)(3)(B)(i) only requires that we list HAPs emitted from area sources, we believe that the public is exposed to complex mixtures of pollutants, and that these pollutants are emitted by all types of sources. In other words, the risk from exposure to HAPs has public health implications regardless of the source or source type from which they are emitted. Therefore, in the interests of best protecting public health in urban areas, we've listed the 33 HAPs in Table 1 considering the aggregate exposure potential of mobile,

[23] The final list includes beryllium compounds, hexachlorobenzene, polychlorinated biphenyls and 1,1,2,2 tetrachloroethane, which hadn't appeared on the draft list, and doesn't include bis(2-ethylhexyl)phthalate (DEHP), 1,4-dichlorobenzene, methyl chloride and methylene diphenyl diisocyanate (MDI), which were on the draft list.

area, and major stationary source emissions combined. At the same time, as described below, we've also identified the 30 HAPs with the greatest area source contribution. Under section 112(k), there aren't any specific regulatory implications of listing the other three HAPs. However, we'll use all 33 HAPs in prioritizing efforts to address risk.

Section 112(k)(3)(B) of the Act requires us to identify not less than 30 HAPs that are estimated to pose the greatest threat to public health in the largest number of urban areas ''as the result of emissions from area sources.'' The Act, however, doesn't state that such threats must be exclusively the result of emissions from area sources. Therefore, from the list of 33 urban HAPs (i.e., the HAPs that pose the greatest threat to public health in urban areas because they ranked highest relative to the other HAPs in the analysis discussed above), we identified those 30 HAPs with the greatest contributions of national urban emissions from area sources, thus ensuring consistency with the specification in section 112(k)(3)(B)(i). Without these contributions from area sources, the threat from these HAPs would not be as great. Emissions of only the 30 area source HAPs were considered in the area source category listing required under section 112(c)(3) and section 112(k) and described in section II.B. of this document. The other three HAPs in Table 1 for which area sources are less significant contributors to total emissions (i.e., those HAPs noted on Table 1 with an asterisk), can be addressed, as appropriate, using our other existing authorities, as described in section II.C. of this document.

During the public comment period on the draft Strategy, we received substantial comment regarding the role of diesel engine emissions among urban air pollutants, with several commenters suggesting that we include diesel exhaust among the priority urban HAPs. As described earlier, diesel exhaust, although not specifically listed among the 188 HAPs in section 112(b) of the Act, is a particular type of emission which is composed of many HAPs. We agree with commenters that diesel exhaust plays an important role among urban air pollutants, and, as previously mentioned, we're investigating the health risks associated with diesel exhaust. Meanwhile, we plan to address diesel exhaust in our section 202(l) rulemaking for air toxics from motor vehicles and their fuels.

It's important to note that the list in Table 1 was generated based on our best estimates representing 1990 national baseline air toxics emissions and ambient concentrations for urban areas. For example, implementation of technology-based standards for coke ovens has reduced the benzene, coke oven gases, and POM from these sources by 80 percent (or 1,408 tons per year) since 1993. In addition, certain urban areas have reduced other benzene emissions by as much as 30 or 40 percent. Much of this reduction is attributable to the implementation of mobile source reformulated gasoline requirements. To insure that we appropriately target reductions of urban air toxics to support the protection of public health, it will be important to reevaluate our priorities as we develop emissions estimates and obtain more comprehensive monitoring information for more recent years.

3. Method to Identify the Urban HAPs.

This section summarizes how we identified HAPs for the urban HAPs list. Our identification methodology included three separate analyses. The results of these analyses were compared using specific criteria in order to identify the urban HAPs. The three analyses relied on a variety of information types including toxicity information, emissions estimates, ambient monitoring, and air quality modeling. The methodology is summarized here and more fully described in the technical support document (''Ranking and Selection of Hazardous Air Pollutants''), which is available through the public docket and on our website.

In 1997, we conducted an initial screening evaluation using a preliminary methodology. In addition to identifying HAPs for which we separately conducted a public review of our national emissions inventory information, this evaluation provided us with the opportunity for peer review of our preliminary methodology. Like the methodology relied on for our final list, this preliminary methodology relied on various types of information relevant to potential health risks posed by the 188 HAPs, and it integrated the results of three relative rankings using the different types of information. This initial screening run provided a starting point for focusing improvements in the national emissions inventory and for evaluating and refining our methodology for selecting the list of urban HAPs.

The preliminary methodology and screening analysis were reviewed by a panel of outside experts. In early January of 1998, the preliminary methodology was presented to the peer review panel in a written report. A full day session of the peer review panel was held on January 21, 1998 to discuss the methodology and underlying data. The reviewers evaluated all facets of the methodology and its suitability for identifying HAPs for the urban HAPs list, the relative value of various data sources, the availability of additional data sources, the scientific validity of assumptions, consistency across the methodology and appropriate presentation formats. Reviewers provided oral comments at the January 21 meeting, as well as written comments before and after the meeting. The final methodology described here has incorporated revisions made to address comments raised by the January 1998 peer review.

Comments were also received from the public in response to our publication of the draft list of urban HAPs (September 14, 1998, 63 FR 49240). Consideration of issues raised by some commenters led us to modify certain aspects of both the identification methodology and the underlying data inputs. These changes were not inconsistent with recommendations made by the 1998 peer review panel. Consistent with peer reviewer recommendations to use the available information in the most robust manner, our final identification methodology integrates the results of three separate analyses. These ranking analyses are discussed in the following sections. Because each analysis focused on different aspects of the available information, such that no one analysis fully captured all important aspects of the urban air toxics information, we and the peer reviewers agreed that all three of the analyses should be performed and their results integrated, to yield a more comprehensive methodology.

a. Analysis 1: Risk-related ranking indices. In the first of the three analyses, we ranked HAPs by combining surrogates for toxicity with surrogates for exposure into ranking indices. The surrogates for toxicity were risk-based concentrations (RBCs) for inhalation or risk-based doses (RBDs) for ingestion. The RBCs and RBDs were derived from acute and chronic (cancer and non-cancer) health-based reference values.[24]

[24] Acute RBCs were set equal to risk management exposure guideline levels (e.g., Acute Exposure Guideline Levels (62 FR 58839–51) or Emergency Response Planning Guidelines (American Industrial Hygiene Association, 1998. Emergency response planning guidelines and workplace environmental exposure guidelines.) for mild, transient or no effects from short exposure periods, when available. Additionally, two chronic RBCs and two chronic RBDs were derived for each HAP for which the requisite data were available. For carcinogenic HAPs, we compared the continuous exposure levels associated with predicted upper-bound lifetime

Types of information used as surrogates for exposure included measured ambient concentrations and yearly emission estimates from area, major and mobile sources in all urban areas nationwide. To address the potential for certain HAPs to pose significant risks of exposure through pathways other than inhalation (primarily by consuming food with accumulated HAPs), one set of indices also incorporated measures of bioaccumulation potential. As described in more detail in the technical support document, a total of seven separate indices [25] were calculated using these different types of toxicity and exposure information. Lack of the requisite data prevented all seven indices from being calculated for all of the 188 HAPs. The indices were combined into a single HAP ranking.

During the public comment period, we received comments stating that the role of monitoring information in the methodology should be strengthened. Because ambient concentrations directly influence people's exposure to HAPs and there are differences among HAPs in the many variables affecting their behavior after being emitted into the air, we agree that it is important that the monitoring information play a strong role in this analysis. Relying solely on emissions information in selection of the urban HAPs would ignore the many factors which influence ambient HAP concentrations. Since the publication of the draft list, we've expanded our monitoring database to increase both the number of pollutants for which we have monitoring information and the number of measurement values. We've also improved our treatment of non-detect measurements, first by assuming undetected HAPs are present at one half the detection limit (instead of omitting the observation), and by omitting data altogether for HAPs having fewer than ten percent of observations above the detection limit. These changes have improved the technical basis of the ambient indices.

We also received comment stating that inappropriate weight was assigned to those HAPs for which the acute index was developed. In the analysis for the draft Strategy, the requisite information for calculating this index (both an acute RBC and an estimate of short-term peak exposure) were available for only 21 of the 188 HAPs. We appreciate the issue raised by the commenter that, because of the relatively small number of HAPs for which this index could be calculated, it was not necessarily assigning HAPs the appropriate emphasis. Through our improvements to the ambient database described above, and by increasing the number of acute RBCs, we have addressed this issue and reduced bias in this index.

Commenters also recommended increased emphasis on persistent, bioaccumulative and multipathway pollutants for which non-inhalation exposure pathways may be important. It's important to recognize that persistent bioaccumulative toxics (PBTs) are also often multipathway pollutants, because the pattern of exposure is frequently other than inhalation. However, not all multipathway pollutants are PBTs.

One commenter said ''EPA should consider multi-pathway exposures under 112(k) when there is sufficient evidence demonstrating that airborne emissions of the listed HAP have both direct and indirect exposure pathways, which have been clearly identified.'' Another said, ''It is appropriate to include compounds with exposure pathways other than inhalation because these pathways are a true concern in urban areas where atmospheric deposition of particulate phase HAPs is occurring (i.e., lead, mercury, cadmium, dioxin and PCBs) and being taken up by fish, garden vegetables or hand-to mouth activity observed in infants.'' With regard to the PBTs, some commenters said PBTs should have been given more thorough consideration for listing. They said the risks from PBT exposure are high, and the concentrations of many PBTs are higher in the urban than non-urban areas. We support the use of the multipathway analysis to assess total human exposure, particularly in the case of PBTs.

Additionally, commenters said that indices should be calculated so that the size of index value differences among HAPs could be more clearly observed, and any bias related to different numbers of HAPs ranked by each index removed. Because we believe that both of these issues are important, we changed the index calculation methodology to address these recommendations. This change had its greatest impact on the food chain pathway index, in which HAPs with high bioaccumulation potential and ingestion toxicity received much higher index values. Primarily as a result of this change, Table 1 now includes two additional persistent, bioaccumulative HAPs—PCBs and hexachlorobenzene—that were absent from the September 1998 draft list. Hexachlorobenzene and PCBs, as well as mercury, cadmium, lead, POM and dioxin (also identified as urban HAPs in Table 1), are among the pollutants of concern for our Great Waters program. Additionally, PCBs, mercury and dioxin were identified as pollutants of concern in the Great Lakes by the International Joint Commission of the United States and Canada. Hexachlorobenzene, PCBs, dioxins, mercury, and alkyl-lead were targeted for virtual elimination in the Great Lakes in the 1997 Canada-United States ''Strategy for the Virtual Elimination of Persistent Toxic Substances in the Great Lakes'', known as the ''Binational Toxics Strategy''.

Some commenters said that the identification methodology emphasized cancer as a health effect and didn't consider other health effects including asthma, birth defects and reproductive effects. The methodology does, however, consider health effects other than cancer. Reference values (RBCs and RBDs) for each HAP used in the analysis were developed for the health effects believed to occur at the lowest exposure. In the case of HAPs which, in addition to these other health effects, also pose cancer risks, we developed RBC/RBD values for one-in-one million and one-in-ten thousand predicted lifetime cancer risk levels. These risk levels have historically been used to inform environmental regulatory action. The cancer risk-based values were compared to RBC/RBD values for the most sensitive non-cancer health effect, and the lowest two RBC/RBD values for each HAP were used in the calculation of the chronic indices. This step, and the inclusion among the seven indices of an acute toxicity index based entirely on effects other than cancer, was intended specifically to recognize the importance of health effects other than cancer for some HAPs. Thus, we believe that the assessment methodology provides a balanced consideration of all health effects associated with each HAP, with index calculation and the resultant ranking depending significantly on effects other than cancer.

We also received comments regarding the toxicity information used in the analysis. More specifically, commenters

increased cancer risks of one-in-one million and one-in-ten thousand to the continuous exposure level (e.g., EPA's reference concentration) estimated to be without adverse non-cancer effects in human populations, including sensitive subgroups. We then set the two chronic RBC or RBD values to the lower two of those three levels. For other HAPs, both of the two chronic RBC or RBD values were set to the continuous exposure level estimated to be without adverse non-cancer effects in human populations, including sensitive subgroups. A fuller discussion of these steps is included in the technical support document.

[25] Four of the indices relied on chronic RBCs and emissions or monitoring information, two other indices relied on chronic RBDs plus emissions and bioaccumulation information, and the seventh index relied on acute RBCs and monitoring information.

suggested that in the case of 1,3-butadiene and vinyl chloride, we should rely on draft assessments in progress rather than on assessments currently available on IRIS. In the case of 1,3-butadiene, we agree that the IRIS risk estimate is not an appropriate basis from which to extrapolate human risk and the updated assessment has progressed to the point where it is appropriate for use here.[26] Use of this new assessment, however, does not affect the presence of 1,3-butadiene on the urban HAPs list. In the case of vinyl chloride, we've chosen to use the Agency consensus assessment currently in IRIS rather than a draft assessment that may yet change significantly. However, we've confirmed that using the draft assessment for vinyl chloride wouldn't change its status on the final urban HAPs list.

Some commenters questioned the use of cancer-based RBC or RBD values for certain HAPs to which the Agency has assigned a ''C'' weight of evidence for carcinogenicity (''possible human carcinogens''). We evaluated the supporting data for each ''C'' carcinogen that had been proposed for listing to verify the appropriateness of the assessments for use in this analysis. Many of these substances are currently the subjects of research studies and EPA reassessment activities. In the case of 1,4-dichlorobenzene, the currently available information led us to modify our analysis so that the RBC and RBD values were based on effects other than cancer. For all other ''C'' carcinogens, we retained the RBC and RBD values. As updated information and assessments become available for these and other HAPs, we intend to use that information in analyses supporting future regulatory actions under the Strategy.

Other commenters questioned our assumptions as to the predominant species of chromium and nickel in emissions and monitoring data. Because the national monitoring and emissions data used in this analysis don't differentiate among species of metals, we had to make certain assumptions. To address the likelihood, supported by limited available data, that all nickel present in emissions or ambient air isn't in the form that is thought to have carcinogenic potential (e.g., nickel subsulfide and other insoluble forms), we applied the cancer-based RBC for nickel subsulfide to 25 percent of the total emissions and the ambient measurements for total nickel. We based this decision on the assumption that no more than 50 percent of ambient nickel is present in the insoluble form and no more than 50 percent of that is present in the crystalline form. In the case of the ingestion pathway, the non-cancer-based RBD was used. Regarding chromium, the limited emissions and monitoring information available for both hexavalent and total chromium indicated that approximately two thirds of the chromium present in ambient air or national emissions is likely to be other than the hexavalent form. Thus, we applied the cancer-based RBC for hexavalent chromium to 35 percent of the total emissions and to 35 percent of the ambient measurement.

A few commenters requested an analysis of uncertainties surrounding the calculations. To the extent that it's possible to conduct an uncertainty analysis, we believe the process already includes one. The calculation and presentation of seven different ranking indices, instituted in response to comments from the January 1998 peer review panel, is presented in graphic form in the technical support document. These graphs show the range of ranking indices for each HAP, which we regard as a measure of some of the uncertainty associated with this identification methodology.

b. Analysis 2: Review of existing risk assessments and hazard rankings. For the second analysis, we reviewed a number of air toxics risk assessments or hazard rankings conducted previously by EPA staff, State agencies or others.[27] We selected 14 of the available studies for use in this analysis, because they were sufficiently broad in the pollutants evaluated, they included area sources of HAPs, and they focused on the risks presented in urban areas. Each study provided a risk-based ranking of HAPs, with separate rankings for cancer and, when available, other health effects. The rankings within each study were converted to a scale common to all of the studies, and the values were summed across the studies, providing a total score for each HAP. Because section 112(k) places special emphasis on area sources of HAPs, scores were developed both for studies that considered combined emissions from major, area, and mobile sources, and for studies that considered emissions from area sources alone. From this analysis, we identified those HAPs that, when compared across studies, consistently ranked high.

c. Analysis 3: Cumulative Exposure Project (CEP). In the third analysis, we used information provided by the CEP.[28] In the CEP, the Assessment System for Population Exposure Nationwide (ASPEN) model was used with preliminary estimates of 1990 HAP emissions from all source types to predict long-term average concentrations at the census tract level for 148 HAPs. For some pollutants, modeled concentrations were augmented with estimates of background levels that were intended to represent contributions from natural sources, as well as historic emissions of persistent pollutants. The estimated ambient concentrations were then compared to risk-based concentrations (termed benchmarks by the authors) intended to represent either continuous exposure levels associated with a one-in-a-million upper bound estimate of excess lifetime cancer risk, or continuous lifetime exposure levels associated with no significant risks of adverse non-cancer effects (e.g., EPA's Inhalation Reference Concentration (RfC)). As stated earlier, estimated concentrations greater than risk-based concentrations should be viewed as indicators of a potential health problem, and not as a characterization of health risks. While we recognize certain limitations associated with this initial attempt at modeling HAP concentrations nationwide, and its inappropriateness for use in drawing conclusions at small geographic scales, this modeling effort is useful as a national screening tool. In this analysis, we used the information generated by the CEP for urban areas and identified those HAPs for which the modeled concentrations exceeded risk-based concentrations in the greatest number of urban census tracts.

We received comments on several aspects of our use of the CEP analysis in our method for identifying the draft urban HAPs list. Some commenters felt that the addition of background concentrations was inappropriate. Additionally, some commenters questioned the appropriateness of the reference values used for some HAPs. We recognized that the background value for one of the HAPs (bis(2-ethylhexyl)phthalate or DEHP) was wrong, and we agreed that we should focus the analysis on modeled concentrations resulting from controllable sources. Additionally, we're currently using updated risk-based concentrations which, in some cases, differ from those used in the CEP analysis. Consequently, prior to using this analysis as part of our final methodology, we repeated the analysis

[26] See April 27, 1999 internal memo, available in the public docket.

[27] These assessments and rankings, and the details of this analysis, are described in the technical support document for the identification of the urban HAPs, which is available in the public docket.

[28] See footnotes 13 and 14.

for the subset of affected HAPs using the modeled concentrations resulting only from current area, major and mobile sources (i.e., without addition of a background value) and an updated set of risk-based concentrations. We've described the details of this reanalysis in the technical support document in the public docket.

d. Integration of the three analyses. In selecting the urban HAPs for the integrated Strategy, we compared the results of these three separate ranking analyses and applied the following criteria when integrating their results. We selected those HAPs for which a publicly reviewed baseline national emissions inventory was available [29] and which had been either:

- Identified by at least two of the three analyses (regardless of area source contribution); or
- Identified by at least one of the three analyses and having an area source contribution to total emissions of at least 25 percent.

The second criterion was set in recognition of the area source emphasis of this integrated Strategy. These criteria produced an integrated list of 33 urban HAPs.

As discussed earlier, section 112(k)(3)(B) of the Act requires us to identify not less than 30 HAPs that are estimated to pose the greatest threat to public health in the largest number of urban areas as the result of emissions from area sources (''the area source HAPs''). To identify these 30 area source HAPs, we ranked the list of 33 urban HAPs by percent contribution to national urban emissions from area sources and selected the 30 urban HAPs with the greatest area source contributions. The remaining three urban HAPs (i.e., coke oven emissions, 1,2-dibromoethane, and carbon tetrachloride) have less significant emissions contributions from area sources and aren't among the 30 area source HAPs considered in the area source category listing described in section II.C.

Some commenters on the draft Strategy were concerned that the percent contribution to national urban emissions from area sources was too low for some of the HAPs on the draft area source HAPs list, thus not placing enough emphasis on risks from area sources. While we note that the percent contribution from area sources for the area source HAPs ranges down to as low as 2.9 percent, these values apply to total urban emissions nationally. In individual urban areas as well as in local communities within large areas, area sources may play a much larger role. Because the Act requires us to select not less than 30 area source HAPs and because the percentage of emissions from area sources will vary, we consider this an appropriate approach to identify the area source HAPs on which the Strategy will focus in reducing area source emissions and any associated health risks in individual urban areas nationwide.[30] Accordingly, this list of 30 area source HAPs was used in identifying the list of new area source categories for which standards will be addressed as required by section 112(c)(3) and section 112(k)(3)(B)(ii).

B. How does EPA Plan to Address Requirements for Area Sources of HAPs?

1. Area Source Category Selection Approach in Draft Strategy

The Clean Air Act includes two provisions—sections 112(c)(3) and 112(k)(3)(B)(ii)—that instruct us to identify and list source categories that contribute to the emissions of the 30 ''listed'' (or area source) HAPs, and that are, or will be, subject to standards under section 112 of the Act. The language in these two sections differs slightly. Section 112(c)(3) requires us to list, pursuant to section 112(k)(3)(B), sufficient categories of sources ''to ensure that area sources representing 90 percent of the area source emissions of the 30 [listed] hazardous air pollutants'' are subject to regulation under section 112. As explained in the draft Strategy, this would seem to allow us to regulate sources accounting for either 90 percent of the combined emissions of all of the 30 area source HAPs, or 90 percent of the emissions of each of the 30 area source HAPs. By contrast, section 112(k)(3)(B)(ii) requires us to identify sufficient categories to ''assure that sources accounting for 90 per centum or more of the aggregate emissions of each of the 30 identified hazardous air pollutants'' are subject to standards under section 112(d). This language explicitly requires us to regulate sources accounting for 90 percent of the emissions of each of the 30 area source HAPs. As a result, in the draft Strategy we adopted the interpretation that allowed us to read the two provisions consistently, and assembled a draft list of area source categories representing 90 percent of the emissions of each of the 30 area source HAPs.

We adopted a two-step process for selecting the source categories for the draft list. First we listed all of the area source categories already subject to area source standards. For each of these source categories we identified their percentage contribution to the total area source emissions for each of the 30 area source HAPs. We then listed additional area source categories as necessary, listing the largest contributors first, until the list of area sources represented 90 percent of the emissions for each of the 30 area source HAPs.

2. Improvements in Area Source Category Information

Since issuing the draft Strategy, we've significantly improved our emissions inventory data for many area source categories. (The final information on the subset of pollutants of the baseline inventory used in this analysis and a description of the changes made is in the technical support document ''Emissions Inventory of 40 Candidate Section 112(k) Pollutants; Supporting Data for EPA's Section 112(k) Regulatory Strategy'' available at www.epa.gov/ttn/uatw/112k.) The draft inventory for the subset of the HAPs of the baseline emission inventory was available twice for public review. From this extensive review, we received over 200 comments on the inventory, which were addressed where data were provided. Based on the large number of public comments, and information from internal comments, we've made many changes to the baseline emissions inventory used to identify HAP sources. In particular, better emission information for many of the sources subject to section 112(d) MACT standards made a significant difference in the inventory. The percent

[29] On June 20, 1997 we published notice of a draft listing of source categories for regulation under section 112(c)(6) of the Act (62 FR 33625). As part of this notice, we requested public review and comment on the baseline national emissions inventory for the seven pollutants identified under section 112(c)(6). In the fall of 1998, we requested and obtained public review on our baseline national emissions inventory for 40 HAPs, five of which had also been reviewed as part of the rulemaking process under section 112(c)(6). During both of these public reviews, many comments were received on various aspects of the emissions information, and we considered these comments in making improvements to the baseline national emissions inventory for those HAPs. Details concerning these two public reviews and documentation of the resultant inventory information are presented in two documents (''1990 Emissions Inventory of Section 112(c)(6) Pollutants: Final Report'' and ''1990 Emissions Inventory of 40 Candidate Section 112(k) Pollutants'') available at www.epa.gov/ttn/uatw/112c6/112c6fac.html and www.epa.gov/ttn/uatw/112k/112kfac.html, respectively. The public reviews provided us with an inventory that was appropriate for our use on a national scale, in the identification of the urban and area source HAPs. However, this baseline inventory may require certain modifications for small scale detailed analyses such as those described in section II.B.

[30] Given the uncertainties and limitations associated with the information upon which the 30 area source HAPs selection was based, we don't believe that identifying greater than the statutory minimum of 30 HAPs is warranted at this time.

contribution from major versus area sources for each source category was also refined and updated based on better information. For many MACT standards, we now have lists of regulated facilities, which allows for better designation of major facilities in the inventory.

We received several comments requesting that the area source categories designated as ''SIC combined'' be broken down into individual SIC (or Standard Industrial Classification) codes. Examples of these source categories from the draft Strategy were Electronic and other Electric Equipment Manufacturing (SICs combined), Food Products (SICs combined) and Instruments and Related Products (SICs combined). The way in which the SIC codes were combined didn't reflect a technical analysis of whether these SIC codes could in fact be combined into single source categories for regulatory purposes. In general, the combinations included large numbers of different industry types which would later have to be broken down into separate projects and separate source categories for regulation. In addition, it was difficult to discern from the list which subsets of the multiple SIC codes were actually emitting the pollutants of concern and would eventually be subject to regulation.

For the final Strategy, we listed source categories (presented in Table 3) that primarily represent single SIC codes in order to more accurately identify the sources that may ultimately be subject to regulation. The exception to this is when the source category was derived directly from information obtained during the development of a section 112(d) standard (e.g., Paint Stripping Operations), in which case the area source category described for the standard may incorporate multiple SIC codes.

Despite these improvements in the baseline, there are still uncertainties in the emissions reported in some categories and in some of the TRI reporting. Our awareness of these uncertainties is based on our improved knowledge of some source categories and emission estimation methods, and also on an improved recognition of the limits of our data for other source categories. For the development of the area source category listing, we needed to use the baseline inventory information on a more refined scale (at the source category level) than we did in development of the HAPs list where we used the baseline inventory on a national scale. For this reason, we sometimes modified the individual source category information in various ways, such as by combining source categories' emission information. In a few cases, we changed the emission information related to tonnage for some source categories. These adjustments to tonnage didn't affect the total emissions used on a national scale. As a result of these changes, the information presented in the area source category analysis (source category names and tonnage) may not always match the way source categories are presented in the final baseline inventory.

Examples of some changes made in the area source category analysis include combining all the emissions from human and animal cremation, because they will be addressed under one rulemaking (Other Solid Waste Incinerators). For the same reason, we combined all the emissions from institutional and commercial heating, as this will be addressed under one rulemaking (Institutional/Commercial Boilers). We also included the area emission estimates for the source category Paint Stripping Operations, because they were inadvertently excluded from the final baseline inventory. We changed the name of the source category listed as Chlorine Production in the baseline to Mercury Cell Chlor-Alkali Plants. This revised source category name better represents the portion of the industry which will be ''subject to standards''. Additional changes are described in the technical support document for identifying area source categories.

As discussed in section II.A.2., several of the 30 area source HAPs listed in the draft Strategy have been replaced based on updated information. The result is the addition of the following HAPs to the list of 30 area source HAPs: beryllium compounds, hexachlorobenzene, polychlorinated biphenyls (PCBs), quinoline, vinyl chloride, and 1,1,2,2,-tetrachloroethane. Quinoline was included in the draft Strategy list for major sources only, but based on updated information is now included for area sources. These changes in the area source HAPs list have also led to changes in the area source categories list.

3. Area Source Category Selection Approach in Final Strategy

We've reviewed the provisions in sections 112(c)(3) and 112(k)(3)(B)(ii), and believe the most reasonable interpretation of the Act is still the interpretation adopted in the draft Strategy. In order to comply with the requirements of both sections, we must list those source categories representing 90 percent of the emissions of each of the 30 area source HAPs.

We have, however, changed our criteria for selecting the source categories contributing to emissions of the 30 area source HAPs. Again we've adopted a two-step approach with the first step being similar to that in the draft Strategy. In the first step we've identified area sources that contribute to emissions of the 30 area source HAPs, and that are subject to existing standards, or will be subject to standards that are currently being developed. These area source categories have already been listed for regulation under the Act. As in the draft Strategy, for each of these source categories we identified the percent contribution to the total area source emissions for each of the 30 area source HAPs.

In the second step, we've decided, at this time, to add only those area source categories that contribute at least 15 percent of the total area source emissions of any of the individual area source HAPs to the list of source categories. We've adopted this criterion to account for the uncertainties in our current inventory data. While we've been able to significantly improve our baseline emissions inventory data, data gaps and uncertainty still remain. This is particularly true as we move to a more refined scale to determine emissions at a source category level. As a result, we've decided to only list new categories of area sources at this time if the inventory data demonstrate that each newly listed area source category contributes at least 15 percent to the national urban emissions of at least one of the 30 area source HAPs. Once listed, we've counted the percent contribution, even if less than 15 percent, to emissions of any other area source HAPs, because once the source is subject to regulation its emissions of any of the 30 area source HAPs can be counted toward the 90-percent goal for each of the area source HAPs. Likewise, when we subject these source categories to regulation we'll evaluate regulation of all 188 HAPs, not just the 33 urban HAPs listed under this Strategy.

The result of these new criteria for the source selection process is that the current list doesn't, at this time, contain area source categories representing 90 percent of the emissions of each individual HAP. It's important to make clear that we still intend to meet our statutory obligation to list area sources accounting for 90 percent of the emissions of each of the 30 area source HAPs. We've chosen to complete this list in stages, adding to, deleting from, or shuffling the list as we gather more and improved data. This first stage lists those area source categories that contribute at least 15 percent, and,

therefore, we're confident add real contributions to the total area source emissions of a particular area source HAP. As discussed in section IV.D., we'll be conducting an initial national risk assessment in the spring of 2000 that will be used in part to prioritize which standards to pursue first. This initial assessment will use the much better-developed 1996 NTI. We'll use this information as part of our process to reevaluate the source categories listed in the Strategy. Based on this updated information, we may decide to remove an area source category listed here if, for example, the reason for the listing was inaccurate (e.g., faulty reporting to TRI) or if no urban area sources exist. We'll also use this assessment to evaluate area source categories to be added to the list.

We believe this iterative approach is consistent with the general scheme for listing and regulating area sources under section 112 of the Act. Section 112 establishes two distinct steps for regulating emissions of HAPs—one for listing source categories under 112(c) and one for setting standards under 112(d). Section 112(k) incorporates this two-step approach. The source category listing step (see for example, sections 112(c)(1) and (9)) is intended to be an ongoing process. Under section 112(e)(4), listing of a particular source category isn't considered final agency action until EPA issues emission standards for that source category. Thus, we feel the list of area source categories is flexible both for the addition of new area source categories and/or removal of area source categories, through public notice. We believe our current approach for fulfilling the 90-percent requirements in sections 112(k)(3)(B) and 112(c)(3) is consistent with the overall structure of section 112 which authorizes us to treat the list of area source categories as a work in progress.

One alternative to this iterative approach would be to attempt to list all sources accounting for 90 percent of the emissions of each individual area source HAPs as we did in the draft Strategy, and to make changes in the future as data are collected and improved. We decided against this approach because it would involve listing many area source categories contributing very small amounts of a particular HAP based on data that we consider in many instances to still have significant uncertainty despite numerous improvements. In the end, we believe the two approaches aren't meaningfully different. Even if we officially ''listed'' these small contributors, their status on the list would be tentative at best. Under the current approach, we've identified all of these small contributors in the supporting materials for this rulemaking, but we've chosen not to list them under section 112(c)(3) at this time, if the emissions currently appear to be less than 15 percent of the total area source emissions of any individual area source HAP. Under both approaches the list will likely change with new and improved inventory data.

4. New Area Source Category List

With the two-step approach described above, we identified the area source categories listed in Tables 2 and 3. In step one, we identified those area source categories that contribute to emissions of the 30 area source HAPs, and that are subject to existing standards, or will be subject to standards that are currently being developed. These source categories are provided in Table 2. We've included Hazardous Waste Combustors on this list, despite the fact that information related to the percentage contribution from area source Hazardous Waste Combustors hasn't yet been completely defined, because the Hazardous Waste Combustor NESHAP (as proposed) would subject area sources to the same standards as major sources. Once we determine the percentage of urban area emissions from the area source categories affected by this rule, their emissions will be counted toward the 90-percent requirement for the appropriate HAPs.

Table 3 includes those new area source categories being listed under section 112(c)(3) for the first time. These area source categories were identified in step two of our selection process, which identified area source categories contributing at least 15 percent of the total area source emissions of any of the 30 area source HAPs.

TABLE 2.—AREA SOURCE CATEGORIES ALREADY SUBJECT TO STANDARDS OR WHICH WILL BE SUBJECT TO STANDARDS

Chromic acid anodizing	Industrial boilers
Commercial Sterilization Facilities	Institutional/Commercial Boilers.
Other Solid Waste Incinerators (Human/Animal Cremation)	Medical Waste Incinerators.
Decorative Chromium Electroplating	Municipal Waste Combustors.
Dry Cleaning Facilities	Open Burning Scrap Tires.
Halogenated Solvent Cleaners	Portland Cement.
Hard Chromium Electroplating	Secondary Lead Smelting.
Hazardous Waste Combustors	Stationary Internal Combustion Engines.

TABLE 3.—NEW AREA SOURCE CATEGORIES BEING LISTED

Cyclic Crude and Intermediate Production	Municipal Landfills.
Flexible Polyurethane Foam Fabrication Operations	Oil and Natural Gas Production.
Hospital Sterilizers	Paint Stripping Operations.
Industrial Inorganic Chemical Manufacturing	Plastic Materials and Resins Manufacturing.
Industrial Organic Chemical Manufacturing	Publicly Owned Treatment Works.
Mercury Cell Chlor-Alkali Plants	Synthetic Rubber Manufacturing.
Gasoline Distribution Stage I.	

5. Meeting the Requirement To List Area Sources Representing 90 Percent of Emissions

The current list of area source categories doesn't include categories representing 90 percent of the emissions of each of the 30 area source HAPs. The current list meets the 90-percent or greater requirement for 11[31] of the 30 area source HAPs. For 10[32] other HAPs, the list accounts for at least 80 percent of the emissions, and for ethylene dichloride the list accounts for approximately 78 percent of the emissions. Improved inventory data may demonstrate that the current list of area sources already meets the 90-percent requirement for some of these HAPs. The remaining HAPs on the list represent less than 75 percent of the emissions: arsenic compounds, cadmium compounds, chromium compounds, hexachlorobenzene, lead compounds, manganese compounds, nickel compounds, and polychlorinated biphenyl.

In the case of the metal compounds for arsenic, cadmium, chromium, lead, manganese and nickel, we know we haven't listed enough new area source categories to say that we've completely addressed the emissions from these area source HAPs. In the case of the metal HAPs, there tend to be numerous source categories, each contributing only a small percentage of the HAPs. In many cases, this is because the source categories have already reduced emissions due to other control programs in place. However, because these pollutants can have significant health effects, we'll be developing a separate strategy to specifically address emissions of these metals. As part of our initial evaluation of the area sources of these HAPs, we're including the following source categories for further evaluation (our current data indicate that each contributed five to twelve percent of area source emissions of one or more of these metal HAPs):

- Sewage Sludge Incineration.
- Aluminum Foundries (castings).
- Steel Foundries.
- Secondary Copper Smelting.
- Stainless and Nonstainless Steel Manufacturing—Electric Arc Furnaces (EAF).
- Iron Foundries.
- Plating and Polishing.
- Cadmium Refining and Cadmium Oxide Production.
- Autobody Refinishing Paint Shops (called Paint Applications in the baseline inventory).
- Pressed and Blown Glass and Glassware Manufacturing.

We aren't listing these categories for possible regulation at this time; however, after further evaluation of these categories, some or all may be added to our area source category list.

We haven't listed any area source categories which specifically contribute emissions of PCBs or hexachlorobenzene, although some of the source categories listed may emit one or both of these HAPs. We've decided to wait on listing any source categories contributing to area source emissions of hexachlorobenzene or PCBs, because these HAPs weren't included in the candidate list of HAPs for which we collected detailed inventory data in preparation for the Strategy; therefore the emissions inventory baseline for these HAPs didn't receive the same level of review. We've already begun efforts that may supplement our inventory data for these HAPs, and, as appropriate, we'll list new area source categories when we collect more data and make the list available through public notice. For example, we're currently researching the sources of PCBs, and whether PCBs may be the product of incomplete combustion. The findings of this research could significantly change the emissions inventory for this pollutant. Even though we're not listing source categories of these pollutants at this time, like the metals, we're concerned about the potential health effects of these pollutants, and we have a number of programs across EPA working to address them (e.g., the PBT initiative and the Binational Toxics Strategy).

We anticipate evaluating the source categories for these and the other remaining HAPs for which we haven't reached a 90-percent emission reduction, including the six metal HAPs, PCBs and hexachlorobenzene, when we conduct the initial risk assessment in the spring of 2000 (discussed in section IV.D.). We intend to adjust this list in the event that new information comes forward and will complete the list by 2003.

6. Comments on Specific Source Category Listings

Several comments on the draft Strategy addressed the need to add or delete certain source categories. Many of these comments have been addressed with the changes described above to the emissions inventory and the urban HAPs list. Many of these commenters asked that we add several source categories (such as dry cleaners, retail gas stations, print shops, autobody shops, and beauty shops). Some of these source categories are already addressed by area source MACT standards (e.g., dry cleaners). Many of the others involve organic emissions from consumer products such as surface coatings, metal cleaning, solvents, personal care products, and household cleaning products. While these products may be responsible for a significant fraction of the emissions of several of the 30 area source HAPs, we believe section 112 isn't necessarily the most appropriate regulatory mechanism for controlling them. For many of these emissions, we believe section 183(e) provides the more useful authority. For example, in September 1998, we published a VOC rule under section 183(e) for household consumer products. This rule will affect approximately 220 consumer product manufacturers and importers nationwide. At the same time we published two other national rules which address VOC emissions from consumer and commercial products: Architectural Coatings and Automobile Refinishing coatings. These combined rules should provide reductions of over 2.4 million tons of VOC per year. Automobile Refinishing is also included on our list for further evaluation due to metals emissions.

Similarly, we don't believe section 112 is the most appropriate tool to address refueling emissions at gas stations. Instead, consistent with Congress' intent, we've chosen to regulate these emissions through sections 182(b)(3) and 202(a)(6). The ''stage II'' and ''onboard requirements'' programs developed under these authorities will lead to reductions of VOCs and HAPs of 300,000 to 400,000 tons per year (63 FR 17844, April 10, 1998).

Commenters also said the list should focus on source categories emitting the deadliest HAPs. As we explained in section II.A., toxicity was one of the key criteria in all of the rankings used to develop the list of 30 area source HAPs. As a result, pollutants such as dioxins and beryllium compounds, because of their high toxicities, are included on the list of 30 area source HAPs, despite relatively small overall emissions in urban areas. Thus, toxicity is built into the list of source categories selected for regulation because toxicity is built into the list of pollutants used to select these source categories.

[31] Including 1,1,2,2-tetrachloroethane, 1,2-dichloropropane, polycyclic organic matter, acetaldehyde, acrolein, benzene, dioxin, furans, ethylene oxide, formaldehyde, quinoline, and tetrachlorethylene.

[32] Including 1,3-butadiene, 1,3-dichloropropene, acrylonitrile, beryllium compounds, chloroform, hydrazine, mercury compounds, methylene chloride, trichloroethylene, and vinyl chloride.

7. Additional Requirements for Area Source Categories Already Subject to MACT

Several of the source categories listed today (e.g., Municipal Landfills, and Publicly Owned Treatment Works) are already in source categories covered by MACT standards for major sources. As discussed in section II.C.1., we'll develop area source standards for the listed area source categories. When it's practical during our rulemaking activities, we'll attempt to combine information gathering for area and major sources. A good example is the development of the MACT standard for municipal landfills. This source category is required to be evaluated for major sources as a MACT standard, and we've expanded our data base to include area sources as well. In other instances, such as for Publicly Owned Treatment Works, the MACT standard was already proposed and is near promulgation, so it isn't possible to coordinate rulemaking for the major and area sources at the same time.

In the cases where standards already apply to listed area sources (e.g., Municipal Waste Combustors, Medical Waste Incinerators, Chromium Electroplating, and Halogenated Solvent Cleaning), we'll coordinate the need for additional regulation through assessments we'll be conducting under the section 112(f) residual risk program. Information on how we'll conduct assessments on residual risk are discussed in the residual risk report.[33] We'll also be evaluating the effectiveness of the standards that are already in place through information provided by State, local and Tribal air agencies. Also, as we continue to assess our progress in meeting our air toxics Strategy goals, we'll reevaluate the need for additional area source standards to ensure that the 90-percent requirement and our other goals are met.

C. What Regulatory Actions Will EPA Take To Implement the Strategy?

Consistent with our goals, we intend to assess cumulative risks to the public from HAP exposures resulting from stationary (area and major) and mobile sources. Based on the outcome of these assessments, we'll undertake the needed regulatory actions using the appropriate authorities. These actions include developing area source standards, which are discussed in sections II.C.1. though II.C.5. We'll also regulate motor vehicle and fuel HAPs as described in section II.C.6. Finally, we'll develop additional major source standards under section 112(d), section 112(f), and other programs under the Act, as needed to reach our goals. The role of major stationary sources in the Strategy is discussed in more detail in section II.C.7. Our approach for addressing combinations of source types (e.g., at airports) is described in section II.C.8.

1. Our Approach to Developing Area Source Standards

We plan to pursue a tiered approach that will consider three standard setting processes. The specific process selected for a particular source category will depend on the criteria outlined below. The three tiers of standard setting processes that will be considered are:

- Tier 1—MACT standard process;
- Tier 2—Source category specific GACT standard process; and
- Tier 3—Flexible GACT process.

We received a number of comments on the draft Strategy stating that our regulatory intentions for area sources were unclear. In addition, we received comments requesting flexibility for State/local/Tribal governments and for emission sources in implementing these area source standards. The following discussion attempts to provide the needed clarifications and to explain our approach to developing a flexible regulatory development process.

Tier 1—MACT standards. We'll develop MACT standards in accordance with the process outlined in section 112(d)(3) for those area sources whose emissions pose the greatest threat to human health and the environment and for which the technology to achieve maximum reductions in HAP emissions is appropriate. Section 112(d)(3) requires the standards to reduce HAP emissions as much as is achievable, considering the cost of these reductions, effects on health or the environment (other than air), and energy requirements.

Section 112(d)(3) requires us to use a minimum statutory baseline (''floor'') when setting MACT standards. For new sources, the MACT standards for a source category or subcategory must be at least as stringent as the emission control achieved in practice by the best controlled similar source. The standards for existing sources can be less stringent than standards for new sources, but they can't be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (excluding certain sources) for categories or subcategories with 30 or more sources, or by the best-performing 5 sources for categories or subcategories with fewer than 30 sources.

We've issued MACT standards for area sources in previous cases. For example, in the chromium electroplating national emission standards for hazardous air pollutants (NESHAP), we developed MACT standards for area sources because of the high toxicity of chromium. Similarly, in the Portland Cement NESHAP, we determined that MACT controls were appropriate because of the quantity and toxicity of the HAPs being emitted from area sources. In addition, both of these source categories have numerous, widespread sources.

Tier 2—Source category specific GACT standards. While we may develop MACT standards for some area sources, we expect most sources will be subject to GACT standards developed in accordance with section 112(d)(5). As with MACT standards, GACT standards would be developed for a specific source category, but they would be based on the use of GACT as opposed to the use of MACT. This approach will be used to address source categories that present a human health risk or environmental concern, but where GACT is a more appropriate approach for reducing HAP emissions than MACT. To make these standard-setting decisions, we'll consider economic feasibility and other factors that could lead us to GACT.

Tier 3—Flexible GACT process. Considering the large number and diversity of area sources and limitations in the data and information currently available for many of them, we expect it may be appropriate in some cases to develop flexible requirements that would apply to several area source categories where more flexibility is appropriate (e.g., where there are very few area sources, they are confined to a limited geographic area or areas, or they contribute to localized public health or environmental risks). Under this option, we might develop general requirements such as a process rule similar to section 112(g), which would be applicable to area sources in several source categories. These general requirements could outline procedures for determining what constitutes ''generally available control technology'' in this context. By following these procedures, States, local governments, and Tribal agencies could elect to develop GACT for the area sources. We'd review the resulting standards to ensure they were developed following the procedures contained within the general requirements and, if appropriate, we'd adopt the standards as GACT for these area sources.

We believe this approach presents several advantages. It could be implemented in a manner that permits State, local and Tribal agencies to

[33] U.S. EPA. Residual Risk Report to Congress. EPA–453/R–99–001. March 1999.

address cumulative risk posed by exposures to HAP emissions from many different source categories. It also permits greater flexibility in tailoring GACT to individual area sources or area source categories which may contribute to an undue public health risk in a particular area. For example, a State, local or Tribal agency could tailor GACT to a particular source by requiring potentially more stringent controls when the source contributes emissions that, when aggregated with emissions from other sources in the area, pose health risk concerns. They could also require less stringent controls when the source is in an area where exposures to aggregated emissions don't present significant concern.

To supplement our general requirements, we may choose to issue control technique guidelines or alternative control technology documents to provide information on generally available control technologies for controlling HAP emissions.

2. The Legal Basis for Using GACT for Area Source Categories

Section 112(k)(3)(B)(ii) directs us to assure that the listed area sources are subject to standards under section 112(d), which includes two levels of standards—''maximum achievable control technology'' (MACT) and ''generally available control technology'' (GACT). We read the requirement in section 112(k)(3)(B)(ii) to give us flexibility in deciding which level of control to apply to a given source category.

Unlike MACT, which is specifically described in sections 112(d)(2) and (3), the meaning of GACT, or of what is ''generally available,'' is not defined in the Act. Section 112(d)(5) authorizes the Administrator to:

> [P]romulgate standards or requirements applicable to [area] sources * * * which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.

Section 112(d)(5) thus doesn't limit us to strict ''standard setting'' in order to provide for the use of GACT. We read section 112(d)(5) to authorize promulgation of at least two types of rules: rules that set emission levels based on specific controls or management practices (analogous to MACT standard setting), and rules that establish permitting or other regulatory processes that result in the identification and application of GACT. As long as the result of the section 112(d)(5) rulemaking is that sources use enforceable generally available control technologies or management practices, section 112(d)(5) appears to give us flexibility in choosing between the adoption of numerical emission limits and the promulgation of other requirements that result in sources applying GACT.

As discussed previously, we intend to determine which of these regulatory approaches is most appropriate when we conduct rulemaking on the individual source categories. However, it's important to bear in mind that we retain authority under section 112(d) to regulate any listed area sources more stringently, under MACT, where appropriate, to effectively address risk. In addition, we can lower the emission thresholds for defining sources as ''major'' and, therefore, subject what would have otherwise been area sources to major source requirements (MACT).

3. Issues on the National vs. Local Scope of Area Source Standards

Section 112(k) requires that listed area source categories be subject to standards under section 112(d).

Many commenters on the draft Strategy addressed the implications of selecting a national versus a local scope for the area source standards. Some said national area source standards are unfair and inefficient, because they apply to sources located outside of urban areas where they may pose less risk. However, others said failing to apply the standards nationally creates an unlevel playing field for businesses in urban areas, encourages urban sprawl, and creates a disincentive for new businesses in brownfield and urban development areas.

As indicated by our initiatives on urban development and brownfield redevelopment, we share the concern of many commenters that applying standards only in the urban areas could negatively impact economic opportunities in the urban areas and could, in some cases, encourage urban sprawl. In addition, we're also concerned about the disproportionate public health risk for people, particularly sensitive populations such as children, in smaller cities or rural areas that might be located near area sources. However, we're aware that for some area source categories it may be more practical and appropriate to limit the applicability to urban areas. Thus, our expectations are to apply area source standards under section 112(k) nationally; however, for each individual area source category, we'll determine whether it's more appropriate for area source standards to apply nationally or only in urban areas.

For those area source categories where the standards only apply in urban areas, we'll look to the consolidated metropolitan statistical area (C/MSA) boundaries as a starting point to define the urban area. Although we used the urban 1 and urban 2 definitions [34] for the development of the inventory to support the HAPs and source category analysis, we believe the C/MSAs are more appropriate for defining applicability of area source standards because the C/MSAs better reflect the nature of population density, commercial development, area growth, and air emissions that represent urban areas.

Although we generally believe that urban areas are those C/MSAs with populations of more than 50,000, we recognize that the appropriate area in which standards should apply may vary among area source categories. Consequently, we believe the determination of the area in which standards will apply should be made separately for each source category.

4. Title V Permits for Area Sources

Under section 502(a) of the Act, area sources can be exempted from Title V permitting if the Administrator determines that compliance with Title V requirements is impracticable, infeasible, or unnecessarily burdensome for the area sources in question. As specified in 40 CFR 63.1(c)(2), 70.3(b)(2) and 71.3(b)(2), individual standards promulgated under part 63 will specify whether Title V permits are required for area sources. Consequently, we'll determine in each subpart that is developed for the Strategy whether area sources affected by the subpart are subject to, or exempt from, Title V permitting.

Factors that might influence this determination were raised by commenters. For example, many commenters felt that area sources are often small businesses, and that requiring Title V permits for these sources places an unfair resource burden on them. Other commenters felt that these sources should be covered by Title V permits in order to provide resources to the States through the collection of Title V fees, and to provide an opportunity for community input on the establishment of area source requirements. Title V, which is implemented through regulations codified in 40 CFR parts 70 and 71, generally requires owners or operators of area sources subject to section 112 standards to obtain Title V permits.

[34] Urban 1 areas are those counties that have a population of more than 250,000. Urban 2 areas are counties where at least 50 percent of the population is considered to be urban.

We also received a number of comments in regard to Title V fees and the Strategy. Some commenters requested that area sources subject to the Title V program be charged an annual fee, rather than a per ton fee. How Title V fees are assessed is determined by the individual permitting authority and is subject to approval by EPA as part of the permitting authority's Title V program submittal to the Agency. Permitting authorities are free to assess fees based on criteria other than emissions, including application fees or service-based fees. Moreover, permitting authorities can assess fees differently among Title V sources. Therefore, we don't have the authority under section 112(k) of the Act to establish a new basis for assessing Title V fees.

Other commenters requested that Title V fees be used to fund state toxics reduction programs. We must emphasize that, according to 40 CFR 70.9(a), Title V fees are to be used solely to fund a permitting authority's Title V program and not non-Title V activities.

5. Schedule for Area Source Standards

We've revised the time line we presented in the draft Strategy for area source standards development. We believe the following milestones reflect a more realistic estimate of the average 4 years it takes to develop MACT/GACT standards. We intend to address the source categories newly listed here by 2004, and address additional source categories listed later in the process of implementing the Strategy in later years (i.e., 2006–2009).

- 2004—promulgate the area source standards newly listed in today's Strategy. We'll attempt to meet this demanding schedule as expeditiously as practicable.
- 2006—promulgate additional area source standards to meet the 90-percent requirement.
- 2009—promulgate all remaining area source standards necessary to meet the 90-percent requirement.
- 2012—expected compliance under all standards.

We'll prioritize the order in which we regulate source categories to address those posing the greatest risks first. This will be a part of our initial assessments, which will be done in the spring of 2000. We'll be developing standards between now and 2009. Compliance with these standards is required within 3 years of promulgation. Therefore, compliance with all standards is anticipated by no later than 2012.

6. Our Approach for Mobile Source Hazardous Air Toxic Controls

Title II of the Act provides several mechanisms to achieve reductions in hazardous air pollutants from mobile sources. The most direct of these is section 202(l) which requires us to identify the need for and consider regulations for control of HAPs from motor vehicles and their fuels.

Pursuant to section 202(l)(1) of the Act, we released the ''Motor Vehicle-Related Air Toxics Study'' in 1993.[35] This study summarized information on emissions of toxic air pollutants associated with motor vehicles and motor vehicle fuels, as well as estimated exposures, and potential risks. The study also provided cancer risk estimates for several air toxics for different years under various control scenarios. We've recently completed draft analyses to update the emissions and exposure analyses done for this study to account for new information.[36, 37] These draft analyses include base scenarios for 1990, 1996, 2007, and 2020, and control scenarios in 2007 and 2020. We modeled toxic emissions and exposure for the following urban areas: Chicago, Denver, Houston, Minneapolis, New York, Philadelphia, Phoenix, Spokane, and St. Louis. We assessed emissions and exposure from benzene, formaldehyde, acetaldehyde, 1,3-butadiene, and diesel particulate. Experts and stakeholders are currently reviewing the methodologies and assumptions used in the analyses, and work is on-going to extend and revise the analyses.

As mentioned before, diesel particulate matter (PM), which is emitted primarily by mobile sources, isn't included on the section 112(b) list of 188 HAP, and, as a result, isn't included on the urban HAP list. However, we're currently investigating the health risks associated with diesel PM and assessing its role in the urban air toxics problem. We're concerned about the potential health risks associated with exposures to the emissions of this pollutant mixture.

Diesel PM is a complex pollutant mixture that is emitted primarily by mobile sources. Heavy-duty highway and nonroad diesel engines are the largest sources of diesel PM, with the total on-road and non-road diesel PM emissions for 1997 being 516,373 thousand tons.[38] While diesel engines are used in a relatively small number of cars and light-duty trucks today, vehicle and engine manufacturers are developing new engine models that may be used in an increasing share of the light-duty fleet, particularly light-duty trucks. If sales of car and light trucks with diesel engines increase substantially over time, the potential health risks from diesel PM could also increase substantially.

Diesel PM typically consists of a solid core, composed mainly of elemental carbon, which has a coating of various organic and inorganic compounds. The characteristically small particle size increases the likelihood that the particles and the attached compounds will reach and lodge in the deepest and more sensitive areas of the human lung. Both the diesel particle and the attached compounds may be influential in contributing to a potential for human health hazard from long term exposure.

Section 202(l)(2) of the Act directs us to set standards to control HAPs from motor vehicles, their fuels, or both. Those standards are to be set based on available technology, taking existing standards, costs, noise, energy and safety factors into account. The Act also specifies that, at minimum, benzene and formaldehyde emissions must be addressed. We're currently working on a proposal in compliance with section 202(l)(2).

In developing the section 202(l)(2) proposal, we'll draw on the 1993 study, and more recent analyses when completed, to describe the magnitude of exposure and potential health risk to the public from toxic emissions from motor vehicles and their fuels. We'll examine exposure and potential risk in a number of urban areas, as well as on a nationwide basis. With regard to control strategies, several of the existing emission control programs developed under section 202(a) (motor vehicle

[35] Motor Vehicle-Related Air Toxics Study, U.S. Environmental Protection Agency, Office of Mobile Sources, Ann Arbor, MI, EPA Report No. EPA 420–R–93–005, April 1993.

[36] Estimation of Motor Vehicle Toxic Emissions and Exposure in Selected Urban Areas. Prepared by Sierra Research, Inc., Radian International Corp., and Energy & Environmental Analysis, Inc. for U.S. EPA, Office of Mobile Sources, Assessment and Modeling Division, Ann Arbor, MI, Report No. EPA420–D–99–002, March 1999.

[37] Sierra Research, Inc. ''On-Road Motor Vehicle National Toxics Exposure Estimates''. Memorandum from Philip Heirigs to Rich Cook, U.S. EPA. October 15, 1998.

[38] EPA National Air Pollutant Emissions Trends Update, 1970–1997. December 1998, EPA–454/E–98–007. This number also represents PM10 emissions, while PM–2.5 emissions are approximately 474 million tons. Non-road emissions include locomotives, and the on-road calculation excludes tire and brake wear.

[38] EPA National Air Pollutant Emissions Trends Update, 1970–1997. December 1998, EPA–454/E–98–007. This number also represents PM10 emissions, while PM–2.5 emissions are approximately 474 million tons. Non-road emissions include locomotives, and the on-road calculation excludes tire and brake wear.

controls) and section 211 (fuel controls) of the Act already limit many HAP emissions from motor vehicles and their fuels. We'll consider these programs, as well as our on-going regulatory activities (such as our recent proposal for new light-duty ''Tier 2'' emission standards and gasoline sulfur controls and our recent Advanced Notice of Proposed Rulemaking for diesel fuel control), in our assessment of whether additional controls are appropriate under section 202(l)(2).

In addition to fulfilling the requirement to examine emissions and health risks from motor vehicles and their fuels, we'll continue our efforts to ensure coordinated use of our standard-setting authorities to address priority risks from mobile sources. In particular, as we review existing regulations for a number of motor vehicle and nonroad engine categories, the goal of reducing air toxics risks will be considered. In addition, we envision that work done in the early stages of implementing the Strategy, such as improving monitoring and inventories, will help us compare options related to the various emissions sources in urban areas and control authorities to provide the best relative reduction of risk to the urban public.

7. Role Major Stationary Sources Play in the Strategy

As discussed in section I.C., section 112(k)(3)(B) requires that we ensure that area sources accounting for 90 percent of the aggregate emissions of each of the 30 area source HAPs are subject to standards. However, in achieving required reductions in cancer incidences, section 112(k)(3)(C) permits us to consider reductions in public health risks resulting from actions to reduce emissions from ''all stationary sources and resulting from measures implemented by the Administrator or by the States under this or other laws.'' Therefore, we'll consider emission reductions from a combination of major and area sources in conducting risk assessments to address this requirement.

These assessments will support regulatory efforts under the Clean Air Act and other authorities, as necessary, to address the identified risk. For example, any reductions resulting from MACT, the national ambient air quality standards, and other programs that achieve reductions in HAPs can be included in the assessment of reductions in risks. Therefore, if we determine that a source category or an individual source is presenting a significant health risk, then we'll address it using the appropriate regulatory authority. For example, if needed to provide an ample margin of safety to protect human health, section 112(f) residual risk standards will be developed for source categories currently subject to MACT. Additionally, if our analyses reveal a major source category that is currently unregulated or unlisted, but poses a public health risk, we'll list that source category under the authority of section 112(c) and develop the necessary regulations under section 112(d), or we may address it through other activities like pollution prevention or voluntary programs. Similarly, if a specific source is contributing to a local risk problem, then the State, local or Tribal program may be more appropriate for addressing that risk.

8. Our Approach for Combinations of Sources

We also intend to coordinate our authorities in addressing cumulative risks posed by exposures to aggregate emissions from multiple source types. For example, many commenters raised concerns about the risks from airports to the communities that surround them. Airports can be viewed as mini-cities, which produce numerous pollutants from multiple sources and are governed by many different authorities. We'll need to have an integrated strategy to reduce air emissions and the many other environmental impacts associated with aviation activities.

Although airports don't meet the definition of ''area'' or ''major'' source under section 112 of the Act, we're involved with numerous efforts to better understand and reduce the environmental impacts of aviation-related activities and their associated human health risks. For example, we co-chair the EPA/Federal Aviation Administration Voluntary Aircraft Emissions Reduction Initiative, a multi-stakeholder process designed to identify and evaluate technically feasible and cost-effective voluntary measures to reduce aviation emissions. We're also participating with other stakeholders in the development of the South Coast Ground Service Equipment memorandum of understanding (MOU) in California to identify ways to achieve additional emissions reductions from the commercial aviation community. Implementation of the MOU, which should be finalized in the summer of 1999, should yield emission reductions through increased use of cleaner engines, electrification, and alternative fuels. In addition, we're developing a Green Airport Initiative to demonstrate innovative strategies for reducing the environmental impacts of aviation-related activities at an airport undergoing expansion. In April 1999, we released a report that assesses the current and potential impact of aircraft emissions on local air quality at ten selected airports.[39] The regulatory and voluntary actions underway for aviation will produce data that can inform this Strategy and begin to address the environmental impacts of aviation-related activities and their associated risks to the communities that surround them.

D. How do the Various Federal Authorities Help EPA Implement the Strategy?

We've already made progress in addressing air toxics emissions using existing programs. To put the problem in perspective, we estimate that approximately 8.1 million tons of 188 HAPs were released in the United States in 1993.[40] We've already issued at least 43 MACT and GACT standards and two section 129 standards with post-1993 compliance dates, which will address these emissions. Emission controls for the nation's cars, trucks and off-road equipment, and standards for fuels add even more to these reductions. In this section, we'll discuss the utility of these programs and others to achieve additional air toxics emissions reductions.

Federal Regulatory Activities—Clean Air Act Section 112 Authorities

Section 112 of the Act provides several authorities for us to use in meeting our air toxics goals. We've promulgated section 112(d) MACT and GACT standards that are projected to reduce air toxics emissions by approximately 1 million tons per year once fully implemented. Within the next 10 years, as we complete more MACT and GACT standards, the air toxics program is estimated to reduce emissions of toxic air pollutants by well over 1.5 million tons per year.[41] These nationwide emission reductions will contribute significantly to reductions needed in urban areas.

The need for section 112(f) standards, or ''residual risk'' standards, is under consideration for some of the early source categories covered by MACT standards. Where justified, these standards will address remaining public health and environmental impacts of HAPs to ensure an ample margin of safety to protect public health and, in consideration of other factors, to prevent adverse environmental effects.

[39] ''Evaluation of Air Pollutant Emissions from Subsonic Commercial Jet Aircraft,'' U.S. EPA, April 1999.

[40] ''Latest Finding on the National Air Quality: 1997 Status and Trends,'' December 1998.

[41] See footnote 40.

Consistent with the requirements of the Act, we'll evaluate the need for residual risk standards for those area source categories covered by MACT standards, and will consider such evaluation for those area source categories for which GACT standards have been promulgated.

The chemical accident prevention regulations (''Risk Management Program requirements'' or ''RMP rule''), were promulgated under section 112(r). These regulations require owners and operators handling more than a threshold quantity of any substance listed in 40 CFR 68.130 in a process, to develop risk management plans to prevent and address accidental releases. Eighteen of these listed substances are HAPs. By preventing accidental releases, the RMP rule will help reduce or prevent emissions of these HAPs in the future.

We've already received several requests for permits under the section 112(g) construction and reconstruction rule. This rule applies to new or reconstructed major sources and requires them to install MACT to reduce HAP emissions. In addition, the section 112(i)(5) rule (early reductions) provides incentives for sources to reduce emissions by up to 95 percent from 1990 levels prior to proposal of MACT for that source category. Approximately 27 Title V permit applications have been received, representing HAP reductions of over 6,800 tons.

Other CAA Authorities

Other programs under the Act also contribute to the reduction of HAPs in urban areas. For example, section 109 requires States to develop State implementation plans to attain compliance with the national ambient air quality standards (NAAQS). Many of the activities that are designed to address criteria pollutants (e.g., ozone, particulate matter and lead) and attain the NAAQS also achieve reductions in air toxics. For example, many of the VOCs that form ozone are also air toxics, such as benzene and 1,3-butadiene. In addition, some VOCs can react in the atmosphere to form HAPs such as formaldehyde. Thus, controlling VOCs leads to reductions in air toxics. Similarly, compliance with the PM standards will provide incidental, but potentially significant, reductions in HAPs that are either emitted in the form of particulate matter or that condense to form particles in the atmosphere. These include polycyclic organic matter (POM), chromium, mercury, and other metals. In addition, lead is a criteria pollutant and lead compounds are listed as a HAP, so reducing lead emissions through the lead NAAQS also reduces HAPs.

With regard to mobile sources, in addition to authority under section 202(1) to address hazardous air toxics, other sections of Title II that address mobile sources, including other parts of section 202 (motor vehicles), section 211 (fuel requirements), section 213 (emission standards for nonroad engines and vehicles), and section 219 (urban bus standards), are resulting in reductions in urban air toxics by limiting VOCs, oxides of nitrogen, and particulate matter.

We've established section 129 performance standards for two source categories for combustion sources. These are expected to result in over 50,000 tons per year in HAP reductions, much of which may be in urban areas. Finally, actions taken under Title IV, the acid rain program, and Title VI, stratospheric ozone layer protection, also reduce or eliminate certain urban air toxic emissions.

Other Federal Laws

There are a number of other authorities, laws, rules, and programs that will also help reduce emissions of HAPs and consequent exposures and risks. We're evaluating the appropriateness of these statutes for controlling emissions of HAPs as described under section 112(k)(3) and intend to take further actions under these statutes as appropriate. The contribution of other Federal programs to achieving the goals of the strategy is discussed in more detail in Appendix A. Following is a list of some relevant programs:

- Superfund Amendments and Reauthorization Act (SARA) Title IV.
- Toxic Substances Control Act (TSCA).
- Resource Conservation and Recovery Act (RCRA).
- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).
- Clean Water Act (CWA).
- Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).
- Emergency Planning and Community Right-To-Know Act (EPCRA) of 1986, especially Toxics Release Inventory requirements.
- Pollution Prevention Act (PPA) of 1990.
- Oil Pollution Act of 1990.

III. State, Local and Tribal Activities

A. Why are State, Local and Tribal Programs Integral to the Process?

The Act requires that the Strategy achieve the risk reduction goals considering control of emissions of HAPs from all stationary sources, using measures implemented by us under the Clean Air Act or other laws or by the States. In addition, section 112(k)(4) requires us to encourage State and local programs. By providing for State reductions in achieving the goals, Congress acknowledged that there are many State programs achieving HAP emissions reductions and, therefore, reducing the chance for exposure and health risks, including cancer. For example, before the Act was amended in 1990, many State, local and Tribal governments developed their own programs for the control of air toxics from stationary sources. Some of these programs have now been in place for many years and, for some of the source categories, they may have succeeded in reducing air toxics emissions to levels at or below those required by the Federal standards. It's clear that Congress intended State and local governments to be important partners in carrying out the mandates of the Federal air toxics program, and this Strategy provides a mechanism to recognize the reductions made by them.

Because of the varied nature of the emissions sources, legislative structures, and other factors, the State, local and Tribal government programs address air toxics in a number of ways. For example, some programs have enacted technology standards for source categories that require controls for specific HAPs, much like the MACT program. Other programs apply a risk standard that prohibits emissions that result in exceedances of a certain level of risk, or they use an ambient air standard for air toxics that is based on threshold or exposure levels. Still others may rely on reductions achieved through volatile organic compound, particulate matter, or lead regulations developed under section 110 or subpart D of the Act to meet national ambient air quality standards. Regardless of the approaches used to address air toxics, State, local and Tribal governments have accomplished and continue to accomplish reductions in HAPs. As we proceed to implement the Strategy, we'll work with these governments to better characterize these reductions in emissions and the resulting reductions of public health risks, including risk of cancer.

Developing the Strategy is a challenge at the national level because urban air toxics problems vary significantly across the country. Because of this variability, the Strategy works best if approached as a partnership between EPA and State, local and Tribal governments. These governments (including municipal

offices other than pollution control departments) have the most experience with local air pollution issues, and can lend their expertise and knowledge to address and resolve air toxics concerns that are unique to cities. Many of these governments also have existing air pollution control programs that currently address, and can effectively continue to address, some or all of these issues. In addition, these governments are often able to act much more quickly than we can to address local concerns, which leads to less overall pollution, particularly in the areas where pollution is of greatest concern.

At the Federal level, we can contribute Federal standards and requirements using our authorities to develop and implement a national regulatory program. We also have the resources and expertise to evaluate, or to help other agencies evaluate, toxic pollution problems. By integrating our relative strengths, we can provide a stronger, more efficient, and more effective program to address toxic air pollution in urban areas.

B. What Are the Objectives of State, Local and Tribal Activities?

The Strategy will be a partnership between EPA and State, local and Tribal governments to address the risks from air toxics in urban areas. Section I.C. of this document describes the goals of the Strategy. Listed below are the objectives that we've identified to guide the actions taken by us and our governmental partners, so that those actions will be effective and efficient in achieving the goals of the Strategy:

- *Establish appropriate Federal measures, through guidance, policies, and rulemaking, which enable State, local and Tribal agencies to be full partners.* Many of the State, local and Tribal agencies may be unable to do more than the Federal laws and rules require. These agencies could benefit from Federal rulemaking guidance in addressing local issues. At the same time, we recognize the need for flexibility for these agencies to identify and address the local issues. We need State, local and Tribal agencies' help to reach the Act's goals for healthy air, and they'll benefit by being able to tailor the Strategy to their specific needs.
- *Provide flexibility for strong State, local and Tribal programs.* Many of these governments have developed their own air programs. In fact, we received many comments requesting that the Strategy acknowledge programs that are already in place. Those governments that have been pro-active in controlling air toxics can benefit by tailoring the Strategy to their own needs, or by being able to implement a program earlier than we can.
- *Provide incentives for State, local and Tribal action.* Since enabling through standards, policies and guidance and providing flexibility can result in more effective and earlier controls of urban HAPs, it will be beneficial to State, local, and Tribal governments, to us, and to the public to facilitate State, local and Tribal actions.
- *Set priorities among urban areas and source categories.* Given the broad scope of the Strategy and the time it may take to implement, it may be most effective to first identify and address those areas and sources with the highest air toxic emissions or exposure levels (including consideration of multipathway exposure where appropriate).
- *Provide information to the public on HAPs and potential risk in urban areas.* The public benefits by having a sound basis to use in setting their pollution control priorities and communicating their priorities to us. Providing information to the public is also our responsibility, and an informed public will be better equipped to help us set priorities for appropriate State, local and Tribal HAP control actions. This public outreach will include not only information on exposure to air toxics, but also information on the link between water quality and the deposition of air toxics.
- *Facilitate a focus on areas with disproportionate impacts and greatest risks.* The Strategy is intended to recognize the potential for disproportionate impacts of air toxics hazards across urban areas. State, local and Tribal governments can be particularly effective in identifying and addressing disproportionate impacts of HAPs. We'll work with our regulatory partners to provide technical and policy guidance to help identify and address disproportionate impacts from HAPs, including consideration of multipathway exposure as appropriate.

C. What Were Comments on the State/Local/Tribal Programs and How Are They Being Addressed in the Strategy Development?

Commenters expressed a general desire for more information on the State/local/Tribal agencies' roles and responsibilities in the development and implementation of the Strategy. The nature of the discussion in this part of the Strategy is general because our efforts to develop urban air toxics strategies with State, local, and Tribal governments are in an early stage of development. As described in a later section, we plan to conduct assessments to better understand our status with regard to the goals of the Strategy. We intend to use this information and also gather more input from relevant parties in the development of those programs through stakeholder meetings.

Commenters had a wide variety of opinions beyond a general desire for more information. Some State, local or Tribal governments have well-developed programs and ample resources for both the scientific and regulatory aspects of an air program, while many others have less experience and/or inadequate resources and don't do more than the Federal government requires. As a result, some States believe that their programs are mature enough to be given the flexibility to identify HAPs and source categories to address the section 112(k) requirements for themselves, and they and large industries located in these States requested local flexibility. Other regulatory agencies, small businesses and public health/environmental advocacy groups recommended against such flexibility and requested national Federally-mandated programs with Federal enforceability. We believe there are valid points from all sides. Those wanting flexibility note that risk reductions tailored to the local situation can be more effective than national solutions and that this approach takes advantage of work they already have in progress. Those wanting Federally-imposed programs note that without such Federal mandates, the playing field wouldn't be level for small businesses across different areas. In addition, some State, local or Tribal programs wouldn't be able to address urban air toxics without a Federal requirement. We will convene stakeholder meetings early in the next fiscal year to resolve these issues on State, local and Tribal programs. This time frame will allow for consideration of information from our national assessment. We plan to bring stakeholders together regularly for approximately six months and then take their input, along with comments already received on the Strategy, to develop a plan for implementing the State program. We intend to release this plan no later than six months after the end of the stakeholder meetings.

D. How Can State, Local or Tribal Agencies Participate in the Strategy?

The Strategy needs to be a partnership between EPA and State, local and Tribal agencies in order to focus on local urban air toxics concerns. But our relative roles may vary according to the needs of particular urban areas and any limitations faced by State, local and Tribal governments. With our regulatory

partners, we'll discuss and explore options for how the State, local and Tribal agencies should participate in developing and implementing the Strategy to address public and other environmental issues related to air toxics.

We see a broad range of possibilities for State, local and Tribal agency participation. For example, as indicated above, many regulatory agency programs are designed to implement delegated Federal requirements. However to provide additional flexibility, we may be able to provide a Federal program that allows the agencies to either develop and substitute their own requirements for an existing Federal program, or, if they wish, to simply adopt and implement a risk reduction program designed by us. For example, we could promulgate a Federal rule describing how we'd develop and implement a local risk reduction program. State, local or Tribal agencies could then either develop and implement a program modeled on ours, or submit an alternative program for our approval.

Alternatively, instead of promulgating a Federal rule setting out the details of an acceptable risk reduction program, we could promulgate a set of minimum elements that any local risk reduction program—whether implemented by us or a State, local or Tribal agency—must contain. This would provide agencies with more flexibility to design and implement their own risk reduction programs that we could approve.

The Federal role in developing additional risk reduction strategies for urban areas could be smaller still. It may not be necessary for us to directly guide development of State, local and Tribal programs. It may be enough for us to encourage them to meet the goals of the Strategy, and to provide necessary guidance. In the end, we (or the State, local or Tribal agency) would still need to measure progress against the mandatory goals of the Act. We might then need to determine whether additional Federal action is warranted to meet the goals.

In evaluating and comparing the options we develop together, we and our regulatory partners and other stakeholders will need to consider how well each option addresses the objectives described in section III.B. We'll also need to consider such other issues as practicality of implementation, resource burden at each governmental level, and possible adverse impacts on other Federal, State, local or Tribal programs.

E. What Elements Should a State, Local or Tribal Program Contain?

No matter who develops and implements State, local or Tribal programs, they should contain certain basic elements to allow them to meet the risk reduction goals of the Strategy. For example, the following list of elements should be considered:

- Locally-focused assessment using existing information and sufficiently refined tools to identify significant contributors to urban risk, problem chemicals and sources, geographic ''hot spots'' within an urban area, and characteristics of at-risk populations.
- A process, regulatory or otherwise, to develop strategies aimed at reducing risk from those sources.
- Opportunity for public review of both the baseline assessment and the proposed risk reduction strategies.
- A process and schedule for implementing the risk reduction strategies.
- Evaluation of whether the goals of the Strategy have been met.
- Provisions to implement additional risk reduction strategies if the goals have not been met.
- A process to encourage public participation.

At this point, this list is fairly general, because we don't have enough information to more fully develop this program structure. However, over the next couple of years, we'll be working to further develop this aspect of the Strategy, to develop and use information from assessments and other tools to guide our thinking, and to get input from our stakeholders. For example, once we've completed the initial assessment in the spring of 2000 (as described in section IV), we'll know better our status with regard to risk reduction goals of the Strategy. This will inform us about additional Federal activities needed to meet those goals, and what additional State, local and Tribal activities are needed to complement these activities. As described in section IV, periodic assessments will continue to inform us about needed programs over time. In the interim, while we're waiting for completion of the initial assessment, we plan to meet with our State, local and Tribal partners. We'll be reviewing the goals and the various components of the Strategy and how they interrelate. In particular, we'll focus on the assessment tools and their role in defining Federal, State and local activities, and we'll exchange information to help better refine the tools.

IV. Assessment Activities

This discussion of our assessment activities first focuses on how we generally intend to assess progress in meeting the goals of the Strategy. We then discuss our methods and tools for estimating health risks and describe more specifically how we intend to apply these risk assessment methods and tools in assessing progress and in supporting implementation of the Strategy. However, it is important to remember that the NATA assessments are designed to address all of the goals and activities of our overall air toxics program.

Historically, Agency risk assessment and decision-making have focused on the likelihood of health effects associated with exposure to individual environmental contaminants. In recent years, as we move from a focus on emissions reductions toward a focus on estimated risk reduction, our risk assessment emphasis has shifted increasingly to a greater consideration of multiple endpoints, pathways and routes of exposure and holistic reduction of risk. This more complex assessment is often called ''cumulative risk assessment,'' defined according to who or what is at risk of adverse effects—from identifiable sources and stressors—through several routes of exposure over varied time frames. While various integrated approaches are now being used within the Agency, we realize that there are significant gaps in methods, models and data that limit our ability to assess cancer and non-cancer risks associated with cumulative exposure to mixtures of pollutants having different endpoints. We've identified both short-term and long-term research needs to fill these gaps, highlighted in section V.D. of this notice. Progress toward more refined assessments of cumulative risks will depend upon the pace and evolution of our policy and guidance on cumulative risk and the underlying research.

A. How Will We Assess Progress Toward Goals?

Assessing progress in reducing cumulative risk from HAPs will require us to move away from a focus on assessing reductions in tons per year emitted, toward a focus on estimating reductions in cancer and non-cancer risks associated with lower emissions.

''Cancer'' describes a group of related diseases that affect a variety of organs and tissues. Cancer results from a combination of genetic damage and non-genetic factors that favor the growth of damaged cells. At current cancer incidence rates, approximately one third

of U.S. residents may be expected eventually to contract some form of cancer. Cancer is associated with a wide range of factors, of which exposure to HAPs is only one. Other causes of cancer, including genetic susceptibility, diet, smoking, background radiation, and lifestyle, are thought to be the dominant factors determining total cancer incidence. Given these complexities, the rate of cancers associated with HAPs alone cannot be observed directly. Attributing cancer to specific factors is also complicated by the fact that many cancers do not appear for years, or decades, after exposure and, therefore, may have been caused by exposures long past and in different locations. As a result, we'll need to rely on modeled estimates of cancer risk rather than on direct measurements for assessing the Strategy's progress toward the goal of 75-percent reduction in cancer incidence associated with HAPs.

Adverse health effects other than cancer (''non-cancer risks'') include a wide range of health endpoints in all organ systems (for example, cardiovascular, immune, liver, kidney).[42] As with cancer, other factors such as diet, lifestyle, and other exposures (for example, smoking) may exert a dominant influence over incidence of adverse non-cancer health effects. Therefore, as with carcinogens, we expect to rely primarily on risk estimates to assess progress, rather than on direct measurements of changes in the incidence of adverse non-cancer health impacts due to reductions in emissions.

The Act sets a clear numerical goal for reduction in cancer incidence, but specifies only a ''substantial'' reduction in public health risks for effects other than cancer. We see a need to define and clarify this goal more fully as we work to implement this Strategy, but we haven't yet developed a specific numerical goal for risk reduction for various non-cancer effects. One major purpose of our non-cancer risk assessments will be to provide a sound technical basis for developing and defining non-cancer goals that are quantifiable, attainable, and consistent with the Act.

Since cancer and non-cancer health impacts can't be directly isolated and measured, we and others have spent more than two decades developing an extensive set of risk assessment methods, tools and data that serve the purpose of estimating health risks for many of our programs. Our risk assessment science has been extensively peer-reviewed, is widely used and understood by the scientific community, and continues to expand and evolve as scientific knowledge advances. We intend to use the most current and appropriate risk estimation methods in tracking progress under the Strategy.

Our risk assessments, reflecting the risk paradigm set forth by the National Academy of Sciences in 1983,[43] are based in general on a combination of two types of analyses. The first type of analysis examines what adverse effects a substance causes (the ''hazard identification''), and the specific exposures at which these effects occur (the ''dose-response assessment''), and is usually based on human or animal studies of high quality published in peer-reviewed scientific journals. This type of analysis allows us to evaluate a chemical's potential to cause cancer and other adverse health effects.

The second type of analysis estimates the levels of exposure that people receive within the environment. We develop this ''exposure assessment'' in stepwise fashion for air pollutants, with the first step being the compilation of emissions data. Second, these data are input to a dispersion model, which estimates ambient air concentrations. These modeled ambient concentrations may be compared to monitoring data in order to test and validate the models. Third, we estimate exposures to ambient concentrations by applying models of human behavior patterns, and incorporate measured personal exposure information when available.

These two types of analyses—the exposure that causes harm and the exposure people actually receive—are combined in a ''risk characterization'' that describes the potential for real-world exposures to cause harm, and the uncertainties surrounding the characterization.

B. What Methods, Tools, and Data Will We Use To Estimate risk?

1. Evaluating a Chemical's Potential To Cause Cancer

Our dose-response assessments for carcinogens are based on mathematical models and assumptions that support extrapolation from high to low doses and from non-human test species to humans. As a matter of science policy, many of these assumptions are protective, to avoid underestimating cancer risks where data are incomplete. The most important of these assumptions for most carcinogenic chemicals is that risk is proportional to dose, with no threshold dose below which there is no risk. Our dose-response assessments for inhalation of carcinogens are expressed as a ''unit risk,'' that is, risk per microgram per cubic meter of daily exposure during a lifetime. The unit risk is defined as a conservative estimate of an individual's excess probability of contracting cancer at the end of 70 years exposure to a continuous level of one microgram per cubic meter. Risks from exposures to concentrations other than one microgram per cubic meter are modeled as proportional, with half the concentration producing half the estimated risk, and so on.

Each word in the above definition of unit risk carries significant meaning. First, the unit risk is a conservative rather than a ''best'' estimate. This means that the actual unit risk is unknown, and is very likely to be lower than estimated and very unlikely to be higher. Second, as already described, risks are estimated rather than measured. Third, the unit risk applies to an individual, although cancer incidence in a population can be estimated across a group by aggregating the risk of each person. Fourth, unit risk estimates focus only on the route of exposure being analyzed. Fifth, unit risks are expressed in terms of probability. For example, we may determine the unit risk of a particular HAP to be one in ten thousand per microgram per cubic meter. This means that, of ten thousand people who continuously inhale an average of one microgram per cubic meter of this particular HAP for 70 years, no more than one would be expected to contract cancer from the exposure. Sixth, risks are generally expressed in terms of contracting cancer, not dying from it. Finally, exposures are averaged over a 70-year lifetime, to account for long-term exposures to low levels of carcinogens.

We intend to use unit risk estimates as the dose-response component in estimating plausible reductions in cancer incidence achieved by this Strategy.

2. Evaluating a Chemical's Potential To Cause Adverse Effects Other Than Cancer

Adverse health effects other than cancer (''non-cancer risks'') cover a wide range of health endpoints in all organ systems (for example, cardiovascular, immune, liver, kidney).

[42] Some HAPs that cause cancer may also cause adverse non-cancer health effects at environmentally relevant doses. Thus, when we discuss ''non-carcinogens,'' we mean substances that may potentially cause non-cancer effects in humans. Some of the same substances may also be evaluated as carcinogens.

[43] National Research Council (NRC). 1983. Risk assessment in the federal government: Managing the process. National Academy Press, Washington, D.C.

For this reason, we've developed our non-cancer dose-response assessment methods to address several additional sources of complexity beyond those found in cancer assessments. First, organisms possess varying abilities to eliminate, detoxify, and sequester many toxic substances, and to repair some amount of damage that those toxic substances may cause to tissues and organs. For this reason, most chemicals don't cause observable adverse non-cancer health effects until some threshold dose has been exceeded. Second, the appearance of a toxic response when the threshold dose is exceeded is seldom proportional to dose. The shape of ''dose-response curves'' (for example, a graph of the number of individuals affected at varying dose levels) varies substantially among chemicals, so there is no single model that can be applied to all non-carcinogens. Third, available information for most HAPs comes from animal studies, and significant uncertainty is associated with extrapolating these results to humans to support predictions of human dose-response curves.

For these reasons, non-cancer dose-response assessments for inhalation are usually expressed in terms of a ''reference concentration,'' defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious non-cancer effects during a lifetime. We intend to use reference concentrations as the dose-response component for estimating reductions in non-cancer risk achieved by this Strategy.[44]

3. Assessing Exposures and Characterizing Risks

In general, the choice of appropriate risk characterization approaches will be influenced by both the availability of data to support exposure assessment, and the level of detail and resolution needed to support the purpose of the assessment. Possible approaches span a wide range, from simple weighting adjustments of emissions data or ambient concentrations, to detailed multipathway risk assessments. We've identified four basic approaches that we plan to use for various assessments to evaluate the progress of the Strategy in reducing estimated risk. Each of these approaches uses the same dose-response information described above, but relies on different types of data to represent exposures. The four basic approaches we intend to use are: (1) Emissions or ambient concentration weighting;(2) comparisons between ambient concentrations and risk-based concentrations (RBCs) [45]; (3) comparisons between estimated exposures and RBCs, that may yield quantitative estimates of risk; and (4) quantitative estimates of carcinogenic risk for individuals and populations.

Approaches (1) and (2) are considered hazard-based approaches, in that they lack the dispersion and/or human exposure modeling steps of an exposure assessment and therefore cannot provide quantitative estimates of risk. However, they can provide valuable information, subject to substantial uncertainty, that may be useful in evaluating progress toward risk reduction goals. In contrast, approaches (3) and (4) are considered risk-based approaches, in that they do incorporate exposure assessments and thereby can provide quantitative risk estimates.

(1) Weighted emissions or ambient concentrations. Weighting of emissions or ambient concentrations is the least resource-intensive approach of the four in terms of data needs and computational requirements.[46] This hazard-based approach combines HAP emissions or monitored HAP concentrations (acting as surrogates for exposure) with weighting factors (developed from unit risks and reference concentrations) that account for differences in relative toxicity among HAPs. Other weighting factors could also potentially be developed to account for differences in dispersion characteristics or variations in population density or behavior.

The toxicity adjustment is intended to account for differences in toxic potency among substances, placing all emissions data on the same scale of hazard potential. For example, acrylamide is approximately 160 times more potent a carcinogen than benzene, such that weighting by toxicity would consider one ton of acrylamide emissions equivalent to 160 tons of benzene. In a cumulative analysis, emissions or concentrations of each HAP would be weighted by its relative toxicity to allow for direct comparison and aggregation across HAPs (with carcinogenic and non-carcinogenic estimates aggregated separately). This type of analysis permits comparisons of relative hazard between pollutants with large mass emissions and low toxicity (for example, many non-chlorinated volatile compounds) against pollutants with small mass emissions but high toxicity (for example, dioxin).

As discussed above, the weighted emissions-or concentration-based approach lacks the last two steps of an exposure assessment, and therefore doesn't provide a quantitative estimate of risk. Also, because of the absence of these important exposure assessment steps, it isn't possible to say how closely changes in weighted emissions or concentrations will be related to changes in health risk. Nevertheless, emissions and ambient concentrations clearly have a strong influence over exposure and risk, and we anticipate that the toxicity-weighting approach will provide useful information to estimate progress where appropriate data for more refined assessment approaches aren't available.

(2) Ratios of ambient concentrations to RBCs. A second type of hazard-based approach is the comparison of ambient HAP concentrations with RBCs.[47] Ambient concentrations may be measured (as discussed in section V.A.) or modeled (section V.C.). Appropriate modeling approaches for estimating ambient concentrations at different spatial scales using emissions data include national-scale and urban-to neighborhood-scale air quality models, as well as multi-media models for urban-to neighborhood-scale analyses.

The RBCs used for comparison are derived from unit risks or reference concentrations. Specifically, cancer RBCs can be defined in terms of a fixed risk level (for example, HAP concentrations conservatively estimated to result in a one-in-ten-thousand or a

[44] The uncertainty surrounding reference concentrations (RfCs) varies substantially among HAPs, depending on the strength of the supporting data. As a result, RfCs vary in their level of protectiveness, with RfCs supported by strong toxicological data tending to be less protective. We recognize this important limitation to the use of RfCs, and may use more advanced dose-response models for specific HAPs where they can be applied.

[45] Risk-based concentrations for cancer are ambient concentrations associated with specific levels of cancer risk, assuming 70 years of continuous exposure. RBCs for non-cancer effects are ambient concentrations that pose no appreciable risk to humans, assuming continuous exposure. The use of RBCs does not imply a judgement that the concentrations are either acceptable or unacceptable, only that they have been derived in the same way for all HAPs.

[46] Peer-reviewed examples of this approach include the EPA/OPPT Risk-Screening Environmental Indicators, the EPA/OSW Waste Prioritization Management Tool, and the EPA/OAQPS ranking analysis for urban HAPs. See the public docket for a detailed list of risk assessment references.

[47] Peer-reviewed examples of the use of this approach include the concentration-toxicity screen used by EPA's Superfund program to select contaminants and exposures for detailed risk assessment, and EPA's Cumulative Exposure Project, which compared modeled ambient air concentration estimates with RBCs (termed Ahealth benchmarks'' by the authors) for 148 HAPs nationwide. See the public docket for a detailed list of risk assessment references.

one-in-one-million upper-bound risk of contracting cancer from a lifetime exposure at the RBC). Non-cancer RBCs can be defined in terms of estimates of continuous exposure levels at which even sensitive subgroups are likely to be without any appreciable risk of adverse effects during a lifetime.

Because it is more complex than emissions-weighting, this type of analysis brings two significant advantages. First, it supports a more complete treatment of ambient HAP concentrations that are already below non-cancer RBCs, for which further reductions may not carry significant health benefits. Second, the use of dispersion models to predict ambient concentrations can potentially account for variations in factors such as location of exposed populations relative to sources of HAPs, differences in meteorological conditions, and differences in fate and transport characteristics among HAPs.

Nevertheless, this approach still lacks the third, human behavior-related, step in an exposure assessment. Therefore, it doesn't provide a quantitative estimate of risk, and its use in estimating progress is subject to greater uncertainty than approaches (3) and (4), below. Changes in health risk may not precisely track changes in concentration/RBC ratios. However, because ambient concentrations are important determiners of exposure and risk, we anticipate that the concentration/RBC approach will provide useful information to estimate progress where exposure assessment is not possible.

(3) Ratios of exposures to RBCs. A third type of approach begins with measured or modeled ambient HAP concentrations, and adds further refinement by overlaying estimates or measurements of population exposures. Thus, this risk-based approach is qualitatively different from the first two hazard-based approaches because it incorporates all three steps of an exposure assessment.

While human exposures are directly affected by ambient concentrations, they're also influenced by behavioral factors such as time spent outdoors, periodic movements (such as commuting) within an urban area, and activity levels. Exposures may be estimated with exposure models, as discussed in section V.C., that simulate the behavioral factors that determine exposure. Human exposure may also be directly measured by personal monitoring, in which subjects wear small air samplers and record their daily activities.

These estimated or measured exposures are then compared to RBCs [48] (as described above for approach (2)). Analogous to the comparisons in approach (2), hazard potential would typically be presented in terms of ratios of the exposure concentrations divided by RBCs. The additional complexity of estimating exposure provides three significant advantages over considering ambient concentrations alone. First, it provides a more realistic comparison with RBCs, which are based on unit risks and reference concentrations usually derived from doses actually received by test organisms. Second, exposure estimates can take into account behavioral differences between populations in different cities, or between different demographic groups. Third, exposure estimates support combining effects of multiple HAPs, considering non-additivity and similarities or differences in toxic mechanisms. Comparison of exposures with reference concentrations for non-cancer effects (acting as RBCs) is currently the most advanced approach available for assessing non-carcinogenic HAPs, although this may change in the future for some substances.

(4) Risk estimation. A fourth type of approach that can be used to estimate cancer incidence is comprehensive risk estimation, focusing on the most exposed individual or on entire populations or subgroups.[49] We'll derive risk estimates by combining exposure estimates with dose-response assessment results in terms of unit cancer risk estimates. Risk estimates will also consider non-standard dose-response models and complex interactions among different HAPs, if information is available. Such risk estimates represent the most refined analysis of the four approaches considered. Comprehensive assessments may contain modeling to account for environmental fate and transport of released pollutants, estimation of exposures to different subpopulations, detailed dose-response assessments for each HAP, and information on complex, non-additive interactions among HAPs. Results are expressed in terms of probabilities of developing cancer during a lifetime. Cancer risks are usually aggregated across HAPs by addition, but non-additive interactions are included if data permit.

In its most complete form, risk estimation produces results in probabilistic form (that is, with calculations considering a range of cancer risks and the likelihood of each), expressed in terms of a frequency distribution rather than as a single deterministic estimate. Of currently available approaches, risk estimation, presented probabilistically, provides the most complete, best-supported, and most accurate presentation of both risk and the variability and uncertainty surrounding it. However, this risk-based approach is much more resource- and calculation-intensive than are simpler approaches.

4. Summary

We anticipate tracking progress in reducing estimated cumulative risks from air toxics in urban areas by relying on estimates of health risk rather than by directly observing reductions in adverse health impacts in human populations. We consider these health risk estimates to be reasonable and appropriate indicators of progress toward meeting the goals of the Strategy. Their use is made necessary by the long latency period for cancer, the high background rate of human cancer from all sources, and complexities involved in attributing various non-cancer health effects to specific environmental causes. Our assessments will use a variety of approaches, including some that do not include all exposure assessment steps. In some cases the information may be too uncertain to support conclusions. We intend to evaluate these approaches against each other, in terms of their ability to estimate risk and their resource and data requirements, when supporting data become available in early 2000. These results will assist us in determining the scope, refinement, and precision of future assessments developed to reflect different purposes under the Strategy.

C. What Is Our Overall Risk Assessment Approach for the Strategy?

In section I, we discussed the key role that assessing air quality, exposure, and estimated risks will play in assessing progress toward meeting the goals of this Strategy. In addition, these assessment activities will, over time, also serve the following broader purposes:

- Improve the definition of the goal for ''substantial'' reduction in non-cancer risk.

[48] Peer-reviewed analyses of this type of analysis include many single-substance risk assessments. Several examples concern the fuel additives methylcyclopentadienyl manganese tricarbonyl (MMT) and methyl tertiary butyl ether (MTBE). See the public docket for a detailed list of risk assessment references.

[49] Examples of such multi-chemical, multipathway risk assessments include many performed by EPA's Superfund program under the Risk Assessment Guidelines for Superfund. See the public docket for a detailed list of risk assessment references.

• Support development of Federal area (as described earlier) and mobile (as appropriate under section 202(l)) source standards.

• Support decisions on how to conduct future risk assessments.

• Evaluate the effectiveness of each of the four approaches to characterizing risk reductions, described above.

• Provide guidance for State, local and Tribal agency efforts in conducting local assessments and developing risk reduction programs at the state and local levels.

Our assessment approach will be basically iterative in nature, so as to take advantage of emerging science, new data, and improved tools that become available at the time future assessments are performed. Consistent with this approach, beginning in early 2000, we'll conduct an initial set of assessments that will be based on final, updated emissions data, as discussed in section IV.D. Subsequent assessments will reflect the best available data, methods, and tools available at the time the assessments are performed.

Our national database of air toxics emissions from major, area, and mobile sources (including diesel exhaust), the NTI, will be a fundamental component of our risk assessments. We are now completing a baseline NTI representing the 1990–1993 period, and obtaining State review of a draft 1996 NTI suitable for use as input data for dispersion and exposure models (scheduled for completion in the fall of 1999). We plan to update the NTI every three years, and to conduct subsequent risk assessments to coincide with these revisions. Monitored air toxics concentrations will also be an important component of our assessment activities, in part to help us evaluate and refine our air quality models. We are now working with the States to design and implement a national air toxics monitoring network that will provide important information for future assessment activities. Our plans for the ambient monitoring network are described in more detail in section V.A.

1. How We Will Design Our Assessments

We'll tailor each assessment to the purpose(s) it is to serve (e.g., measuring progress against the 75-percent estimated cancer incidence reduction goal). Accordingly, assessments will vary in scope, level of refinement, and, thus, data and resource requirements. The scope of each assessment will generally be defined by the following characteristics:

• The number of HAPs to be evaluated (all 188 or some subset);

• Types of source included (area, major, mobile);

• Spatial resolution (for example, aggregation of results on the national, state, urban, or neighborhood scale); and

• Pathways/media to be evaluated (inhalation/air only or multipathway/multimedia).

Further, for each assessment, we need to specify an appropriate approach to use in estimating progress toward our risk reduction goals, since, as discussed above, it will not be possible to directly measure reduction in cancer incidence or non-cancer risks attributable to hazardous air pollutant emissions. Alternative approaches, discussed in section IV.B., range from rough approximations to more precise risk estimates, with data and resource requirements increasing for more precise assessments that require greater refinement.

2. How Our Assessments Will Address Disproportionate Risks

Disparities in risks from air toxics in the urban environment may exist between different cities, between neighborhoods or demographic groups within a city, or within a similarly-exposed population that includes sensitive groups. In our assessments, we intend to pay particular attention to areas, populations, and sensitive groups with substantially higher-than-average risks.

While differences in risk between different urban areas may be discernible from national screening-level modeling, more refined modeling will generally be needed to evaluate localized disparities within any one urban area. This is because highly localized disparities may be obscured by the simplifying assumptions that are necessarily inherent in national screening-level assessments. For this reason, the ability of EPA or State and local authorities to assess localized risk disparities will depend on the availability of detailed data on emissions and population distribution, local-scale models, and sufficient resources.

D. How Will We Design Future Assessments?

We'll conduct a series of assessments starting in early 2000 and periodically thereafter at appropriate times during the implementation of the Strategy. The assessments will include both national-scale and urban-scale analyses. All assessments will incorporate the most current data, information, and assessment tools available at the time they are performed. As the Strategy progresses, we may eventually use risk assessment tools that are now only in early development, or perhaps have not yet been envisioned. For this reason, we can't describe in detail assessments that will be conducted several years from now.

1. Initial Assessments—National

We'll conduct an initial national assessment in early 2000. This assessment will define an appropriate hazard-or risk-based approach consistent with the limited available information on HAP emissions and ambient concentrations. The principal limitation of the baseline emissions information is that, although the baseline NTI will be a comprehensive county-level inventory, it will lack the source-specific information necessary to support air quality modeling.[50] Thus, any assessment of progress relative to the base year will be limited to using either a weighted emissions or a weighted ambient concentration analysis, since the other approaches include an air quality modeling step. Future assessments, however, will not be limited in this way because emission inventory data, beginning in 1996, will include information needed for modeling.

The initial assessment will serve several purposes. First, we'll develop an estimate of progress that has already been made toward the goals of the Air Toxics Program and the Strategy. Consistent with section 112(k) of the Act as amended in 1990, which focuses on reductions ''below those currently experienced,'' we've established 1990 as the base year for assessing progress. To estimate progress since the base year, we'll compare the base year emissions inventory to the inventory for 1996, due to be completed in fall of 1999, using a weighted emissions analysis. This assessment will be limited to the weighted-emissions approach because the base year inventory (although a comprehensive county-level inventory) will lack the source-specific information

[50] We note here, as discussed in sections I.B. and II.A., that as part of the Agency's Cumulative Exposure Project, the ASPEN model to estimate HAP ambient concentrations nationwide was developed and tested using a 1990 emissions inventory that was based on the limited HAP information available in the mid-1990s prior to the substantial improvements that are now reflected in the baseline NTI. While that first national-scale modeling exercise provided screening-level information that we've used in conjunction with other information in selecting the urban HAP list, we believe that the uncertainties in the CEP's 1990 emission inventory are too large to support a meaningful comparison with modeled concentrations for future years that will result from the application of the ASPEN model using updated emissions inventories. These updated inventories, starting with the 1996 NTI, are specifically designed to include sufficient source-specific information to support air quality modeling.

necessary to support air quality modeling. Subsequent assessments, however, will not be limited in this way because emission inventory data, beginning in 1996, will include information needed for modeling.[51]

Second, the initial national assessment will provide basic information to assist us in prioritizing HAPs and area, mobile, and major source categories for regulations to be developed consistent with section 112(k), section 202(l) and other authorities (e.g., residual risk), respectively, based on their relative importance as contributors of risk. Third, the assessment will provide the clearest and most current picture of inter-urban and demographic disparities in risk, and will provide insight on more refined analyses that may be appropriate to identify types of sources associated with particularly high risk levels. Fourth, we intend to use information from the initial assessment to develop a more complete and quantitative goal for a ''substantial'' reduction in non-cancer risk. Finally, we'll use the initial assessment to compare different hazard- and risk-based approaches. In particular, we intend to correlate results of assessment approaches (1) and (2) (which lack exposure assessments) with exposure assessment-based approaches, to determine their relative accuracy and to quantify uncertainties. These comparisons, in combination with data and resource availability, will help us to scope the details of future assessments and finalize our estimates of progress from 1990 to 1996.

We'll use all four types of approaches (emissions weighting, comparisons between ambient concentrations and exposure estimates and RBCs, and modeled estimates of risk) in the initial national assessments, to the extent possible. As discussed in section V.C., we plan to use the ASPEN model to estimate national air quality concentrations in conjunction with the use of the Hazardous Air Pollutant Exposure Model (HAPEM) to estimate national exposures. We'll conduct screening level analyses before progressing to more refined analyses, to ensure that we're allocating appropriate amounts of resources to each assessment, given our information needs. The assessment will focus on inhalation exposures, with the expectation of including multipathway exposures, as appropriate, in subsequent assessments. The initial assessment will include all urban areas in the United States, and we anticipate presenting results with county- and/or urban-scale resolution. The assessment will address as many HAPs as the data support, but will include at least the 33 urban HAPs and diesel PM.

2. Initial Assessments—Urban

We plan to conduct urban-scale assessments for a number of selected cities to serve as case studies that may be particularly useful as guidance for State, local and Tribal program assessments. We'll also provide technical support and risk assessment tools for authorities that wish to conduct their own local assessments to analyze area-specific progress and intra-urban disparities. The experience we gain through these analyses will also help us refine future assessments.

We'll develop these initial urban assessments using the specific approaches that are appropriate for the quality of data available. Each assessment will describe a single urban area, and we anticipate presenting the results with high spatial resolution (for example, a 1-kilometer grid). The scope of each assessment will address a subset of HAPs that we identify as being priority HAPs for the particular urban area being assessed. We plan to consider both inhalation and multipathway exposures as appropriate and as available data permit.

3. Periodic Assessments

In the years following the initial national assessment, we'll conduct new analyses at appropriate intervals as new data become available. These periodic assessments will serve two principal purposes. First, they'll measure progress toward the goals of the Strategy, considering all actions taken that reduce HAP emissions (including Federal, State, local and Tribal actions, as well as voluntary initiatives by local communities and industry) for any purpose. Second, they'll assist us in prioritizing which future regulatory actions would be most effective in making needed further progress. We'll develop the periodic assessments using the specific approaches that have proved most efficient (that is, the least resource-intensive approach that accomplishes the purpose of the assessment). Assessments will include all urban areas in the United States, with results presented on county- and urban-scale level resolution. Assessments will address the full list of 188 HAPs, to the extent to which emissions, monitoring, and health data are available. If appropriate tools become available, periodic assessments for bioaccumulative HAPs will include multipathway exposures.

By measuring ongoing progress, periodic assessments will also inform us when we have met our goals, and will help us to measure the degree to which we have reduced disparities in risk. The approaches used for such goal-specific comparisons will be determined by the results of earlier assessments, and developed to fit the Strategy's purpose.

V. Knowledge and Tools

This section describes the activities we'll undertake to improve our base of knowledge (e.g., concerning health effects and exposure characteristics) and tools (e.g., emissions inventories, monitoring networks, and computer models), along with our plans for their improvement and related research.

A. How Will We Review and Expand Ambient Monitoring Networks?

1. Need for Ambient Data

As described in section IV, our iterative approach to risk characterization looks at emissions as a rough surrogate for risks in the near-term, while providing for a plan to periodically conduct more refined analyses as risk tools and data are developed. In order to base the air toxics program on risk assessments backed by sound science, we'll need emissions and monitoring data to conduct good assessments. Emissions data are one way we can attribute HAP exposures to specific sources. On the other hand, ambient monitoring data allow us to continually evaluate and improve our models and inventories, to deal credibly with the difficult issue of background HAP concentrations, and to measure progress more directly. Furthermore, each type of data (source emissions data and ambient monitoring data) can be used to improve our understanding of the other. For example, ambient data can warn us when our inventory or models are seriously flawed, and modeled exposures can be used in siting monitors and directing analyses for both short- and long-term measurements.

2. Ambient Monitoring Network Program Design

Currently, we have limited data on ambient concentrations of air toxics, because existing networks are limited, were developed for other purposes, or weren't specifically designed to develop the data needed to meet our current air toxic program goals. In fact, many commenters raised concerns that the current monitoring network was

[51] Peer-reviewed examples of this approach include the EPA/OPPT Risk-Screening Environmental Indicators, the EPA/OSW Waste Prioritization Management Tool, and the EPA/OAQPS ranking analysis for urban HAPs. See the public docket for a detailed list of risk assessment references.

inadequate and that the draft Strategy didn't adequately address this concern. Another problem is that ambient data can be both difficult and expensive to obtain. Our long-term plan is to build an air toxics monitoring network consistent with the goals of the air toxics program and the Strategy.

Since it's not possible to monitor everywhere, we must develop a monitoring network that is representative of air toxics problems on a national scale, but that still provides a means of obtaining data on a more localized basis as appropriate and necessary. The appropriateness of a candidate monitoring site with respect to the projected uses of its data is a key consideration in identifying sites for the national network. For example, in selecting monitor locations we must evaluate how well the location allows us to directly evaluate public exposure and environmental impacts in the vicinity of the monitors. We'll also need to site monitors to allow us to obtain data that can help us establish an ambient baseline for toxics risk characterization, track trends in ambient levels to assess progress in meeting our emission and risk reduction goals, and assess the effectiveness of specific emission reduction activities.

We'll design the monitoring network to address all of the needs of the air toxics program and the Strategy, which should satisfy the following objectives:

- Measure pollutants of concern to the overall air toxics program and the Strategy.
- Use scientifically sound monitoring protocols to ensure nationally consistent data of high quality.
- Collect a sufficient amount of data to estimate annual average concentrations at each monitoring site.
- Complement existing national and State/local monitoring programs.
- Reflect Acommunity-oriented'' (i.e., neighborhood-scale) population exposure, including inhalation and non-inhalation exposure.
- Represent geographic variability in average ambient concentrations.

3. Network Implementation Schedule

For the first 2 years of monitoring, we'll maximize our use of existing State/local air toxics monitoring sites, Photochemical Assessment Monitoring Stations (PAMS) sites, or planned particulate matter chemical speciation sites. These sites should provide coverage of both the largest metropolitan areas and neighborhood-scale sites, which fits with our focus on population-oriented urban sites. If existing platforms aren't suitable for characterization of population exposure to air toxics, we'll strive to establish new community-oriented monitoring stations or upgrade existing ones to include urban HAP analyses. We'll also work to establish appropriate quality assurance, data management, data analysis, and data submission procedures, and will use established monitoring protocols in the next few years.

After 2000, we expect the air toxics monitoring network to continue to grow to cover more urban areas and to include monitors in rural areas to permit estimates of background concentrations. We also expect to place other fixed-site monitors in areas that may be subject to localized high concentrations of air toxics. In some cases, temporary or mobile monitors may be used to evaluate these areas. The long term goal for a national network includes monitoring of sensitive ecosystems and other environmental concerns. To this end, the national network should incorporate the separately funded deposition monitoring activities associated with the Great Waters Program. Our tentative projection of the national network is 200 sites, but this will be revised as additional information becomes available and as the network itself expands.

B. How Will We Update and Maintain the Emission Inventory?

We plan to update the NTI every 3 years using the same principles that we used when developing the 1996 NTI. The next version will be known as the 1999 NTI. The 1996 and subsequent NTIs will be compiled from State and local air toxics inventories. The State and local emission inventory data are supplemented with data gathered to support the development of MACT standards and Toxic Release Inventory (TRI) as well as calculated emission estimates for the majority of area and mobile sources. Unlike the baseline inventory developed for the Strategy, the 1996 and subsequent NTIs will contain location- and facility-specific data making the inventory suitable for input to dispersion and exposure modeling. These additional data are used to determine the exact types and location of facilities in urban and rural areas. We also expect that the quality of information available to use in developing future inventories will improve as data quality does and as we learn more about the locations and sources we are studying.

As discussed in the rest of section V, we plan to obtain improved monitoring data that will influence our inventory efforts, as well as to undertake research projects to address our data needs. One tool we're in the process of developing is the consolidated emissions reporting rule, whose purpose is to simplify reporting, offer options for data exchange, and unify reporting dates for various categories of inventories.

C. What Air Quality and Exposure Models Will We Use To Implement the Strategy?

A variety of mathematical models are often employed to assist in risk assessment activities. While not designed specifically to address urban areas, several models are currently available or under development to help describe the fate and transport of toxic air pollutant emissions. Although there is much associated uncertainty, the output of such models is then used as input to models that estimate human exposure and risk. This section discusses the model development activities and models that will be used in the air toxic assessments discussed in section IV.

We'll rely on a variety of fate and transport modeling tools that vary in their complexity and the scale of the geographic area that they're capable of handling. For example, we plan to use the Assessment System for Population Exposure Nationwide (ASPEN) model to conduct national screening modeling for ambient (i.e., outdoor) air toxic concentrations. This model estimates annual average ambient air toxic concentrations by modeling the dispersion of a nationwide inventory of HAP emissions from major, area, and mobile sources. It can also address simple chemical transformations of air toxics in the atmosphere. Current developmental efforts are underway to add increased model functionality to allow for testing of various ''what-if'' emission reduction scenarios using the ASPEN model. We'll use the Industrial Source Complex Short-Term (ISCST3) model to estimate both short-term (one-hour) and long-term (annual) average concentrations at locations from the urban to neighborhood scales. The ISCST3 model can predict not only ambient air toxic concentrations, but the amount of air toxic pollutants that will settle to the soil and/or into bodies of water. These settling rates are sometimes used to track the fate of air toxic pollutants where multimedia (air, water and/or soil) exposure and risk are of concern (e.g., with mercury). When multimedia considerations are of concern, we'll use the environmental fate and transport module of the Total Risk Integrated Methodology (TRIM) to determine urban and neighborhood scale impacts. Likewise, when a HAP

associated with complex chemical reactions in the atmosphere is being considered, we'll use the Community Multiscale Air Quality (CMAQ) Model. This model is currently being developed in the EPA's Models-3 Framework, and it can be used to predict regional and urban wide concentrations values. The Models-3 Framework also employs a state-of-the-art meteorological pre-processor for accurate and detailed simulation of the meteorological data for input into the CMAQ model.

Model estimates of HAPs in the ambient air (and water and soil, when appropriate) will provide input necessary for modeling exposures. An exposure assessment takes into account the fact that most people don't spend the majority of their lives in an outdoor environment. An exposure model can track day-to-day activity patterns, simulating the movement of population subgroups (e.g, children under 5 years of age) through different ''micro-environments'' (e.g., in homes, vehicles, school, work, or while bathing). These activity pattern relationships are then used to estimate levels of exposures of population subgroups to the HAPs. One such model that we've developed for determining inhalation exposures is the Hazardous Air Pollutant Exposure Model (HAPEM4). This model can work in tandem with the ASPEN model to predict long-term nationwide-scale inhalation exposures to HAPs. Applications requiring exposure estimates through multipathway routes (e.g., through inhalation, ingestion and dermal contact) can use the TRIM module, TRIM.Expo, which is currently under development. We're currently developing several other exposure models for specific applications that we may also consider in our air toxic assessments.

As is the case with any mathematical simulation, the more detailed and accurate the simulation required, the more complex the input data requirements become. The availability, type, and quality of input data will directly influence the choice of the model or models selected for specific assessment purposes. Where gaps between input data and the required level of detail and accuracy are identified, we're making efforts to supplement and improve our data sets (e.g., improvements in the NTI, establishment of national monitoring networks) to make use of the most state-of-the-art models available.

D. What are the Research Needs and What is EPA Doing to Address Them?

The Strategy describes the process we'll use for identifying the various risks that may be present in an urban environment. Part of that process is to determine gaps in our scientific information and to identify the tools we'll need to assess urban risks and to implement the risk reduction elements of the Strategy. To address this concern, we plan to include a ''research needs'' chapter in our forthcoming ''Integrated Urban Air Toxics Report to Congress'' (Urban Report), which will describe the activities and research that will be needed to assist in our assessment and management of risks in urban environments.[52] The Urban Report will describe the research activities we'll undertake with the support of our Office of Research and Development, the research activities to be done by organizations outside of EPA and funded through our Grants program, and the research activities described in various other EPA reports that have relevance to the Strategy. We're also developing an ''Air Toxics Research Strategy'' (Research Strategy) which will expand on the planned urban ''research needs'' chapter, to include information that would assist in assessing risks on a national or regional basis.[53] This Research Strategy would reflect the needs of other elements of the air toxics program, such as the residual risk and Great Waters elements.

In our Urban Report, we plan to present research needs using the risk assessment/risk management paradigm developed by the National Academy of Sciences as the basis for the requested research. This paradigm includes activities related to health and dose-response, emissions and exposure characterization, a risk assessment, and risk management. Briefly, the following identifies the research areas and describes some of our current activities:

Urban HAP health effects and dose response needs.

- Additional knowledge of both cancer and non-cancer health effects will be accumulated. This will include determinations of specific toxicities (determined from animal and human studies) as well as the development of models to extrapolate across HAPs, species, time, and routes of exposure. Any such determinations should address the effects of HAPs or other factors which make sensitive subpopulations (e.g., children, the elderly, persons with existing illnesses) more vulnerable to exposure and effects.
- Development and updating of HAP health reference values, such as inhalation reference concentrations, acute reference exposure values, and cancer unit risk factors.
- Statistical methods for quantifying and reducing uncertainty in risk assessments using acute and chronic data.

Emission characterization needs.

- Development of methods for measuring HAPs in emissions and for monitoring the ambient and indoor air, and the environment (e.g., deposition to water). The resulting measurements will be used to improve the spatial characterization of potential exposures and to establish a baseline against which modeling concentrations may be compared.
- Improved procedures to estimate and assess HAP emissions in a representative number of cities, and to extrapolate results to other locations.
- Improved models that include multiscale air dispersion models (neighborhood, urban, and regional) which consider atmospheric transport, fate, and their potential transformation products and which can simulate microenvironments when estimating inhalation exposures to urban HAPs.

Exposure characterization needs.

- Improved data to better understand the potential for disproportionate impacts on those who are more susceptible to HAP exposures including minority and low-income communities.
- Improved understanding of human indoor and outdoor activity patterns in urban environments, especially for children.
- Improved understanding of the relationship between outdoor and indoor air and HAP concentrations.
- Improved monitoring to assess multipathway exposures to foods, such as fish, vegetables and beef, contaminated by deposition of urban HAPs.

Risk assessment needs.

- Improved risk assessment methods for chemical mixtures.

Risk management needs.

- Cost-effective control technologies for all HAPs and more effective controls for those HAPs posing residual risks even after applying currently available controls.

Some of the major air toxic research activities currently planned or being undertaken by EPA include:

Health effects and dose-response assessment research highlights.

- A proposed test rule under Toxics Substance Control Act (TSCA) that would require testing of 21 HAPs.
- Dose-response assessment efforts for mobile source pollutants (such as benzene, 1,3-butadiene, and various fuel additives, including

[52] We hope to release the ''Integrated Urban Air Toxics Report to Congress'' this summer.

[53] The ''Air Toxics Research Strategy'' will be finalized in fall 1999.

methylcyclopentadienyl manganese tricarbonyl (MMT)) and urban HAPs shown in Table 1.

- Reducing uncertainty in acute and chronic dose-response assessments through the use of statistical (and other) methods.
- Improved methods for identifying and quantifying the health effects associated with exposures to mixtures of pollutants.
- Development of a mixtures database to facilitate assessments involving more than one chemical.

Emissions and exposure characterization research highlights.

- A national air toxics monitoring network.
- An updated, comprehensive emissions inventory of air toxics (the National Toxics Inventory).
- Various toxic emission characterization studies that include addressing emissions speciation for HAPs such as mercury.
- Improved nonroad and highway emission prediction models.
- Improved air quality models, including long-range transport models, a new model of acid deposition, and a modeling system, the Total Risk Integrated Methodology (TRIM), which will provide a framework for better assessing health and ecological risks from multipathway exposure to air toxic (as well as criteria) pollutants.
- Various exposure assessment studies and methodologies.

Risk management research highlights.

- Identification of processes contributing to the HAP emissions from area source categories, and listing of control options and Pollution Prevention alternatives for these processes.

In addition to those research needs and activities that will be identified in the Urban Report, research designed to improve quantitative risk assessment and management which may have relevance to urban HAPs, can be found in various other EPA documents. For example, we're developing a ''Mercury Research Strategy,'' which describes the key research questions for mercury that we plan to address over the coming 5 years. We expect that the mercury strategy will be finalized during 1999 (following consideration of peer review comments). A summary description of this and other research activities and the documents in which they are found will be included in a separate chapter of the Urban Report. As discussed earlier, we're also developing an ''Air Toxics Research Strategy'' that, building on the summary research descriptions in the Urban Report, will identify key research questions and the additional research that will be conducted to address those questions.

VI. Public Participation and Communication

A. How Will we Encourage Stakeholder Involvement?

Because of the scope of the Strategy, we realize that various interests may perceive it differently. As a result, we'll make every effort to address the unique perspectives of the key stakeholders to this process, and we'll welcome their input to support an equitable approach to meeting our risk reduction goals. As described earlier, we intend to hold stakeholder meetings starting early in the next fiscal year to discuss State, local, and Tribal authority and implementation of the Strategy. With comments already received on the Strategy and through input from various stakeholders in these meetings, we will develop a plan for implementing the State, local and tribal programs. Below we have also provided more information on different groups that we plan to involve in implementing various aspects of the Strategy.

State, Local, and Tribal Governments

National standards for mobile and major sources may not adequately address the human health risks in urban areas because of the combined emissions from these sources and the many different types of sources. For this reason, we expect State, local, and Tribal agencies to play an active role in tailoring local approaches to reduce risks in urban areas, and we'll ask for their help in developing practical programs to implement the Strategy. More information on their role is presented in section III.

In a parallel effort to address the issue of roles and responsibilities, we'll be holding a series of meetings with State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) to develop a plan for the most efficient and effective interaction among regulators. Additionally, over the next year, we plan to meet with other regulatory partners including Tribal leaders and city mayors to help shape the coordination process. In conducting urban scale assessments as discussed in section IV, we'll work with local communities as appropriate to characterize the air toxics emissions within a community (through monitoring and emission inventories), estimate the risks associated with these emissions, and identify actions which could be taken to reduce air toxics. We'll also explore to what extent and how to address air toxics indoors.

Environmental Justice Communities

The cumulative impact of multiple emission sources on minority populations and low income populations in urban areas is of special concern. The Strategy will help identify and plan actions to decrease emissions that affect these communities. We're already coordinating with the National Environmental Justice Advisory Council (NEJAC) to establish mechanisms to work with communities to help solve urban air toxics problems. We'll work with NEJAC to explore the formation of groups such as round tables and panels as a means to involve communities, and other stakeholders, including representatives from universities and hospitals. These round tables/panels would explore issues related to rulemaking coordination, risk assessments, and the process of defining roles and responsibilities for Federal and State, local and Tribal agencies in implementing the Strategy.

Public Health Groups and Environmental Groups

Public health concerns are a priority in this Strategy, especially the impact of air toxics on susceptible groups like children. We plan to identify and address health risks to children and seniors and welcome input on these key issues. We'll also encourage these groups to work with us on various aspects of the Strategy, such as defining the roles and responsibilities of State, local, and Tribal agencies.

Small Business and Industry

Because the Strategy focuses on reducing emissions from area sources, impacts of the ultimate standards may be felt by small businesses. We'll strive, however, to ensure that regulations don't unfairly impact them. We also plan to involve small businesses in pilot projects to assess and design solutions to local air toxics risks.

An example of how we'll provide concrete support to small businesses is our EPA Small Business Innovative Research (SBIR) Program. Under this program, we can award Phase I contracts of up to $70,000 over 6 months to small businesses with fewer than 500 employees to develop and commercialize new environmental technologies. The awards are based on the scientific merit and technical feasibility of the proposed technology. The results of Phase I determine whether the research idea is technically feasible, whether the firm can do high-quality research, and whether sufficient

progress has been made to justify a larger Phase II effort. We can award Phase II contracts for up to $295,000 over 2 years to commercialize the technology or product. The FY2000 Phase I Solicitation will open on August 11, 1999 and close on October 13, 1999. Copies of the solicitation will be posted on August 11, 1999 on our website at: http://www.epa.gov/ncerqa. The solicitation will also be available by fax at the EPA SBIR Helpline: 800–490–9194.

In addition, large businesses could be affected by programs and regulations developed to implement the Strategy. As always, we'll work with industry representatives to try to develop technically sound, effective regulations that minimize the burden to affected sources.

Urban Developers

In designing the Strategy, we've tried to avoid unfairly limiting the efforts of developers interested in creating business opportunities in urban industrial sites or areas needing revitalization. We plan to work with these interests to ensure that public health protection is achieved and economic development is encouraged.

As with our previous air toxics regulatory development efforts, our efforts under the Strategy will involve stakeholders as early as possible in the process. We recognize that opportunities for public participation beyond the required notice and comment process help ensure we develop the most workable requirements that still achieve our environmental goals. We'll use the established urban air toxics Strategy website on the Internet (www.epa.gov/ttn/uatw/urban/urban.pg.html) to update the public on ongoing activities and opportunities to participate in implementation of the Strategy. This will include updates on rule development, assessment activities, and progress toward meeting all of the Strategy goals. You can find information on all of our air toxics regulations at the following website on the Internet: www.epa.gov/ttn/uatw.

B. What is our Overall Timeline for Action?

Many of the activities identified in the Strategy will require further public notice and comment, and we'll provide further opportunities for stakeholder input as they are developed. The public will also be able to measure the progress of the Strategy by tracking the following milestones projected in the coming five years:

- 1999
  - —Publish the Integrated Urban Air Toxics Strategy, including the urban HAPs list and the area source category list.
  - —Issue the first Integrated Urban Air Toxics Strategy report to Congress under section 112(k)(5).
  - —Complete 1996 NTI update.
  - —Begin State/local/Tribal stakeholder communication and information exchange on implementing the Strategy.
  - —Propose motor vehicle and fuel standards under section 202(l).
- 2000
  - —Complete initial national and urban scale assessment.
  - —Complete motor vehicle and fuels standards development under section 202(l).
  - —Start development of additional area source standards.
- 2002
  - —Complete 1999 NTI update.
- 2003
  - —Complete 1999 assessment.
  - —Finalize source category list.
- 2004
  - —Promulgate standards for the area source categories newly listed in today's strategy.

We'll attempt to meet this demanding schedule as expeditiously as practicable. We're currently engaged in significant efforts to develop standards for stationary sources that were previously listed under section 112(c). In addition, realistic schedule and resource constraints suggest that our efforts to develop additional standards should be phased in over time.

C. What Reports Will we Prepare To Communicate With the Public?

We're required under section 112 of the Act to provide two reports to Congress on actions taken to reduce the risks to public health posed by the release of HAPs from area sources. The Act also requires that the reports identify specific metropolitan areas that continue to experience high risks to public health as the result of emissions from area sources.

We'll submit our first report in late 1999. This report will provide more specific information about our Strategy, including further details on the methodologies we used to develop the final urban HAPs list and the list of source categories. The report will also provide an overview of previous studies conducted in various cities to characterize their respective urban air toxics problems and contain a detailed discussion of the research needed to achieve the goals of the Strategy. We also expect to report to the public about air toxics emissions trends and air quality in urban and other areas in our annual Air Quality and Emissions Trends Reports.

Dated: July 6, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

Appendix A—Summary of Other Authorities, Laws, Rules, and Programs to Help Reduce HAP Emissions

There are a number of other authorities, laws, rules, and programs that will help reduce emissions of HAPs and consequent exposures and risks. Some of these are discussed below. We're currently evaluating the appropriateness of these statutes for controlling emissions of HAPs as described under section 112(k)(3) and intend to take further actions under these statutes as appropriate.

As discussed in section I., the Strategy involves collaboration between offices within the air program to assess the risks from exposures to air toxics indoors and will assimilate non-regulatory, voluntary programs developed to address those risks. Title IV of the Superfund Amendments and Reauthorization Act (SARA) provides EPA with the authority to perform research and provide information to the public on the health problems associated with air pollutants in the indoor environment.

Under the Toxic Substances Control Act (TSCA), chemicals produced or imported into the United States are evaluated as to toxicity to human health and the environment. To prevent adverse consequences of the many chemicals developed each year, TSCA requires that any chemical that will reach the consumer marketplace be tested for possible toxic effects prior to commercial manufacture. Any existing chemical that is determined to pose health and environmental hazards is tracked and reported under TSCA. Procedures also are authorized for corrective action under TSCA in cases of cleanup of toxic materials contamination. The TSCA is a complementary authority to the Clean Air Act and has contributed to decreased emissions of several HAPs. For example, concern over the toxicity and persistence in the environment of polychlorinated biphenyl (PCB) compounds led Congress to include in TSCA prohibitions on the manufacture, processing, and distribution in commerce of PCBs (TSCA section 6(e), 15 U.S.C. 2605(e)). In 1990, TSCA authority was relied upon to eliminate chromium use in, and emissions from, comfort cooling towers (i.e., industrial process cooling towers used exclusively for cooling, heating, ventilation, and air conditioning systems).

There are several provisions of the Resource Conservation and Recovery Act (RCRA) and its amendments which may yield reductions of urban air toxics. One impact evidenced in the 1990's is increased recycling and recovery of hazardous waste, including solvents which through volatilization contribute to HAP emissions. Section 3004(n) of RCRA has been the basis of a three-phased regulatory program to control air emissions from hazardous waste

treatment, storage and disposal facilities. The third phase would address any risks remaining after implementation of the control regulations issued in 1990 and 1994, which were estimated to reduce organic emissions by more than one million tons per year. Any resulting emissions and risk reductions can be considered in assessing progress toward the 75-percent reduction in cancer incidence from the baseline.

Under the Comprehensive Environmental Response, Compensation and Liability Act, commonly known as Superfund, the clean-up of abandoned hazardous waste sites may also reduce emissions of HAPs. Where significant health risks from chemical releases to the air have been identified at Superfund sites in urban areas, clean-up will reduce risks from urban air toxics.

Under the Clean Water Act (CWA), controls on the discharge of pollutants to surface water can also reduce the amount of HAPs entering the environment. These controls may take the form of national technology-based standards under the effluent guidelines program or site-specific water quality-based controls to achieve State water quality standards. In addition to providing control by establishing discharge limitations on pollutants (including HAPs) in the wastewater, process changes made in order to comply with these limitations may also reduce fugitive emission sources.

As part of the effluent guidelines program under the CWA, we've issued effluent limitations for the pharmaceuticals industry. Human health benefits from these guidelines include reductions in excess cancer risk through inhalation. The regulatory impact assessment prepared for these guidelines estimates that the number of excess cancer cases avoided per year nationwide ranges from 0.02 to 0.35. These reductions are due to reductions in VOC emissions, including 10 carcinogens (principally chloroform and methylene chloride). We can also point to air toxics benefits from the effluent guidelines for the pulp, paper, and particleboard industry. These regulations, coupled with the associated NESHAP, are expected to decrease background emission of HAPs by 121,200 megagrams annually.

If a waterbody isn't meeting water quality standards even after all technology-based controls under the effluent guidelines program are in place, the State, local agency, or Tribe must list the water as ''water quality limited'' and prepare a ''total maximum daily load'' (TMDL) calculation that allocates the maximum amount of pollution, with a margin of safety, that the waterbody can absorb from point and nonpoint (including air deposited) sources. A plan must then be developed to implement the TMDL, which might include provisions to address air sources under Federal or State (or local or Tribal) programs. We're conducting a pilot project in two waterbodies to develop TMDLs identifying the relative contributions of mercury from various air sources. This project will also examine how Federal and State water programs can work together to reduce mercury contamination of water.

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) provides Federal control of pesticide distribution, sale, and use. Several HAPs listed in Clean Air Act section 112(b) have been used as pesticides. An EPA registration is required of all pesticides sold in the United States and is intended to ensure that pesticide use, when in accordance with label specifications, doesn't cause unreasonable harm to people or the environment. It's a violation of FIFRA to use a pesticide in a manner inconsistent with its label. Registered pesticides classified as ''restricted use'' may only be used by registered applicators who have passed a certification exam. This restricted use requirement minimizes the number of persons having access to certain pesticides. The FIFRA regulations may also reduce emissions and exposures by banning (canceling or denying registration) or severely restricting pesticide use. Seven individual HAPs and members of three HAP compound groups have been banned or severely restricted in their use as pesticides.

Two other Federal laws, the Emergency Planning and Community Right-To-Know Act (EPCRA) of 1986 and the Pollution Prevention Act (PPA) of 1990, while not directly regulating air emissions of HAPs, may influence decisions regarding chemical usage and storage, and yield significant reductions in air toxics risks in urban areas. The goal of EPCRA is to reduce risks to communities through informing communities and citizens of chemical hazards in their areas. Sections 311 and 312 of EPCRA require certain facilities to report the locations and quantities of chemicals stored at their facilities to State and local governments. This information is used by State and local agencies in preparing for, and responding to, chemical spills and similar emergencies.

Through EPCRA, Congress mandated that a Toxics Release Inventory be made public. The TRI provides citizens with information about potentially hazardous chemicals stored, manufactured and used in their community. Section 313 of EPCRA specifically requires certain manufacturers and all Federal facilities to report to EPA and State governments, all releases of any of more than 600 designated toxic chemicals to the environment (including most of the 188 HAPs). Each year, more than 20,000 manufacturing facilities and 200 Federal facilities submit information to us on the releases of chemicals to the environment. We compile these data in an on-line, publicly accessible national database, which is a significant source of information regarding HAP emissions. Reporting requirements for TRI became more comprehensive in 1991, highlighting the importance of pollution prevention. In 1997 we added seven industry groups (metal mining, coal mining, RCRA subtitle C TSD and solvent recovery, petroleum distribution, electricity generating, and chemical distribution). We believe that for the manufacturing sector this public spotlight on releases and other waste management of toxic chemicals has led to reductions in their environmental release. We're also planning to lower the reporting thresholds under the TRI for several persistent, bioaccumulative toxic chemicals, including mercury and dioxin, that can cause human health and environmental damage at very low levels, so that additional information on releases will be available to the public.

The passage of the Pollution Prevention Act (PPA) established an environmental hierarchy that establishes pollution prevention as the first choice among waste management practices. Traditionally, much environmental protection has involved controlling, treating or cleaning up pollution. Pollution prevention, which eliminates or minimizes pollution at the source, is most effective in reducing health and environmental risks because it (1) eliminates any pollutant associated risks, (2) avoids shifts of pollutants from one medium (air, water or land) to another, which can result from certain waste treatments, and (3) reduces waste of natural resources. For waste that cannot be avoided at the source, recycling is considered the next best option. A waste generator should turn to treatment or disposal only after source reduction and recycling have been considered. Pollution prevention strategies include redesigning products, changing processes, substituting raw materials for less toxic substances, increasing efficiency in the use of raw materials, energy, water, land and other techniques. The EPA implements the PPA by promoting voluntary pollution reduction programs, engaging in partnerships, providing technical assistance, funding demonstration projects and incorporating cost-effective pollution prevention alternatives into regulations and other initiatives.

In addition, we've developed the ''Waste Minimization National Plan,'' a voluntary, long-term effort to reduce the quantity and toxicity of hazardous waste through waste minimization. The plan was built on extensive stakeholder involvement and was released in 1994. The plan focused on the following key objectives:

- Prioritize pollution prevention efforts based on risk.
- Promote source reduction over recycling.
- Adopt a multi-media approach and prevent cross media transfers.
- Provide flexibility in implementing pollution prevention activities.
- Provide accountability and measure progress.
- Involve the public.

The plan calls for a 50-percent reduction in the presence of the most persistent, bioaccumulative and toxic (PBT) chemicals in hazardous waste by 2005.

The starting point for selecting chemicals for the national waste minimization list is EPA's ''Waste Minimization Prioritization Tool,'' which is a software program that provides a screening-level assessment of the potential chronic risks that chemicals pose to human health and the environment, based on their persistence, bioaccumulative potential, and human and ecological toxicity. This software program contains full or partial PBT data for approximately 4,200 chemicals. The draft ''Waste Minimization Prioritization Tool'' was released for public comment on June 23, 1997 (62 FR 33868). We made significant changes in response to public comment and published a revised version on November 9, 1998 (63 FR 60332). The revised software, in conjunction with a publicly

reviewed methodology, was used to generate a draft list of 53 PBT chemicals, which is now in the process of being finalized.

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July 19, 1999

Part III

Department of Commerce

International Trade Administration

Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil; Notices

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–829]

Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil

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

EFFECTIVE DATE: July 19, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Lockard, Group II, Office of AD/CVD 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.

Final Determination

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to Companhia Siderugica Nacional (CSN), Usinas Siderugicas de Minas Gerais (USIMINAS) and Companhia Siderurgica Paulista (COSIPA) producers and exporters of certain hot-rolled flat-rolled carbon-quality steel products from Brazil. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

Petitioners

The petition in this investigation was filed by Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Ispat Inland Steel, LTV Steel Company, Inc., National Steel Corporation, California Steel Industries, Gallatin Steel Company, Geneva Steel, Gulf States Steel Inc., IPSCO Steel Inc., Steel Dynamics, Weirton Steel Corporation, Independent Steelworkers Union, and United Steelworkers of America (the petitioners).

Case History

Since the publication of our preliminary determination in this investigation, the following events have occurred. *See Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 64 FR 8313 (February 19, 1999) (*Preliminary Determination*).

Because the final determination of this countervailing duty investigation was aligned with the final antidumping duty determination (*see* 64 FR 8313), and the final antidumping duty determination was postponed, the Department extended the final determination of the countervailing duty investigation until no later than July 6, 1999. *See Postponement of Final Determination of Antidumping and Countervailing Duty Investigations of Hot-Rolled Flat-Rolled Carbon-Quality Steel from Brazil*, 64 FR 9474 (February 26, 1999) and *Postponement of Final Determination of Antidumping and Countervailing Duty Investigations of Hot-Rolled Flat-Rolled Carbon-Quality Steel from Brazil*, 64 FR 24321 (May 6, 1999).

We conducted verification of the countervailing duty questionnaire responses from April 5 through April 16, 1999. Petitioners, the Government of Brazil (GOB) and respondent companies filed case briefs on May 10, 1999, and rebuttal briefs on May 17, 1999.

On June 21, 1999, we terminated the suspension of liquidation of all entries of the subject merchandise entered or withdrawn from warehouse for consumption on or after that date, pursuant to section 703(d) of the Act. *See* the ''Suspension of Liquidation'' section of this notice.

On June 7, 1999, the GOB and the U.S. Government initialed a proposed suspension agreement. On July 6, 1999, the U.S. Government and the GOB signed a suspension agreement (*see Notice of Suspension of Countervailing Duty Investigation: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*) which is being published concurrently with this notice in the **Federal Register**. On July 6, 1999, the petitioners also requested that the Department and the International Trade Commission (ITC) continue this investigation in accordance with section 704(g) of the Act. As such, this final determination is being issued pursuant to section 704(g) of the Act.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations codified at 19 CFR part 351 (1998).

Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (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 thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of HTSUS definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below 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
0.012 percent of boron, 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 of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical

elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).

- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max.

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches;
Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16% ..	0.70–0.90% ..	0.025% Max	0.006% Max	0.30–0.50% ..	0.50–0.70% ..	0.25% Max ...	0.20% Max ...	0.21% Max.

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V (wt.)	Cb
0.10–0.14%	1.30–1.80%	0.025% Max.	0.005% Max.	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max	0.10 Max ...	0.08% Max.

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% Max	1.40% Max.	0.025% Max.	0.010% Max.	0.50% Max.	1.00% Max.	0.50% Max.	0.20% Max.	0.005% Min.	Treated	0.01–0.07%

Width = 39.37 inches; Thickness = 0.181 inches maximum;
Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses > 0.148 inches;
Tensile Strength = 80,000 psi minimum.

- Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm^2 and 640 N/mm^2 and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm^2 and 690 N/mm^2 and an elongation percentage ≥ 25 percent for thicknesses of 2mm and above.
- Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.
- Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this investigation, including: Vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Injury Test

Because Brazil is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Brazil materially injure, or threaten material injury to, a U.S. industry.

Period of Investigation

The period for which we are measuring subsidies (the POI) is calendar year 1997.

Company History

USIMINAS was founded in 1956 as a venture between the Brazilian Government, various stockholders and Nippon Usiminas. In 1974, the majority interest in USIMINAS was transferred to SIDERBRAS, the government holding company for steel interests. The company underwent several expansions of capacity throughout the 1980s. In 1990, SIDERBRAS was put into liquidation and the GOB decided to include its operating companies, including USIMINAS, in its National Privatization Program (NPP). In 1991, USIMINAS was partially privatized; as a result of the initial auction, Companhia do Vale do Rio Doce (CVRD), a majority government-owned iron ore producer, acquired 15 percent of USIMINAS's common shares. In 1994, the Government disposed of additional holdings, amounting to 16.2 percent of the company's equity. USIMINAS is now owned by CVRD and a consortium of private investors, including Nippon Usiminas, Caixa de Previdencia dos Funcionarios do Banco do Brasil (Previ) and the USIMINAS Employee Investment Club. CVRD was partially privatized in 1997, when 31 percent of the company's shares were sold.

COSIPA was established in 1953 as a government-owned steel production company. In 1974, COSIPA was transferred to SIDERBRAS. Like USIMINAS, COSIPA was included in the NPP after SIDERBRAS was put into liquidation. In 1993, COSIPA was partially privatized, with the GOB retaining a minority of the preferred shares. Control of the company was acquired by a consortium of investors led by USIMINAS. In 1994, additional government-held shares were sold, but the GOB still maintained approximately 25 percent of COSIPA's preferred shares. During the POI, USIMINAS owned 49.8 percent of the voting capital stock of the company. Other principal owners include Bozano Simonsen Asset Management Ltd., the COSIPA Employee Investment Club and COSIPA's Pension Fund (FEMCO).

CSN was established in 1941 and commenced operations in 1946 as a government-owned steel company. In 1974, CSN was transferred to SIDERBRAS; only a very small amount of shares, a fraction of a percent, were held by private investors. In 1990, when SIDERBRAS was put into liquidation, the GOB included CSN, in its NPP. In 1991, 12 percent of the equity of the company was transferred to the CSN employee's pension fund. In 1993, CSN was partially privatized; CVRD, through its subsidiary Vale do Rio Doce Navegacao S.A. (Docenave), acquired 9.4 percent of the common shares. The GOB's remaining share of the firm was sold in 1994. CSN is now owned by Docenave/CVRD and a consortium of private investors, including Uniao Comercio e Partipacoes Ltda., Textilia S.A., Previ, the CSN Employee Investment Club, and the CSN employee pension fund. As discussed above, CVRD was partially privatized in 1997; CSN was part of the consortium that acquired control of CVRD through this partial privatization.

Affiliated Parties

In the present investigation, there are affiliated parties (within the meaning of section 771(33) of the Act) whose relationship is sufficient to warrant treatment as a single company. In the countervailing duty questionnaire, consistent with our past practice, the Department defined companies as sufficiently affiliated to warrant potential treatment as a single company where one company owns 20 percent or more of the other company, or where companies prepare consolidated financial statements. The Department also has stated that companies may be considered sufficiently affiliated where there are common directors or one company performs services for the other company. *See Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') From Italy,* 61 FR 30287 (June 14, 1996) (*Pasta*). Companies that are sufficiently affiliated to warrant potential treatment as a single company and either (1) produce the subject merchandise or (2) have engaged in certain financial transactions, are required by the Department to respond to the questionnaire. This standard is designed to identify instances where two companies interests have merged and either both produce subject merchandise or there is ''evidence of the transmittal of subsidies between the companies.'' *See Pasta,* 61 FR at 30308.

USIMINAS owns 49.79 percent of COSIPA. As such, the companies are affiliated within the meaning of section 771(33)(E) of the Act. Moreover, given the level of ownership and the fact that both companies produce the subject merchandise, we determine that it is appropriate to treat these two producers as a single company for purposes of this investigation. Accordingly, we calculated a single countervailing duty rate for these companies by dividing their combined subsidy benefits by their combined sales.

We also examined the relationship between USIMINAS and CSN in order to determine whether these two companies were affiliated and, if so, whether the level of affiliation between the two companies was sufficient to warrant treatment as a single company. As discussed in the *Preliminary Determination,* two entities, CVRD and Previ (the pension fund of the Bank of Brasil) have meaningful holdings in both USIMINAS and CSN. As these entities both have ownership interests in and elect members to the Boards of Directors of both companies, we examined whether CSN and USIMINAS could have merged interests through these investors.

CVRD holds 15.48 percent of USIMINAS and 10.3 percent of CSN (through Docenave) and holds two of the eight seats on each company's board of directors. Previ holds 15 percent of the common shares of USIMINAS and one seat on its board of directors and 13 percent of CSN and two seats on its board of directors. At verification, we learned more about the operations of the companies. Both companies are controlled through shareholders agreements, in which, the participating shareholders, who account for more than 50 percent of the shares of the company, pre-vote issues before the Board of Directors and vote as a block, in order to control the company. CVRD and Previ both participate in the CSN shareholders agreement, and therefore, exercise considerable control over the operations of the company. However, while both CVRD and Previ elect representatives to USIMINAS's Board of Directors, neither entity participates in the USIMINAS shareholders agreement, and therefore, neither is in a position to exercise control over the company's operations. *See* CSN and USIMINAS Verification Reports, dated April 29, 1999, and April 28, 1999, respectively, public versions on file in the CRU.

Thus, neither CVRD nor Previ exerts meaningful control over USIMINAS. There is no common control of USIMINAS and CSN which could lead to the interests of the companies being merged. Therefore, we do not consider that the record evidence supports a finding that USIMINAS and CSN are affiliated, and as a result, the record evidence is also not sufficient to warrant treating the two companies as a single entity. *See* Department's Position on Comment #8, below.

Changes in Ownership

In the *General Issues Appendix* (*GIA*), attached to the *Final Affirmative Countervailing Duty Determination; Certain Steel Products from Austria,* 58 FR 37217, 37226 (July 9, 1993), we applied a new methodology with respect to the treatment of subsidies received prior to the sale of the company (privatization).

Under this methodology, we estimate the portion of the company's purchase price which is attributable to prior subsidies. We compute this by first dividing the face value of the company's subsidies by the company's net worth for each of the years corresponding to the company's allocation period, ending one year prior to the privatization. We then take the simple average of these ratios, which serves as a reasonable surrogate for the percentage that subsidies constitute of the overall value, i.e., net worth, of the company. Next, we multiply the purchase price of the company by this average ratio to derive the portion of the purchase price that we estimate to reflect prior subsidies. Then, we reduce the benefit streams of the prior subsidies by the ratio of the repayment/reallocation amount to the net present value of all remaining benefits at the time of the change in ownership.

In the current investigation, we are analyzing the privatizations of USIMINAS, COSIPA and CSN, including the various partial privatizations. In conducting these analyses, to the extent that partially government-owned companies purchased shares, we have not applied our methodology to a percentage of the acquired shares equal to the percentage of government ownership in the partially government-owned purchaser. Further, we have determined that it is appropriate to make an additional adjustment to USIMINAS and CSN's calculations to account for CVRD's 1997 partial privatization. *See* Calculation Memo, dated July 6, 1999, public version on file in the CRU. In addition, we have adjusted certain figures included in the privatization calculations to account for inflationary accounting practices. *See* Department's Position on Comment #3, below.

In the *Preliminary Determination,* we noted that the use of privatization currencies, *i.e.*, certain existing government bonds, privatization certificates and frozen currencies, warranted additional examination in the context of our privatization methodology. Since the *Preliminary Determination,* we have obtained additional information about the use and valuation of the privatization currencies that were used in the NPP. At verification, we asked the GOB to explain how privatization currencies were valued in the context of the privatization auctions. Officials explained that the GOB accepted most of these currencies at their full redeemable value (face value discounted according to the time remaining until maturity); foreign debt and restructuring bonds (MYDFAs) were accepted at 75 percent of their redeemable value. Officials acknowledged that many of the government bonds that were accepted as privatization currencies traded at a discount on secondary markets, but the GOB officials were unable to provide any data or estimation of what discounts applied. *See* Verification Report of the Government of Brazil, dated April 28, 1999, public version on file in the Central Records Unit (CRU), Room B–099 of the Main Commerce Building (GOB Verification Report). In addition, the respondent companies were unable to provide any data on secondary market trading of currencies. *See* COSIPA, CSN and USIMINAS Verification Reports, dated April 29, 1999, April 29, 1999, and April 28, 1999, respectively, public versions on file in the CRU.

During verification we also met with an independent banker who provided information about how the bonds that were accepted as privatization currencies were valued in contemporary secondary markets. The banker said that it was common knowledge that these bonds traded at a fairly steep discount in these markets, and that investors actively traded to obtain the cheapest bonds in order to maximize their positions in the privatization auctions. The banker indicated that the value of the bonds varied depending on the instrument's yield and length to maturity and traded within a range of 40 percent to 90 percent of the redeemable value, *i.e.*, with a discount ranging from 10 percent to 60 percent. Because various issues of bonds were accepted as privatization currencies, with different yields and terms, precise valuation data was not available. However, the banker indicated that during the period 1991–1994 most bonds traded with discounts ranging from 40 to 60 percent. He also stated that Privatization Certificates (CPs), which banks were forced to purchase and could only be used in the privatization auctions, traded at a discount of approximately 60 percent, reflecting their low yield. See Independent Banker Report, a public document on file in the CRU. Prior to the *Preliminary Determination,* petitioners submitted information to the record indicating that the privatization currencies traded at a discount. For example, according to a press report submitted by petitioners, the market price for MYDFAs was about 30 percent of the face value, rather than the 75 percent accepted by the GOB. Thus, information submitted by petitioners and gathered by the Department prior to the preliminary determination from public sources corroborates the information provided by this banker. *See* Petitioners' October 22, 1998, submission, a public document on file in the CRU and attachments to Calculation Memo, dated February 12, 1999, public version on file in the CRU.

Record evidence supports the conclusion that some adjustment to the purchase price of the companies is warranted because of the use of privatization currencies in the auctions. In the *Preliminary Determination,* we discounted the MYDFAs based on the 30 percent value reported in the press article and then applied a ratio reflecting the percentage difference between the value assigned to the MYDFAs and accepted by the GOB and the actual market value of the MYDFAs to the other privatization currencies. Based on the information we gathered at verification, we have modified this approach in this final determination. We have continued to apply the discount reported in the press article to the MYDFAs. In addition, we have applied a 60 percent discount to the CPs, reflecting the information provided by the banker. For the remaining currencies, in accordance with section 776(a)(1) of the Act, we applied a 50 percent discount as facts available, reflecting the average of the range of discounts estimated by the banker. *See* Department's Position on Comment #3, below.

Subsidies Valuation Information

Discount Rates: In the years relevant to this investigation through 1994, Brazil has experienced persistent high inflation. There were no long-term fixed-rate commercial loans made in domestic currencies during those years that could be used as discount rates. As in the *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil,* 68 FR 37295, (July 9, 1993) (*Certain Steel from Brazil*), we have determined that the most reasonable way to account for the high inflation in the Brazilian economy through 1994, and the lack of an appropriate Brazilian discount rate, is to convert the non-recurring subsidies into U.S. dollars. If available, we applied the

exchange rate applicable on the day the subsidies were granted, or, if unavailable, the average exchange rate in the month the subsidies were granted. Then we applied, as the discount rate, a long-term dollar lending rate. Therefore, for our discount rate, we used data for U.S. dollar lending in Brazil for long-term non-guaranteed loans from private lenders, as published in the World Bank Debt Tables: External Finance for Developing Countries. This conforms with our practice in *Certain Steel from Brazil* (58 FR at 37298) and *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela* 62 FR 55014, 55019, 55023 (October 21, 1997) (*Steel Wire Rod from Venezuela*). Because we have determined CSN, COSIPA and USIMINAS to be uncreditworthy, as described below, we added to the discount rates a risk premium equal to 12 percent of the U.S. prime rate for each of the years the companies were determined to be uncreditworthy.

Allocation Period: In the past, the Department has relied upon information from the U.S. Internal Revenue Service on the industry-specific average useful life of assets (AUL) in determining the allocation period for non-recurring subsidies. *See GIA,* 58 FR at 37227. However, in *British Steel plc* v. *United States,* 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) ruled against this allocation methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for non-recurring subsidies based on the AUL of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See British Steel plc* v. *United States,* 929 F. Supp. 426, 439 (CIT 1996) (*British Steel II*). In accordance with our new practice following *British Steel II,* we intend to determine the allocation period for non-recurring subsidies using company-specific AUL data where reasonable and practicable. *See, e.g., Certain Cut-to-Length Carbon Steel Plate from Sweden; Final Results of Countervailing Duty Administrative Review,* 62 FR 16551, 16552 (April 7, 1997). When such data are not available (or are otherwise unusable), our practice is to rely upon the IRS depreciation tables.

In this investigation the Department, in accordance with *British Steel II,* requested that the respondents submit information relating to their average useful life of assets. However, as discussed in the *Preliminary Determination,* our analysis of the data submitted by COSIPA, CSN, and USIMINAS regarding the AUL of their assets revealed several problems related to the companies' changes in ownership which resulted in changes in investment patterns, asset revaluations, and in some cases, changed amortization periods. *See Preliminary Determination,* 64 FR at 8317. Our review of the record, findings at verification, and analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the *Preliminary Determination.* Accordingly, we determine that the most appropriate allocation period is 15 years, as set out in the U.S. Internal Revenue Service (IRS) depreciation tables.

Equityworthiness

In analyzing whether a company is equityworthy, the Department considers whether that company could have attracted investment capital from a reasonable private investor in the year of the government equity infusion based on the information available at that time. In this regard, the Department has consistently stated that a key factor for a company in attracting investment capital is its ability to generate a reasonable return on investment within a reasonable period of time. In making an equityworthiness determination, the Department may examine the following factors, among others:

1. Current and past indicators of a firm's financial condition calculated from that firm's financial statements and accounts,
2. Future financial prospects of the firm including market studies, economic forecasts, and project or loan appraisals,
3. Rates of return on equity in the three years prior to the government equity infusion,
4. Equity investment in the firm by private investors, and
5. Prospects in the marketplace for the product under consideration.

For a more detailed discussion of the Department's equityworthiness criteria, see the *GIA,* 58 FR at 37244, and *Steel Wire Rod from Venezuela.*

The Department has examined the respondents' equityworthiness for each equity infusion covered by the initiation: For COSIPA, 1977 through 1989, and 1992 through 1993; USIMINAS, 1980 through 1988; and CSN, 1977 through 1992. We note that because the Department determined that it is appropriate to use a 15-year allocation period for non-recurring subsidies, equity infusions provided in the years 1977 through 1982 do not provide a benefit in the POI. In a prior investigation we found that COSIPA was unequityworthy in 1983–1989 and 1991, USIMINAS in 1983 through 1988, and CSN in 1983 through 1991. *See Certain Steel from Brazil,* 58 FR at 37296. No new information has been provided in this investigation that would cause us to reconsider these determinations.

As discussed in the *Preliminary Determination,* in considering whether COSIPA was equityworthy in 1992 and 1993, we examined information on the above-listed factors. *See,* 64 FR at 8318. Our review of the record, findings at verification, and analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the *Preliminary Determination.* Accordingly, we find that COSIPA was unequityworthy in 1992 and 1993.

As discussed in the *Preliminary Determination,* in considering whether CSN was equityworthy in 1992, we examined information on the above-listed factors. *See,* 64 FR at 8318–19. Our review of the record, findings at verification, and analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the *Preliminary Determination.* Accordingly, we find that CSN was unequityworthy in 1992.

Equity Methodology

In measuring the benefit from a government equity infusion to an unequityworthy company, the Department compares the price paid by the government for the equity to a market benchmark, if such a benchmark exists. A market benchmark can be obtained, for example, where the company's shares are publicly traded. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Spain,* 58 FR 37374, 37376 (July 9, 1993).

Where a market benchmark does not exist, the Department has determined in this investigation to continue to follow the methodology described in the *GIA. See* 58 FR at 37239. Following this methodology, equity infusions made to unequityworthy companies are treated as grants. Use of the grant methodology for equity infusions into an unequityworthy company is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year. *See also* Department's Position on Comment #2, below.

Creditworthiness

When the Department examines whether a company is creditworthy, it is

attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. To do so, the Department examines whether the company received long-term commercial loans in the year in question, and, if necessary, the overall financial health and future prospects of the company. If a company receives long-term financing from commercial sources without government guarantees, that company will normally be considered creditworthy. In the absence of commercial borrowings, the Department examines the following factors, among others, to determine whether or not a firm is creditworthy:

1. Current and past indicators of a firm's financial health calculated from the firm's financial statements and accounts,
2. The firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow, and
3. Future financial prospects of the firm including market studies, economic forecasts, and projects or loan appraisals.

For a more detailed discussion of the Department's creditworthiness criteria, *see, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from the United Kingdom*, 58 FR 37393 (July 9, 1993).

The Department has previously determined that respondents were uncreditworthy in the following years: USIMINAS, 1983–1988; COSIPA, 1983–1989 and 1991; and CSN 1983–1991. *See Certain Steel from Brazil*, 58 FR at 37297. No new information has been presented in this investigation that would lead us to reconsider these findings.

COSIPA received no long-term financing from commercial sources in the years in question. As discussed in the *Preliminary Determination*, to determine whether COSIPA was creditworthy in 1992 and 1993, in accordance with the Department's past practice, we analyzed financial ratios for each of the three years prior to the year under examination. *See*, 64 FR at 8319. Our review of the record, findings at verification, and analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the *Preliminary Determination*. Thus, we find that COSIPA was uncreditworthy in 1992 and 1993.

As discussed in the *Preliminary Determination*, CSN received one small commercial loan in 1992. However, the terms and insignificant principal amount of this loan render it inconclusive in determining whether CSN was creditworthy in 1992. Therefore, to determine whether CSN was creditworthy in 1992, we also analyzed financial data for the prior three years. *See*, 64 FR 8319. Our review of the record, findings at verification, and analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the *Preliminary Determination*. Thus, we find that CSN was uncreditworthy in 1992.

I. Programs Determined To Be Countervailable

A. Pre-1992 Equity Infusions

The GOB, through SIDERBRAS, provided equity infusions to USIMINAS (1983 through 1988), COSIPA (1983 through 1989 and 1991) and CSN (1983 through 1991) that have previously been investigated by the Department. *See Certain Steel from Brazil*, 58 FR at 37298.

We determine that under section 771(5)(E)(i) of the Act, the equity infusions into USIMINAS, COSIPA and CSN were not consistent with the usual investment practices of private investors and confer a benefit in the amount of each infusion (*see* ''Equityworthiness'' section above). These equity infusions are specific within the meaning of section 771(5A)(D) of the Act because they were limited to each of the companies. Accordingly, we find that the pre-1992 equity infusions are countervailable subsidies within the meaning of section 771(5) of the Act.

As explained in the ''Equity Methodology'' section above, we have treated equity infusions into unequityworthy companies as grants given in the year the infusion was received because no market benchmark exists. We have further determined these infusions to be non-recurring subsidies because each required separate authorization from SIDERBRAS, the shareholder. Because USIMINAS, COSIPA and CSN were uncreditworthy in the year of receipt, we applied a discount rate that included a risk premium. Since USIMINAS, COSIPA and CSN have been privatized, we followed the methodology outlined in the ''Change in Ownership'' section above to determine the amount of each equity infusion attributable to the companies after privatization. For CSN, we summed the benefits allocable to the POI from all equity infusions and divided by CSN's total sales during the POI. For USIMINAS/COSIPA, we summed the benefits allocable to the POI from all of the equity infusions and divided this amount by the combined total sales of USIMINAS/COSIPA during the POI. On this basis, we determine the net subsidy to be 5.20 percent ad valorem for CSN and 5.55 percent ad valorem for USIMINAS/COSIPA.

B. GOB Debt-to-Equity Conversions Provided to COSIPA in 1992 and 1993

In 1990, the GOB decided to liquidate SIDERBRAS and to include the SIDERBRAS operating companies, including respondents, in its National Privatization Program. The NPP was a major initiative proposed by President Collor that was part of the GOB's larger strategy to liberalize the Brazilian economy. Under the NPP, approved in Law 8031 of April 12, 1990, a general framework was established to govern all privatizations. Two entities were charged with oversight of the process: the Privatization Committee and the Banco Nacionale de Desenvolvimento Economico e Social (BNDES), which acted as the general coordinator. The Privatization Committee, composed of government and private sector representatives, was responsible for approving the conditions of sale, guidelines and the minimum price for each privatization. BNDES commissioned three consultants to make recommendations with respect to each company undergoing privatization: two consultants to make an economic assessment of the company including its competitiveness and to recommend a minimum price and one consultant to act as an independent auditor.

One of the consultants who examined COSIPA's financial health and competitiveness recommended that financial adjustments be made to the company before privatization including debt-to-equity conversions and deferring certain tax liabilities (*see* ''Negotiated Deferrals of Tax Liabilities'' in the section ''Programs Determined to be Non-Countervailable'' below). In accordance with this consultant's recommendation, the GOB made two debt-to-equity conversions in 1992 and 1993 in preparation for COSIPA's privatization.

We determine that pursuant to section 771(5)(E)(i) of the Act, these debt-to-equity conversions were not consistent with the usual investment practices of private investors and confer a benefit in the amount of each conversion (*see* ''Equityworthiness'' section above). These debt-to-equity conversions are specific within the meaning of section 771(5A)(D) of the Act because they were limited to COSIPA. Accordingly, we find that the GOB debt-to-equity conversions provided to COSIPA in 1992 and 1993 are countervailable

subsidies within the meaning of section 771(5) of the Act.

As explained in the ''Equity Methodology'' section above, we have treated each debt-to-equity conversion as a grant given in the year the conversion was made. We have further determined that these conversions are non-recurring subsidies because they were specifically approved by the GOB. Because COSIPA was uncreditworthy in the years of receipt, we applied a discount rate that included a risk premium. Because COSIPA has been privatized, we followed the methodology outlined in the ''Change in Ownership'' section above to determine the amount of each debt-to-equity conversion attributable to the company after privatization. After accounting for the change in ownership, we divided the benefit allocable to the POI from these debt-to-equity conversions by the combined total sales of USIMINAS/COSIPA. On this basis, we determine the net subsidy to be 4.12 percent ad valorem for USIMINAS/COSIPA.

C. GOB Debt-to-Equity Conversion Provided to CSN in 1992

As discussed above, under the GOB's National Privatization program, companies were privatized under the supervision of BNDES and the Privatization Committee. In accordance with the established privatization procedures, BNDES commissioned three consultants with respect to the privatization of CSN: Two to analyze the firm's financial performance, make recommendations, and formulate the minimum price and one to act as an independent auditor. One of the consultants, after analysis of CSN's financial data, recommended that additional capital be provided to the firm in advance of its privatization. The GOB followed this recommendation and made a pre-privatization debt-to-equity conversion in 1992. We note that in the *Preliminary Determination,* we considered this program to be an ''equity infusion.'' At verification, we learned that the GOB converted debt into equity as opposed to providing new equity in the form of cash infusions. Thus, we have modified the description of this program accordingly.

We determine that, pursuant to section 771(5)(E)(i) of the Act, this debt-to-equity conversion was not consistent with the usual investment practices of private investors and confers a benefit in the amount of the conversion (*see* ''Equityworthiness'' section above). This conversion is specific within the meaning of section 771(5A)(D) of the Act because it was limited to CSN. Accordingly, we find that the GOB debt-to-equity conversion provided to CSN in 1992 is a countervailable subsidy within the meaning of section 771(5) of the Act.

As explained in the ''Equity Methodology'' section above, we have treated this debt-to-equity conversion as a grant given in the year the conversion was received. We have further determined that this infusion is a non-recurring subsidy because it required separate authorization from the GOB. Because CSN was uncreditworthy in the year of receipt, we applied a discount rate that included a risk premium. Because CSN was privatized, we followed the methodology outlined in the ''Change in Ownership'' section above to determine the amount of each equity infusion attributable to the company after privatization. After accounting for the change in ownership, we divided the benefit allocable to the POI from the debt conversion by CSN's total sales during the POI. On this basis, we determine the net subsidy to be 1.15 percent ad valorem for CSN.

II. Program Determined To Be Non-Countervailable

Negotiated Deferrals of Tax Liabilities

As discussed above, one of the privatization consultants recommended that COSIPA negotiate with the various tax authorities in order to arrange to pay its large tax arrears in deferred installments. COSIPA petitioned four different tax authorities in order to arrange for installment payments for ten different types of taxes owed. In addition, CSN petitioned to arrange for installment payments for one tax liability.

Each of the tax agencies, the Revenue Service, Social Security Authority, State of Sao Paulo, and City authority has established legal procedures for arranging installment payments for delinquent tax payers. The authorities established these rules in order to collect tax arrears without resorting to legal action. These procedures were contained in Law 8383/91, Law 8620/93 and Decree 612/92, Decree 33.118/91 and Law 1383/83, respectively, and specified penalties, interest rates, and in some cases, the maximum repayment term. For example, law 8383/91 that governs the Revenue Service's operations and applies to six of the ten types of taxes COSIPA deferred and the tax that CSN deferred, specifies that fines of 20 percent and interest of one per cent per month will be charged and that all amounts will be subject to monetary correction, i.e., adjustments for inflation. To the extent that terms, such as the maximum repayment period, were not covered in the agency's laws and regulations, they were negotiated by COSIPA or CSN and the relevant tax authority. Once the parties completed negotiations, the authority would endorse the petition and, in some cases, execute a separate agreement.

When determining whether a program is countervailable, we must ascertain whether it provides benefits to a specific enterprise, industry, or group thereof within the meaning of section 771(5A)(D) of the Act. By comparing the terms included in the agencies' laws and regulations and the terms provided to COSIPA and CSN, we were able to conclude that the respondent companies received the same terms as those specified in the laws and regulations. Therefore, as the GOB did not favor COSIPA or CSN over other companies, we turned to an examination of the general programs themselves in order to determine whether they are specific. We examined whether the programs are *de jure* specific and found that the laws do not limit eligibility to an enterprise, industry, or group thereof. We then analyzed whether the program meets the criteria for *de facto* specificity. The GOB indicated in its response that ''[d]eferred payment terms are generally available for all companies that have outstanding tax obligations to the underlying tax authority.'' *See* GOB Supplemental Questionnaire Response dated January 12, 1999, public version on file in the CRU. Further, at verification we saw that tax deferral petitions are automatically approved by the authorities as long as they conform with the establishing laws and regulations and, as stated above, neither the laws nor regulations provide differential or special treatment to any company or industry. Authorities explained that an extremely broad range of companies and industries have used the programs—from industrial firms to professional soccer clubs. Further, at verification we saw that tens of thousands of taxpayers have petitioned the tax authorities to arrange for these tax deferral agreements. *See* GOB Verification Report, public version on file in the CRU. While the number of companies that receive benefits under a program is not dispositive as to a program's non-specificity, the extremely large number of companies receiving deferrals indicates that a broad range of companies and industries received benefits under the program, as was indicated by the tax authorities. Further, since the authorities automatically approved all applicants that requested the terms and agreed to the conditions specified in the agencies' laws and regulations, there is no basis for

concluding that these tax deferrals are limited to a specific enterprise, industry or group thereof. Thus, we determine that these tax deferrals are not countervailable.

III. Program Determined Not To Exist

GOB Equity Infusions to COSIPA in 1992 and 1993

The Department included two programs in its initiation relating to benefits provided to COSIPA in advance of the company's privatization: debt assumptions and equity infusions. According to information provided by respondents, there were no equity infusions, *per se*. Instead, all benefits were in the form of debt assumptions that were converted into equity and have been addressed in the ''GOB Debt-to-Equity Conversions Provided to COSIPA in 1992 and 1993'' section above. Accordingly, we determine that the separate ''GOB Equity Infusions to COSIPA in 1992 and 1993'' program does not exist.

Interested Party Comments

Comment #1: Privatization

Respondents state that 19 U.S.C. 1677(5)(B) and Article 1.1 of the Agreement on Subsidies and Countervailing Measures (SCM) require that a financial contribution is made and a benefit is thereby conferred in order for the subsidy to exist and that both legal structures require a finding of a causal connection between the two on a continuing basis. Respondents hold that the Department is required to consider subsequent events and the Department's analysis only identifies a past financial contribution and presumes irrebuttably that the contribution continues to confer a benefit after the company has changed owners. They argue that the Department may not hide behind the fact that it is not required to conduct an ''effects test'' in explaining the lack of analysis of subsequent events. Respondents state that their position does not require analysis of the effects of a subsidy in all circumstances, rather only when a ''significant event'' occurs, such as privatization. This requirement, they explain, is the only justification for the inclusion of 19 U.S.C. 1677(5)(F), which directs the Department to consider that some privatizations do not eliminate the benefits of pre-privatization subsidies.

Respondents further argue that if the Department properly considered the impact of the subsequent event in this case, we would find that the arm's-length privatizations eliminated the pass-through of pre-privatization benefits. They state that unless there is some analytical basis to presume that subsidies have been passed through after an arm's-length privatization, the Department must conclude that the post-privatization owners do not benefit from pre-privatization subsidies. Respondents use a hypothetical example of a company purchasing a machine with government assistance, then selling that machine to another party for a market price to illustrate their point that the benefit from the original government assistance remains with the original company. Respondents further hold that the ownership of the company cannot be separated from consideration of the operating entity that uses the assets and liabilities. Thus, if the ownership of a company has changed, the company itself has changed. Respondents conclude that the Department's current methodology ignores the relevance of the new owners.

Respondents point to the Department's *Final Regulations,* 63 FR 65348, 65361, stating, ''where a firm does not pay less for its inputs than it would otherwise have to pay * * * as a result of a (government) financial contribution, it would be very difficult to contend that a benefit exists.'' Since the new owners of the respondent companies did not pay less than they otherwise would have had to acquire these companies, they conclude that no benefit exists.

In addition, respondents state that the GOB's residual and/or indirect interest in the companies during the POI does not undermine this conclusion. Respondents state that GOB-owned entities such as CVRD outbid private investors to acquire shares; thus, no benefit arises from or passes through in this transaction. Further, they state that the GOB's residual holding in COSIPA is irrelevant to COSIPA's production and sales since privatization.

Petitioners reject respondents' argument as without authority. Petitioners submit that this argument may be reduced to an effects test, expressly not required by the Act and which has been prohibited by the Courts. Petitioners state that the Department's repayment/change in ownership methodology does not represent an inquiry into whether subsidies continue to exist; instead it merely allocates the remaining benefit stream between the seller and the purchaser.

Petitioners state that 19 U.S.C. 1677(5)(F) was intended to make clear that the Department does not have any obligation to reevaluate the subsidy after a significant event. Petitioners state that this provision was added expressly to overrule findings in which the Court ruled that an arms-length sale extinguished subsidies. *See Saarstahl AG* v. *United States (Saarstahl I)* and *Inland Steel Bar Co.* v. *United States (Inland I).* These findings were subsequently reversed by the CAFC. *See Saarstahl AG* v. *United States,* 78 F.3d 1539 (Fed. Cir. 1996) (*Saarstahl II*) and *Inland Steel Bar Co.* v. *United States,* 86 F.3d 1174 (Fed. Cir. 1996) (*Inland II*). Petitioners further object to respondents' interpretation of SCM Article 1.1 and the virtually identical 19 U.S.C. 1677(5)(B). Petitioners state that the CIT has held that this language does not require a finding of a current competitive benefit during the POI.

Petitioners argue that respondents mischaracterize the Department's obligation to consider significant subsequent events, as respondents attempt to define all subsequent events as significant. Petitioners conclude that under this definition, all subsequent events would have to be considered and subsidy benefits would have to be traced, a proposition that is unworkable.

Finally, petitioners disagree with respondents' focus on the ownership of the company. Petitioners state that the inquiry must focus on the ''manufacture, production or export'' of subject merchandise. To support this position, petitioners cite *Delverde II,* in which the CIT stated that there are practical reasons for excluding ''the current owner of the goods at issue entirely from the determination of benefit * * *.'' *See Delverde SrL* v. *United States,* 24 F. Supp. 2d 314 (Ct. Int'l Trade 1998). In addition, petitioners state that the logical conclusion of respondents' arguments would require any change in ownership of shares on the open market to be examined, a result that the Department rejected as absurd in *Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from* Italy, 64 FR 15508 (March 31, 1999). Petitioners conclude that focusing on production demonstrates that the benefits continue to exist after privatization.

Department's Position: We disagree with respondents. In accordance with the provisions of the statute (Sec. 771(5)(B) and 771(5)(E)), the Department has found that COSIPA, CSN and USIMINAS continue to benefit from pre-privatization equity infusions. We have examined the facts of this case in light of the above cited provisions and find that the methodology we follow is in accordance with the statute. As petitioners noted, the Departments' privatization/change-in-ownership methodology has been upheld by the

Courts both pre-and post-URAA. See *Saarstahl II, Inland II* and *Delverde II.*

The Department has satisfied both 19 U.S.C. 1677(5)(B) and Article 1.1. of the SCM in this investigation. We found that the GOB provided financial contributions to respondents, in the form of equity infusions and debt-to-equity conversions in the above-mentioned years which confer countervailable benefits through the POI. In accordance with the Department's standard methodology, the benefits from these subsidies were allocated over time. Neither of the above-mentioned provisions require the Department to revisit these determinations.

Under both the SCM and the Act, the Department has the discretion to determine the impact of a change in ownership on the countervailability of past subsidies. The Department has consistently applied its privatization/change in ownership methodology to determine the impact that a privatization/change in ownership has on pre-privatization subsidies. But, it has not done this by re-identifying or re-valuing the subsidy benefit based on events as of the time when the ownership of the subsidized company changed hands. The Department does not re-visit the determination identifying and valuing the subsidy event as of the time of the subsidy bestowal. As petitioners correctly note, the Department is not required to examine the effects of subsidies, *i.e.*, trace how benefits are used by companies and whether they provide competitive advantages. Instead, the Department's methodology addresses the impact of the change in ownership on the allocation of pre-privatization subsidies. The Department's methodology accounts for the impact that the change in ownership has on pre-privatization subsidies, by looking at how the Department already has allocated the subsidy benefit over time (based on events as of the time of the subsidy bestowal) under our normal allocation methodology and then allocating, or apportioning, that benefit between the buyer and the seller. As the Department said in *Stainless Steel Plate in Coils from Italy*, ''[o]ur methodology recognizes that a change in ownership has some impact on the allocation of previously-bestowed subsidies and, through an analysis based on the facts of each transaction, determine the extent to which the subsidies pass through to the buyer.'' 64 FR at 15518. Thus, our methodology is wholly consistent with 19 U.S.C. 1677(5)(F) and, contrary to respondents' argument, provides the analytical basis for determining whether and to what extent subsidies have passed through to the privatized company in a change in ownership or remain, in whole or in part, with the seller.

In addition, section 701(a)(1) of the Act directs the Department to determine whether a government-entity is providing a countervailable subsidy ''with respect to the manufacture, production, or export of a class or kind of merchandise.'' We note that the same terminology is also reflected in the SCM (footnote 34). Given this focus on the manufacture, production and/or exportation of merchandise, the focus of the inquiry here should not be on the new *owners* of the company and how they may or may not have benefitted from the privatization transaction. The Department has not separated the ownership of the company from its analysis. Rather we have, as directed by law, focused on the activities of the company, rather than its ownership structure. Our privatization methodology has accounted for the change in the ownership of the company conducting these activities. Thus, we have measured the amount of the benefit that passes through this transaction as respondent companies continued to manufacture, produce and export subject merchandise.

Respondents' reliance on the adequate remuneration standard is misplaced. This provision applies only to inquiries of whether government provided inputs are sold for adequate remuneration. The sale of an input and sale of an ongoing company are materially different.

Finally, we note that we have properly analyzed the GOB's residual and indirect interests in companies during the POI in the context of our standard privatization methodology. We have not considered shares bought by government-owned companies in privatization auctions as privatizations; these transactions do not reflect the change in ownership of the shares from government to private ownership, but rather a transfer from one government holding to another. However, when such companies were, themselves, privatized, we have made adjustments to reflect the change in ownership at that time.

Comment #2: Valuation of Equity Infusion Benefits

Respondents argue that the Department's policy of treating the benefit from equity infusions (into unequityworthy companies) as grants overstates the net benefits associated with the investments. Respondents hold that ignoring post-investment activities, such as the payment of dividends or privatizations, violates the principle contained in 19 U.S.C. 1671(a) specifying that the Department countervail the *net* subsidy. Respondents state that grants and equity infusions are different as equity infusions impose financial obligations on the firm, specifically, to pay dividends and the obligation to cede a claim on the company's assets to the investor.

Respondents point to the pre-1993 equity methodology, the so-called ''rate of return shortfall'' methodology, as recognition of the differences in benefits between grants and equity investments. Further, respondents state that the Department should recognize that paying dividends is, in a certain sense, the company's attempt to offset the benefits of a subsidy, and this is a result that the CVD law should encourage to eliminate subsidization. Respondents state that applying the grant methodology to equity infusions is tantamount to forming an irrebuttable presumption that unequityworthy companies incur absolutely no costs in connection with government investments.

Respondents state that the Department must accommodate all post-investment events in the calculation of the benefit to the company during the POI including the effects of privatization, increases in net worth, and the issuance of dividends to the investor.

Petitioners state that the Department has previously considered and rejected respondents' arguments with respect to treating equity infusions into unequityworthy companies as grants. Petitioners hold that this methodology correctly recognizes that a reasonable private investor would not invest in companies that are unable to generate a reasonable rate of return. Petitioners reject the notion that equity investments into unequityworthy companies impose costs on firms, citing *British Steel I*, in which the CIT stated that ''* * * the Court is unconvinced by the argument that equity infusions impose costs on recipient firms, costs that differentiate equity infusions into unequityworthy firms from grants.'' In addition, petitioners argue that the Court has further rejected consideration of subsequent dividends and retained earnings in measuring the benefit from equity infusions. Petitioners further state that the Department may not consider these events as they do not appear on the list of offsets contained in 19 U.S.C. 1677(6).

Department's Position: Respondents are basically arguing a return to the pre-1993 equity methodology, known as the

rate of ''return shortfall methodology'' (RORS). The Department rejected RORS in 1993 because, among other things, it relied on an *ex post facto* analysis of events and represented a cost-to-government analysis of the benefit. The Department instead determined that the grant methodology was the most appropriate for analyzing the benefit from an equity infusion into an unequityworthy company. As the Department said in the *GIA*, 58 FR at 37239:

> [u]sing the grant methodology for equity infusions into unequityworthy companies is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information. Thus, neither the benefit nor the equityworthiness determination should be reexamined *post hoc* since such information could not have been known to the investor at the time of the investment. Therefore, the grant methodology, when used for equity infusions into unequityworthy companies * * * should not be adjusted based on subsequent events (*e.g.*, dividends, profits).

The Department has consistently applied the grant methodology to measure the benefit from equity infusions into unequityworthy companies since 1993. *See, e.g., Certain Steel from Brazil; Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy*, 59 FR 18357 (March 18, 19994); *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela*, 62 FR 55014 (October 22, 1997); and *Final Affirmative Countervailing Duty Determination; Stainless Steel Plate in Coils from Belgium*, 64 FR 15567, 15569 (March 31, 1999). This methodology has been upheld by the Court, as discussed by petitioners, above. Respondents' argument that equity investments impose additional costs on companies is not relevant and has been rejected by the Court. We have found respondents to be unequityworthy as discussed in the ''Equityworthiness'' section above. This finding has not been disputed by respondents. Our finding of unequityworthiness is tantamount to saying that private investors would not have invested *any* capital in the firm. Therefore, we have applied the grant methodology to measure the benefit of equity infusions (and debt-to-equity conversions), as discussed in the ''Equity Methodology'' section above.

Comment #3: Repayment Calculations

Respondents argue that if the Department continues to apply its standard privatization methodology, it must revise these calculations because the gamma ratio does not properly reflect the proportion of the purchase price that reflects repayment of prior subsides because they hold that an average of infusion values to net worth ratios over time does not provide a meaningful ratio. Respondents instead suggest using the present value of the unamortized pre-privatization infusions (at the time of the infusion) to the total net worth of the company at the time of privatization. They argue that this approach more properly accounts for the difference between a company that received an infusion ten years prior to subsidization from a company that receives the same infusion the year before privatization.

Respondents further argue that the Department incorrectly deflated the purchase price in each privatization because of privatization currencies. Respondents argue that the relevant value of the currencies, in identifying the purchase price of the companies, is the present value of the currencies (face value, discounted to account for the time remaining until maturity), the amount at which the currencies were accepted by the GOB. Respondents hold that this value is correct because it represents the value of the debt that the GOB retired through the sales. Further, the GOB had a real liability equal to the present value of the instrument and the value to the GOB must be used in the calculation as it attempts to identify the amount of subsidy ''paid back'' to the government in the privatization. Respondents state that the value of the privatization currencies to the purchasers of the shares is irrelevant. Respondents use examples of different currency exchange rates and different bond values to illustrate the point that the value to the GOB remains the same in each scenario. Respondents also argue that the Department's valuation of the privatization currencies assumes that all currencies were acquired by the users at a discount. They point to the Privatization Certificates (CPs), which banks were forced to purchase under the Collor Plan for 100 percent of their value. Respondents state that many banks chose to use the CPs in privatization auctions, exchanging one-to-one for shares, despite secondary market discounts. They hold that if instruments were not traded on secondary markets, a secondary market discount cannot be applied, and to do so is to apply an adverse inference without justification.

In addition, respondents state that the Department did not make any adjustments to the purchase price in its examination of the 1991 USIMINAS privatization examined in *Certain Steel From Brazil.* Respondents argue that the Department has changed its analysis without explaining the reasons for the departure.

Finally, respondents disagree with the treatment of shares purchased by CVRD in the privatizations. Respondents state that CVRD's share purchases were made on commercial terms, and cannot be considered to provide a financial benefit to the companies. Respondents state they cannot be penalized for a GOB investment made on terms consistent with commercial considerations.

Petitioners argue that respondents' suggested change to the gamma calculation is ambiguous. Petitioners state that the Department has rejected similar changes to the gamma in prior cases, specifically *Industrial Phosphoric Acid from Israel* and *Stainless Steel Plate in Coils from Italy.* They also note that the current gamma calculation received Court approval in *Saarstahl II, British Steel II* and *Delverde II.*

Petitioners support the Department's preliminary adjustments to account for the market value of privatization currencies. Petitioners state that record evidence demonstrates that the currencies traded at deep discounts from their face values on secondary markets. Petitioners state that CVD law and practice reveal a strong preference for using market-determined prices to make valuation decisions. They hold that the GOB could purchase the securities on the secondary market, just like private investors, and thus the value to the GOB was exactly the same as the market value. Petitioners disagree with respondents' arguments with respect to the CPs, noting that the Department must seek the market value at the time the currency as exchanged for shares.

Petitioners state that respondents never provided specific information on the secondary market prices of privatization currencies. Petitioners state that the repayment methodology, in effecting a downward adjustment on the benefit stream, benefits respondents and respondents bear the burden of demonstrating their entitlement to this adjustment. Thus, petitioners argue that the Department should apply the steepest discount on the record, 70 percent, in valuing the privatization currencies.

Petitioners disagree with respondents' arguments with respect to the valuation of privatization currencies in *Certain Steel From Brazil.* Petitioners state that the parties in that investigation did not address this issue as the Department did not apply the current privatization methodology until the final

determination. Thus, *Certain Steel From Brazil* should not be seen as a precedent on this matter.

Petitioners support the Department's treatment of CVRD share purchases in the *Preliminary Determination,* arguing that the repayment methodology may not be applied to public-to-public sales. Petitioners hold that applying the privatization methodology to such sales would create a massive loophole in the law where a government could reduce benefit streams simply by rearranging the holdings of government-owned companies.

Department's Position: For this final determination, we have continued to calculate gamma using historical subsidy and net worth data. The gamma calculation serves as a reasonable estimate of the percent that subsidies constitute of the overall value of the company. This methodology has been upheld by the courts in *Saarstahl II* and *British Steel II.* Respondents' criticism of the Department's current methodology centers on the fact that the average of subsidies to net worth does not take into account the timing of the receipt of subsidies and the corresponding net present value of the subsidies. We note that while gamma itself does not factor in the net present value of the subsidies, the results of the gamma calculation are applied to the present value of the remaining benefit streams at the time of privatization. Thus, our current calculations, as a whole, do properly account for the present value of the remaining benefits at the time of privatization.

Respondents' arguments regarding the valuation of privatization currencies are also flawed. While we do not deny that the GOB's retired debts are equal to the present value of the currencies accepted in exchange for shares, the proper value used in the privatization calculation is the market selling price of the company, as indicated by the market selling price of the currencies. Since the currencies were discounted on secondary markets, the present value of the currencies overstates the cash, market value of the purchase price. As petitioners correctly point out, it is the Department's preference to use market values in calculations where possible.

Respondents' arguments with respect to CPs are also flawed. In discounting the CPs as described above, we have appropriately estimated their market values at the times of the privatization transactions.

We also agree with petitioners regarding the examination of the currencies in *Certain Steel From Brazil.* While the fact that privatization currencies were used to acquire USIMINAS shares was contained in the record of that case, parties did not have the opportunity to comment on the final privatization methodology applied and the implications that various facts in evidence may have had on this methodology. Furthermore, *Certain Steel From Brazil,* and the companion Certain Steel cases, were the first time that the Department applied this methodology. We have gained experience with the methodology since that time. In this investigation, we have properly determined that privatization currencies were overvalued by the GOB and that the discounted, market value should be used in the privatization calculation as discussed above. As discussed in the ''Subsidies Valuation'' section above, we have applied discounts to the various privatization currencies based on the record evidence.

Finally, we agree with petitioners with respect to the treatment of CVRD share purchases. Government purchases of government assets cannot be seen properly as a ''privatization'' or ''change in ownership'' that would give rise to a reallocation of subsidies between buyer and seller. Instead, these transactions represent a transfer of government funds from one account to another. Thus, we have continued to remove the CVRD purchases from the calculations as discussed above. In addition, we note that we have accounted for the 1997 partial privatization of CVRD in the calculations.

Comment #4: Asymmetrical Comparisons in Calculations

Respondents state that the Department must ensure that the ratios, such as gamma, used in the privatization calculations use symmetrical comparisons: both the numerator and denominator should be in either corrected values, or historical values. Respondents suggest that the Department apply historical values as the equity infusions were reported in historical terms; if historical values are unavailable, the Department should dollarize the net worth figure and the equity infusion amounts.

Petitioners argue that the Department must ensure that a symmetrical comparison is used in applying the 0.5 percent test. Because respondents have reported a mix of historical and corrected figures, petitioners state that the 0.5 percent test has been distorted.

In their reply brief, respondents agree with petitioners that symmetrical comparisons must be used in all calculations. In petitioners' reply brief, petitioners argue that the distortion identified by respondents was the result of a failure on the part of respondents to report consistent data. Petitioners disagree that dollarizing the net worth would correct the asymmetrical comparison problem and should not be applied as the problem arises from respondents' poor reporting and the correction should not benefit respondents. Petitioners further argue that if the Department does not have a historical value for total sales, the 0.5 percent test should not be applied in that year.

Department's Position: For the final determination, we have revised our calculations to include symmetrical comparisons in the numerator and denominator of the ratios used in the privatization calculation and 0.5 percent test where data on the record allows us to make this comparison. We used historical values for the subsidy to net worth ratios that are averaged to derive gamma. For the years in which historical values are not available for use in the gamma, we have continued to use corrected values. For the 0.5 percent test, in the instance where the asymmetrical comparison has a meaningful impact on the ratio, we used the historical sales value.

Comment #5: Application of New Risk Premium Methodology

Petitioners argue that the Department should apply the risk premium methodology contained in the *Final Regulations,* even though the *Final Regulations* do not govern this proceeding. Petitioners state that the Department has described the new methodology as ''more appropriate'' and ''more accurate'' and argues that the Court has reversed the Department when it has declined to apply a ''more accurate'' methodology. Finally, petitioners state that all parties have had ample notice as the new methodology was proposed in the 1997 Proposed Regulations and was applied in the petition.

Respondents reject petitioners' argument as they state there is no justification in departing from the current risk premium methodology at this stage. Respondents state that the *Final Regulations* do not apply to this investigation. Respondents argue that there would be procedural difficulties in applying this methodology as no parties have had the opportunity to comment and review its use. Respondents further state that the new methodology is complicated and requires the Department to consider default rates in the country if that information is submitted to the record and that the parties did not have the opportunity to submit such information in this case.

Finally, respondents reiterate their argument that the Department has improperly measured the benefit from the equity infusions by treating these amounts as grants.

Department's Position: We agree with respondents. The Department's *Final Regulations* do not govern this proceeding. While we have described the new risk premium methodology contained in the *Final Regulations* as ''more accurate,'' because of the logistical reasons identified by respondents, it is not appropriate to apply this methodology in this case. To do so, without having given parties sufficient opportunity to address the options contained in the regulation, would forestall the participation of the parties.

Comment #6: Verification Clarifications

Respondents argue that minor refinements clarified at verification should be changed in the calculations for the final determination. Specifically the amount of the 1988 CSN equity infusions, USIMINAS' total and subject merchandise sales values, and COSIPA's total sales value.

COSIPA explained at verification that an amount contained in its 1993 capital advance account was actually the repayment of a debt from Siderbras. *See* COSIPA Verification Report, public version on file in the CRU.

Petitioners argue that COSIPA's claim about the debt does not withstand scrutiny as COSIPA did not provide information about how the debt arose or what it represents. Petitioners further state that while COSIPA demonstrated to the Department that the debt existed, the company did not show that the debt *was* paid with amounts from the capital advances account; on the contrary, they argue that since the amount remained in the capital advances account, it was not utilized to cancel the outstanding debt. Petitioners conclude that this amount should be added to the amount of the debt-to-equity conversion countervailed for 1992.

Respondents reply that the existence of the Siderbras debt was verified to the Department's satisfaction, and thus, petitioners' arguments with regard to the bona fides of the debt are inappropriate. Respondents state that verification exhibits demonstrate that the Siderbras debt was deducted from the capital advances account.

In addition, Petitioners argue that COSIPA withheld information pertaining to the date each equity infusion was received despite repeated requests from the Department for this information. COSIPA provided the specific dates that the 1992 and 1993 debt-to-equity conversions were made at verification. Petitioners reason that COSIPA withheld the relevant information and that the Department should reject the information obtained at verification as untimely. Petitioners conclude that the Department should apply an adverse inference as facts available and treat all equity infusions as having been received on the first day of the month.

Respondents reply that COSIPA did not attempt to conceal information from the Department with respect to the actual dates that the conversions were granted. Respondents state that COSIPA relied on information that was verified in other cases as some of the equity infusions are from years that the company no longer maintains records and that COSIPA was not able to determine the actual dates of the infusions in these cases. COSIPA was able to determine the dates of the 1992 and 1993 infusions and these dates were discussed at verification and the 1993 dates were reported in the February 8, 1999, questionnaire response. Finally, respondents state that use of the actual dates favors COSIPA; thus, there was no attempt by the company to withhold this information.

Petitioners also dispute the accuracy of corrections made to CSN's 1988 equity infusion amount at verification. Petitioners argue that the amount of the infusion was verified in the 1993 *Certain Steel from Brazil* investigation, and that the Department should not accept any changes at this point.

Department's Position: We agree with respondents. The corrections identified by the parties—the amount of the CSN 1988 equity infusion, dates of the COSIPA infusions, and sales amounts—were verified to the Department's satisfaction and tied directly to the respective companies' accounting documents. Further, COSIPA did report the dates of the 1993 conversions in the February 8, 1999, response as identified by respondents. Finally, CSN demonstrated that the numbers verified in this proceeding were accurate irrespective of their difference from amounts countervailed in the *Certain Steel from Brazil* investigation. It is standard Department practice to accept minor corrections at verifications, and the opportunity to make minor corrections was included in the companies' verification outlines that were used to prepare for verification. None of the corrections at issue are significant in nature; thus it is entirely appropriate to use the corrected numbers in our final calculations.

Comment #7: Tax Deferral Programs

Petitioners argue that COSIPA received deferral terms more favorable than those granted to other taxpayers and that record evidence indicates that COSIPA was a predominant user of the IPI, Social Contribution and ICMS tax deferral programs. Petitioners state that respondents failed to provide information regarding the terms of tax deferrals granted to other taxpayers. They submit that the administering authorities granted COSIPA installment periods for the IPI and Social Contribution tax longer than provided for in the applicable regulation. Petitioners reject the explanation provided at verification—that the Minister could grant longer periods than provided for in the regulations. They argue that the fact that COSIPA received an extended term, demonstrates that the laws and regulations were not followed and that the program is specific. Petitioners state that because COSIPA needed such a long period to repay the large debts, it is likely that COSIPA received a disproportionate amount of the subsidy. They conclude that the GOB exercised discretion to favor COSIPA over others.

With respect to the IRPJ tax, Petitioners state that the record shows COSIPA applied for and received the deferral program after the statutorily-mandated guideline expired. Petitioners argue that respondents have not demonstrated that any other taxpayer received the program after the deadline expired; thus, the Department should find that the program is specific.

Petitioners argue that COSIPA received a repayment term longer than specified in the applicable law for the INSS tax. Petitioners state that law 8630/93 provides for a 240-month deferral period only for applications submitted in February 1993, and that record evidence demonstrates that COSIPA did not submit its application in that month. Since respondents have not provided any evidence indicating that other taxpayers also received this term under these circumstances, Petitioners conclude that the program is specific to COSIPA.

Finally, Petitioners argue that COSIPA was a predominant user of the Sao Paulo State ICMS tax deferral program. Relying on press articles which mentioned the company's upcoming privatization, petitioners state that COSIPA's massive ICMS debts and reported negotiations with federal and state authorities dispute claims made by the GOB at verification. Petitioners submit that if all parties receive the same treatment under the law, there

would have been no need for lengthy negotiations. They also state that the magnitude of the tax arrears demonstrates that COSIPA was a disproportionate user of the program—the size of the debt, viewed in the context of the large number of users of the tax deferral program suggests that program was specific to COSIPA.

Petitioners also argue that in measuring the benefit from the tax deferral programs, the Department should apply the monthly average overnight rate as the benchmark, which was applied in *Certain Steel from Brazil.*

Respondents reject petitioners arguments with respect to the tax deferral programs. Respondents state that the GOB provided the Department with all information requested, except for the proprietary information of companies not involved with this case.

With respect to the IPI and Social Contribution taxes, respondents state that petitioners mischaracterized the normative instruction cited by petitioners as this document does not apply to the Minister and does not limit the Minister's discretion to alter these instructions. Respondents state that record evidence demonstrates that more than 200 companies received terms other than those contained in the normative instruction in all sectors of the economy and that nothing points to the conclusion that these agreements are specific. Respondents also reject the argument that since COSIPA received a term of more than 60 months, the underlying debt must have been large and thus COSIPA was a disproportionate user of the program. Respondents instead state that the technical analysis required to receive a period longer than 60 months analyzed a number of factors, in particular cash flow and thus does not support Petitioners' assertion.

Respondents also characterize petitioners' arguments on the IRPJ program as innuendo. Respondents state that record evidence does not support the conclusion that COSIPA's IRPJ application was submitted after the deadline expired. Finally, respondents note that COSIPA did not make any IRPJ payments during the POI; thus, petitioners' arguments are moot.

Respondents also reject petitioners' argument that the INSS application was submitted after the deadline expired for receiving the maximum deferral. Respondents state that record evidence demonstrates that the petition was submitted within the relevant deadline.

With respect to the ICMS program, respondents reject the information contained in the press articles cited by petitioners. Respondents state that negotiations are a normal part of the deferral application process and that the fact that the authorities were aware of the company's upcoming privatization supports no conclusion one way or the other. They state that record evidence does not support the conclusion that COSIPA was a disproportionate user of the program.

Finally, respondents reject the petitioners' proposed benchmark, instead suggesting that the rate applied to other taxpayers should be applied. Alternatively, respondents suggest other long-term interest rates on the record.

Department's Position: We disagree with petitioners. As discussed in the ''Programs Determined to Be Non-Countervailable'' section above, we have found the negotiated tax deferral agreement programs to be non-countervailable because they are not specific within the meaning of the Act. Because of the nature of the programs, it was difficult for the GOB to provide the information required to address all of the questions addressing the *de facto* specificity criteria. At verification, we asked for and received sufficient information to determine that the programs are not specific including charts specifying the total number of applicants/users, regions of the applicants/users and amount of debts covered by the programs for the relevant years. *See,* GOB Verification Report, public version on file in the CRU. None of the GOB agencies collect information on an industry basis. However, we were able to determine from the record evidence that the programs are not *de facto* specific. Respondents demonstrated that tens of thousands of taxpayers applied for and received tax deferrals under these programs. Further, all applicants are automatically approved if they satisfy the eligibility criteria contained in the laws and regulations—basic criteria such as having a debt, not being delinquent on another tax deferral agreement, and willingness to pay within the specified period. The GOB not only did not exercise discretion to favor COSIPA over others, it exercised *no* discretion in the operation of the program.

The GOB explained at verification that applicants for deferral agreements of IPI and Social Contribution arrears could receive repayment periods longer than the 60 months specified in the normative instructions if the company demonstrated that it could not afford to repay the debt within the period. The GOB conducted a technical analysis of the cash-flow position of each applicant that requested longer than 60 months to repay and the Minister followed the recommendation of the technical experts in approving the more than 200 applicants that requested an extended period. Further, the companies that receive the extended period are required to pay the same amount of interest, penalty and monetary correction as the applicants that pay within 60 months. Thus, the record evidence does not support the conclusion that COSIPA was favored over other applicants with respect to its IPI and Social Contribution deferral agreements.

As respondents noted, COSIPA did not make any payments on its IRPJ agreement during the POI; thus, no benefit could arise from this tax deferral agreement in 1997. In addition, as respondents discuss in their reply brief, the tax consolidation table submitted in the response was dated February 19, 1993, within the time period specified in the regulations to receive the maximum deferral period.

With regard to the ICMS tax, officials demonstrated at verification that COSIPA applied for and received the tax deferral agreements because it satisfied the conditions contained in the laws and regulations. Further, petitioners misinterpret the significance of the ''negotiation'' for these agreements; as discussed with GOB officials during verification, COSIPA was automatically approved based on the analysis by the data processing system. In addition, the GOB officials explained that the only applicants that have been denied were due to the fact that the taxpayers have already exceeded the number of deferrals allowed by law. Thus, record evidence does not support petitioners' arguments regarding the IPRJ, INSS and ICMS tax deferral programs.

As we have found the programs non-countervailable on the basis that they are non-specific, both parties' comments regarding the benchmark are moot.

Comment #8: Affiliation of CSN and USIMINAS

Petitioners state that record evidence demonstrates that CSN and USIMINAS/COSIPA are sufficiently related to each other so as to find that their interests have merged. Petitioners state that respondents' reliance on the fact that neither CVRD nor Previ is a party to the USIMINAS shareholders agreement, and therefore, CSN does not exercise any control over USIMINAS, is incorrect. Petitioners argue that absolute control is not required for a finding of affiliation, merely that the companies are ''sufficiently related''—if one company owns 20 percent of the other, the companies prepare consolidated financial statements, there are common directors, or one company performs services for the other. Petitioners state

that CSN, through CVRD, and Previ have significant influence over USIMINAS through its substantial, albeit minority, presence on USIMINAS' Board of Directors. Petitioners conclude that record evidence supports a finding that USIMINAS and CSN are affiliated and should be treated as a single company for purposes of calculating the countervailing duty rate.

Respondents disagree with petitioners' arguments stating that the record indicates that CSN and USIMINAS are competitors. In addition, the record demonstrates that there is insufficient overlap in shareholder interests and/or directors to support a finding of affiliation and presumption that subsidy benefits could have been transferred between the companies. Respondents also state that the Department did not collapse the respondents when they were all owned and controlled by Siderbras, and thus, to do so now, when they have even less affinity of interests, would be inappropriate.

Department's Position: We disagree with petitioners. As discussed in the ''Affiliation'' section above, record evidence does not support a finding of affiliation between CSN and USIMINAS. We disagree with petitioners that the fact that CVRD and Previ do not participate in the USIMINAS shareholders agreement is not dispositive of a finding of no affiliation. The shareholders that participate in the shareholders agreements of USIMINAS are required to pre-vote all issues before the respective Boards of Directors and their representatives on the Boards are then required to vote as a block. *See* USIMINAS Verification Report at 2. Therefore, shareholders that do not participate in the shareholders agreement are effectively prevented from exercising any control over the operations of the company, irrespective of the size of their shareholdings. Neither CVRD nor Previ, on their own, are sufficiently related to satisfy the affiliation standard identified in the Department's countervailing duty questionnaire. CVRD and Previ are also not in the position to exercise joint control over USIMINAS since they do not participate in the shareholders agreement. There are no other connections between CSN and USIMINAS that could result in a finding of affiliation between the two companies. Therefore, no finding of affiliation is warranted and the issue of collapsing is moot.

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with the government and company officials, and examining relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the CRU.

Ad Valorem Rates

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated individual subsidy rates for each of the companies under investigation. As discussed in the ''Affiliated Parties'' section of this notice, we are treating USIMINAS/COSIPA as one company and have calculated a single rate for USIMINAS/COSIPA. To calculate the ''all others'' rate, we weight-averaged the company rates by each company's exports of the subject merchandise to the United States.

Producer/exporter	Net subsidy rate %
USIMINAS/COSIPA	9.67
CSN	6.35
All Others	7.81

Suspension of Liquidation

In accordance with our preliminary affirmative determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of hot-rolled flat-rolled carbon-quality steel from Brazil which were entered, or withdrawn from warehouse, for consumption on or after February 19, 1999, the date of the publication of our preliminary determination in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after June 21, 1999, but to continue the suspension of liquidation of entries made between February 19, 1999, and June 20, 1999.

We have concluded a suspension agreement with the Government of Brazil which eliminates the injurious effects of imports from Brazil (*see, Notice of Suspension of Investigation: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil* being published concurrently with this notice). As indicated in the notice announcing the suspension agreement, pursuant to section 704(h)(3) of the Act, we are directing the U.S. Customs Service to continue the suspension of liquidation for entries of subject merchandise entered, or withdrawn from warehouse, for consumption between February 19, 1999, and June 21, 1999. This suspension will terminate 20 days after publication of the suspension agreement or, if a review is requested pursuant to section 704(h)(1) of the Act, at the completion of that review. Pursuant to section 704(f)(2)(B) of the Act, however, we are not applying the final determination rate to entries of subject merchandise from Brazil; rather, we have adjusted the rate to zero to reflect the effect of the agreement.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, the suspension agreement will have no force or effect, this investigation will be terminated, and the Department will instruct the U.S. Customs Service to refund or cancel all securities posted (*see*, section 704(f)(3)(A) of the Act). If the ITC's injury determination is affirmative, the Department will not issue a countervailing duty order as long as the suspension agreement remains in force, and the Department will instruct the U.S. Customs Service to refund or cancel all securities posted (*see*, section 704(f)(3)(B) of the Act).

Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 704(g) and 777(i) of the Act.

Dated: July 6, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–18224 Filed 7–16–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828]

Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil

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

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: July 19, 1999.

FOR FURTHER INFORMATION, CONTACT: Maureen McPhillips at 202–482–0193 for CSN, Barbara Chaves at 202–482–0414 or Samantha Denenberg at 202–482–1386 for USIMINAS/COSIPA, or Linda Ludwig at 202–482–3833, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

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 the regulations codified at 19 CFR part 351 (1999).

Final Determination

We determine that certain hot-rolled flat-rolled carbon-quality steel products (hot-rolled steel) from Brazil are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

We published in the **Federal Register** the preliminary determination in this investigation on February 19, 1999. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 8299 (Feb. 19, 1999) (Preliminary Determination). Since the publication of the Preliminary Determination the following events have occurred:

The respondents in this investigation: Companhia Siderurgica Nacional (CSN); Usinas Siderurgicas de Minas Gerais, S.A. (USIMINAS); and Companhia Siderurgica Paulista (COSIPA) requested postponement of the final determination in accordance with Section 735(a)(2) of the Act on February 2, 1999. Accordingly, we postponed the final determination in this investigation on February 18, 1999 for 30 days. See Postponement of Final Determination of Antidumping and Countervailing Duty Investigations of Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 9475 (February 26, 1999).

The Department verified sections A (General Information), B (Home Market Sales) and C (U.S. Sales) of CSN's responses on March 8 through March 12, 1999. The Department verified section D (Cost) of CSN's response on March 15 through March 19, 1999. These verifications were performed at CSN's production facility in Volta Redonda. See Memorandum to the File; ''Sales Verification Report of Companhia Siderurgica Nacional (CSN),'' April 7, 1999, (CSN's Sales Verification Report) and Memorandum to Neal Halper, Acting Director, Office of Accounting; ''Verification of the Cost of Production and Constructed Value Data—CSN,'' April 7, 1999, (CSN's Cost Verification Report). Public versions of these, and all other Departmental memoranda referred to herein, are on file in room B–099 of the main Commerce building.

The Department verified sections A–C of USIMINAS' responses on March 15 through March 20, 1999 at USIMINAS' corporate headquarters in Belo Horizonte and its production facility in Ipatinga, Brazil. The Department verified section D of USIMINAS' response on March 22 through March 26, 1999 at USIMINAS'' production facility in Ipatinga, Brazil. See Memorandum For the File; ''Sales Verification of Sections A–C Questionnaire Responses Submitted by Usinas Siderurgicas de Minas Gerais, S.A. (USIMINAS),'' April 9, 1999 (USIMINAS' Sales Verification Report) and Memorandum to Neal Halper, Acting Director, Office of Accounting; ''Verification of the Cost of Production and Constructed Value Data—USIMINAS,'' April 9, 1999 (USIMINAS' Cost Verification Report).

The Department verified section D of COSIPA's response on March 15 through March 19, 1999 at COSIPA's production facility in Cubatão, Brazil. The Department verified sections A–C of COSIPA's responses on March 22 through March 27, 1999 at COSIPA's production facility in Cubatão, Brazil. See Memorandum to Neal Halper, Acting Director, Office of Accounting; ''Verification of the Cost of Production and Constructed Value Submissions of Companhia Siderurgica Paulista,'' April 8, 1999 (COSIPA's Cost Verification Report) and Memorandum For the File; ''Sales Verification of Sections A–C Questionnaire Responses Submitted by Companhia Siderurgica Paulista (COSIPA),'' April 9, 1999 (COSIPA's Sales Verification Report).

On March 22, 1999, CSN, USIMINAS, and COSIPA (respondents) requested a public hearing in this case. California Steel Industries, Gallatin Steel Company, Geneva Steel, Gulf States Steel, Inc., IPSCO Steel Inc., Steel Dynamics, Inc., Weirton Steel Corporation, Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Ispat Inland Steel, LTV Steel Company, Inc., National Steel Corporation, Independent Steelworkers Union, and United Steelworkers of America (petitioners) also requested a public hearing on March 22, 1999. On April 16, 1999, petitioners and respondents in this investigation filed case briefs. We received rebuttal briefs from petitioners and respondents on April 26, 1999. On April 22, 1999, the Department sent a request to USIMINAS and COSIPA to report further information identified at the verifications. The Department received this information on April 28, 1999.

In addition, on April 15, 1999, General Motors Corporation (''GM'') requested a scope exclusion for hot-rolled carbon steel that both meets the standards of SAE J2329 Grade 2 and is of a gauge thinner than 2 mm with a 2.5 percent maximum tolerance. On April 22, 1999, the petitioners requested that certain ASTM A570–50 grade steel be excluded from the investigation. For a more detailed discussion of scope issues, please see Scope Amendments Memorandum (April 28, 1999).

On May 5, 1999, the respondents and counsel for petitioners withdrew requests for a hearing, and therefore, there was no hearing for in this investigation. On, May 6, 1999, the Department published Postponement of Final Determination of Antidumping and Countervailing Duty Investigations of Hot-Rolled Flat-Rolled Carbon-Quality Steel from Brazil, 64 FR 24321, further extending the deadline for this investigation.

Scope of the Investigation

For purposes of this investigation, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic

substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (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 thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of HTSUS definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below 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
0.012 percent of boron, 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 of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including *e.g.*, ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max.

Width = 44.80 inches maximum; Thickness = 0.063—0.198 inches;
Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000—88,000 psi.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16% ..	0.70–0.90% ..	0.025% Max	0.006% Max	0.30–0.50% ..	0.50–0.70% ..	0.25% Max ...	0.20% Max ...	0.21% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V(wt.)	Cb
0.10—0.14%	1.30–1.80%	0.025% Max.	0.005% Max.	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max	0.10 Max ...	0.08% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.
Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% Max	1.40% Max.	0.025% Max.	0.010% Max.	0.50% Max.	1.00% Max.	0.50% Max.	0.20% Max.	0.005% Min.	Treated	0.01–0.07%.

Width = 39.37 inches; Thickness = 0.181 inches maximum;
Yield Strength = 70,000 psi minimum for thicknesses ≤0.148 inches and 65,000 psi minimum for thicknesses >0.148 inches; Tensile Strength = 80,000 psi minimum.

- Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent

silicon by weight, further characterized by either (i) tensile strength between 540 N/mm^2 and 640 N/mm^2 and an elongation percentage ≥26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm^2 and 690 N/mm^2 and an elongation percentage ≥25 percent for thicknesses of 2mm and above.

- Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.
- Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this investigation, including: Vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1997 through June 30, 1998.

Facts Available

Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

The statute requires that certain conditions be met before the Department may resort to the facts available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by (the Department)'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as the facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' See Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 316, 103d Cong. 2nd Sess. (1994), at 870. Furthermore, ''an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' Final Rule, 62 FR at 27340. The statute notes, in addition, that in selecting from among the facts available the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases), or any other information on the record.

CSN

We are applying adverse facts available where the criteria laid out in section 776(a)(2) of the Act are present. For this final determination, we have applied facts available to account for those unreported U.S. sales where the nota fiscal date—the date of sale—was within the POI but the commercial invoice date (the date of sale reported by CSN) fell outside the POI. Please see Comment 5 for a more detailed explanation of this issue.

USIMINAS/COSIPA

In March, 1999, the Department conducted verifications of USIMINAS and COSIPA and was unable to verify various issues. As noted in USIMINAS'' Sales Verification Report, COSIPA's Sales Verification Report, and the respective Cost Verification Reports, respondents were either unprepared, unwilling, or unable to review certain issues at the verifications. When the material remained unverified, but respondents exhibited cooperation in supplying at least a basic level of information, the Department applied facts available in accordance with section 776(a) of the Act. This was the case in the Department's application of facts available for USIMINAS'' costs. USIMINAS deviated from its normal allocation system in reporting its product-specific costs. As a result, it failed to pick up all costs captured in its financial accounting records. As facts available, the Department adjusted USIMINAS'' reported costs to coincide with its normal accounting records. See Comment 47. The Department also used facts otherwise available in its determination of critical circumstances. See the Critical Circumstances section below.

In several other instances, the respondent failed to cooperate to the

best of its ability. In these cases the Department asked repeatedly to cover certain issues, but respondents declined and they remained outstanding at the end of verification. Therefore, in accordance with section 776(b) of the Act, we have determined that adverse inferences are warranted for USIMINAS'' unreported U.S. sales where the nota fiscal date—the date of sale—was within the POI but the commercial invoice date (the date of sale reported by USIMINAS) fell outside the POI. See Comment 19. We have also determined that adverse inferences are warranted for the following items: downstream sales data, USIMINAS' home market inland freight, USIMINAS' U.S. inland freight, USIMINAS' warranty expense, COSIPA's home market inland freight, COSIPA's brokerage and handling expenses, COSIPA's packing, and USIMINAS' failure to report its affiliated supplier's actual cost of production (COP),. See Comments 18, 25, 26, 30, 34, 35, 40, and 49. See also Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey, 61 FR 30309, 30310 (June 14, 1996).

Critical Circumstances

In our preliminary determination, the Department found that there was no reasonable basis to believe or suspect that critical circumstances exist with respect to imports of hot-rolled steel from Brazil. In this final determination, the Department finds the same to be true. In accordance with section 735(a)(3) of the Act, if a petitioner alleges critical circumstances, the Department will determine whether: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

As in the Preliminary Determination, the Department finds that the first criterion has been met since Mexico has an antidumping duty order on hot-rolled steel from Brazil. This shows a history of dumping and material injury by reason of dumped imports of the subject merchandise. To determine whether the second criterion is met, *i.e.* whether imports were massive over a relatively short time period, the Department typically compares the import volume of the subject merchandise for at least three months immediately preceding and following the filing of the petition. See 19 CFR 351.206(i). The Department, therefore, requested on February 9, 1999, that respondents submit monthly U.S. shipment data from January 1997 through January 1999. COSIPA submitted this data on February 19, 1999; USIMINAS on March 1, 1999; and CSN on February 22, 1999. In the Department's verification outlines and at verification, the Department requested that respondents demonstrate their methodology in reporting the monthly U.S. shipment data. CSN's monthly shipment data was verified, but USIMINAS and COSIPA's was not. See USIMINAS' Sales Verification Report, page 59 and COSIPA's Sales Verification Report, page 45.

Pursuant to 19 CFR 351.206(h)(2), the Department will consider an increase of 15 % or more in the imports of the subject merchandise over the relevant period to be massive. CSN's verified data demonstrates that the threshold needed to find critical circumstances was not met since a comparison of shipments immediately preceding and following the filing of the petition did not reflect an increase of more than 15%. See Exhibit 5 of CSN's February 22, 1999 submission of monthly U.S. shipment data. We were unable to verify USIMINAS/COSIPA's shipment data, and therefore, are not using it in making our final critical circumstances determination. However, based on information available to the Department including official Census statistics, verified data for CSN, and the fact that CSN, USIMINAS, and COSIPA are the only known producers/exporters of the subject merchandise to the United States, we have determined that imports of the subject merchandise produced by USIMINAS/COSIPA did not increase by 15%. See Memorandum to the File: ''Analysis for Usinas Siderurgicas de Minas Gerais, S.A. (USIMINAS) / Companhia Siderurgica Paulista (COSIPA) for the Final Determination of the Antidumping Duty Investigation of Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil for the period July 1, 1997 through June 30, 1998,'' July 6, 1999, (USIMINAS/ COSIPA's Analysis Memo). Therefore, the threshold for critical circumstances was not met.

Fair Value Comparisons

To determine whether sales of hot-rolled steel from Brazil to the United States were made at LTFV, we compared export price (EP) to the normal value (NV), as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average export prices for comparison to weighted-average normal values or constructed values.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents covered by the description in the ''Scope of the Investigation'' section above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire. If there were no home market foreign like products to compare to a U.S. sale, we used constructed value (CV).

Affiliated Respondents

In our preliminary determination, we determined that USIMINAS and COSIPA were affiliated parties, and we collapsed these entities. See Collapsing Memorandum to Joseph A. Spetrini from Richard Weible, December 22, 1998 (Collapsing Memo). For the purpose of this investigation, we continue to consider these two respondents as a single entity. See Comment 17 below for a further discussion of this issue. Petitioners also argue that all three respondents are affiliated and should be collapsed. For this final determination, the Department determined that there is insufficient evidence on the record to warrant a collapsing of all three respondents. See Comment 1 below for a further discussion of this issue. However, should this investigation result in an antidumping duty order, we intend to scrutinize this issue in any subsequent segment of this proceeding.

Level of Trade

CSN

In our preliminary determination we agreed with CSN that one level of trade (LOT) existed for CSN in the home market. Furthermore, we agreed with CSN that its EP sales in the United States were at a single LOT, and that CSN's sales in both markets were at the same LOT (see Preliminary Determination, 64 FR 8302). During verification, in the course of reviewing

CSN's sales process, accounting system, and sales documentation for both home market and U.S. customers, we found no evidence of different selling functions based on customer category, distribution channels, or market (see CSN's Sales Verification Report, p. 15).

No party to this investigation commented on this issue relative to CSN and the Department has no new evidence that would warrant altering our preliminary determination. Therefore, as in the preliminary determination, we find that CSN's sales within or between markets were made at the same LOT and, therefore, a LOT adjustment pursuant to section 773(a)(7)(A) of the Act is not appropriate.

USIMINAS/COSIPA

In our preliminary determination, the Department found that two LOTs existed in the home market, one to affiliated resellers and the other to all other types of customers which we termed mill direct sales. In the U.S. market, the Department determined that there was one LOT, and that the U.S. LOT was equivalent to all types of home market sales except those to affiliated resellers. However, we were unable to verify USIMINAS/COSIPA's LOT claims. Therefore, for this final determination we are considering all U.S. and home market sales to be at the same LOT. See Comment 18 below.

Export Price

The Department based its calculations on EP in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation. The Department calculated EP based on packed prices charged to the first unaffiliated customer in the United States.

We calculated EP for CSN and USIMINAS/COSIPA based on the same methodology employed in the Preliminary Determination, except as noted in the Comment section below. See Memorandum to the File: ''Analysis for Companhia Siderurgica Nacional (CSN) for the Final Results of the Antidumping Duty Investigation of Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil for the period July 1, 1997 through June 30, 1998,'' (July 6, 1999), (CSN's Analysis Memo), and USIMINAS/COSIPA's Analysis Memo.

Normal Value

Home Market Viability

As discussed in the Preliminary Determination, in order to determine whether the home market was viable for purposes of calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. As CSN's and USIMINAS/COSIPA's aggregate volumes of home market sales of the foreign like product were greater than five percent of these companies' aggregate volumes of U.S. sales of the subject merchandise, we determined that the home market was viable for both CSN and USIMINAS/COSIPA. Therefore, we based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Affiliated-Party Transactions and Arm's Length Test

Sales to affiliated customers in the home market not made at arm's length prices (if any) were excluded from our analysis because we consider them to be outside the ordinary course of trade. See 19 CFR 351.102. To test whether these sales were made at arm's length prices, we compared, on a model-specific basis, the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 % or more of the price to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that sales to that affiliated customer were made at arm's length prices and, therefore, we excluded them from our LTFV analysis. See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062, 37077 (July 9, 1993).

Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Cost of Production Analysis

Petitioners provided reasonable grounds to believe or suspect that CSN and USIMINAS/COSIPA's sales of the foreign like product under consideration for determining NV may have been at prices below the cost of production (COP), as provided in section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by the respondents in this investigation.

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP based on the sum of respondents' cost of materials, fabrication, general expenses, and packing costs. We relied on CSN's and USIMINAS/COSIPA's submitted COP, except in the following specific instances:

CSN

1. We revised COP and CV to include the identified reconciliation items and minor corrections, presented on the first day of verification, which were not included in CSN's reported costs. See Comment 43.
2. We revised CSN's selling, general and administrative (SG&A) expense rate in order to include the net exchange loss and the amortization of goodwill. See Comment 44.
3. We recalculated CSN's financial expense rate to include certain net exchange losses which were financial in nature. We also revised the long-term financial income amount based on consolidated statement figures instead of company-specific figures. See Comment 44.

USIMINAS

1. We adjusted the reported cost of manufacturing (COM) for each CONNUM to coincide with its normal accounting records. See Comment 47.
2. Where different COM's were reported for the same CONNUM, we used the higher amount. See Comment 48.
3. We adjusted the transfer price for iron ore and coal obtained from an affiliated supplier in accordance with the major input rule. See Comment 49.
4. We computed the interest income offset using data from the USIMINAS unconsolidated entity. See Comment 51.
5. We adjusted the G&A rate calculation to exclude those expenses which directly relate to revenue received from non-operational activities. See Comment 52.

COSIPA

1. We revised the cost of iron ore to reflect the market value of this input. See Comment 54.

2. We revised COSIPA's G&A expense rate calculation to reflect amounts from the 1997 financial statements and disallowed income resulting from rescheduling of ICMS payments to offset general and administrative expenses. See Comment 55.

3. We revised the interest expense rate to use USIMINAS's revised rate. See Comment 51.

Price-to-Price Comparisons

CSN

For those product comparisons for which there were sales at home market prices at or above the COP, we based NV on CSN's sales to unaffiliated home market customers or sales to affiliated customers that we determined to be at arm's length. We made adjustments for U.S. packing expenses. We made deductions, where appropriate, for movement expenses, taxes, and home market packing pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We made circumstance-of-sale (COS) adjustments for warranty expenses, credit, and interest revenue in accordance with section 773(a)(6)(C)(iii) of the Act.

USIMINAS/COSIPA

For those product comparisons for which there were sales at home market prices at or above the COP, we based NV on USIMINAS/COSIPA's sales to unaffiliated home market customers or prices to affiliated customers that we determined to be at arm's length prices. We made adjustments for selling expenses, discounts, movement expenses, packing and taxes in accordance with section 773(a)(6) of the Act. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. In addition, we made COS adjustments for warranty expenses, credit, and interest revenue in accordance with section 773(a)(6)(C)(iii) of the Act.

Price-to-Constructed Value Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the costs of materials and fabrication employed in producing the subject merchandise, SG&A, and profit. See section 773(e)(1). In accordance with section 773(e)(2)(A) of the Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Brazil. We calculated the cost of materials, fabrication, and general expenses based upon the methodology described in the ''Cost of Production Analysis'' section above. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We made COS adjustments by deducting home market direct selling expenses from NV and adding U.S. direct selling expenses.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Analysis of Interested Party Comments

I. Sales Issues pertaining to all three respondents

Comment 1: Whether to collapse USIMINAS/COSIPA with CSN. Petitioners assert that in addition to collapsing USIMINAS and COSIPA, all of the respondents should be collapsed into a single entity for purposes of this investigation. They argue that CSN and USIMINAS/COSIPA produce the same products, share common directors, and have intertwined operations, all of which create the potential for the manipulation of price or production. Referring to the Letter from Dewey Ballantine LLP to the U.S. Department of Commerce, Case No. A–351–828 (March 11, 1999) (Collapsing Comments), petitioners argue that the linkages between all three respondents clearly satisfy the affiliation and collapsing criteria set out in the Department's regulations.

Petitioners cite to the definition of affiliated parties in section 771(33) of the Act. Petitioners maintain that CSN, in conjunction with Companhia Vale do Rio Doce (CVRD) and other affiliated companies, or the ''CSN/CVRD group,'' is affiliated with USIMINAS/COSIPA as evidenced by (1) the CSN/CVRD group sharing equity and managerial relationships which petitioners claim establish an integrated unit under the control of Benjamin Steinbruch and his family; (2) the ''CSN/CVRD group'' sharing board members with USIMINAS; and (3) the CSN/CVRD group holding significant equity interest in USIMINAS.

Petitioners first argue that CSN and CVRD should be treated as a single entity, and that this ''CSN/CVRD'' entity is affiliated with USIMINAS by virtue of the alleged control of both by Mr. Steinbruch. In support of this theory, petitioners note that Mr. Steinbruch is the head of the Vicunha Group, or Steinbruch family business, which owns 14.1% of CSN through Textilia. Textilia is a member of CSN's shareholders' agreement (a group of minority shareholders which vote as a block and together control 64.3% of the voting shares) and has two representatives on CSN's board, including Mr. Steinbruch. Mr. Steinbruch is chairman of both CSN and CVRD's boards, and petitioners cite Business Week and Financial Times articles referring to Mr. Steinbruch as controlling the ''CSN/CVRD group.'' In fact, petitioners claim that CSN's stake in CVRD through its 31% ownership of Valepar, S.A. (Valepar) (which owns 27% of CVRD) and CVRD's stake in CSN through its 96.84% ownership of Vale do Rio Doce Navegacao (Docenave)(which, in turn, owns 25.2% of CSN), effectively makes CSN and CVRD a single business entity. In quoting the Financial Times, petitioners state that Mr. Steinbruch's reorganization of CVRD strengthened his control of this company beyond what CSN's ownership would imply.

Petitioners believe that the directors and officers shared by CVRD and Valepar and by CSN and CVRD further solidify Mr. Steinbruch's control over the companies, and ''provide a ready means for the companies to act in concert (*e.g.*, planning and pricing decisions).'' Petitioners point out that Gabriel Stoliar, a director of CVRD, sits on CSN's and USIMINAS'' board of directors. On the subject of board members, petitioners take issue with the different explanations by USIMINAS and CSN of the function of a board of directors. They state that USIMINAS compares the function of the ''Administrative Council'' to a U.S. board of directors and the ''Board of Directors'' to a company's management, while CSN makes no such distinction. Therefore, when petitioners use the term ''Board of Directors'' they intend it to mean ''the entity controlling the company.''

Second, petitioners claim that because of CSN's equity interest in CVRD, which in turn owns a 23% interest in USIMINAS, CSN has more than 5% of the outstanding stock in USIMINAS. They believe that this factor demonstrates CSN's ability to exercise restraint or direction over USIMINAS and is sufficient grounds for finding affiliation between CSN and USIMINAS.

Third, petitioners argue that CSN and USIMINAS are affiliated based on common ties to the Caixa de Previdencia dos Funcionarios do Banco do Brasil (Previ) (employee pension fund of the Bank of Brazil). They believe that CSN has a close relationship with Previ and acts in concert with it to acquire and control various companies, including USIMINAS. They argue that Previ is not a passive investor of pension funds but an important source of capital for Mr. Steinbruch's investments. Petitioners state that Previ is a member of CSN's shareholders agreement, directly owns 13.8% of the company, and together with CSN, submitted the winning bid in the privatization of CVRD. According to petitioners, Previ and CSN together maintain 30 or 38% of the outstanding voting stock of CVRD. They also point out that Previ is the third largest shareholder in USIMINAS, and while not a member of its shareholders' agreement, has two employees from the Banco do Brasil on USIMINAS' Board of Directors. Petitioners argue that Previ's ownership in CSN, CVRD, and USIMINAS and its joint interests and activities with CSN demonstrate that Previ and CSN together are affiliated with USIMINAS.

Having explained their arguments for affiliation, petitioners next argue that CSN's legal, organizational, and operational ties with USIMINAS/COSIPA also satisfy the Department's other criteria for collapsing. Petitioners note that, pursuant to § 351.401(f)(1) of the Department's regulations, affiliated producers will be treated as a single entity if (1) the producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (2) the Department concludes that there is a significant potential for the manipulation of price or production.

Petitioners believe that CSN and USIMINAS/COSIPA are capable of easily shifting production of identical or similar products among themselves, as evidenced by similar production facilities and similar products. In discussing the ''significant potential'' criterion, petitioners quote § 351.401(f)(2), which explains that the Department examines the following factors, among others: (i) The level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

Petitioners cite cases (see FAG Kugelfischer v. United States, 932 F. Supp. 315 (CIT 1996); Nihon Cement Co., Ltd. v. United States, 17 CIT 400 (1993); Queen's Flowers de Colombia, et al., v. United States, 981 F. Supp. 617 (CIT 1997), in which the U.S. Court of International Trade (the Court) upheld the Department's articulation of these collapsing criteria. Petitioners believe that the central issue according to the Court is ''whether parties are sufficiently related to present the possibility of price manipulation.'' Petitioners believe there is significant potential for manipulation of price or production between CSN and USIMINAS/COSIPA. Petitioners state that this potential stems from the high level of common ownership, common members on the boards of directors, and intertwined operations, and is reflected in the ongoing price fixing investigation of CSN, USIMINAS and COSIPA by the Brazilian government (see USIMINAS' Sales Verification Report, page 9 and COSIPA's Sales Verification Report, pages 5–6 for a discussion of the ongoing price-fixing investigation).

With respect to intertwined operations, petitioners cite several factors. They argue that there is a connection between USIMINAS and CSN through a third company in the United States. CSN is affiliated with this third company by way of two companies in which it has equity. USIMINAS also has a relationship with this third U.S. company through a commercial agreement. Petitioners believe there is potential for CSN and USIMINAS to use this common tie to manipulate U.S. prices. Additionally, petitioners believe that respondents' joint purchase of coal, common ownership in MRS Logistica (a railroad transport company), and a common source of inputs demonstrate operational links. Petitioners include iron ore among the common inputs, arguing that just as USIMINAS/COSIPA purchases iron ore from CVRD, a statement by Mr. Steinbruch in ''CSN Denies Cartel Charges,'' *American Metal Market* (March 1, 1999) indicates that CSN does so as well.

In conclusion, petitioners argue that respondents' nearly identical production facilities and products, common equity ownership, shared board members, the on-going price-fixing investigation, and intertwined operations all indicate that there is a significant potential for price or production manipulation. Petitioners also believe that these factors are similar to those relied upon in prior determinations such as Final Results of Antidumping Duty Administrative Review: Certain Fresh Cut Flowers from Columbia, 61 FR 42833, 42853, (August 19, 1996), (Fresh Cut Flowers) and Final Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker from Mexico, 64 FR 13148, 13151 (March 17, 1999) and Final Determination of Sales at Less than Fair Value: Stainless Steel Wire Rod from Sweden, 63 FR 40449, 40453–54 (July 29, 1998) in which the Department collapsed respondents.

While respondents did not address the issue of collapsing CSN with USIMINAS/COSIPA, they did argue that USIMINAS and COSIPA should not be collapsed for this investigation. See Comment 17.

Department's Position: The Department has determined that USIMINAS and COSIPA should be collapsed for margin calculation purposes (see Comment 17). To collapse CSN with USIMINAS/COSIPA, as petitioners suggest, requires that we first find that CSN and USIMINAS/COSIPA are affiliated parties within the meaning of section 771(33) of the Act. Because we find that USIMINAS/COSIPA is not affiliated with CSN, we have not collapsed these entities for purposes of this investigation.

The issue of whether CSN is affiliated with USIMINAS/COSIPA, is governed by section 771(33) of the Act, which deems the following persons to be affiliated: (A) Members of a family; (B) any officer or director of an organization and such organization (C) partners; (D) employer and employees; (E) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting stock or shares of any organization and such organization; (F) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) any person who controls any other person and such other person. For purposes of this provision, a person controls another person if the person is in a position to exercise restraint or direction over the other person. Petitioners arguments for finding USIMINAS/COSIPA and CSN affiliated appear to be based on subparagraphs (E), (F) and (G) of section 771(33) of the Act.

Pursuant to section 771(33)(E), the Department examined CSN's ownership interest, direct or indirect, in USIMINAS (USIMINAS/COSIPA does not own or control any shares in CSN). CSN owns a 31% equity interest in

Valepar, which owns 27%, 42%, or 52% of CVRD, depending on which of the sources submitted in this investigation is used. Throughout the POI, CVRD, in turn, had a 15.48% interest in USIMINAS. Even assuming the highest possible percentages of equity ownership by CSN in Valepar, by Valepar in CVRD, and by CVRD in USIMINAS, CSN would own well under 5% of USIMINAS. Based on this evidence, CSN and USIMINAS/COSIPA are not affiliated within the meaning of section 771(33)(E) of the Act.

With respect to affiliation based on control, petitioners have not clearly identified which entities they believe are in a position to exercise control over CSN and USIMINAS (or USIMINAS/COSIPA) or on which specific subparagraph (F or G) of section 771(33) they are relying in their analysis. Therefore, we have analyzed petitioners comments under both section 771(33)(F) and (G).

In accordance with section 771(33)(F), we first examined whether the record establishes common control over these entities by Mr. Steinbruch, CVRD, or Previ as separate entities. Assuming arguendo that we were to conclude that Mr. Steinbruch, as chairman of CSN's board of directors, controls CSN, the record contains no evidence that he controls USIMINAS.

CVRD is affiliated with both CSN and USIMINAS under section 771(33)(E). CVRD directly owns more than 5% of USIMINAS (15.48% of the voting shares) and indirectly owns, through its holdings in Docenave, more than 5% of CSN (10.3% of the voting shares). However, CVRD does not control both CSN and USIMINAS. Mr. Gabriel Stoliar, the CEO of CVRD, serves on the eight-to-ten-member boards of both CSN and USIMINAS. In addition, CVRD appoints an additional board member at USIMINAS and through Docenave (in which CVRD is the majority stockholder), appoints one at CSN. However, Brazilian law prohibits board members from representing any other company's interests while serving on the board of a different company. See USIMINAS' Sales Verification Report at 5–6 and COSIPA's Sales Verification Report at 2. In addition, the record indicates that the USIMINAS board of directors (the ''administrative council'') is responsible for macroeconomic issues such as large investment matters and does not control daily operations. See USIMINAS' Sales Verification Report, at 5. Finally, CVRD is not a member of the USIMINAS shareholder's agreement, whose members control 53% of the voting stock of that company. The Department finds that, under the circumstances of this case, CVRD is not in a position to control USIMINAS within the meaning of section 771(33) of the Act. Because CVRD does not control USIMINAS, it cannot exercise common control over both CSN and USIMINAS within the meaning of subsection (F). Therefore, the issue of whether CVRD controls CSN is moot for purposes of this analysis.

Previ, like CVRD, is affiliated with both CSN and USIMINAS through equity ownership. However, subsection (F) requires a finding of common control, not merely of common affiliation. Previ is not a member of the USIMINAS shareholders' agreement, which controls 53% of the voting stock of that company. Nor is there other evidence that Previ is in a position to control USIMINAS. Because the record evidence does not establish that Previ is otherwise in a position to control USIMINAS, we find that CSN and USIMINAS are not affiliated by virtue of common control by Previ.

The SAA recognizes that, even in the absence of an equity relationship, control may be established ''through corporate or family groupings'' (see SAA at 838), i.e., a corporate or family group may constitute a ''person'' within the meaning of section 771(33) of the Act. See *Ferro Union* v. *United States,* Slip Op. 99–27 (Ct. of Int'l Trade, March 23, 1999). In such a case, the control factors of individual members of the group (*e.g.,* stock ownership, management positions, board membership) are considered in the aggregate. Accordingly, the Department considered whether USIMINAS and CSN are affiliated by virtue of common control by a corporate or family group.

Petitioners allege that the Steinbruch family controls the ''CSN/CVRD group.'' However, there is no record evidence that the family controls USIMINAS. Therefore, there is no basis to find CSN and USIMINAS affiliated through common control by the Steinbruch family.

What constitutes a ''corporate group'' for purposes of the affiliation analysis is not defined; the Department must address the issue on a case-by-case basis. The cases in which the Department has recognized that affiliation exists by virtue of participation in the same corporate or family group involved common control of the firms at issue by members of the same family, the same group of investors, or the same group of corporations. In other words, the ''control group'' language in the SAA does not add a new criterion to the statutory definition of ''affiliation.'' It merely acknowledges that the controlling entity of the ''common control'' provision can be something other than a physical or legal person, and can exercise that common control by means other than equity ownership. It does not allow for treating all affiliation relationships as if they created new ''control groups.'' With respect to USIMINAS and CSN, there is no such pattern of common control. Although petitioners reference a variety of connections between various other entities and CSN and USIMINAS, they do not identify, nor do we find, any definable corporate group that controls both CSN and USIMINAS. Thus, we do not have a basis in the record to find affiliation under section 771(33)(F) of the Act.

With respect to section 771(33)(G) of the Act, petitioners have again failed to clearly identify a basis for finding that CSN controls USIMINAS (or USIMINAS/COSIPA), or vice versa. Petitioners appear to argue that CSN and CVRD are a ''corporate group'' for purposes of the affiliation analysis. While we agree that CSN and CVRD are affiliated, that by itself is not sufficient to consider them a ''corporate group'' for purposes of an affiliation analysis. Moreover, even if the Department were to treat CSN and CVRD as a corporate group, there is no evidence that the alleged ''CSN/CVRD group'' controls USIMINAS within the meaning of section 771(33)(G) of the Act. In some instances petitioners appear to suggest that the corporate group includes not only CSN and CVRD, but also Previ. However, we do not find a sufficient basis in the record to treat CSN, CVRD and Previ as a corporate group for purposes of the affiliation analysis.

Because the record evidence does not support a finding that USIMINAS (or USIMINAS/COSIPA) and CSN are affiliated under any provision of section 771(33), there is no basis to apply the collapsing criteria in § 351.401(f). Therefore, the Department has continued to treat CSN and USIMINAS/COSIPA as separate entities for the purposes of this investigation.

Comment 2: PIS/COFINS Taxes. To avoid duplication, USIMINAS/COSIPA and CSN prepared a joint description of their PIS/COFINS tax argument in CSN's Case Brief of April 16, 1999 (CSN's Case Brief). In their argument, respondents note that section 773(a)(6)(B)(iii) of the Act (''the tax adjustment provision''), as amended, ensures that the Department makes a tax-neutral comparison when comparing normal value to export price. This section of the statute achieves this end by requiring the Department to adjust normal value by the amount of any

indirect taxes imposed on home market sales, but not on export sales. Respondents state that, until recently, the Department considered Brazil's Programa de Integracao Social (PIS) and Contribuicao do Fin Social (COFINS) taxes to be indirect taxes that fall within the meaning of the tax adjustment provision. The Department's change in its treatment of these taxes, according to respondents, is based on a factually incorrect assumption that these taxes apply to total gross revenue and on a legally improper understanding of what indirect taxes are.

Respondents point out that the statute and prior case law make clear that three circumstances must exist for the tax adjustment provision to apply to a particular tax. First, the tax must be ''directly'' imposed on the home market product. Second, it must be rebated or not collected on export sales. Third, it must be added to or included in the price of the home market sale. The fact that these taxes are not imposed on exports has never been an issue. Thus, respondents state that the only requirements of significance in this review are the first and third requirements.

In failing to adjust respondents' home market price for Brazil's PIS/COFINS taxes in the Preliminary Determination, respondents argue that the Department incorrectly determined that ''these taxes are levied on total revenues.'' Respondents state that until recently, the Department consistently held that PIS/COFINS fall within the meaning of the tax adjustment provision. Respondents cite numerous antidumping cases from Brazil in support of their position that PIS and COFINS should be deducted from home market price. See CSN's Case Brief, p. 7.

Respondents contend that in the Final Administrative Review of Silicon Metal from Brazil, 62 FR 1970 (January 14, 1997)(Silicon Metal from Brazil, 1997), the Department erroneously determined that PIS/COFINS are analogous to two Argentine taxes previously determined not to be indirect taxes within the meaning of the tax adjustment provision. Respondents state that in the Final Determination of the Less-Than-Fair Value Investigation of Silicon Metal from Argentina, 56 FR 37891 (August 9, 1991) (Silicon Metal from Argentina), the Department refused to make an upward adjustment to U.S. price for two Argentine taxes because these taxes were based on non-sales revenue as well as sales revenue. The Department concluded that these taxes were not ''directly'' imposed on Argentine sales within the meaning of section 773(a)(6)(B)(iii) of the Act.

According to respondents, petitioners in Silicon Metal from Brazil, 1997 glossed over the fact that Brazilian and Argentine taxes are, in fact, vastly different and asserted that PIS/COFINS are ''*almost* identical'' to the two Argentine taxes. Respondents state that PIS/COFINS are imposed only on a company's total domestic sales. Respondents assert that CSN's Sales Verification Report and Exhibit 28 of the Report demonstrate that the basis for both PIS and COFINS is gross sales (Receita Bruta de Vendas), minus credit billing adjustments, canceled sales, and IPI, plus ''other'' sales revenue. Respondents state that the accounting documents in Exhibit 28 further demonstrate that it calculates its PIS and COFINS tax liability on sales revenue alone. Moreover, respondents note that Brazilian law specifies that the COFINS tax ''shall be two percent and charged against monthly billing, that is gross revenues derived from the sale of goods and services of any nature.'' (emphasis added). See CSN's Supplemental Response—Sections B and C at Exhibit 9 (January 25, 1999). Likewise, the PIS tax represents 0.65% of invoicing—''invoicing'' being defined as the ''gross revenue* * *originating from the sale of goods from own account (sic), from the price of the services rendered and from the result obtained from alien's (i.e., consignees) account.'' See Supplementary Law No. 70 of September 7, 1970. Since neither tax is based on non-sales revenue, respondents maintain that PIS/COFINS are not ''gross revenue taxes'' and, therefore, not analogous to the Argentine taxes in Silicon Metal from Argentina.

In addition, respondents claim that the Department's decision not to make an adjustment for PIS and COFINS is unsupported by any accounting or economic analysis. The fact that PIS and COFINS sales taxes are calculated on an aggregate basis as opposed to an invoice-specific basis is irrelevant—the tax liability is the same. In respondents' view, no basis exists to conclude that the manner of calculating a tax disqualifies a tax from an adjustment under section 773(a)(6)(B)(iii) of the Act.

Respondents state that the Department has not, in any of its decisions relating to this issue, identified any support for its classification of a sales tax as a ''gross revenue tax'' simply because it is calculated on an aggregate basis. As a result, respondents reiterate that the taxes are based exclusively on home market sales and for this reason the Department for almost two decades found these taxes to qualify for a COS adjustment.

The third prong, inclusion of the taxes in the home market price, is satisfied in the instant case—the Department has never based its denial of the PIS/COFINS adjustment on a specific or explained finding that the taxes were not included in the price and passed through to the home market customer. Respondents note that in the Final Administrative Review of Color Television Receivers from Korea, 49 FR 50420 (December 28, 1984), the Department made an adjustment for home market taxes based on the conclusion that the taxes were fully passed through to the home market customers. The ensuing court appeals upheld the Department's practice of making an adjustment for home market taxes under section 772(d)(1)(C) of the Act. See *American Alloys, Inc.* v. *United States*, 810 F3d.1469, 1475 (Fed. Circ., 1994). Therefore, respondents urge the Department to determine that PIS and COFINS are included in the home market price, and passed through to home market customers. In addition, respondents assert that in the Preliminary Determination, the Department did not cite to any record evidence that there is no pass-through. Nor did it prepare any questions related to the pass-through aspect of these taxes in its questionnaires or at verification. Since the Department never asked respondents to rebut any newfound presumption that these taxes were not included in the home market price to the customers, respondents believe the Department is not justified in finding no pass-through in this investigation.

If the Department were to argue that PIS and COFINS are not included in the price because they are not itemized on the invoice (like the IPI and ICMS taxes), respondents maintain that it would be wrong for two reasons: (1) PIS and COFINS were not itemized on the Brazilian invoices in all the Department's previous investigations, yet it always found that these taxes were included in the home market price, and qualified for an adjustment. (2) Whether or not the tax is itemized on the invoice is irrelevant to a pass-through finding. If the tax is not itemized, it is included in the gross unit price. Itemization on the invoice only indicates how the tax is calculated in the accounting records of the company.

Respondents conclude that there is no justification for the Department's preliminary decision to ignore the necessary deduction for PIS and COFINS. The PIS/COFINS adjustment is consistent with Department findings (except for recent erroneous decisions),

and decisions by the Courts. Moreover, there is no evidence on the record to support a Department presumption that PIS/COFINS are not included in the home market price. The PIS/COFINS adjustment is required to ensure that the Department's LTFV comparisons are tax neutral, as contemplated by the U.S. dumping law and Article 2.4 of the WTO Antidumping Agreement.

Petitioners counter that the statute and the SAA clearly state that downward adjustments to normal value may only be made for tax amounts directly imposed upon sales of the foreign like product. See section 773(a)(6)(B)(iii) of the Act and SAA, pp. 827–828. In this case, neither the PIS nor the COFINS is directly imposed on sales of the foreign like product. To the contrary, petitioners maintain that these taxes are based on income, not sales prices, and are imposed on all of the company's domestic sales revenue, including service revenue, on an aggregate basis. In fact, petitioners contend that neither PIS nor COFINS appears to be a simple aggregation of sales revenue, as suggested by respondents. COFINS tax liability is net of the ''tax on industrialized goods,'' and as to PIS, it is not clear that PIS is levied on sales revenues and exclusive of financial revenue. See Rebuttal Brief of Schagrin Associates, p. 3, April 27, 1999.

According to petitioners, respondents bear the burden of creating a record sufficient to support findings made by the Department. Petitioners claim that the record in the instant case is devoid of evidence that PIS and COFINS are fully passed through to purchasers.

Contrary to respondents' suggestion that the Department lacks an understanding of indirect taxes, petitioners state that the Department is ''intimately familiar with the way the PIS/COFINS taxes are imposed and collected,'' and since mid-1997 has consistently disallowed claimed adjustments to normal value for these taxes. See footnote no. 10, p. 4 of Dewey Ballantine Rebuttal Brief, April 26, 1999. Petitioners urge the Department not to disturb its settled practice on this issue.

Department's Position: Petitioners are correct in stating that since mid-1997 the Department has consistently disallowed claimed adjustments to normal value for these taxes. Pursuant to section 773(a)(6)(B)(iii) of the Act, normal value of the merchandise will be reduced by the amount of any taxes imposed directly upon the foreign like product or components thereof which have been rebated, or which have not been collected, on the subject merchandise, but only to the extent that such taxes are added to or included in the price of the foreign like product.

Respondents have not provided any evidence to support their claim that the Department incorrectly concluded that the PIS and COFINS taxes are taxes on gross revenue exclusive of export revenue and, thus, are not imposed specifically on the merchandise or components thereof. Information on the record demonstrates that the PIS and COFINS taxes are taxes on gross revenue exclusive of export revenue. These taxes do not appear to be imposed on the subject merchandise or components thereof, and therefore, we have no statutory basis to deduct them from NV. As in the most recent review of Silicon Metal from Brazil, 64 FR 6318 (February 19, 1999), (Silicon Metal from Brazil, 1999), the Department has determined that a deduction of the PIS and COFINS taxes is not correct in the calculation of NV because these taxes are levied on total revenues (except for export revenues), and thus the taxes are direct, similar to taxes on profit or wages. Therefore, we made no adjustment for PIS/COFINS taxes in the calculation of the dumping margin for this final determination.

Comment 3: Input Tax Credit. While petitioners made this comment with respect to CSN, it also applies to USIMINAS/COSIPA. According to petitioners, the Department inappropriately deducted the gross ICMS and IPI tax amounts shown on CSN's sales invoices from CSN's reported home market gross unit price. Petitioners believe that for the final determination, the Department should deduct only the actual net ICMS and IPI payments made by CSN to the state and federal governments from CSN's reported home market gross unit prices. Petitioners cite the statute, which states that normal value shall be reduced by ''the amount of any taxes imposed directly upon the foreign like product* * *, *but only to the extent that such taxes are added to or included in the price of the foreign like product.*'' See section 773(a)(6)(B)(iii) (emphasis added). The SAA reiterates petitioners' position: ''*It would be inappropriate to reduce a foreign price by the amount of the tax, unless a tax liability had actually been incurred on that sale.*'' See Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103–516, 103d Cong., 2d Sess. at 827–828. (emphasis added).

Petitioners argue that the actual net ICMS and IPI payments made by CSN to the state and federal governments were significantly less than the amounts reported by CSN in its home market database. First, petitioners aver that CSN clearly stated in its Section B Response that ''the *net liability* is the amount of the IPI and ICMS owing on the sale of the finished product, minus the credit for ICMS and IPI paid on raw materials.'' (CSN Section B Response at B–23) (emphasis added). Second, petitioners point out that both ICMS and IPI are value-added taxes (VAT), meaning that they are intended to tax the value added by each producer, not the full amount of the producer's sales value. Petitioners suggest that CSN does not understand the nature of a VAT. Finally, petitioners state that the Department's Sales Verification Report clearly indicates that the actual ICMS and IPI tax payments made by CSN to the state and federal governments were significantly less than the gross tax amounts reported in the TAX1 and TAX2 fields of CSN's home market database. Petitioners provide specific examples from the Department's CSN Sales Verification Report at 35 to support this conclusion.

CSN counters that petitioners' arguments for reducing the amount of the adjustment to home market prices for ICMS and IPI taxes to account for the credit received by manufacturers for ICMS and IPI paid on inputs, are wrong both as a matter of fact and of law. CSN cites section 773(b)(6)(B)(iii) of the Act and Daewoo Electronics Co. v. United States, 6 F.3d 1511, 1513–14 (Fed. Cir. 1993) (Daewoo Electronics) in support of its position that the statute requires an adjustment ''to the extent to which the company bears the burden of such taxes.'' The Court of Appeals of the Federal Circuit (CAFC) stated:

> *To prevent the creation of dumping margins merely because the country of exportation taxes home market sales but not exports,* the antidumping law provides an offsetting adjustment to the sales price of the goods. . . . (emphasis added).

CSN notes that the court refused to engage in an inquiry into the extent that the tax is ''passed through'' to the customer; if it is imposed on the home market sale but not on the U.S. sale, it is fully deductible.

CSN claims that the petitioners were selective in their reading of the *SAA*. CSN states that according to petitioners, the quoted language seeks only to distinguish between sales which incur a tax liability and those which do not. CSN, however, maintains that the clear language of the statute is to make sure that a fair comparison be made between prices on the same basis. CSN concludes that there is nothing in either the statute or the legislative history which requires

any inquiry into the amount of payment actually remitted by the manufacturer.

However, CSN emphasizes that the steel companies, in fact, do incur the full amount of ICMS and IPI imposed on the sale of their products. In order to prevent the ''cascading'' of a tax, each processor is given a credit for the tax it pays on the inputs it uses to produce the product, so the tax that the manufacturer pays is no more than the tax that is incident on the sale of the finished product. Citing the antidumping statute, CSN notes that the tax is limited to ''the extent that such taxes are added to or included in the price of the foreign like product.''

According to CSN, petitioners are wrong in implying that value-added taxes are somehow different from excise taxes when in fact the courts have made clear that value-added taxes are to be treated in the same manner as excise taxes when it comes to granting the adjustment for indirect taxes. See Daewoo Electronics at 1517. In addition, CSN maintains that petitioners' ultimate conclusion is wrong in that value-added taxes do not ensure that a company's liability is less than the amount of the tax on the product; on the contrary, it is only by the credit against taxes paid on the inputs that the value-added tax ensures that the manufacturer's liability is equal to the amount of the tax on the product it manufactures.

Department's Position: We agree with CSN. To prevent the creation of dumping margins merely because the country of exportation taxes home market sales but not exports, the antidumping law provides an offsetting adjustment to the sales price of the goods in the United States. See section 773(a)(6)(B)(iii) of the Act.

The CAFC in Daewoo Electronics concluded that ''[i]f an exporter's records show that a tax was either a separate ''add on'' to the domestic price or, although not separately stated, was, in fact, included in the price and that the taxes were paid to the government, that satisfies the tax inquiry required by the statute for an adjustment of the U.S. price.'' The CAFC further stated that the statute does not speak to tax incidence, shifting burdens, or pass-through, nor does it contain any hint that an econometric analysis must be performed. The statutory language does not mandate that the ITA look at the effect of the tax on consumers rather than on the . . . company. The CAFC reasoned that as an unavoidable incident of any sale by the company, these taxes can only be recouped in their entirety from purchasers. *Id.* at 1517.

Section 773 (a)(6)(B)(iii) of the Act requires the deduction from NV of any taxes imposed directly upon the foreign like product or components thereof which have been rebated or which have not been collected on the subject merchandise, but only to the extent that such taxes are added to or included in the price of the foreign like product. The SAA (see, Section B.2.c.(2), at 157)) explains that the deduction of indirect taxes from NV constitutes a change from the existing statute, which required the addition of the tax amount to the U.S. price. The requirement that the home-market consumption taxes in question be ''added to or included in the price'' of the foreign-like product is intended to ensure that such taxes actually have been charged and paid on the home market sales used to calculate NV, rather than charged on sales of such merchandise in the home market generally. As the SAA states, ''[it] would be inappropriate to reduce a foreign price by the amount of the tax, unless a tax liability had actually been incurred on that sale.'' At verification, we verified the amount of ICMS and IPI taxes CSN reported for home market sales used to calculate NV. Besides tracing CSN's monthly payments to the government for these taxes from CSN's fiscal accounts to the proof of payment form, in the course of our home market sales traces, we verified that the ICMS and IPI taxes were included on each home market sale invoice. See Exhibits 25 and 29 of CSN's Sales Verification Report.

In sum, the Department is treating consumption taxes in a manner consistent with its longstanding policy (*i.e.*, calculating tax-neutral dumping margins), and in conformity with the statute as amended by the URAA. Since the reported home market gross unit price includes ICMS and IPI taxes, as demonstrated at verification, we have continued to deduct the full amount of these taxes from the home market price in order to achieve parity between the reported U.S. price, exclusive of taxes, and the NV of the comparison model.

Comment 4: Quality Designations. Though petitioners commented on CSN's quality designations, USIMINAS/COSIPA also submitted additional quality fields. Therefore, in the Department's Position below, we have addressed both companies' quality designations.

In petitioners' opinion, the Department should not allow CSN to adopt two additional quality designations: American Petroleum Institute (API) quality (code 9) and automotive wheel quality (code 10). According to CSN, code 9 is produced to API standards for oil pipelines, has a high silicon content, and very clean edges to ensure a tight weld. Petitioners note that end use is irrelevant and the limited information on the record indicates that this quality of steel is already identified by the Department's quality designation ''1'' (i.e., ''High Strength Low Alloy''). According to petitioners, the American Society of Testing and Materials (ASTM) specification A 572 is within quality code ''1'' and contains the ''high silicon content'' that CSN claims is limited to its API quality products. Moreover, petitioners state that CSN's claims regarding the ''very clean'' or ''purified'' nature of this quality steel is equally inappropriate for requiring a separate quality designation. They state that CSN's claim that all its products are ''either aluminum killed or a combination of aluminum killed and silicon'' applies equally to the ASTM A 572 family of steels.

With respect to CSN's claims regarding the need for an automotive wheel quality designation (code ''10''), petitioners assert that this separate designation is based on end use and the Department's existing quality designations confirm that application or use is not the determining factor in distinguishing quality designations. Furthermore, petitioners state that steel products with these characteristics are already separately identified in quality code ''6'' (*i.e.*, deep drawing, whether or not fully stabilized (interstitial-free) or special killed; pressure vessel) is comprised almost exclusively of steels with low silicon content, mechanical strength, and formability.

For the foregoing reasons, petitioners recommend that the Department revise CSN's quality designations so that quality designation ''9'' is revised to ''1'' and quality designation ''10'' is revised to ''6''. Furthermore, they state that the cost dataset should be revised to weight-average the cost of CONNUMS that are identical but for quality code ''1'' and ''9'', and ''6'' and ''10,'' respectively. If this approach proves too difficult to program, petitioners recommend that the Department use the higher of the two reported cost amounts.

Respondents did not comment on this issue.

Department's Position: We agree with petitioners. We believe that the quality codes designated by the Department in its initial questionnaire to the respondents adequately cover the different classifications possible for hot-rolled flat-rolled carbon-quality steel products. Therefore, we have designated the quality code ''9'' as quality code ''1'' and quality code ''10'' as quality code

''6'') and adjusted the cost of the CONNUMS accordingly. See Analysis Memo for CSN.

USIMINAS/COSIPA also adopted four additional quality designations which we believe are adequately covered by the codes designated by the Department in its initial questionnaire. We have changed the new codes created by them and matched each one to the correct code among the eight originally designated by the Department. We have, therefore, changed codes ''9'' and ''11'' to code ''3'' and codes ''10'' and ''12'' to code ''4'' and adjusted the cost of the CONNUMS accordingly. See USIMINAS/COSIPA's Analysis Memo.

II. Company Specific Sales Comments

CSN

Comment 5: Date of Sale. Petitioners argue that for sales to the United States, the commercial invoice date is not an appropriate date of sale for CSN in this investigation. Rather, the record in this case overwhelmingly indicates that the date of the order confirmation is the date when the material terms of sale are established and, therefore, should be used as the date of sale.

Although the Department's regulations provide that the date of sale will normally be the invoice date, petitioners state that, as a general rule, the date of sale may not occur after the date of shipment (see Department Questionnaire, B–16, n.7 (''no date occurring after the date of shipment, including invoice may be used as the ''date of sale'''). Moreover, petitioners note that a date other than invoice date may be used where ''a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' See Preliminary Results of Antidumping Duty Administrative Review of Circular Welded Non-alloy Steel Pipe from Korea, 62 FR 64559, 64560 (December 8, 1997).

Petitioners point out that in its Preliminary Determination the Department stated that ''in most cases, the U.S. date of sale reported by respondents is after the date of shipment of the product from the factory. Because it is the Department's practice to use shipment date as the latest date of sale, the Department is using the ex-factory shipment date as the date of sale for U.S. sales in those cases in which the commercial invoice date is later.'' See Preliminary Determination, p. 8304. Petitioners term the Department's practice of not using a date of sale after shipment as ''appropriate,'' because it reflects the common sense notion that a producer does not ship a product, particularly one made to order, without agreement on the material terms of sale.

Petitioners term the selection of the date of the ''nota fiscal'' (*i.e.*, the ex-factory date) as the Department's ''default'' date of sale methodology. However, in petitioners'' view, the ex-factory date evinces no particular establishment of the material terms of sale. According to petitioners, the record in this investigation indicates that the material terms for CSN's U.S. sales were established at the order confirmation date. To support their position, petitioners cite CSN's Section A submission, which states that the order confirmation is computer generated and ''sets forth the general terms of sale, and specifies...the product type, weight, weight tolerance, price, delivery, destination and other terms and conditions for sale.'' See Section A of CSN's Questionnaire Response (November 11, 1998), p. 27. Moreover, petitioners note that a discussion of the sales process with company personnel at verification confirmed that material terms of sale are established by negotiation of price and quantity, the specific terms of which are confirmed by fax to the customer. See CSN's Sales Verification Report, p. 9).

CSN's U.S. shipment data also supports order confirmation as the date of sale, according to petitioners. They point out that for a large majority of CSN's U.S. sales, the quantities shipped met the order confirmation terms, and even where the quantities shipped exceeded contract quantity tolerances, there appeared to be no change in the unit price for the merchandise. Petitioners note that order date is available for most CSN sales and non-adverse facts available can be used for those instances where the date is not available.

Petitioners conclude that invoice date is not an acceptable date of sale and shipment date is simply an arbitrary construction which does not reflect the evidence of record. Therefore, the Department should use order confirmation date as the date of sale for CSN's sales to the United States.

CSN maintains that the Department should continue to use the nota fiscal date as the home market date of sale and use the commercial invoice date as the U.S. date of sale. CSN notes that petitioners seem to acquiesce in the use of nota fiscal date as the date of sale for home market sales. It is CSN's opinion that petitioners are briefing the U.S. date of sale because (a) an earlier U.S. date of sale will move the universe of POI sales to the United States forward so as to capture invoices issued after the POI and (b) CSN's failure to report sales with nota fiscal or commercial invoice dates outside the POI could result in application of facts available.

CSN states that the commercial invoice date is the only appropriate date of sale for U.S. sales because it is the earliest date by which the material terms of sale are finalized. To support its position CSN notes the following: (1) The fact that quantity tolerances are often exceeded is enough to establish a post-order confirmation date of sale (see, e.g., Final Results of Administrative Review of Certain Welded Carbon Steel Pipes and Tubes from Thailand, 63 FR 55578, 55588 (October 16, 1998)); (2) use of the order confirmation date is not practicable for CSN because it is not maintained in the computer system for more than a few months, after which point, the numbers are reused; (3) the only purpose of the nota fiscal is to accompany the over-land shipment from the mill to the port, in conformity with Brazilian law; (4) once at the port, a product originally destined for one market can be diverted to another market; and (5) as verified by the Department, ''the commercial invoice is issued after the coils are in the hold of the ship and, therefore, at that time it is definitely an export sale.'' See CSN's Sales Verification Report, p. 9.

CSN, therefore, stands by its position that the only appropriate U.S. date of sale is the date of the commercial invoice. To the extent that the commercial invoice date is after the ex-port shipment date, CSN suggests that the Department use the ex-port shipment date as an alternative date of sale.

In an issue related to the selection of the date of the U.S. sale, petitioners believe that the Department should apply facts available to those sales CSN failed to report based on the date of shipment from the factory. Although CSN claimed that the date of invoice from its affiliate CSN Cayman/Overseas was the most appropriate date for determining date of sale, petitioners note that the Department used the date of shipment from the mill as the date of sale in its Preliminary Determination. Petitioners state that this information was obtained as a result of a request in the Department's supplemental questionnaire.

Petitioners claim that the Department discovered at verification that CSN had failed to report all sales based on date of shipment from the factory, and subsequently requested that CSN provide the additional sales information. Petitioners argue that because this information was provided late and contains fundamental flaws (*i.e.*

lack of CONNUM designation, price adjustment amounts), the Department should reject it and employ the highest calculated margin to these sales. See section 776(a)(1995) of the Act.

Department's Position: We agree with CSN that the order confirmation date is not the appropriate date of sale. We have determined that the nota fiscal date is the home market date of sale. For U.S. sales, we have continued to use the ex-factory shipment date as the date of sale because the commercial invoice date, the date CSN reported as the date of sale, is after shipment from the factory.

The Department considers the date of sale to be the date on which all substantive terms of sale are agreed upon by the parties. This normally includes the price, quantity, delivery terms and payment terms. In accordance with 19 CFR 351.401(i), the date of sale will normally be the date of the invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, unless satisfactory evidence is presented that the exporter or producer establishes the material terms of sale on some other date. In some instances, it may not be appropriate to rely on the date of invoice as the date of sale, because the evidence may indicate that the material terms of sale were established on some date other than the invoice date. See Preamble to the Department's Final Regulations at 19 CFR part 351 (''Preamble''), 62 FR 27296 (1997); Final Determination of Sales at Less Than Fair Value; Polyvinyl Alcohol from Taiwan, 61 FR 14067 (March 29, 1996). Further, in submissions throughout this investigation, CSN has reiterated the fact that the date of the order confirmation is not maintained in its computer system, hard copies are not always kept, and the order confirmation numbers are reused after a few months. Department staff verified the accuracy of these statements (see CSN's Sales Verification Report, pp. 9–11).

The Department does *not* consider dates subsequent to the date of shipment from the factory as appropriate for date of sale. We also disagree with CSN's assertion that invoice date or export shipment date most appropriately represent date of sale. Because the commercial invoice date reported by CSN as its U.S. date of sale falls after the date of shipment of the product from the factory, the Department is continuing to use the ex-factory shipment date as the date of sale for its U.S. merchandise. CSN reported the date of the nota fiscal (*i.e.*, the ex-factory shipment date) of its U.S. sales in its supplemental submission. However, although we gave CSN ample opportunity to report the dates of all potential dates of sale, including order confirmations and notas fiscais issued during the POI, CSN elected not to submit the requested data in its entirety.

In our supplemental questionnaire to CSN's Section A Response (December 4, 1998), we requested that CSN report:

> all sales for which ''the order confirmation date (or comparable date if data on order confirmation does not exist) was within the POI. If you believe another date is a more appropriate date of sale, you should provide all sales during the POI based on order confirmation date, using alternative production or accounting records, and the other date (*provided the other date is not after the merchandise is shipped from the plant*). (emphasis added)

In our January 4, 1999 Supplemental Questionnaire to Sections BCD, we repeated this question and added:

> If CSN chooses not to report order confirmation date, and we determine at verification that this information is available and is a more appropriate date of sale than that reported, CSN may be subject to the use of adverse facts available pursuant to section 776 of our statute.

In its response to this submission (January 25, 1999), CSN did provide the dates of the U.S. notas fiscais, but only those dates associated with the commercial invoices issued during the POI. In their pre-verification comments, petitioners requested that at verification the Department examine those sales shipped from the factory, but not invoiced during the POI (see, Dewey Ballantine's Letter to the Secretary, March 8, 1999). Accordingly, the Department specifically requested this information in its verification outline. At verification, CSN prepared a printout of the quantity and value of those U.S. sales which left the mill (*i.e.*, which had a nota fiscal date) during the POI, but were not invoiced until after the POI (see Exhibit 27 of CSN's Sales Verification Report), which represent unreported U.S. sales.

Since CSN failed to follow explicit instructions in the questionnaire, or to contact the Department to determine whether an alternate reporting basis was appropriate, we find that CSN did not cooperate to the best of its ability. Therefore, as adverse facts available, we are applying the highest calculated margin to those U.S. sales. The Department finds that this margin is indicative of CSN's customary selling practices and is rationally related to the transactions to which the adverse facts available are being applied.

Comment 6: Affiliation. Petitioners contend that despite explicit instructions in the Department's questionnaire to report U.S. prices that are ''calculated from the price at which the subject merchandise is first sold to a person not affiliated with the foreign producer or exporter,'' CSN inappropriately reported as its ultimate U.S. price the transaction between itself and a trading company to which CSN has numerous connections. Petitioners note that in response to the Department's request for additional information on the relationship between CSN and this customer, CSN stated that its customer is ''simply a trading company that receives a commission from its suppliers.'' See Section A of CSN's Supplemental Response, January 19, 1999, p. 41.

Petitioners claim that CSN failed to inform the Department that the person who manages the trading company's daily operations is also a board member of both CSN and the trading company's controlled subsidiary, Emesa, which, petitioners point out, CSN acknowledges as a ''related party.'' According to petitioners, the fact that the manager of the trading company's operations is ''required by law to act in the best interest of CSN'' further demonstrates an affiliation between the two parties. Petitioners assert that, faced with similar circumstances in the past, the Department not only deemed companies to be affiliated, but also collapsed companies, based on overlapping board involvement by senior managers. In support of their position, petitioners cite the Final Results of New Shippers Antidumping Duty Administrative Review of Certain Welded Carbon Standard Steel Pipes and Tubes From India, 62 FR 47632, 47639 (September 10, 1997) (Steel Pipes and Tubes From India).

In addition, petitioners note that CSN's Sales Verification Report reveals a surprising similarity in terminology between Brazilian GAAP's definition of a related party and the Act's definition of an affiliated entity (see Exhibit 2a, p. 4 and 771(33) (1995) of the Act). As stated under Brazilian GAAP, petitioners claim that CSN's transactions with the trading company should also be described as ''lacking the independence that characterizes the transactions with independent third parties.'' *Ibid.* Petitioners also contend that the language of the Brazilian GAAP suggests other undisclosed links between the two parties. For example, even though CSN has stated that there is no controlling relationship between itself and the trading company's subsidiary, Emesa, CSN's 1998 Financial Statement indicates that Emesa is related to CSN. Moreover, petitioners note that CSN's disclosure of

the trading company's subsidiary as a related party is in isolation. The important point, according to petitioners is that the subsidiary is defined as a related party even though CSN did not fully disclose why it was deemed a related party.

Petitioners conclude that the evidence on the record indicates that the Department should not base its final determination on the reported transaction prices between CSN and the trading company. Rather, the Department should resort to adverse facts available and apply the highest transaction margin in the petition or the highest calculated transaction margin to these sales.

CSN rejects petitioners' conclusion that the trading company and CSN are affiliated because a customer of CSN owns a percentage of Emesa, which in turn owns 1.1% of CSN. The fact that one of the officers of the trading company sits on the boards of both Emesa and CSN is equally unconvincing in CSN's view.

CSN contends that petitioners' reasoning cannot possibly lead to a determination that Emesa, with only 1.1% of CSN shares, controls CSN. Moreover, CSN notes that Emesa must vote with the majority of the parties to the shareholders' agreement and consequently has as little power as other shareholders with similar percentage holdings in CSN.

According to CSN, the critical question regarding Mr. Netto's position as an officer of the trading company and a member of CSN's board, is whether Mr. Netto is in a position to control both companies. While Mr. Netto may be able to control the trading company, CSN maintains that he has no ability to control CSN because Emesa, the company he represents, holds only 1.1 % of CSN shares.

Furthermore, CSN argues that evidence on the record shows that CSN board members play no role in setting prices (see CSN's Sales Verification Report, pp. 4–5). To confirm this statement, CSN ran the traditional arm's length test used by the Department and found that sales to this customer passed the test, *i.e.*, the prices charged to this company were not lower than the prices charged to its other U.S. customers.

For all the above reasons, CSN urges the Department to use the U.S. sales data as reported by CSN (*i.e.*, CSN's sales to the trading company) and not require CSN to report the resales of the trading company.

Department's Position: We agree with CSN. Section 771(33) of the Act provides that the following persons are affiliated: (A) Members of a family; (B) any officer or director of an organization and such organization; (C) partners; (D) employer or employee (E) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting stock or shares of any organization and such organization; (F) two or more persons, directly or indirectly controlling, controlled by, or under common control with, any person; (G) any person who controls any other person and such other person.

An examination of each of these criteria results in the conclusion that the trading company and CSN are not affiliated pursuant to section 771(33) of the Act. The relationships among the trading company, Emesa, and CSN, and the connection that Mr. Netto has to each as a board member of CSN and a corporate officer of the trading company and of Emesa provide, the basis for petitioners' conclusion that CSN and the trading company are affiliated. First, section 771(33)(A) of the Act is inapplicable because evidence on the record does not reveal any familial ties among the three entities and Mr. Netto. Nor is the relationship between CSN and its customer, the trading company, one of a partnership or employer or employee within the meaning of sections 771(33)(C) and (D) of the Act.

As a corporate officer of the trading company and a member of CSN's board, the Department considers Mr. Netto affiliated to the trading company and CSN pursuant to section 771(33)(B) of the Act. As a corporate officer of the trading company, Mr. Netto may be able to control that entity within the meaning of section 771(33), but he is in no position to control CSN because Emesa, the company he represents on CSN's board, holds only 1.1% of CSN's shares. We find this percentage ownership, even with Emesa's participation in CSN's shareholders agreement, insufficient to establish that Emesa is in a position to control CSN, as required under section 771(33)(F) or (G) of the Act. Moreover, Mr. Netto is obligated to vote with the majority of the parties to the shareholders' agreement and has little say in the operations of CSN. Mr. Netto's affiliation with the trading company and CSN does not put him in a position to control CSN or Emesa, even though he is on the board of each of these companies.

Finally, section 771(33)(E) of the Act, which considers any persons or parties affiliated if they directly or indirectly own, control, or hold with power to vote 5% or more of the outstanding votes in a company, does not apply. Although Emesa is considered a subsidiary of the trading company, its 1.1% voting share in CSN's stock does not meet the statutory criteria.

In conclusion, we find no basis for affiliation between CSN and its customer, the trading company. Petitioners' reliance on the similarity between the Brazilian GAAP's definition of a ''related party'' and the Act's definition of an ''affiliated party'' is irrelevant. A similarity in the definition of two words does not necessarily give them the same meaning, especially when applied in different circumstances. Petitioners provide no support for their conclusion that CSN's dealings with the trading company ''lack independence.'' Finally, the fact that CSN's 1998 financial statement indicates that Emesa is related to CSN does not establish that CSN is affiliated with the trading company within the meaning of section 771(33) of the Act.

Therefore, for this final determination, we are using the U.S. sales between CSN and the trading company as reported by CSN.

Comment 7: Commissions. Petitioners object to CSN's characterization of a certain payment directly to CSN's customer as a ''commission,'' when, in fact, it is a rebate or discount. According to petitioners, when customers receive payments from suppliers, those payments cannot be classified as commissions unless the party that receives the payment is functioning solely as a commissionaire and not as a purchaser—which is not the case in this instance. Petitioners state that there is no dispute in this investigation that the so-called ''commission agent'' is affiliated with the U.S. customer. Therefore, petitioners contend that the Department should follow its practice of treating payments made directly to the U.S. customer or to a customer's affiliate as a rebate or discount, not a commission. Petitioners cite the Preliminary Determination of Sales at Less-than-Fair-Value; Open-End Spun Rayon Singles Yarn from Austria, 62 FR 14399, 14401 (March 26, 1997), (Preliminary Determination of Spun Rayon Singles Yarn) in support of their position.

CSN claims that petitioners' reading of this case improperly suggests that the Department's analysis focuses entirely on whether an unaffiliated purchaser resells subject merchandise to a party with whom that purchaser is affiliated. CSN notes that petitioners conceded that the Department reversed its preliminary determination to treat the commission as rebates in the Final Determination of Sales at Less Than Fair Value of Open-End Spun Rayon Singles

Yarn From Austria, 62 FR 43708–09 (August 15, 1997) (Final Determination of Spun Rayon Singles Yarn) after it learned that the unaffiliated purchaser indeed acted as a commissionaire. CSN claims that contrary to what petitioners suggest, the Department did *not* reverse its treatment of the commission from the Preliminary Determination to the Final Determination of Spun Rayon Singles Yarn *solely* because the selling agent and the selling agent's customer were unaffiliated, but because the unaffiliated selling agent ''performed the functions of a commission agent'' and because the respondent made ''payments directly to the selling agent for services rendered in the sales transaction'' See *Id*.

CSN states that it pays a commission directly to the affiliate of its ultimate customer, not to these companies' customers, for the selling services these companies perform for CSN (*e.g.*, handling the paperwork involved in a sale). Moreover, CSN directly invoices the ultimate customers and consistently refers to the payments it makes to these two parties as commissions in its accounting records.

CSN also rejects petitioners' claim that its payments to another customer for sales services are rebates because the party is a customer, not a commissionaire. According to CSN, this party earns the commission by establishing a portion of CSN's export business in the United States and handling sales paperwork and claims that arise from that portion of CSN's export business. For these reasons, and the fact that CSN refers to these payments as commissions in its questionnaire responses and its accounting records, CSN maintains that the Department was correct in treating these payments as commissions.

Department's Position: We agree with CSN. Generally speaking, a commission is a payment to a sales representative for engaging in sales activity. See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, and Revocation in Part of the Antidumping Duty Orders, 60 FR 10900, 10914 (February 28, 1995). A discount is a reduction in price to a customer, while a commission is a form of payment for services. Therefore, the issue is not whether or not the trading company is affiliated with the customer but whether there was one transaction between CSN and the ultimate customer in which the trading company acted as sales agents for a commission; or whether there were two transactions, one in which the trading company bought from CSN and received a discount on the price for that initial sale and subsequently resold the merchandise to the ultimate purchaser. See Certain Cold-Rolled Carbon Steel Flat Products from Germany; Final Results of Antidumping Duty Review 60 FR 65264, 65277–8 (December 19, 1995); Certain Carbon Steel Products from Austria; Final Determination of Sales at LTFV, 50 FR 33365 (August 19, 1985).

The general purpose and administration of the payments at issue is, in most instances, consistent with the characteristics of commissions to trading companies outlined in the Final Determination of Sales at Less-Than-Fair Value: Stainless Steel Angle from Japan, 60 FR 16608, 16611 (March 31, 1995): The Department has recognized that commissions paid to trading companies have certain characteristics: (1) They are agreed upon in writing, (2) they are earned directly on sales made, based on flat rates or percentage rates applied to the value of individual orders, (3) they take into consideration the expenses which a trading company incurs, and (4) they take into consideration the sales and marketing services performed by a trading company in lieu of an exporter/manufacturer establishing its own larger sales force. See Gray Portland Cement and Clinker From Japan; Final Results of Antidumping Duty Administrative Review, 61 FR 67308–67318 (December 20, 1996) and Oil Country Tubular Goods from Austria, 60 FR 33551 (June 28, 1995) (OCTG from Austria).

Although CSN does not maintain general commission agreements with either the agents or with the trading companies it uses, the commission rate is negotiated on a sale-by-sale basis and is referenced on the ''production order'' that CSN issues upon receiving an order from a client. See Document B in Exhibit 5 of CSN's Section A Response.

Commissions are normally set at given rates prior to sale. During the POI, CSN's commission rate remained constant, regardless of the price of the individual sale or the trading company involved. The trading companies used for sales of the subject merchandise performed the functions of a commission agent. CSN characterizes its payments to these trading companies as recognition for services performed in the sales process. As such, they are by nature sales commissions (see OCTG From Austria).

Each U.S. sale involved one transaction between CSN and its U.S. customer. CSN, through CSN Overseas or CSN Cayman, invoiced the U.S. customer directly. The U.S. customer, not the selling agent, paid for the merchandise. If CSN had paid the ''commission'' to the ultimate unaffiliated U.S. customer the expense would be considered a discount on the price between the U.S. customer and CSN. CSN paid the trading companies a commission in a separate transaction for services rendered. Moreover, at verification we established that the payments CSN made to the trading companies during the POI were administered and documented as commissions in CSN's accounting records. See CSN's Section A Response to the Department's Questionnaire, Exhibit 5.

Comment 8: Overruns. Petitioners maintain that, consistent with its prior practice, the Department should not include overrun sales in its calculation of normal value because these sales are not in the ordinary course of trade.

In CSN's opinion, the fact that these products are sold out of inventory does not make them a different product from that which is produced to order. CSN concedes that if the product were non-prime quality, petitioners would have a good argument. However, CSN states that these products are mostly prime-quality merchandise. CSN maintains that the fact that these products are sometimes sold at a discount is no reason to exclude them.

Department's Position: We agree with respondent. To determine if sales or transactions are outside the ordinary course of trade, the Department evaluates all of the circumstances particular to the sales in question. Examples of sales that we might consider outside the ordinary course of trade are sales involving off-quality merchandise or merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's length price. See 19 CFR 351.102.

In its questionnaire response, CSN stated that it generally produces to order. Sometimes, however, the company runs coil that weighs more than the customer will accept or is of a quality that meets the necessary specifications but does not meet the customer's particular quality expectations. The product is set aside to be sold out of inventory to other customers that will accept it. CSN then assigns an order confirmation number identifying the sale as an overrun. At verification we learned that overruns, like any of the merchandise produced by CSN can occasionally be judged as off-quality by a committee of production engineers, be placed in inventory, and

subsequently sold as non-prime product. However, the merchandise can just as readily involve the wrong dimensions for a specific customer's order and continue to be sold as prime merchandise.

Moreover, CSN did not produce any of the subject merchandise according to unusual specifications. Nor were any of CSN's products sold at aberrational prices, with abnormally high profits, or sold pursuant to unusual terms of sale.

Finally, at verification we determined that those sales classified as overruns by CSN were only sold in the home market and represent such an insignificant portion of total home market sales during the POI that their effect on the margin, if any, would be negligible (see Exhibit 9 (c) of CSN's Sales Verification Report). Since the factors that the Department considers in determining if merchandise is outside the ordinary course of trade are not germane to the sales CSN classifies as overruns, we do not think they warrant exclusion from the home market database.

Comment 9: Duty Drawback. Since CSN failed to present the requested information on duty drawback at verification, petitioners state that consistent with the Act and Department practice regarding information that is unverified, the Department should disallow any duty drawback adjustment for purposes of this final determination.

CSN counters that it is not uncommon for the Department to decline to verify several items during the course of a verification. In fact, CSN notes that this practice is specifically endorsed in the Department's Antidumping Manual (see Chapter 13, pp. 5–6, January 22, 1998). CSN states that since this item has a relatively small impact on the antidumping margin and verification of duty drawback adjustments can take an inordinate amount of time, the Department elected not to verify CSN's duty drawback adjustment. CSN concludes that denial of this adjustment would be inconsistent with Department policy and would set a bad precedent for future cases.

Department's Position: We disagree with petitioners. The petitioners are incorrect in stating that it is consistent with the Act and Department practice to disallow any unverified adjustment. In Monsanto v. United States, 698 F. Supp 275, 281 (CIT 1988) the Court upheld the Department's discretion to pick and choose which items it wants to examine in detail. The Court stated that ''verification is a spot check and is not intended to be an exhaustive examination of the respondent's business.'' *Id.* In addition, in the Department's Antidumping Duty Manual we state the following:

> Usually, it is not necessary, nor is there time to verify every bit of data in the questionnaire response. Therefore, it is critical to rank your verification topics in priority . . . . The fact that an item was not actually verified will not mean that the item is unverified. Verifications involve a great deal of sampling. Consequently, assumptions about items not selected for verification will depend on how the verification went for the selected items . . . .

Due to time constraints and the relatively small impact of the duty drawback adjustment on the dumping margin, it was mutually agreed that other adjustments (*e.g.*, interest rate for imputed credit) were of greater significance. Therefore, we did not examine the documentation relating to CSN's duty drawback adjustment. We have continued to adjust U.S. price for duty drawback in this final determination.

Comment 10: Inland Freight Costs. Petitioners cite a number of instances in the Department's Verification Report where it was unable to verify CSN's reported home market and U.S. inland freight costs. Moreover, petitioners note that the Department was unable to verify the arm's length nature of CSN's freight expenses with MRS and FCA, both rail companies in which CSN owns shares.

Accordingly, petitioners maintain that the Department should not rely on CSN's reported amounts, but rather should resort to (adverse) facts available, using either zero or the lowest amount reported for home market sales and the highest amount reported for all U.S. sales.

CSN strongly objects to petitioners' recommendation that the Department use adverse facts available for its home market and U.S. inland freight expenses. CSN points out that for each of the many shipments which leave its mill every day, it receives an invoice from the transportation company, the amounts of which are input manually into CSN's nota fiscal database. According to CSN, since verification of these amounts involved searching manually for the transportation invoice(s) associated with each selected sale, time did not permit finding all of the documentation for the pre-selected and surprise sales chosen by the Department.

In response to petitioners' claim that CSN could not establish the arm's length nature of its rail expenses, CSN states that MRS's financial statements during the POI demonstrate its profitability. CSN also showed the arm's length nature of its purchase of transportation services from FCA by comparing the rates charged to CSN with the rates charged to unaffiliated customers for similar distances and similar products.

CSN points out that it did not provide documents showing that the reported inland freight amounts were wrong. It simply did not have enough time. CSN concludes that since the integrity of the reported amounts was never questioned, the Department should find CSN's methodology for reporting inland freight to be reasonable and accurate. If the Department determines otherwise, CSN suggests the following: an alternative combined port expense/inland freight adjustment (see CSN's Sales Verification Report, p. 29 and Exhibit 23) for U.S. sales; use the amount in CSN's income statement for the POI for freight and divide by the POI sales value for a factor to be applied to the gross unit price).

Department's Position: We agree with CSN. At verification we determined that CSN used the actual freight expenses incurred for its home market inland freight expenses. We were able to trace these amounts to CSN's nota fiscal database. For U.S. inland freight expenses, the only error as noted by CSN during verification was the incorrect coding of a U.S. shipment by truck when, in fact, the merchandise was shipped by rail. Since trucking is more expensive than rail, this error was not to CSN's advantage.

In addition, we cannot accept petitioners' claim that CSN's freight expenses were not made at arm's length. MRS' financial statements during the POI indicate that the rail company sold above its cost of production and the Department's cost verifiers noted its net profitability in its financial statements covering the POI (see Exhibit 14 of CSN's Section A Response, November 16, 1998 and CSN's Cost Verification Report, April 8, 1999, p. 14). In addition, in its Supplemental Section BCD Response, CSN demonstrated the arm's length nature of its purchase of FCA transportation services, showing CSN's expenses as greater than the average rate charged to other FCA customers.

We are satisfied that CSN demonstrated the integrity of its home market and U.S. inland freight expenses. Moreover, CSN showed that its transactions with the affiliated rail companies were arm's length in nature. Therefore, we have accepted CSN's freight expenses as reported for the final determination.

Comment 11: Imputed Credit. According to CSN, the Department erred in its calculation of both U.S. and home market imputed credit in the

Preliminary Determination. CSN objects to the Department's use of the period between the ex-factory date and date of payment by the customer in calculating U.S. credit. In its calculation of home market credit, CSN contends that the Department should use the gross unit price, inclusive of ICMS and IPI, and not the net unit price.

U.S.

CSN argues that the ex-port shipment date more accurately reflects the theory behind the U.S. imputed credit adjustment. According to CSN, under the time value of money theory, a seller begins losing money the day the product is released from its possession for *delivery* to a customer until the day the seller receives payment from the customer. To support its opinion, CSN cites the CAFC in LMI-LaMetalli Industriale v. United States, 912 F.2d 455, 460–61 (Fed. Cir. 1990)(LMI-LaMetalli), which stated that the imputation of credit costs ''must correspond to a . . . figure reasonably calculated to account for such value during the gap between delivery and payment.''

CSN asserts that the Department determined during verification that shipment of the product to the port simply represents the day the product leaves the mill for the port, where it may or may not be placed on a ship for export. CSN notes that the nota fiscal, not the commercial invoice, accompanies the merchandise to the port, where it can then be diverted to other markets, including the home market. CSN states that since ''delivery'' can only be deemed to begin when the product leaves the port, the Department should use ex-port date to calculate U.S. imputed credit expenses.

Petitioners point out that CSN recognizes that the appropriate calculation of U.S. credit is inextricably linked to the issue of the appropriate U.S. date of sale. Since the Department correctly used the date of the nota fiscal as the date of sale in the Preliminary Determination, petitioners believe the U.S. imputed credit should be calculated from this date to the date of payment by the customer.

Petitioners note that CSN has reported that the vast majority of its U.S. sales are produced to order. Therefore, they conclude that CSN knows that the product is destined for the United States in most instances. As support for their argument, petitioners point out that the Department verified that the only merchandise diverted to the home market is damaged merchandise. See CSN's Sales Verification Report, p. 9. In petitioners' opinion, CSN is asking the Department to determine the date of sale, and thereby, the appropriate date for calculating imputed credit costs, on exceptional cases rather than on the vast majority of sales.

Moreover, regardless of its destination, petitioners contend that the product, once it leaves the factory, incurs an imputed credit cost. This, according to petitioners, is the ''commercial reality'' which must be reflected in the Department's calculations. See, LMI–LaMetalli v. United States, 912 F.2d 455 (Federal Circuit 1990); cf CSN's Case Brief, p. 5.

Alternatively, petitioners state that if no credit cost is incurred until shipment from the port, then CSN must incur an inventory carrying cost for the time between shipment from the factory and shipment from the port.

Home Market

CSN views the Department's calculation of the home market imputed credit adjustment net of ICMS and IPI taxes as inappropriate because the money lost as a result of the passage of time between shipment to the customer and the receipt of payment from the customer is the entire amount of the payment due on the invoice (*i.e.*, inclusive of on-invoice taxes).

CSN states that it is required to pay the government each month for the amount of the invoiced ICMS and IPI it collects (net of credit for taxes paid on inputs). CSN emphasizes that it alone is responsible for any time value of money losses it incurs as a result of extending its customers' credit terms. Therefore, CSN asserts that the basis for the calculation of home market credit should be the gross unit price, inclusive of taxes.

To support its position, CSN cites the final LTFV determination in Silicon Metal from Brazil, 56 FR 26982 (June 12, 1991) as precedent for this approach: ''The ICMS incident to a home market sale is outstanding until the time that the customer pays for its merchandise. Until the customer pays . . . the (producer) cannot use the ICMS collected on the sale to offset the ICMS it has paid on purchases of materials used in the production of the subject merchandise * * * . Therefore, we have included the ICMS in the home market price when calculating imputed credit expenses.'' The respondent also cites the CAFC, in LMI-LaMetalli v. United States, which stated that the imputation of credit cost, as ''a reflection of the time value of money, * * * must correspond to a * * * figure reasonably calculated to account for such value during the gap between delivery and payment,'' and that it should conform with ''commercial reality.'' 912 F.2d at 460–61.

CSN concludes that the VAT taxes in Brazil, which are included on each invoice, are a part of the time value losses incurred by Brazilian companies when extending credit terms to their customers. Therefore, it reflects commercial reality to include these taxes in the home market imputed credit adjustment.

Petitioners argue that the Department correctly calculated home market credit expenses using a price net of ICMS and IPI taxes. (Petitioners noted that although the Department intended to calculate home market credit expenses net of taxes, it inadvertently failed to do so in the computer programming.) They maintain that there are no credit costs associated with the ICMS and IPI payments to the government because CSN admits that it does not pay these taxes until it collects from its customers. Petitioners state that even if CSN pays the government on an invoice-specific basis, these taxes are only paid once a month. Moreover, the record contains no data which correlates shipments, customer payments to CSN, and CSN's payment of VAT taxes to the government, which would permit the accurate calculation of the claimed imputed credit cost adjustment.

Regarding CSN's contention that an imputed credit cost inclusive of ICMS and IPI taxes is warranted because the producer cannot use the ICMS collected on the sale to offset the tax paid on raw materials used in the production of the merchandise, petitioners argue that the imputed credit costs would be incurred only on the amount of the VAT on the raw material costs and not on the finished product. Furthermore, petitioners maintain that this imputed credit cost would have to reflect the CSN payment period on raw material purchases for both home market and exported merchandise. Petitioners add that even if CSN did pay the VAT on the final product prior to payment from CSN's customer, the period for home market imputed credit costs would be the date of payment to the government, not the date of shipment.

Petitioners note in the Final Results of the Antidumping Administrative Review of Certain Cut-to-Length Carbon Steel Plate from Brazil, 62 FR 18486, 18488 (April 15, 1997), the Department stated that there is no statutory or regulatory requirement for making this adjustment. According to petitioners, to allow the type of credit adjustment suggested by the respondents would imply that in the future the Department would be faced with the virtually impossible task of trying to determine

the potential opportunity cost or gain of every charge and expense reported in respondents' home market and U.S. databases.

Therefore, petitioners conclude that the Department should continue to use its well-supported and consistent practice of calculating imputed home market credit expenses net of ICMS and IPI taxes.

Department's Position: Both petitioners and the respondent are incorrect in their contention that the credit period is inextricably linked to the date of sale. As cited by petitioners, the seller begins losing money the day the product is released from its possession for *delivery* to a customer until the day the seller receives payment from the customer. This period comprises the imputed credit period. It is the Department's longstanding policy when calculating imputed credit to use the period between the date of shipment from the factory and the date of payment by the customer. See Notice of Final Results of Antidumping Duty Administrative Review; Ferrosilicon From Brazil, 62 FR 43508 (August 14, 1997).

CSN's characterization of the ex-factory date as ''simply the day the product leaves the mill for the port, where it may or may not be placed on a ship for export'' is misleading. The ex-factory date is the date marking the commencement of delivery of an order to a specific customer. The imputation of credit costs ''must correspond to a * * * figure reasonably calculated to account for such value during the gap between delivery and payment.'' See LMI–LaMetalli, 912 F.2d at 460–61.

Since the vast majority of CSN's sales are produced to order, CSN knows which products are destined for the United States when the product leaves the factory. Diverting an order of merchandise destined for export to a home market customer because of damage or some other reason is certainly the exception, not the rule, as CSN seems to characterize it.

CSN itself characterized the calculation of the imputed credit adjustment as ''the difference between ex-factory shipment date and payment date divided by 365 multiplied by the interest rate multiplied by the gross unit price. See CSN's Section C Response to the Department's Questionnaire, p. C–34.

Therefore, we have continued to use the day the product leaves the factory for *delivery* to a customer until the day the seller receives payment from the customer as the period for the calculation of both home market and U.S. imputed credit.

With regard to CSN's contention that home market imputed credit should be calculated using a gross price, the Department agrees with petitioners that home market imputed credit expense should be calculated using the price net of taxes, rather than the gross unit price. It is the Department's practice not to impute credit expenses related to VAT payments. Nor is there any statutory or regulatory requirement for making the adjustment proposed by the respondent.

While there may be an opportunity cost associated with the respondents' prepayment of the VAT, this fact alone is not a sufficient basis for the Department to make an adjustment in price-to-price comparisons. Virtually every charge or expense associated with price-to-price comparisons is either prepaid or paid for at some point after the cost is incurred. Consequently, there is potentially an opportunity cost or gain associated with each expense. To allow the type of credit adjustment suggested by CSN would imply that the Department would have the impossible task of trying to determine the opportunity cost or gain of every charge and expense reported in the respondent's U.S. and home market databases. Therefore, we have changed the computer program for this final determination to reflect our intention in the Preliminary Determination of calculating home market imputed credit expenses using the price net of VAT taxes. See Certain Cut-to-Length Carbon Steel Plate from Brazil, 62 FR 18488, (April 15, 1997); Notice of Final Determination of Sales at LTFV: ESBR from Korea, 64 FR 14865, 14868–69 (March 29, 1999).

Comment 12: Late Payment Fee. CSN objects to the Department imputing a late payment fee on CSN's home market sales when payment had not been received by the date of CSN's January 25, 1999 submission. CSN notes that imputing such late payment fees for these sales is inappropriate because the Department discovered at verification that CSN does not always charge its customers with these late payment fees. The Department, therefore, should not add the imputed fees to CSN's home market price.

Petitioners, however, maintain that in the Preliminary Determination the Department correctly imputed late payment fees for home market sales with missing payment dates because this reflects commercial reality, and CSN's stated policy. Since the Department found at verification that it was CSN's practice to charge late payment fees, petitioners state that it is only logical to impute late payment fees for sales that have missing payment dates. The burden was on CSN to provide specific information on those sales exempt from a late payment fee. In fact, petitioners note that it is the Department's practice to supply facts available data where the information on the record is missing or inadequate. See Final Determination of Sales at Less Than Fair Value; Certain Preserved Mushrooms from Chile, 63 FR 56613, 56622 (October 22, 1998). Given that it is CSN's practice to charge late payment fees and CSN failed to report payment dates on a number of sales, petitioners believe the Department's decision to impute late payment fees was reasonable and in accordance with commercial reality. Moreover, the burden was on CSN to provide specific information on those sales exempt from late payments.

Department's Position: We agree with petitioners. Although CSN's statement that late payment fees on home market sales were not always assessed was borne out at verification, it is CSN's general policy to require a late payment fee. In fact, in the course of the sales verification, we noted that specific rates for late payments appeared on the invoices of some of the customers. Absent any specific information which would indicate which sales were exempt from payment of a late fee, for this final determination, the Department has assumed that CSN assesses a late payment fee on home market sales under the contractual sales terms.

USIMINAS/COSIPA

Comment 13: What Constitutes Verification. In several comments, respondents disagree with the Department's assessment in USIMINAS'' and COSIPA's Sales Verification Reports of what constitutes a verified item. Specifically they dispute the use of terms such as ''spot-checking,'' ''unable to fully review,'' and ''unverified.'' They particularly disagree with the Department's assessment in the USIMINAS and COSIPA verification reports that several items were deemed unverified ''because the Department has not reviewed that item, or not reviewed all accounting records related to that document or transaction.'' They find the Department's practices in several instances to not be in keeping with Chapter 13 of the Department's Antidumping Manual. Furthermore, respondents argue that the vast majority of their fundamental sales and cost data verified.

In referring specifically to certain home market sales trace packets, respondents disagree with the term ''spot checking,'' since they believe that

the documents reviewed in fully verified traces were similar to those reviewed in spot checks. Respondents believe that both types of checks included the documents of internal order allocation screen, nota fiscal, order confirmation sheet, mill certificate, and the bill of lading. USIMINAS states that the only additional documents found in a fully verified trace were bank documents, accounting ledgers, and payment advices. Additionally, respondents argue that checking every document for every field in order to consider them fully verified contradicts Department practice as noted in the Antidumping Manual, Chapter 13, 47–50. They note that this section of the manual says the goal of this phase of verification is to verify the details of each sale, such as date of sale, product description, customer, destination, date of invoice, date of shipment, quantity, price, credit terms, and date of payment.

USIMINAS also disagrees with the Department's use of the expression ''unable to fully review'' in referring to a sales trace and dispute the accuracy of this phrase. Respondents also do not believe that they suggested that the Department ''spot check'' sales traces but rather insisted that the Department ''move on and verify the items that are most important to the verification'' so as not to spend an ''inordinate amount of time verifying such insignificant expenses'' as had been verified in previous sales traces. USIMINAS cited the length of the COSIPA inland insurance and the USIMINAS indirect selling expense exhibits, noting the insignificance of these adjustments.

Petitioners argue that the Department should stand by its verified sales findings in the final determination. They believe that respondents were ''woefully unprepared'' for verification and little of the submitted information could be verified. In citing Chapter 13 of the Antidumping Manual, petitioners note that the Department's verifiers correctly followed Departmental practice by examining source documents ''rather than simply accepting 'explanations' '' offered by respondents. Petitioners note that in respondents' first example of a spot-checked sales trace, they mistakenly appear to be comparing a home market with a U.S. sales trace. Petitioners also argue that absent proof of payment and proof of receipt of payment, a sales trace is incomplete and cannot be considered ''verified.'' They subsequently quote eleven statements in the verification reports that they believe demonstrate USIMINAS and COSIPA's general lack of preparation in providing fundamental verification documentation. In petitioners' view, this lack of preparation and uncooperative behavior call for the application of total adverse facts available in the final determination.

Department's Position: As indicated by the USIMINAS and COSIPA verification reports, respondents either said they were unprepared or preferred to cover other topics at each point when items requested by the Department were left unaddressed. In the Department's March 8, 1999 verification outline sent to USIMINAS and the March 11, 1999 outline sent to COSIPA, we stated, ''If your clients are not prepared to support or explain a response item at the appropriate time, the verifiers will move on to another topic. If, due to time constraints, it is not possible to return to that item, we may consider the item unverified. Furthermore, if information requested for verification is not supplied, or is unverified, pursuant to section 776(a) of the Act, we may use facts available for our final determinations, which may include information supplied by the petitioners.'' Respondents were fully aware that failure to cover items requested by the Department could result in these items being considered unverified. The Department sought to verify each of the items at issue, but these items were not addressed by the company at the time of the request. Further, the verification procedures and verification reports were in compliance with Departmental procedures laid out in Chapter 13 of the Antidumping Manual.

At the same time, most of the items that Commerce was unable to verify are relatively minor and the most essential components of verification were successfully completed. The Department, therefore, does not agree with petitioners that the use of total adverse facts available is warranted. The Department is, instead, applying partial facts available where necessary and using an adverse inference where appropriate under section 776(b) of the Act. See the Facts Available section of this notice and the treatment of specific issues in the comments.

Comment 14: Prioritization and Volume of Material Covered. USIMINAS/COSIPA generally argue that the large volume of material the Department attempted to review in one week and the time the Department spent reviewing ''many items in detail'' did not permit certain items to be verified. They disagree with the manner in which the Department conducted verification and do not believe the Department followed proper time management and prioritization procedures as outlined in Chapter 13 of the Antidumping Manual. Respondents had four specific comments related to prioritization and time management.

USIMINAS believes that the Department's attempt to review USIMINAS and its downstream affiliates, Rio Negro and Fasal, within one week was misguided. It argues that the Department sought to review in detail each company's accounting practices, corporate structure, sales process, quantity and value, and sales trace documents. The respondent believes that this was too difficult and time consuming a task and notes that the review of Fasal as discussed in the USIMINAS Verification Report took nearly a full day of the USIMINAS verification.

Respondents claim that the Department sought to verify ''numerous time consuming and contentious issues'' such as date of sale, order confirmation, CONNUM methodologies, and production and cost information. Respondents argue that the Department should have allotted extra time for the verification, given the level of complexity and detail with which the Department reviewed these items.

Respondents state that the Department requested twenty preselected sales traces, fourteen partial sales traces for specific issues in the verification report, ten surprise sales traces on the first day of verification, and twenty more surprise ''date of sale'' sales traces. They argue that retrieving and compiling all the source documents for these sales was unduly burdensome for USIMINAS staff to prepare, review for accuracy, and present to the Department.

Lastly, respondents argue that the Department sought to verify each item of a sales trace in detail regardless of its importance to the Department's calculations. For instance, they believe that the Department spent ''hours verifying USIMINAS' inland insurance'' and that the length of COSIPA's exhibit on inland insurance demonstrates the Department's overemphasis on the issue. Respondents quote sections of Chapter 13 of the Department's Antidumping Manual to demonstrate that the Department should not ''spend one day verifying inland insurance'' and that verifiers should not treat all information with the same importance.

Petitioners argue that the Department did prioritize issues but USIMINAS and COSIPA prevented the verifiers from verifying those issues. As noted in Chapter 13 of the Antidumping Manual, petitioners state that setting priorities is the responsibility of the verifiers, not

the respondents. They argue that the verifiers' efforts to keep the verification moving and to set priorities were constantly challenged by respondents. They cite thirteen quotations from the verification report which they believe support this claim. An example of such a quote is, ''Although we asked for documentation regarding Dufer's sales process, COSIPA requested that we move on to verify other verification subjects, and return to Dufer. We never returned to this issue.'' Petitioners argue that if USIMINAS and COSIPA could dictate which issues could be verified and how deeply, they would be able to ''manipulate the outcome of the verification.''

Petitioners state that ''the verification agenda is not to blame for the fact that USIMINAS and COSIPA were unprepared for verification.'' They disagree that the ''large volume of material the Department attempted to verify'' or the ''considerable time'' the Department spent reviewing items were responsible for USIMINAS and COSIPA's performance at verification. Petitioners note that the Department issues a similarly detailed verification agenda in virtually every proceeding and that respondents never complained to the Department prior to verification. Petitioners contradict respondents' assumption that more time would have allowed verifiers to consider each issue by stating that ''virtually no issue could be verified, regardless of the amount of time devoted to it.'' For example, petitioners note that the Department was unable to verify Fasal's quantity and value despite the amount of time spent reviewing Fasal. Instead, petitioners argue that respondents were unprepared and uncooperative and the Department should apply total adverse facts available in the Final Determination.

Department's Position: In the Department's verification agendas, we informed respondents to contact the Department ''[I]f you have any questions regarding this verification or if you believe any of the verification procedures cannot be performed.'' The Department did not receive any submissions from respondents regarding the length or breadth of the outline prior to verification. The outlines given to the companies were based on Departmental standards with the exception of downstream data, a topic only covered when merited by the facts of a case. The Department disagrees with respondents' description of the amount of time it took to review certain topics such as USIMINAS' corporate structure and inland insurance, and notes that the length of time it took to cover other topics such as quantity and value was left unaddressed by respondents. The verification exhibits themselves demonstrate one factor that contributed to the slow pace of verification—the number of untranslated pages.

The Department recognizes that, like many verifications, there was a significant amount of material to cover. However, it is the Department's responsibility to set priorities and to determine the amount of time spent on topics to ensure that the verification moves forward. As noted in the Department's verification outline, it is the responsibility of the respondents to be prepared for verification to allow this information to be covered expeditiously. The Department believes that it met its responsibilities and that the time spent reviewing certain fundamental issues, such as downstream affiliates, date of sale, order confirmation, and CONNUM methodologies was appropriate for information essential to this investigation.

Comment 15: Use of Total Facts Available. Petitioners state that, based on multiple problems with USIMINAS' sales verification, the Department should apply total adverse facts available. Petitioners specifically reference the Department's inability to complete all of the pre-selected and surprise sales trace examinations in the home market and the U.S. market during its verification of USIMINAS. Based on the problems noted in the USIMINAS' Sales Verification Report, petitioners question the reliability and accuracy of the following reported information in the home market: Taxes, billing adjustments, quantity discounts, other discounts, inland freight, inland insurance, payment date, credit expense, interest revenue, warranty expense, indirect selling expenses, inventory carrying costs, packing expenses, and variable cost of manufacture. Petitioners also question, in most instances, the reliability of the following reported information in the U.S. market: Product characteristics, customer name, date of payment, sales terms, terms of payment, level of trade, domestic inland freight, domestic brokerage and handling, international freight, destination, credit expense, interest revenue, warranty expense, indirect selling expenses, packing expenses, and variable costs. Petitioners recommend that the Department apply as total adverse facts available, the highest rate calculated in the petition, 85.71%.

Petitioners likewise state that based on multiple problems with COSIPA's sales verification, the Department should apply total adverse facts available. Petitioners specifically reference the Department's inability to complete all of the pre-selected and surprise sales trace examinations in the home market and the U.S. market. Petitioners question the reliability and accuracy of the following reported information in the home market: value-added tax credits on production inputs, billing adjustments, quantity discounts, other discounts, inland freight, inland insurance, payment date, credit expense, interest revenue, warranty expenses, indirect selling expenses, inventory carrying costs, packing expenses, and variable cost of manufacture. Petitioners question, in most instances, the reliability of the following reported information in the U.S. market: product characteristics, customer name, order date, sale date, date of shipment, date of payment, sales terms, terms of payment, quantity, level of trade, domestic inland freight, domestic brokerage and handling, destination, credit expense, interest revenue, warranty expense, indirect selling expense, packing expense, and variable costs.

As further argument that the Department should apply total adverse facts available in this case, petitioners state that the Department was unable to verify the accuracy of the date of sale reported by COSIPA for home market sales. Petitioners refer to the COSIPA verification where the Department requested specific documents for ten additional home market sales. Petitioners state that since the Department only received one document for a limited number of the requested sales, that the Department cannot be confident that the appropriate date of sale was reported for home market sales. Petitioners also maintain that other problems discovered at verification are cause to use total facts available. Petitioners refer to COSIPA's omission of supplementary notas fiscais issued during the period of investigation, the Department's inability to verify the reported order confirmation date, and instances where the Department requested but did not receive sales process information and documentation. Furthermore, petitioners refer to problems with verification of COSIPA's quantity and value. Petitioners highlight instances where the company neglected to report certain home market sales to the Department for more than one customer. Petitioners recommend that the Department apply as total adverse facts available, the highest rate calculated in the petition, 85.71%.

Respondents do not feel that the information willingly submitted by

USIMINAS and COSIPA satisfies the high threshold for the application of total adverse facts available. Respondents refer to Borden, Gooch Foods and Hershey Foods v. United States, 4 F. Supp. 2d. 1221, 1244 (CIT 1998) (Borden Foods), to support their opinion that it is not proper for the Department to apply total adverse facts available in this investigation. Respondents provide several facts to support their claim that they cooperated fully in these proceedings. First, respondents point to the number of questionnaire and supplemental questionnaire responses that they have submitted in this investigation as evidence that they have fully cooperated. In addition to the numerous questionnaire responses, respondents note the refinements to submitted data that were researched by hand, such as multiple payment dates, calculating actual freight amounts, creating additional CONNUMS for unique qualities, creating additional methodologies to report missing carbon and yield strengths, and designing and implementing complicated computer programs to extract scope merchandise based on chemical composition. Respondents refer to NSK Ltd. and NSK Corp. v. United States, 919 F. Supp. 422, 448 (CIT 1996) (NSK Ltd.) and Ferro Union v. United States, Slip Op. 99–27 (CIT March 23, 1999) (Ferro Union), as support for their argument that the Department should not accept petitioners' suggestion that it disregard months of work on USIMINAS' and COSIPA's parts in lieu of total facts available since they cooperated throughout the proceeding. Second, respondents state that the USIMINAS and COSIPA opened up company books, records, and computer systems to Department officials during verification. Respondents state that they brought representatives of the affiliated resellers to their own locations to provide source documentation and maintain that they prepared volumes of information for verification. Respondents argue they did not hamper the investigation in any way and state that it was only when the companies were faced with unrealistic demands at verification that they were unable to provide all the information sought by the Department.

Respondents refute petitioners' claim that much of the submitted data was unverified, claiming that value and volume, product characteristics, date of sale, sales processes, accounting processes, corporate structures, and production processes were fully verified. Respondents assert that quantity and value were verified and that any discrepancies were either noted at the beginning of verification, or minor errors discovered during the course of verification. Respondents state that petitioners did not allege any significant errors regarding the quantity and value of respondents' reported sales. Respondents maintain that the Department reviewed and verified the sales processes of the companies and that the verification reports did not note significant discrepancies. Respondents believe that the verification reports substantiate respondents' claims that order date should not be used for date of sale purposes. Respondents point out that no discrepancies were noted in the verification reports regarding the Department's review of production processes and facilities, the explanation of the classification of products, and plant tours. Respondents cite Asociacion Colombiana de Exportadores v. United States, 704 F. Supp. 1114, 1117 (CIT 1989) (Asociacion Colombiana) as further evidence that the verification deficiencies of minor expenses are not enough to justify the use of total adverse facts available.

Respondents state that petitioners' claim that Department verifiers were unable to verify USIMINAS' and COSIPA's sales data is incorrect. Respondents maintain that the Department's sampling of the selected sales traces was reasonable and therefore, the sales information should be considered verified. Respondents point to the number of home market sales traces that were completed by the Department and state that the spot checks of the other traces in conjunction with the separate verification of the allocated expenses constitute verification of sales data.

Respondents also state that petitioners do not point to basic problems or flaws with the sales data actually reviewed. Respondents assert that petitioners focus on the Department's inability to review information at verification, and that it would be inconceivable for the Department to apply total facts available simply because the Department did not review all the fields of all of the sales traces. Respondents state that petitioners incorrectly make the assumption that the Department's inability to verify certain subjects means that those subjects were not considered verified. Respondents maintain that the Department's failure to review an item does not mean that the item is not verified.

Respondents also state that petitioners are incorrect in asserting that COSIPA did not report certain home market sales. COSIPA maintains that these sales had been previously reported, but had been inadvertently omitted from the March 1, 1999 submission of data. COSIPA states that these sales were corrected and reported at verification.

Department's Position: The Department disagrees with petitioners' call for total adverse facts available for USIMINAS and COSIPA. While the Department acknowledges that there were multiple problems at the sales verifications of USIMINAS and COSIPA, the nature and extent of these problems do not support the use of total facts available. The Department agrees with respondents that the major components of verification verified. These include quantity and value, production characteristics, and sales and accounting processes. By contrast, the majority of the information that did not verify generally constituted relatively minor issues and adjustments. The Department does not find that the inability to complete all of the pre-selected and surprise sales traces is substantial enough in this case to necessitate the use of total facts available.

Respondents' reference to Borden Foods, however, is off point. In the Borden Foods case, the Court did not disagree with the Department's use of total adverse facts available. Instead, that case dealt with the subject of corroboration of the facts available margin imposed in that proceeding.

Further, the Department disagrees with respondents' assumption that the Department's failure to review certain items at verification equates to the verification of those items. As stated in USIMINAS' and COSIPA's Sales Verification Reports, there were numerous instances in which the Department sought to cover certain items, and the respondents declined for reasons described in the report. These items do not have the same status as items which the Department chooses not to raise at verification. The Department considers these items which were raised by the Department, but not addressed by the respondents, to be unverified. Please see Comment 13 on What Constitutes Verification for a complete discussion of this issue.

While the Department does not find the use of total facts available appropriate in this investigation, there were several instances which merited the use of partial facts available. See the comments below for specific applications of facts available.

Comment 16: Use of Facts Available. Petitioners state that if the Department decides to accept USIMINAS and COSIPA's questionnaire responses, facts available must be applied in certain

instances as described in several comments below.

Respondents refer to Borden Foods in asserting that the Department must use caution in applying facts available, but respondents suggest that the Department use facts available in certain instances as described in specific comments below. Respondents also refer to National Steel in stating that the Department should not make adverse inferences where respondents have acted to the best of their ability and the error is minor.

To support their claim that verification problems were insignificant, respondents cite NSK Ltd., which in turn cites Ad Hoc Comm. Of AZ-NM-TX-FL Producers of Gray Portland Cement v. United States, 865 F. Supp. 857, 866, (CIT 1994), stating, ''Neutral BIA is 'applied only to a respondent who has substantially complied and there is also an inadvertent or unavoidable gap in the record, or when a minor or insignificant adjustment is involved.' '' 919 F. Supp. at 448.

Department's Position: As discussed in the Facts Available section above, the Department has determined that facts available should be applied for certain sales adjustments and expenses. The Department gave USIMINAS and COSIPA substantial opportunity to verify multiple outstanding issues at the sales verification. As noted in the Sales Verification Reports for both companies, respondents were either unable to or unwilling to verify these issues. The agendas were provided to respondents prior to verification, and the information was repeatedly requested by the Department officials at the verification. In instances in which the material remained unverified, the Department applied facts available. In several instances, because the respondents failed to cooperate to the best of their abilities, the Department applied adverse facts available in accordance with section 776(b) of the Act. See the individual comments below for specific applications of facts available and adverse facts available.

In reference to Borden Foods and National Steel, the Department notes that these cases were not governed by the current statute, and the use of adverse inferences is now governed by section 776(b) of the Act. Moreover, respondents' reference to Borden Foods is off point. See Comment 15 above. In addition, respondents' reliance on National Steel in asserting that the Department should not make adverse inferences in the application of facts available is misplaced. Further examination of National Steel supports the use of partial facts available ''when only part of the submitted information is deficient,'' and the use of an adverse inference ''depend[ing] on the level of sufficiency of the information provided.'' 919 F. Supp. at 442.

Comment 17: Collapsing USIMINAS AND COSIPA. Respondents assert that the Department's decision to collapse USIMINAS and COSIPA into a single company for purposes of calculating dumping margins, a single average cost of production and unified average prices was incorrect. Respondents do not dispute two of the criteria used by the Department in making this determination: (1) The two companies manufacture substantially similar products and (2) USIMINAS has a high level of direct ownership in COSIPA. They do, however, dispute the Department's determination that there is some intertwining of operations and do not believe that USIMINAS is in a position to manipulate COSIPA's prices or production. Though USIMINAS is the largest shareholder in COSIPA and appoints two members to its Administrative Council, respondents argue that USIMINAS'' influence is limited. Respondents state that the Administrative Council focuses on ''large-impact corporate decisions'' and not pricing. They also indicate that each company's Directorate, where pricing and sales policies are discussed, is composed entirely of its own employees with neither company appointing directors of the other. Citing their letter of February 9, 1999, respondents note that the companies maintain separate and distinct sales staff and offices, do not make joint sales calls, meet with their own customers, and determine prices separately.

Respondents contest the Department's view that USIMINAS and COSIPA have some intertwining of operations as shown by the supply of technology from USIMINAS to COSIPA. They state that this supply has to do with the sale of computer programs and discussions on optimizing productivity of equipment, but nothing to do with the pricing or marketing of products. For all these reasons, respondents do not believe that there is a basis for collapsing USIMINAS and COSIPA to determine dumping margins.

Petitioners disagree with respondents' argument that USIMINAS'' and COSIPA's operations are not sufficiently intertwined to justify collapsing the two companies. First, they cite the Preliminary Results and Partial Rescission of Antidumping Administrative Review of Sulfanilic Acid from the People's Republic of China, 61 FR 29073, 29075 (June 7, 1996) and the Fresh Cut Flowers, 61 FR 42833, 42853, arguing that substantial intertwining of operations is not a necessary precondition to collapsing where evidence on the other collapsing factors is sufficient to indicate a significant possibility of price manipulation and where determinations are made based on the totality of the circumstances. Secondly, petitioners refer again to Fresh Cut Flowers in arguing that the lack of current intertwining of operations does not establish that there is no potential that such will occur. They believe that the circumstances of this case indicate the significant potential for such intertwining to occur.

Petitioners contest respondents' assertion that USIMINAS and COSIPA were improperly collapsed for this investigation. Citing the Department's findings in the U.S. Department of Commerce Internal Memorandum from R. Weible for J. Spetrini, Case No. A–351–828 (December 22, 1998) (''Collapsing Memorandum''), petitioners state that the first prong of the collapsing test, that both companies' facilities and products were similar enough so as not to require substantial retooling in order to restructure manufacturing priorities, had been met. Regarding the second prong of the test, in which the Department examines the potential for price manipulation or production, petitioners state that there are three relevant factors the Department considers as listed in the Collapsing Memorandum. They note that all three factors need not be present in order to find significant potential for price or production manipulation. Petitioners point out that respondents conceded that the first two factors, a high level of common ownership and common employees or board members, are present in this case. They also refer to the Collapsing Memorandum, in which the Department found that the third criterion of intertwined operations was met by virtue of transferred technology. Petitioners reiterate that even though all three factors need not be present, the Department's findings and the record show that all three are present and sufficiently demonstrate the significant potential for price or production manipulation.

Department's Position: The Department agrees with petitioners. On December 22, 1998, the Department outlined in its Collapsing Memorandum referenced above its decision to collapse USIMINAS and COSIPA. For this final determination, we have continued to collapse these two companies. Because the Department is concerned with price and cost manipulation, it must ensure that reviewed companies ''constitute

separate manufacturers or exporters for purposes of the dumping law.'' See, Final Determination of Sales at Less than Fair Value; Certain Granite Products from Spain, 53 FR 24335, 24337 (June 28, 1988). Where there is evidence indicating a significant potential for the manipulation of price and production, the Department will ''collapse'' related companies; that is, the Department will treat the companies as one entity for purposes of calculating the dumping margin.

Before considering whether companies should be collapsed, the Department must first find that the companies in question are affiliated within the meaning of section 771(33) of the Act. As outlined in the Department's Collapsing Memorandum, USIMINAS and COSIPA meet the criteria for affiliation which is undisputed by respondents. Under § 351.401(f)(1) of the Department's regulations, to determine whether to collapse, we examine whether the affiliated producers have similar production facilities, such that retooling would not be required to shift production from one company to another, and if there is significant potential for the manipulation of prices or production. USIMINAS and COSIPA meet the first prong of this test since they are both fully integrated producers of steel offering a similar range of products. See the Collapsing Memorandum for further discussion of this issue. In examining the potential for the manipulation of price or production, the Department considers the following: (1) The level of common ownership; (2) the existence of interlocking officers or directors; and (3) the existence of intertwined operations. The Department notes that section 351.401(f)(2) states that all three factors need not be present to find a significant potential for the manipulation of price or production.

Since USIMINAS is the largest single shareholder in COSIPA, owning 49.79% of its voting stock, the level of common ownership is significant. USIMINAS' Chairman of the Board (or Administrative Council) and USIMINAS' Director both serve on COSIPA's board of directors. See COSIPA Verification Exhibit 1 at 7 and USIMINAS Verification Exhibit 2 at 6. Regarding intertwined operations, as noted in the Collapsing Memorandum, Brazil's Securities Commission reports that USIMINAS has supplied COSIPA with technology. USIMINAS and COSIPA, together with CSN, also joined in a consortium to buy a controlling interest in MRS Logistica, a rail transport company. Additionally, USIMINAS, COSIPA, and CSN cooperate in the buying of imported coal.

Even if the degree of intertwined operations between USIMINAS and COSIPA is insufficient by itself to find a potential for the manipulation of prices or production, we rely on the totality of the circumstances in deciding this issue. See Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Product, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan, 58 FR 37154, 37159 (July 9, 1993), (Japanese Steel). The Department finds that the preponderance of evidence on the record indicates a significant potential for USIMINAS and COSIPA to manipulate prices or production. Since the criteria outlined in § 351.401(f)(1) of the Department's regulations have been met, the Department is continuing to collapse USIMINAS and COSIPA in this final determination.

Comment 18: Downstream Sales/Level of Trade. Petitioners state that due to the Department's inability to verify downstream sales data, facts available should be applied for the final determination. Petitioners recall that in the Preliminary Determination, the Department used facts available because the reported downstream sales data was incomplete and not useable. Petitioners state that problems with the verification of downstream data (*e.g.*, the Department was unable to verify quantity and value for the downstream companies, USIMINAS was unable to provide information requested by the verifiers regarding the completeness of sales through one of the downstream companies, and the Department's inability to verify the sales process of some downstream companies) necessitate the use of facts available. Petitioners also maintain that the Department's inability to verify the respondents' LOT claims make it impossible to determine if different levels of trade exist. Petitioners state that because of these problems, the Department must resort to facts available. As facts available, the petitioners recommend that the Department apply the same facts available methodology that was applied in the Preliminary Determination.

Respondents believe that the Department inaccurately portrayed the fact that the Rio Negro was not verified by making the statement, ''USIMINAS said it preferred to review other topics instead.'' They argue that a more accurate representation is that the Department's verification methods prevented respondents from presenting all information requested in the outline in the manner desired by the Department. These methods included spending a ''full day and a half reviewing USIMINAS' corporate structure and price fixing allegations,'' a full day reviewing USIMINAS' other downstream affiliate, Fasal, and not following the recommendation in Chapter 13 of its Antidumping Manual on setting verification priorities. Moreover, respondents suggested that the verification of Rio Negro take place at COSIPA's offices because USIMINAS and COSIPA were collapsed for this investigation, because it would save time at USIMINAS, and because Rio Negro's facilities were closer to COSIPA. For all of these reasons, respondents made clear that it preferred to move on to topics other than Rio Negro.

Respondents maintain that the petitioners overstate claims that the Department's verification reports note several flaws and problems with the USIMINAS and COSIPA verifications. Respondents state that petitioners focus too much emphasis on respondents' downstream sales data, and that petitioners misquote portions of the verification reports. Respondents state that many of the flaws pointed out by petitioners are not flaws, but rather items that the Department was not able to verify because of time constraints.

Respondents state that the Department should disregard petitioners calls for the use of facts available in lieu of respondents' downstream sales data. While the respondents agree that the Department officials were unable to review much of the affiliates' downstream sales data, they state that there was not enough time allotted to the verification to allow for the review of the downstream data. Respondents maintain that it would be incorrect for the Department to resort to facts available based on the fact that all downstream sales data were not verified. Respondents have maintained throughout the proceeding that the Department should not use downstream data in calculating margins since these sales account for a small percentage of the respondents' home market sales, are physically different products, and are made at a different LOT. Respondents also note that it was very difficult for the companies to gather the downstream data as requested by the Department. Respondents maintain that based on the facts listed above, the Department should simply disregard downstream sales. Respondents state that if the Department does not choose to disregard these sales, facts available should not be used. Rather, respondents suggest the Department should use the

downstream information reported because the downstream companies provided this information to the best of their abilities. Respondents state that section 782 of the Act provides that the Department should not disregard the information submitted by an interested party if it has acted to the best if its ability, and that the Department should take into consideration any difficulties experienced by interested parties in providing information to the Department.

Department's Position: The Department agrees in part with both petitioners and respondents. At verification, the Department requested to cover LOT, but respondents indicated they preferred to move on to other topics. We repeatedly asked to return to this issue, but were unsuccessful. Because respondents showed no cooperation in verifying this topic and the burden is on respondents to support all LOT claims, we are not making an LOT adjustment. See Cold-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review, 63 FR 13205, 13206 (March 18, 1998) (''the burden is on a respondent to demonstrate that its categorizations of LOT are correct.'')

The Department was also unable to verify most issues regarding the affiliated downstream companies. We were unable to verify quantity and value for any downstream entity. We were only able to verify portions of one sales trace and product characteristics for one downstream company. There were many variables for this sales trace that we could not verify. Therefore, pursuant to section 776(a)(2)(D) of the Act, we must us the facts available. Respondents suggest that the verification of downstream companies was burdensome, but upon receiving the verification outline, they did not indicate that they were unable to comply with this section. See section 782(c)(1) of the Act. The Department made repeated attempts to verify downstream sales information, but respondents declined to cover these topics. For these reasons we find that respondents failed to cooperate to the best of their abilities and pursuant to section 776(b) of the Act, the Department is applying adverse facts available to downstream sales.

As adverse facts available, the Department used the downstream data reported by USIMINAS and COSIPA for CONNUM matching purposes only. In cases in which the best match is to a downstream home market sale, we applied as adverse facts available the highest calculated margin for any USIMINAS/COSIPA CONNUM. The Department finds that this margin is indicative of USIMINAS/COSIPA's customary selling practices and is rationally related to the transactions to which the adverse facts available are being applied.

The approach proposed by petitioners—using only identical matches at the same LOT—is not appropriate for several reasons. First, as noted above, because respondent did not support its claims for multiple LOTs, we are determining there is a single LOT for all U.S. and home market sales for this final determination. Second, we are able to calculate difference in merchandise adjustments for this final determination, because the deficiencies in the cost data at the time of the preliminary determination have been subsequently remedied.

Comment 19: Date of Sale. Petitioners assert that the verifications of USIMINAS and COSIPA establish that documents issued long before the commercial invoice memorialize the agreed terms of sale. USIMINAS sends the customer an export contract which sets out the general terms of sale, including price and quantity. The attached order confirmation specifies quantity, price, tolerances, order date, and expected delivery date. Similarly, COSIPA's export contract specifies the estimated delivery time, sales conditions, payment terms, and the date of issuance. Attachments to this document specify dimensions, price, quantity, and tolerances. See USIMINAS'' Sales Verification Report, p. 15 and COSIPA's Sales Verification Report, p.10.

Petitioners maintain that USIMINAS'' and COSIPA's shipment data likewise indicate no change in material terms which invalidate order confirmation or export contract date as the date of sale. In the great majority of instances, petitioners argue that shipments were within contract tolerances. Even where quantity tolerances are not met, petitioners note that the price was unaffected. Petitioners conclude that invoice date is not acceptable as the date of sale for USIMINAS and COSIPA. Therefore, the Department should use the order confirmation date, or alternatively, the export contract date, which is available for most U.S. sales.

Respondents counter that the Department was correct in using the date of nota fiscal as the date of sale for home market sales and relying on the commercial invoice date for USIMINAS and the nota fiscal date for COSIPA in its Preliminary Determination. According to USIMINAS/COSIPA, the Department's regulations make clear that the ''invoice'' date is the preferred sale date because it simplifies reporting and verification of information and accommodates changes that often occur up to the invoice date. In support of this argument, they cite the Department's Antidumping Regulations, 62 FR 27296, 27348 (May 19, 1997). Moreover, USIMINAS and COSIPA state that their sales terms are not set with finality until the invoice date. Respondents assert that Department verifiers were unable to locate any retrievable date to use as the ''order'' date. (See USIMINAS'' Sales Verification Report, pp. 12–16.) Therefore, the Department should continue to use the invoice date as the date of sale for the final determination.

Respondents also raise several issues related to the Department's methodology in verifying date of sale and the discussion of the issue in the USIMINAS and COSIPA verification reports. They dispute the Department's phrasing that ''it was not possible to verify USIMINAS'' order dates due to the apparent unavailability of certain documents.'' They believe that a more accurate statement would have been that respondents ''do not reliably keep order confirmation date information in their normal course of business.'' Respondents assert that they made clear in prior submissions that they could not provide this information because they do not reliably keep such records in their normal course of business. They also state that the Department spent significant time at verification searching for order date information and that the Department's verification report supports their claim that these documents are elusive, not that they are not verified.

USIMINAS points out that while the Department did not receive alteration history screens for all sales traces as requested, it did receive printouts of this document for ''nearly all'' of the sales traces. It adds that copies of the screens were presented on the last day of COSIPA's verification, but the Department did not choose to take all of them. Additionally, USIMINAS states that the computer screens themselves, if not actual copies, were available to the verifiers. Respondents argue that the Department spent ''considerable time reviewing information that appears to be more relevant to costs than to sales.'' They find it conceivable that the Department originally sought this information to address the order date issue, but believe that the Department's focus was more on production and cost information. Respondents cite as evidence of this that the Department insisted on visiting the control tower, witnessing the types of computer

reports used to generate production reports, and later meeting with production planning staff.

Respondents believe that the amount of time devoted to the order confirmation and date of sale issues and the level of detail sought by the Department limited the amount of time that could be devoted to other topics. Respondents note the number of pages written by the Department about the topic and comment that the discussions included details about their price circulars, location and responsibilities of each sales office, the method by which the mill is contacted, time and manner of computer record keeping, and the frequency of internal sales meetings. Respondents argue that despite their indications that order confirmation information was not stored in the computers in any organized fashion, the Department spent considerable time at both USIMINAS and COSIPA learning more about the order confirmation process, reviewing computer records, and asking for production records.

Department's Position: The Department disagrees in part with both petitioners and the respondents. The date of sale is the date on which all substantive terms of sale are agreed upon by the parties, including the price, quantity, delivery and payment terms. In accordance with 19 CFR 351.401(i), the date of sale will normally be the date of the invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, unless satisfactory evidence is presented that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. For example, in Final Determination of Sales at Less Than Fair Value; Polyvinyl Alcohol from Taiwan, 61 FR 14067 (March 29, 1996), the Department used the date of the purchase order as the date of sale. In addition, it is the Department's practice not to use a date of sale that falls after the shipment of the product from the factory for delivery, *e.g.* an ex-port shipment date. This practice is dictated by the fact that a customer's price and quantity would rarely, if ever, change after a delivery has commenced.

The Department agrees with the respondents that the nota fiscal is the correct date of sale in the home market. The nota fiscal represents the first point at which USIMINAS'' and COSIPA's records can establish that the material terms of sale are set, it is issued as products leave the factory, and it serves as the invoice. For this final determination, the Department will continue to use the nota fiscal as the date of sale in the home market for both USIMINAS and COSIPA.

For COSIPA's U.S. date of sale, the Department agrees with the respondent that the commercial invoice represents the correct date of sale. The terms of sale are set at this point, and the commercial invoice is generally issued at the same time that the subject merchandise leaves COSIPA's factory. See COSIPA's Sales Verification Report, p. 11.

For USIMINAS, the Department disagrees with the respondent that the commercial invoice represents the correct date of sale in the U.S. market. The commercial invoice is issued when the merchandise is shipped from the port. As noted below, we explicitly instructed USIMINAS that date of sale may not be after the merchandise was shipped from the factory. Because the terms of sale are set at the issuance of the nota fiscal (as acknowledged by USIMINAS on page 32 of the November 16, 1998 Section A Response and verified by the Department) and the nota fiscal represents an ex-factory, not ex-port shipment date, the Department finds that nota fiscal is the correct U.S. date of sale.

The Department notes that petitioners argue that order confirmation is the correct date of sale in both the home and U.S. markets. However, as indicated in USIMINAS' Sales Verification Report at 15 and Exhibit 7 of the January 19, 1999 Supplemental Section A Response, there is evidence of significant change in the terms of sale, specifically quantities exceeding tolerances, between the issuance of the order confirmation and the nota fiscal. The Department was also able to verify respondent claims that they are unable to reliably report order confirmation as their U.S. or home market date of sale. See USIMINAS Sales Verification Report at 18 and COSIPA Sales Verification Report at 14. Since the record does not establish that order confirmation best reflects the date at which the terms of sale are set, and it is difficult or impossible for respondents to report this date, the Department does not consider order confirmation the appropriate date of sale.

In reference to USIMINAS' U.S. date of sale, the Department specifically requested in its supplemental questionnaire to USIMINAS' Section A Response (December 4, 1998) that USIMINAS report:

> all sales for which ''the order confirmation date (or comparable date if data on order confirmation does not exist) was within the POI. If you believe another date is a more appropriate date of sale, you should provide all sales during the POI based on order confirmation date, using alternative production or accounting records, and the other date (*provided the other date is not after the merchandise is shipped from the plant*). (emphasis added)

In our January 4, 1999 Supplemental Questionnaire to Sections BCD, we repeated this question and added:

> If USIMINAS chooses not to report order confirmation date, and we determine at verification that this information is available and is a more appropriate date of sale than that reported, USIMINAS may be subject to the use of adverse facts available pursuant to section 776 of our statute.

USIMINAS, however, continued to report the commercial invoice date as the date of sale even though this date is after shipment from the factory, and it did not report all sales during the POI based on an ex-factory date of sale. Since USIMINAS failed to follow explicit instructions in the questionnaire, or to contact the Department to determine whether an alternate reporting basis was appropriate, we find that USIMINAS did not cooperate to the best of its ability. Therefore, we are applying adverse facts available for the sales that were not reported based on an ex-factory date of sale. For the unreported sales we estimated the average number of days between the ex-factory shipment date and the commercial invoice date, using USIMINAS' submitted data. We then estimated the value of USIMINAS' unreported sales for the estimated amount of time using the data USIMINAS submitted for purposes of our critical circumstances analysis. See USIMINAS/COSIPA's Analysis Memo. We applied the highest margin calculated for any CONNUM to this value. The Department finds that this margin is indicative of USIMINAS/COSIPA's customary selling practices and is rationally related to the transactions to which the adverse facts available are being applied.

In reference to respondents' general comments regarding date of sale issues discussed in the Department's verification reports, the Department did seek information on production in order to understand the order confirmation process. Both respondents and petitioners in this investigation have spent considerable time analyzing and writing about date of sale. Date of sale is an important issue in this investigation and the amount of time spent reviewing the topic was merited and within Departmental practices.

Comment 20: Contracts with affiliated suppliers—USIMINAS. The respondent believes that the statement, ''USIMINAS did not provide any contracts with

affiliated suppliers'' should have been further explained. USIMINAS argues that its rail contracts were not presented because they do not exist. They further assert that the Department acknowledged this by saying, ''USIMINAS stated that Rios Unidos does not have exclusive agreements with any of these companies'' and ''USIMINAS said that CVRD negotiates and sells separately to its customers and they do not have any special buying arrangements together with CSN and COSIPA.''

Petitioners believe that the Department's conclusion that USIMINAS failed to provide the requested documentation was correct. Petitioners argue that statements asserting that such contracts do not exist do not constitute verification. Furthermore, they note that the lack of ''exclusive agreements'' does not demonstrate that USIMINAS had no contracts whatsoever with affiliated suppliers. Petitioners believe it is also unclear how the stated absence of a ''special buying arrangement'' between CVRD, CSN, and COSIPA indicates that USIMINAS had no contract with CVRD. Petitioners maintain that because USIMINAS did not provide the requested contracts with affiliated suppliers, the Department should make an adverse inference with respect to the costs of materials purchased from affiliated suppliers such as iron ore and coal. Petitioners state that the respondent's cost of production should be increased as facts available.

Department's Position: The two statements about USIMINAS' contracts with Rios Unidos and CVRD were taken out of context. These sentences referred to contractual agreements between all three of the respondents (CSN, COSIPA, USIMINAS) and affiliated suppliers, and not to individual contracts USIMINAS had with affiliated suppliers. Furthermore, the fact that USIMINAS asserted that it did not have any special or exclusive buying relationship in concert with all respondents or individually is not the same thing as saying that it had no contract with its affiliated suppliers. See Comments 49 and 50 for a complete discussion of the costs of iron ore and coal.

Comment 21: Fasal's Commissions—USIMINAS. Petitioners state that since the Department was not able to verify the reported commission for Fasal's (one of USIMINAS/COSIPA's affiliated resellers) home market sales, the Department should deny the commission adjustment as facts available.

Department's Position: Because the Department was unable to verify downstream sales, including Fasal's sales, we have based the margin for all U.S. sales matching to any of respondent's downstream sales solely on adverse facts available. Therefore, we need not reach the question of commission adjustments. See Comment 18 on Downstream Sales/Level of Trade for a complete discussion of the downstream sales issue.

Comment 22: Fasal's Inventory Carrying Costs—USIMINAS. Petitioners state that the Department's inability to verify Fasal's reported inventory carrying cost necessitates that the Department apply adverse facts available.

Department's Position: We are not using inventory carrying costs in our analysis because in this investigation, we are not analyzing CEP sales and do not have to calculate a CEP offset. Additionally, we are not calculating a commission offset. Therefore, this issue is moot.

Comment 23: Theoretical weight sales—USIMINAS. The respondent disagrees with the Department's conclusion that the gross unit price calculations for a small number of sales made on a theoretical weight basis is unverified. USIMINAS does not dispute that it made a clerical error in its calculation and reporting of these sales, and that this error was discovered during verification, not at the beginning of it. However USIMINAS states that it provided the Department with a reconciliation worksheet correcting the prices and quantities. The respondent points out that the impact of the error is minuscule, the Department is emphasizing a clerical error, and USIMINAS found the error in a voluntary attempt to revise unusual transactions in its database.

Petitioners argue that all U.S. sales made on a theoretical weight basis had incorrectly calculated gross unit prices. Petitioners state that theoretical weight sales were only made in the United States. Petitioners feel that the Department should apply facts available to all U.S. sales made on a theoretical weight basis by assigning the highest margin alleged in the petition, 85.71%.

Department's Position: Regarding USIMINAS' U.S. sales made on a theoretical weight basis, we agree with respondents. At verification, USIMINAS realized that a clerical error had been made in the computation of gross unit prices on this small number of sales. USIMINAS presented the Department with a list of revised gross unit prices during the verification. Given the nature and extent of the error, the Department accepted these revised prices and has used them in the final calculations. See USIMINAS' Sales Verification Report, Exhibit 31, and USIMINAS/COSIPA's Analysis Memo.

Comment 24: Indirect Selling Expenses—USIMINAS. USIMINAS believes that the Department's statement that it was unable to verify indirect selling expenses for a certain transaction because of mistakes discovered at verification is a mischaracterization that is contradicted by the Department's report. It argues that this shows the Department does not realize this is an allocated expense which is applied across the board to all sales. Respondents also state that the Department verified indirect selling expenses on page 58 of the verification report.

Petitioners state that based on errors in the calculation of U.S. indirect selling expenses found at verification, the Department should apply as facts available the highest indirect selling expense amount reported on the USIMINAS U.S. or home market sales databases.

Respondents dispute petitioners' proposal for facts available and state that a reasonable facts available approach would be to use COSIPA's indirect selling expenses for USIMINAS since the two companies are collapsed for the purpose of this investigation.

Department's Position: We are not using indirect selling expenses in our analysis, because in this investigation, we are not analyzing CEP sales and do not have to calculate a CEP offset. Additionally, we are not calculating a commission offset. Therefore, this issue is moot.

Comment 25: Home Market Inland Freight—USIMINAS. USIMINAS believes the Department made a false statement in saying that USIMINAS did not have anything prepared to prove that transactions with affiliated rail companies were at arm's length. The respondent argues that the Department contradicts this assertion with two statements: ''USIMINAS stated that CVRD and MRS have no preferential arrangement with it even though they are affiliated parties'' and ''USIMINAS also stated that it is difficult to prove this issue because some of the rail companies provide transportation for routes that no other rail company services.'' With these statements, USIMINAS feels it explained this situation and the Department's findings were false.

Petitioners assert that USIMINAS' statements made at verification do not constitute demonstration of a claim. They further note that if verbal

explanations rather than concrete documentation were all that was required, there would be no point in conducting verifications.

Petitioners maintain that because the Department was not presented with requested proof that freight transactions with affiliated trucking or rail companies were made at arm's length, the Department should deny the inland freight adjustment for all home market sales.

Respondents reply that petitioners are incorrect and that USIMINAS has no contracts with these affiliated companies and that USIMINAS staff presented oral testimony that the company does not receive preferential treatment from affiliated transportation companies. Respondents state that the Department should reject petitioners' facts available suggestion because it is excessively punitory. Furthermore, respondents claim that since the Department verified the arm's length nature of COSIPA's affiliated freight transactions and since the Department has collapsed USIMINAS and COSIPA, the Department should assume that USIMINAS' affiliated freight transactions were also made at arm's length. Respondents suggest that should the Department reject USIMINAS' reported freight expenses and apply facts available, COSIPA's freight rates should be used as surrogate values for USIMINAS' freight expenses.

Department's Position: The Department agrees in part with petitioners. USIMINAS' assertion that it has no preferential arrangements with CVRD and MRS does not constitute proof that it has no arrangement or contract with these affiliated rail companies or that transactions were at arm's length. As noted in USIMINAS' Sales Verification Report, p. 50, we requested information from USIMINAS showing that its rail and trucking freight transactions were at arm's length. We reminded respondents that an alternative way to demonstrate arm's length transactions to affiliated companies is to show that the transactions were above those companies' costs or that the companies were profitable. Nevertheless, USIMINAS had nothing prepared to demonstrate that the freight charges were at arm's length. After several attempts to verify the arm's length nature of USIMINAS' transactions with affiliated transportation companies, we determined that the USIMINAS claim that these sales are made at arm's length had not been substantiated or verified.

USIMINAS made no attempt to establish that its inland freight transactions were at arm's length, despite the Department's repeated attempts to verify this issue. Further, the Department offered alternative solutions for verifying this topic in accordance with section 782(c)(2), but USIMINAS made no attempt to provide verifying information. Therefore, the Department is applying adverse facts available to USIMINAS' home market inland freight. Accordingly, for sales in which USIMINAS incurred a freight expense, the Department used the lowest value for inland freight reported by USIMINAS. Because we are already making an adverse assumption in assigning inland freight expenses, we are not making an additional adjustment for VAT taxes. See USIMINAS/COSIPA's Analysis Memo.

Comment 26: U.S. Inland Freight—USIMINAS. Petitioners maintain that since the Department was only able to verify the reported inland freight for one U.S. sale, as facts available, the Department should apply to all U.S. sales the highest reported inland freight expense.

Respondents state that petitioners' call for facts available for the inland freight value associated with USIMINAS' U.S. sales should be rejected. Respondents claim that petitioners acknowledge in their case brief that the Department verified USIMINAS' inland freight adjustments, and therefore, the Department should use USIMINAS' reported U.S. inland freight expense.

Department's Position: We agree with petitioners that adverse facts available should be applied to USIMINAS' reported U.S. inland freight expenses. Respondents mis-characterize petitioners' brief by stating that the petitioners asserted that the Department was able to verify this adjustment, when in fact, the brief suggests that the Department was only able to review the U.S. inland freight adjustment for one observation, and the reported amount for that observation did not reconcile to company records. We note that it is not necessary for the Department to verify more than one example of an expense to consider the expense to be verified. See Monsanto v. United States. However, the reported expense for the sale we examined did not agree with the actual expense. (See Verification Exhibit 36). Therefore, we have rejected USIMINAS' inland freight adjustments due to failure of this data to verify and instead have used the facts available, pursuant to section 776(a)(2)(D) of the Act. The unexplained failure of this data to verify demonstrates that USIMINAS failed to cooperate to the best of its ability in responding to our request for inland freight data. Therefore, we are applying as adverse facts available USIMINAS' highest reported amount for inland freight. See USIMINAS/COSIPA's Analysis Memo.

Comment 27: Warehousing Expense—USIMINAS. Petitioners state that since the Department was unable to verify USIMINAS' U.S. warehousing expenses, facts available should be applied. Petitioners argue that since USIMINAS claims to have reported these expenses with the indirect selling expenses that as adverse facts available, the Department should treat all of USIMINAS' reported indirect selling expenses as direct selling expenses.

Department's Position: We disagree with petitioners. Respondent consistently told the Department that it was unable to segregate warehousing expenses from its indirect selling expenses and that it had reported warehousing as part of these expenses. See USIMINAS' Section B response at B–41 and Section C response at C–38 (December 21, 1998). Therefore, we have accepted respondent's data, as reported, and are not reclassifying respondent's indirect selling expenses as direct selling expenses for this final determination.

Comment 28: Inland Insurance—USIMINAS. In referring to inland insurance for home market sales, petitioners state that since the Department was not able to completely verify the reported amounts, for all home market sales, the inland insurance adjustment should be denied as adverse facts available.

Department's Position: We disagree with petitioners that adverse facts available should be applied to USIMINAS' reported inland insurance expenses. At verification, the Department verified USIMINAS' nominal rate, discount rate, and reported rate. We were satisfied with the verification of USIMINAS' reported expense. In an April 22, 1999 letter to respondents, we requested that USIMINAS correct the reported inland insurance amount to include IOF taxes and fees. We accept the reported amount and adjusted for the inland insurance amount accordingly.

Comment 29: Billing Adjustments—USIMINAS. Petitioners maintain that USIMINAS incorrectly included canceled sales (sales in which the billing adjustment is equal to the gross unit price) within the billing adjustment field of its home market database. Petitioners state that these sales should be removed. Petitioners also reference an error discovered at verification in which the reported billing adjustment for observation 52003 was incorrectly reported. Petitioners state that the

adjustment for this transaction should be denied.

Department's Position: We agree with petitioners that canceled sales should be removed from the database and have done so for this final determination. We also agree that there was an error with respect to the observation cited by petitioners and the billing adjustment should be denied for this sale.

Comment 30: Warranty Expense—USIMINAS. Petitioners maintain that because the Department was unable to verify USIMINAS' warranty expense, the Department should apply adverse facts available and deny the adjustment in its entirety.

Department's Position: We determine that adverse facts available should be applied to USIMINAS'' reported warranty expense. As noted in USIMINAS'' Sales Verification Report, at 57, we requested to verify warranty expenses several times but USIMINAS asked to skip this topic. Thus, despite our repeated attempts to verify this data, we were unable to do so. By declining our request to verify warranty expenses, USIMINAS did not cooperate to the best of its ability. Therefore, as adverse facts available, we are denying the warranty expense adjustment for all of USIMINAS'' home market sales. Since USIMINAS did not report any warranty expenses for U.S. sales, we are not making any changes to these sales. See USIMINAS/COSIPA's Analysis Memo.

Comment 31: Packing Expenses—USIMINAS. Petitioners state that since the verification of U.S. and home market packing expenses was not completed, the Department should use the highest reported packing expense on the USIMINAS U.S. sales database as the packing adjustment for all U.S. sales. Petitioners then state that for home market sales, the packing adjustment should be set equal to zero.

Respondents disagree with petitioners suggestions for facts available with regard to USIMINAS'' packing expenses. Respondents state that the Department should accept USIMINAS'' reported packing expenses. Respondents maintain that USIMINAS presented information to Department officials at the mill, and that Department staff preferred to return to the head office and after they returned, discovered that they had more questions about the packing expense. Respondents further state that USIMINAS made the packing expense information available to the cost verification team, but that the cost verifiers elected not to examine the documents. USIMINAS maintains that since USIMINAS presented the packing information to the Department, and since verifiers elected not to review the information, the Department should consider the packing expenses verified for USIMINAS.

Department's Position: The Department disagrees with petitioners that facts available should be applied to USIMINAS'' reported packing expenses. Respondent presented information about packing to the verification team at the mill and, subsequent to leaving the mill, the team asked for additional information. We were not able to review this additional information, and requested that the cost verification team review this issue. Due to time constraints, the cost verification team was not able to verify the outstanding questions regarding packing because the Department determined that other issues were more important to verify in the remaining time period. We are therefore accepting USIMINAS'' submitted packing information in this final determination.

Comment 32: Inland Insurance—COSIPA. Petitioners state that, due to errors in the verification of COSIPA's inland insurance, the Department should apply adverse facts available and not make an adjustment for home market inland insurance.

Department's Position: The Department disagrees with petitioners that adverse facts available should be applied to COSIPA's reported inland insurance expenses. At verification, we verified COSIPA's nominal rate, discount rate and reported rate. In an April 22, 1999 letter to respondents, we requested that COSIPA correct the reported inland insurance amount to include certain taxes and fees. We accept the reported amount and adjusted for the inland insurance amount accordingly.

Comment 33: IPI Tax—COSIPA. Petitioners state that due to problems with the verification of the IPI tax, as adverse facts available, the reported tax amounts should be revised downward to reflect the actual amounts paid to the federal government.

Department's Position: We disagree with petitioners that adverse facts available should be applied to COSIPA's reported IPI tax. Although the verification did reveal a clerical error on the part of COSIPA in calculating the IPI tax paid to the government for one month of the period of investigation, we do not believe that this error justifies the use of adverse facts available. See COSIPA's Sales Verification Report at 31. The Department is generally satisfied with the verification of the IPI tax. We accept the reported amount and adjusted for the tax accordingly.

Comment 34: Home Market Inland Freight—COSIPA. Petitioners maintain that because COSIPA failed to demonstrate that freight services provided by affiliated parties were made at arm's length prices, the inland freight adjustment should be denied for home market transactions, and for U.S. transactions, the highest reported expense should be applied as domestic inland freight.

Respondents state that COSIPA established the arm's length nature of its transactions with affiliated transportation companies. Respondents state that the Department should reject petitioners' facts available suggestion because it is excessively punitory.

Department's Position: The Department agrees in part with petitioners. The respondent was able to demonstrate that transactions with one of its two affiliated trucking companies were at arm's length. See COSIPA's Sales Verification Report at 39. However, despite the Department's repeated attempts to verify the arm's length nature of transactions with affiliated rail companies including offering alternative solutions for verifying this topic, the respondent failed to cooperate with our verification efforts. Therefore, in accordance with section 782(c)(2), the Department is applying adverse facts available to COSIPA's home market inland freight. Accordingly, for sales in which COSIPA incurred a freight expense, the Department used the lowest value for inland freight reported by COSIPA. Because we are already making an adverse assumption in assigning inland freight expenses, we are not making an additional adjustment for VAT taxes. See USIMINAS/COSIPA's Analysis Memo.

Comment 35: Brokerage and Handling—COSIPA: Petitioners state that because the Department was unable to verify the reported brokerage and handling expenses, the reported amount should be doubled as facts available for all U.S. sales.

Respondents dispute petitioners' interpretation of COSIPA's Sales Verification Report. Respondents interpret the Department's inability to verify the reported brokerage and handling expenses as an indication that the Department simply ran out of time and was therefore unable to review the information. Respondents claim that the Department should consider COSIPA's reported brokerage and handling expenses verified. However, respondents do suggest that the Department use USIMINAS' verified brokerage and handling expenses as facts available for COSIPA in the event that the Department does not consider the COSIPA expense to be verified.

Department's Position: Since the Department repeatedly attempted to verify brokerage and handling, COSIPA declined to review this item within the time frame allotted for verification (see COSIPA's Sales Verification Report at 41), and there is no indication that the reported amounts are accurate, the Department is applying adverse facts available to COSIPA's reported U.S. brokerage and handling. As adverse facts available, we are using the highest reported brokerage and handling amount for all U.S. sales. See USIMINAS/COSIPA's Analysis Memo.

Comment 36: Home Market Credit—COSIPA. Petitioners maintain that due to the Department's inability to verify the reported home market credit expense, as adverse facts available, it should deny the adjustment.

Department's Position: We disagree with petitioners that adverse facts available should be applied to COSIPA's reported home market credit expense. As is discussed in the verification report, COSIPA intended to calculate the reported credit expense using the same formula and interest rates as did USIMINAS; however, a clerical error was made by COSIPA when the expense was calculated, and the incorrect factors were input into the credit formula. The Department verified that USIMINAS correctly calculated its credit expense. Furthermore, the Department agrees with USIMINAS and COSIPA that the financing rates received by USIMINAS would be much more conservative than those received by COSIPA or any of the other downstream companies. This can be illustrated by the Brazilian publications of lending rates supplied to the Department by USIMINAS at verification. See USIMINAS' Sales Verification Report and Exhibits 23 and 43. Therefore, the Department recalculated COSIPA's home market credit expense by using the interest rates supplied by USIMINAS to correct for the clerical error discovered at verification. See USIMINAS/COSIPA's Analysis Memo.

Comment 37: Interest Revenue—COSIPA. Petitioners state that because COSIPA did not provide certain documentation at verification, the reported interest revenue (INTREV1H) is called into question, and as adverse facts available, the Department should apply the highest reported amount of interest revenue to all home market sales where interest revenue was reported.

Respondents state that the Department should disregard petitioners' call for facts available for this issue. Respondents' interpretation of the verification report is that the interest revenue amount reported in the INTREV1H field was verified. Respondents state that the verification report indicates that only the highest interest rate used to calculate interest revenue was not documented, and claim that this documentation was not provided because it was not requested.

Department's Position: We disagree with petitioners that adverse facts available should be applied to COSIPA's reported interest revenue expense. As is discussed in the verification report, COSIPA stated at the verification that the Department should not adjust for the second interest revenue field (INTREV2H) because COSIPA incorrectly reported the additional interest revenue field. COSIPA explained that the interest rate is negotiated on a sale by sale basis with customers depending on the risk factor associated with the customer. The verification report also notes that COSIPA was unable to provide documentation illustrating the highest interest revenue percentage that COSIPA might assign to any sale. However, the Department did not review any documentation or information that would alter its position in the Preliminary Determination. Based on information reviewed at COSIPA, we consider its reported interest revenue (INTREV1H) to be verified. See COSIPA's Sales Verification Report at 43. We are, therefore, accepting the reported amount for INTREV1H, setting INTREV2H equal to zero, and adjusting for interest revenue as appropriate. For sales with unreported payment dates, we are continuing as we did in the Preliminary Determination to calculate an imputed interest revenue expense for both COSIPA and USIMINAS. See USIMINAS/COSIPA's Analysis Memo.

Comment 38: Inventory Carrying Costs—COSIPA. Petitioners feel that because the Department was unable to verify the reported inventory carrying costs, which were only reported for home market sales, the Department should deny the adjustment as adverse facts available.

Department's Position: We are not using inventory carrying costs in our analysis, because in this investigation, we are not analyzing CEP sales and do not have to calculate a CEP offset. Additionally, we are not calculating a commission offset. Therefore, this issue is moot.

Comment 39: Indirect Selling Expenses—COSIPA. Petitioners state that COSIPA reported a higher unit value indirect selling expense than the amount discovered at verification. They therefore argue that the Department should apply as adverse facts available the reported indirect selling expenses discovered at the verification.

Department's Position: We are not using indirect selling expenses in our analysis, because in this investigation, we are not analyzing CEP sales and do not have to calculate a CEP offset. Additionally, we are not calculating a commission offset. Therefore, this issue is moot.

Comment 40: Packing—COSIPA. Petitioners maintain that since the reported packing expenses were unverified, the Department should apply facts available as follows: in the home market, the packing expense adjustment should be denied; in the U.S. market, the highest reported packing expense should be applied to all U.S. sales.

Respondents state that as facts available, the Department should employ USIMINAS' packing expenses to COSIPA on a CONNUM specific basis as a surrogate value. Respondents also state that for any COSIPA CONNUM that does not have a packing expense, the Department should use an average of USIMINAS packing expenses.

Department's Position: We agree with petitioners that adverse facts available should be applied to COSIPA's reported packing expenses. Since the Department repeatedly attempted to verify packing, COSIPA declined to review this item within the time frame allotted for verification (see COSIPA's Sales Verification Report at 45), and there is no indication that the reported amounts are accurate, the Department is applying adverse facts available to COSIPA's packing expenses. As adverse facts available, we are applying the highest reported packing amount to all U.S. sales, and we are denying the packing adjustment in the home market. See USIMINAS/COSIPA's Analysis Memo.

Comment 41: Corporate Structure. USIMINAS disagrees with the use of the phrase ''exercises control'' in the statements ''CVRD is the largest single shareholder in USIMINAS and exercises control in USIMINAS as such'' and ''Previ is the third largest shareholder in USIMINAS * * * and exercises control over USIMINAS by utilizing its voting share as a shareholder.'' Respondents believe that there is no factual evidence to support this language. Since USIMINAS' group of shareholders that vote as one block have 53% of the voting capital and CVRD and Previ have 23.14% and 15% respectively, respondents do not believe these companies can be said to ''exercise control'' over USIMINAS.

Department's Position: The Department does not believe that this clarification adds to or subtracts from its

determination regarding collapsing USIMINAS/COSIPA with CSN. See Comment 1 for a complete discussion of the collapsing issue .

Comment 42: U.S. Sales Processes for USIMINAS and COSIPA. USIMINAS states that the Department incorrectly referred to a U.S. company that buys the respondent's products from one of its customers as USIMINAS' customer. USIMINAS pointed out that its contractual relationship is with its own customer, not its customer's customer. Similarly, COSIPA believes that the Department was mistaken in saying that its product is shipped to COSIPA's contractual customer which is a company in the Cayman Islands that facilitates international transactions. COSIPA states that the Department did however correctly describe its U.S. sales process when it stated that ''such sales have 'two financial paths, a financial flow of documents and a physical flow of products.''

Department's Position: The Department agrees with respondents. We recognize that USIMINAS's contractual relationship is with its own customer, not its customers' customers. The Department also recognizes that COSIPA's products are not shipped to the Cayman Island company but wherever the contractual customer directs them to ship the products.

III. Cost Issues

CSN

Comment 43: Adjustments Identified in the Overall Cost Reconciliation. CSN argues that the Department should not adjust the company's reported COP and CV amounts to include the reconciling items shown in the cost reconciliation. Specifically, CSN states that the first reconciling item in question relates to the company's discovery of an overstatement of its inventory values in the normal course of business. This overstatement was found when the company switched to a new financial accounting system in 1997. According to CSN, the company did not reflect this adjustment in its cost accounting system until the new cost accounting systems became fully functional in 1999. Moreover, CSN claims that since the adjustment did not affect monthly POI cost or POI inventory levels it does not impact the reported costs. As for the second reconciling item in question, CSN states that this item relates to the total adjustment needed to reconcile the submitted costs to the costs of goods sold reported on the financial statements. According to the company, this reconciling item is negligible and does not cast doubt on the submitted costs. Moreover, the time and effort required to determine what this small amount represents is simply unreasonable in light of its insignificance. Therefore, CSN argues that no adjustment to the reported costs is necessary.

According to the petitioners, CSN has inappropriately excluded certain costs from the calculation of COP and CV even though they relate to the production of the subject merchandise. The petitioners argue that the Department normally requires respondents to include these types of reconciling items in the reported costs. To support their position, the petitioners cite the Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rod from France, 58 FR 68865, 68873 (December 29, 1993), in which the Department included similar reconciling items.

Department's Position: We agree with petitioners that we should include certain reconciling items in the calculation of COP and CV. As noted by CSN, the first reconciling item in question relates to a difference in production costs that exists between CSN's cost accounting system and financial accounting system. Specifically, the financial accounting system reflects a loss realized on missing raw materials while the cost accounting system does not. Thus, CSN's cost accounting system and financial accounting system generate different results due to this inventory adjustment. (For submission purposes, CSN relied on its cost accounting system to calculate the reported costs.) In such instances where the total costs reported in the cost accounting system differ from the total costs reported on the financial statements, we typically rely on the amounts reported on a company's audited financial statements prepared in accordance with generally accepted accounting principles (''GAAP''), provided that it does not result in distorted per-unit costs. In this instance, we do not find it unreasonable to include raw material write-offs in the reported costs. This practice has been upheld by the Court (see, FAG U.K. Ltd. v. United States, 945 F. Supp. 260, 271 (CIT 1996) (upholding the Department's reliance on a firm's expense as recorded on the firm's financial statements.) and Hercules, Inc. v. United States, 673 F. Supp. 454 (CIT 1987) (upholding the Department's reliance on COP information from the respondent's normal financial statements maintained in conformity with GAAP).

As for the second reconciling item, which relates to the unreconcilable difference that cannot be explained by CSN, we note that our normal practice is to include such items in the calculation of COP and CV unless respondent can identify and document why such amount does not relate to the merchandise under investigation. See, Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Taiwan, 64 FR 15493, 15498 (March 31, 1999). (The Department determined that the respondent should include the unreconciled difference between amounts in the accounting records and reported costs in reported costs.) In this case, CSN failed to do so.

Comment 44: Including Foreign Exchange Gains and Losses in SG&A and Interest Expense. The petitioners argue that CSN's exchange gains and losses related to accounts payable for the POI should be included in the company's SG&A expense rate calculation. Citing Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada, 64 FR 17324, 17334 (April 9, 1999) (Comment 16), petitioners assert that exchange gains and losses for accounts payable are related to purchases of raw materials, and that therefore, the Department normally includes them in the COP and CV calculations. In addition, petitioners argue that the Department should include all exchange losses that relate to financing transactions in CSN's financial expense rate calculation.

CSN, on the other hand, claims that exchange gains and losses that relate to both accounts payable and accounts receivable should be included in the company's G&A expense rate calculation. CSN realizes that the Department's normal practice is to include in COP net exchange gains and losses associated with accounts payable but not accounts receivable. However, it contends that the Department should reconsider this policy because no adjustment is ever made to gross unit prices under the antidumping law to account for exchange gains or losses on sales. As an alternative to reconsideration of including gains and losses associated with accounts receivables CSN claims that the Department should simply not adjust the company's price of inputs for exchange gains and losses incurred on accounts payable. Therefore, CSN requests that the Department use the G&A rate presented at verification, exclusive of exchange gains and losses related to accounts receivable and accounts payable, in calculating COP and CV. As for net exchange losses that relate to debt, CSN argues that it has included them in the calculation of

G&A. Thus, the Department would double-count this expense if it also included them in the calculation of the financial expense rate.

Department's Position: We disagree with respondent that exchange gains and losses related to accounts payable should not be included in CSN's G&A rate calculation. We also disagree with CSN that the calculation of COP and CV should reflect exchange gains and losses realized on accounts receivables. As the Department has repeatedly stated, our normal practice is to include a portion of the respondent's foreign-exchange gains and losses in the calculation of COP and CV. Specifically, it is our normal practice to distinguish between exchange gains and losses realized or incurred in connection with sales transactions and those associated with purchase transactions. (See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada, 64 FR 17324, 17334 (April 9, 1999) (Comment 16); Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber From the Republic of Korea (''ESBR''), 64 FR 14865, 14871 (March 29, 1999) (Comment 7); Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile, 63 FR 31411, 31430 (June 9, 1998) and Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago, 63 FR 9177, 9181 (February 24, 1998)). We normally include in the calculation of COP and CV the foreign-exchange gains and losses that result from the transactions related to a company's manufacturing activities. We do not consider exchange gains and losses from sales transactions to be related to the manufacturing activities of the company. Accordingly, for purposes of the final determination, we have included all foreign-exchange gains and losses in the G&A rate calculation, except for those related to accounts receivable and debt.

As for exchange gains and losses associated with financing transactions (*i.e.*, debt), we agree with the petitioners that the respondent should include them in the calculation of the financial expense rate. We normally include the foreign exchange gains and losses resulting from debt in the calculation of the financial expense rate (see, ESBR). For the final determination, we included the exchange gains and losses generated from financial transactions in the calculation of the financial expense rate and included the exchange gains and losses generated from accounts payable in the calculation of the G&A expense rate.

Comment 45: Unreported COP/CV Data. CSN states that the Department should not apply adverse facts available to those CONNUMS for which they did not provide COP data as of the date of the preliminary determination. CSN notes that it submitted the missing data to the Department following the preliminary determination, which the Department verified during the cost verification.

Petitioners had no comment on this issue.

Department's Position: We agree with CSN. For the preliminary determination, we applied adverse facts available for those CONNUMS for which CSN failed to provide a cost. Following the preliminary determination, CSN submitted revised cost files at our request. CSN filed these cost files on a timely basis and we verified the information contained in these files. As a result, we have used CSN's data.

Comment 46: Major Input Rule in Relation to Electricity Costs. CSN contends that the Department should not increase COP and CV for the difference between the energy costs it incurred and its affiliated suppliers total per-unit COP. According to CSN, the Department overlooked the fact that the company's affiliation to its energy supplier (*i.e.*, Light-Servicios de Electricidade S.A. (''Light'')) has no bearing on prices which Light charges to CSN because the Brazilian government prohibits Light from deviating from the regulated rates. Consequently, CSN claims that it is not reasonable for the Department to compare the transfer price with either the COP or the market price because of the regulatory aspect involved. CSN further notes that it is quite common throughout the world for electricity companies to charge a broad range of rates to different types of customers. For example, utility companies typically charge residential customers a higher rate than industrial users because they require additional lines and converters to supply the electricity. As for Light's reported COP, CSN claims that Light's overall profit recorded on its financial statement proves that the company is not losing money on larger users like CSN. Therefore, the Department should not rely on Light's COP in this instance. CSN also argues that the Department has the discretion to not apply the major input rule (i.e., higher of COP, market value, or transfer price) in this case. Thus, the company concludes that the Department should not apply the major input rule in this instance.

Petitioners state that the Department should revise CSN's reported electricity costs from transfer prices to the affiliate's average COP as done in the preliminary determination. In addition, the petitioners disagree with CSN's arguments that the Department should not adjust the cost for the following reasons. First, petitioners note that CSN's argument that it costs more to supply electricity to residential customers than to industrial users is not supported by the respondent's submitted data. Second, petitioners dispute that the company's overall profitability does not provide any support for the transfer prices to a specific entity. Finally, petitioners maintain that the statute does not specify that inputs which are charged at government rates are exempt from the major input rule (see section 773(f)(3) of the Act). Petitioners further argue that the Department only ignores the major input rule when it involves collapsed entities. Since CSN and Light are not collapsed entities, petitioners conclude that the Department should continue to apply the major input rule to CSN's electricity costs as it did in its preliminary determination.

Department's Position: We agree with respondent that it is inappropriate to apply the major input rule in this instance. The price charged by Light to CSN for electricity is set by the Brazilian government. Accordingly, we have not disregarded the transaction prices between CSN and Light because they are government regulated prices that cannot be affected by the relationship between the parties. As such, the regulated price charged to CSN by Light, which is the same rate charged to other companies in the same general industry, fairly represents market value.

USIMINAS/COSIPA

Comment 47: USIMINAS'' Reported Cost Methodology. Petitioners argue that the Department should resort to total facts available because USIMINAS failed to provide cost data from its normal cost accounting system. Petitioners claim that the system used to derive the cost data (*i.e.*, USIMINAS'' ''Dumping Matrix'') does not calculate costs on a more specific level than the normal cost accounting system. Petitioners assert that the Dumping Matrix results in a loss of product specificity because the system begins with the average slab cost for all grades and sizes of steel, whereas the normal cost accounting system calculates costs at a level of detail which accounts for these differences.

According to petitioners, there were significant differences between the submitted product-specific costs from the Dumping Matrix and product-specific costs from the normal cost

accounting system. Petitioners note that all the transformation costs for the selected products were lower in the Dumping matrix system compared to the costs in the normal cost accounting system. Petitioners argue that the total cost captured by the Dumping Matrix system for subject merchandise was less than the total cost captured in the normal cost accounting system, and that thus, the costs could not be tied to the financial accounting system. The petitioners further note that USIMINAS did not provide documentation for the revisions to its standard costs and therefore, the Department could not verify the reasonableness of the standards. Petitioners argue that since the Department was not able to verify these critical data, the Department has no choice but to apply facts available as mandated by the statute. Finally, petitioners argue that the Department is not obligated to accept an incorrect methodology and perpetuate a mistake because it was accepted in a prior review, as suggested by USIMINAS. Petitioners note that in Final Results of Antidumping Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 64 FR 12927, 12945–48 (March 16, 1999), the Department applied facts available to adjust for reporting errors despite the fact that the Department had accepted an identical cost system in every other case involving the respondent.

USIMINAS states that the Department should accept the costs as submitted and not resort to facts available. USIMINAS maintains that the cost verification report wrongly criticizes the integrity of the Dumping Matrix. USIMINAS states that the Department's concern about the Dumping Matrix methodology was first raised in the cost verification report. USIMINAS asserts that the cost verification report inaccurately says that ''the Dumping Matrix does not distinguish between grade, width, thickness and process.'' According to USIMINAS, once an adjustment factor is applied to the Dumping Matrix cost then these differences are accounted for.

USIMINAS believes that the Department's concerns about its reporting methodology are based solely on the results of the reconciliation which showed overall hot rolling costs were less in the Dumping Matrix than in the cost accounting system. USIMINAS claims that the cost verification report leaves the wrong impression that the identified methodological difference was for subject merchandise only. USIMINAS claims that the Department did not find that the global costs were wrong in the Dumping Matrix.

USIMINAS argues that it used the Dumping Matrix system in the 1995/1996 cut-to-length plate review and the Department did not question the methodology. USIMINAS asserts that the Department should rely on the Dumping Matrix based on its prior use of the system. USIMINAS alleges that the Department never asked it to resubmit its costs using the financial-cost accounting system and there is nothing in the report that indicates that the Department found methodological differences between the Matrix system and the financial cost accounting system.

USIMINAS contends that the financial-cost accounting system has several shortcomings. The largest is that variances and depreciation are allocated on a factory-wide basis. USIMINAS states that the Matrix system is the only system that correctly assigned variances and depreciation to products. Therefore, it had to resort to the usage of the Dumping Matrix.

Department's Position: We agree with petitioners, in part. We agree that USIMINAS did not use its normal cost accounting system to derive the reported costs and, as a result, it understated its submitted costs. However, because we were able to adjust for the understatement of reported costs, it was not necessary to resort to total facts available.

Because of the ambiguity and numerous inconsistences in USIMINAS' responses regarding its multiple costing systems, we were not able to discern the differences between these systems until the cost verification. At verification we learned that the normal cost accounting system was fully integrated with USIMINAS' financial accounting system. USIMINAS' normal cost accounting system which was used to prepare the audited financial statements was a process cost accounting system based on standards. Even though USIMINAS' cost accounting system calculated product-specific costs which accounted for the differences in steel grade, width, thickness and process, USIMINAS did not rely on it to prepare the submitted COP and CV data. We do not find persuasive USIMINAS' claim that its normal cost accounting system did not contain the level of cost detail requested by the Department. The normal cost accounting system utilized a twenty-seven digit product coding scheme with the various product characteristics accounted for. The underlying cost detail remained despite the fact that USIMINAS averaged multiple products together for inventory valuation while preparing the financial statements. Thus, the normal cost accounting system was sufficient for Department cost reporting purposes. See, Memorandum from Laurens van Houten, et al. to Neal Halper—Verification of the Cost of Production and Constructed Value Data, April 9, 1999 (Cost Verification Report).

Despite the existence of a detailed cost accounting system, USIMINAS used its dumping matrix system, which was outside its normal cost and financial accounting system, to calculate the reported costs. The dumping matrix is not audited by the independent auditors, nor did the independent auditors opine as to whether the principles used by the matrix were in accordance with Brazilian generally accepted accounting principles (GAAP). The USIMINAS dumping matrix system reallocates costs to broad product groups and does not account for the physical characteristics defined by the Department. This is undisputed by USIMINAS. In an attempt to differentiate costs for each CONNUM's physical characteristics, USIMINAS applied a correction factor to the cost calculated by the dumping matrix. The correction factor was the ratio of the product specific cost from the normal cost accounting system to the average group cost from the normal cost accounting system.

There were numerous problems with the methodology employed by USIMINAS to develop the reported costs. First and foremost, USIMINAS failed to use its normal cost accounting system to prepare the reported costs. Section 773(f)(1)(A) of the Act specifically requires that costs be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the GAAP of the exporting country *and* reasonably reflect the costs associated with the production and sale of the merchandise. In accordance with the statutory directive, the Department will accept costs of the exporter or producer if they are based on records kept in accordance with GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise (*i.e.*, the cost data can be reasonably allocated to subject merchandise). In determining whether the costs were reasonably allocated to all products the Department will, consistent with section 773(f)(1)(A) of the Act, examine whether the allocation methods are used in the normal accounting records and whether they have been historically used by the company. As demonstrated by the

record evidence in this case (see, e.g., Cost Verification Report), the normal cost accounting system was based on records kept in accordance with GAAP of the exporting country and reasonably reflected the costs associated with the production and sale of the merchandise (*i.e.*, the costs were reasonably allocated to subject merchandise). Because USIMINAS' normal cost accounting system was maintained in accordance with Brazilian GAAP and reasonably reflected the costs associated with the production and sale of subject merchandise, USIMINAS should have reported the costs from its normal cost accounting system.

We allow companies to deviate from their normal cost accounting system when that system does not appropriately allocate costs to specific products. See, e.g., Certain Cut-to-Length Carbon Steel Plate From Mexico: Final Results of Antidumping Duty Administrative Review 64 FR 76, 80 (January 4, 1999). This is not the case here. In the instant case, USIMINAS normal cost accounting system calculated costs at a much greater level of detail than the dumping matrix. Therefore, contrary to USIMINAS' claim, it was not necessary for it to resort to the dumping matrix to develop the reported costs.

Another shortcoming of USIMINAS' reporting methodology is that the product costs in the dumping matrix are based on a single average cost for slab. That is, USIMINAS used the average cost of all slab regardless of the grade or quality of the steel. Hence, in the dumping matrix there is no cost differentiation for grade or quality of steel. USIMINAS claims to have accounted for this difference in the reported costs by applying a correction factor to the dumping matrix costs. However, USIMINAS calculated the correction factor based on the ratio of a product-specific slab cost to the group-specific cost it relates to and applied the factor to the company-wide average slab cost (which is an average of numerous product groups). As a result, the ratio used to compute the slab cost adjustment has nothing to do with the average slab cost to which it is applied. Thus, this methodology does not appropriately allocate slab costs to the specific product.

In order to test the reported product-specific costs, we compared the reported costs for several products to the product-specific costs recorded in the normal cost accounting system. We found that the dumping matrix costs, even after they were adjusted by the ''correction factor,'' were consistently lower than the costs recorded in the normal cost accounting system used to prepare the audited financial statements. Additionally, during our testing we noted that the dumping matrix allocated process center costs to products on a basis different from that used in the normal cost accounting system to allocate these costs. Therefore, the allocation methods used for the reported costs were not those historically used by the company as required by section 773(f)(1)(A).

Before the Department can assess the reasonableness of a respondent's cost allocation methodology, it must ensure that the aggregate amount of the reported costs captures all costs incurred by the respondent in producing the subject merchandise during the period under examination. This is done by performing a reconciliation of the respondent's submitted COP and CV data to the company's audited financial statements, when such statements are available. Because of the time constraints imposed on verifications, the Department generally must rely on the independent auditor's opinion concerning whether a respondent's financial statements present the actual costs incurred by the company, and whether those financial statements are in accordance with GAAP of the exporting country. In situations where the respondent's total reported costs differ from amounts reported in its financial statements, the overall cost reconciliation assists the Department in identifying and quantifying those differences in order to determine whether it was reasonable for the respondent to exclude certain costs for purposes of reporting COP and CV. Although the format of the reconciliation of submitted costs to actual financial statement costs depends greatly on the nature of the accounting records maintained by the respondent, the reconciliation represents the starting point of a cost verification because it assures the Department that the respondent has accounted for all costs before allocating those costs to individual products.

In performing this reconciliation, at verification USIMINAS provided a reconciling schedule which indicates an amount which was identified as that corresponding to the methodological difference between the normal cost accounting system and the reported costs. The amount of the overall reconciliation difference was consistent with the highest difference we found when we compared the reported product-specific costs to the product-specific costs in the normal cost accounting system. Therefore, to correct USIMINAS' mis-allocation of costs and its failure to use its normal cost accounting system as required by section 773(f)(1)(A), as facts available we increased the reported costs for all products by the largest reconciliation difference we found between the reported product-specific costs from the dumping matrix and the product specific costs in the normal cost accounting system.

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e), facts otherwise available in reaching the applicable determination. In this case USIMINAS failed to provide COP and CV data in the form and manner requested, *i.e.*, based on its normal cost accounting system as required by section 773(f)(1)(A). Since USIMINAS failed to provide the necessary information in the form and manner requested, and in some instances the submitted information was found to be inaccurate, we conclude that, pursuant to section 776(a) of the Act, use of facts otherwise available is appropriate.

Section 776(b) of the Act provides that adverse inferences may be used when an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information. As discussed above and in the verification report, USIMINAS failed to use its normal cost accounting system to report the submitted COP and CV data and, as a result, failed to reconcile the reported costs to its normal cost accounting system. In this case, however, an adverse inference is not warranted. The Department has applied the reconciliation difference to correct the submitted cost data. As explained above, the Department determined at verification that this reconciliation difference accurately represents the actual variation between product-specific costs generated by the dumping matrix and product-specific costs generated by the normal cost accounting system.

We also disagree with USIMINAS' claim that the Department should have relied on its dumping matrix because it had done so in a previous review. As articulated in Final Results of Antidumping Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 64 FR 12927, 12945–48 (March 16, 1999), the Department is not

obligated to accept an incorrect methodology and perpetuate a mistake because it was accepted in a prior review, as suggested by USIMINAS.

We disagree with USIMINAS' claim that it had to use the dumping matrix because it was the only system that correctly allocated variances and depreciation. In its normal cost accounting system, USIMINAS did not allocate these costs to specific products. However, USIMINAS allocated them to the cost of goods sold and the cost of inventory based on the standard costs. In its normal accounting system, USIMINAS recognizes that standard cost is the appropriate allocation base for variances and depreciation. As this allocation methodology factors in the cost drivers of the variances and depreciation (*e.g.* machine time, labor hours, direct and indirect material cost and usage, energy cost and usage, other variable costs, maintenance, and other services) it would have been a reasonable method to report costs for Department purposes. Therefore, we disagree that the dumping matrix was the only system that correctly accounted for these costs.

Comment 48: USIMINAS' Different COP and CV values. Petitioners argue that the Department should employ as facts available the higher of the COP or CV when the COP and CV differ for an identical CONNUM. Petitioners argue that USIMINAS did not calculate a weight-averaged cost based on global sales quantities for each product as instructed by the Department. Petitioners argue that it is impossible to fix this error with either of the remedies suggested by USIMINAS. Petitioners argue that without the sales quantity for each 27-digit product in a CONNUM, the Department cannot correct the error.

USIMINAS maintains that the existence of different CONNUM-specific costs in the COP and CV files is not a problem. USIMINAS argues that the submitted global cost file provides the cost for each CONNUM, segregated by product groups, which the Department may use to calculate a unique cost for each CONNUM. In addition, USIMINAS states that, in the event the Department elects to collapse USIMINAS and COSIPA, the Department will ultimately rely on the consolidated cost file provided for USIMINAS and COSIPA. USIMINAS claims that in this file USIMINAS and COSIPA have provided unique costs for each CONNUM and, as a result, the Department's observation about a distinct CONNUM cost in the USIMINAS-specific COP and CV file should have no impact on the Department's calculations in this investigation.

Department's Position: We agree with petitioners. USIMINAS calculated a COM for COP purposes which was different from the COM it calculated for CV purposes for identical CONNUMS. Because the COM for a given CONNUM is the weighted average cost of producing that CONNUM, at least one of the reported COMs for each such ''two-value'' CONNUMS is incorrect. Although USIMINAS has provided a ''global'' file that consolidates COM (for both COP and CV) for both USIMINAS and COSIPA on a per-CONNUM basis, this global figure is not sufficient for the Department's needs. Specifically, the Department needs an accurate USIMINAS-specific COM for each CONNUM in order to make USIMINAS-specific adjustments to that COM before it is averaged with the COSIPA-specific COM data, to which COSIPA-specific adjustments have been made.

The apparent reason why there are different USIMINAS COMs for COP and CV is that the former represents the COM of units sold in the home market, whereas the latter represents the COM of units sold to the United States. Instead, the Department's practice is to calculate COM values (for both COP and CV) for each CONNUM (which in this case is a group of multiple discrete products, each represented by a 27-digit product code) based on production of that CONNUM for sale to the worldwide market. The Department repeatedly requested that USIMINAS provide a single, weighted average COM for each USIMINAS CONNUM, but USIMINAS failed to provide this. Furthermore, the Department is unable to calculate such a COM from the data supplied by USIMINAS because it does not have the sales quantity data for each 27-digit product code needed to calculate the CONNUM-specific average across production for world-wide sale. Because USIMINAS has not provided the USIMINAS-specific weighted average COM for each CONNUM, the Department must use the facts otherwise available for this information. Therefore, when the COM reported for COP purposes and the COM reported for CV purposes differed for any USIMINAS CONNUM, we have used the higher of the two figures as the COM value for that CONNUM.

Comment 49: USIMINAS' Major Inputs from CVRD. Petitioners argue that iron ore is a major input and that since USIMINAS failed to provide the COP information for iron ore purchased from its affiliate Companhia do Vale Rio Doce (''CVRD''), the Department should use facts available to value this input.

USIMINAS argues that Department should accept the iron ore transfer price from CVRD, as the Department has done in a prior administrative review because the iron ore prices charged by CVRD were above the price charged by unaffiliated companies. USIMINAS argues that the circumstances in this case are identical to that in a prior review in which the Department made no adjustment. In addition, USIMINAS maintains that the Department has confirmed that the iron ore prices charged by CVRD are above the prices charged by unaffiliated suppliers. USIMINAS argues that it could not compel CVRD to provide its COP of iron ore.

USIMINAS states that the Department overestimated the percentage of CVRD's iron ore in the total cost of manufacturing in its verification report. USIMINAS argues that the Department's calculation incorrectly assumes that the entire cost of sinter is equivalent to iron ore, whereas sinter is a value-added product in which iron ore is one input. USIMINAS argues that cost verification exhibit C–15 shows that the monthly consumption of iron ore is less than half of the amount assumed by the Department. USIMINAS states that when the correct monthly cost of iron ore is used in the Department's methodology, the cost of iron ore is a much lower percentage of the total cost of manufacturing.

Department's position: We have applied the major input rule in accordance with section 773(f)(3) of the Act in valuing the iron ore received from CVRD. In doing so, we have used, as facts available, the COP information provided in the September 30, 1998 petition as the COP of iron ore from CVRD since USIMINAS did not provide the COP information as requested by the Department.

We consider iron ore to be a major input in accordance with section 773(f)(3) of the Act. Section 773(f)(2) allows the Department to test whether transactions between affiliated parties involving any element of value (*i.e.*, major or minor inputs) are at prices that ''fairly reflect the market under consideration.'' Section 773(f)(3) allows the Department to test whether, for transactions between affiliated parties involving a major input, the value of the major input is not less than the affiliated supplier's COP where there is reasonable cause to believe or suspect the price is below COP. In other words, if an understatement in the value of an input would have a significant impact on the reported cost of the subject merchandise, the law allows the Department to insure that the transfer price or market price is not below cost. We consider the initiation of a sales-

below-cost investigation reasonable grounds to believe or suspect that major inputs to the foreign like product may also have been sold at prices below the COP within the meaning of section 773(f)(3) of the Act (see e.g., Final Results of Antidumping Administrative Review: Silicomanganese from Brazil, 62 FR 37871 (July 15, 1997)).

In determining whether an input is considered major, among other factors, the Department considers both the percentage of the input obtained from affiliated suppliers (versus unaffiliated suppliers) and the percentage the individual element represents of the product's COM. Even though we agree with USIMINAS that the Department overestimated the percentage of CVRD's iron ore in USIMINAS's total COM in the USIMINAS cost verification report, we still determined in this case that iron ore represents a significant percentage of the total cost of manufacturing and that USIMINAS receives a significant portion of its iron ore from its affiliate CVRD. The combination of the significant amounts of the inputs obtained from CVRD and the relatively large percentage the iron ore represents of the product's COM increases the risk of misstatement of the subject merchandise's costs to such a degree that we have determined that section 773(f)(3) of the Act applies to this input.

Because we have determined that iron ore purchased from an affiliate is a major input in USIMINAS' production of carbon steel, the statute requires that, for the dumping analysis, the major input should be valued at the higher of transfer price, market price or COP. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada, 64 FR 17324, 17335 (April 9, 1999). In accordance with sections 773(f)(2) and (3) of the Act, we attempted to compare the transfer price for iron ore purchased from USIMINAS' affiliated supplier to the supplier's COP and a market price. Even though the Department requested that USIMINAS provide its affiliated supplier's actual COP for iron ore in the original section D questionnaire, the supplemental questionnaires and at verification, USIMINAS failed to do so.

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e), facts otherwise available in reaching the applicable determination. Section 776(b) of the Act provides that, if the administering authority ''finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' then in determining the applicable facts available it ''may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.''

In the instant case, the use of facts available is warranted because USIMINAS failed to provide the COP of iron ore received from its affiliated supplier. Because USIMINAS failed to respond to repeated requests for this information, as adverse facts available, we have relied on the COP provided in the September 30, 1998 petition. For the final determination, we adjusted the transfer price of the iron ore inputs received from CVRD to reflect the higher COP in the petition.

Comment 50: USIMINAS' Major Inputs from USIMPEX. Petitioners note that USIMINAS purchases the majority of its coal from an affiliate, USIMINAS Importacao e Exportacao S.A. (''USIMPEX''). Petitioners argue that USIMPEX's COP for coal was higher than the market value and the transfer price used to establish the COP and CV. Petitioners contend that since coal is a major input, the Department should apply the major input rule and use the higher of market value, transfer price or COP.

USIMINAS argues that the Department incorrectly calculated the amount of USIMPEX's 1997 loss and USIMPEX actually had a gross profit. USIMINAS argues that the amount the Department stated was USIMPEX's negative gross profit was the company's net operating expenses. USIMINAS argues that because USIMPEX had a gross profit in 1997 its sales prices were above its costs. USIMINAS further argues that if the Department were to subtract USIMPEX's SG&A expenses, there is still no indication that USIMPEX is selling below its costs because the resulting loss is insignificant and would show that it was essentially operating at the break-even point.

Department's position: As it relates to the facts of this case, we consider coal to be a major input in the production of carbon steel in accordance with section 773(f)(3) of the Act (see response to Comment 49).

Because we have determined that coal purchased from an affiliate is a major input in USIMINAS' production of carbon steel in this case, the statute requires that, for the dumping analysis, the major input should be valued at the higher of transfer price, market price or COP. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada, 64 FR 17324, 17335 (April 9, 1999). In accordance with section 773(f)(2) and (3) of the Act, we compared the transfer price to the affiliated supplier's COP and the market price (*i.e.*, prices from un-affiliated suppliers) and found that the market price was greater than both the transfer price and the COP. Thus, for the final determination we have adjusted the reported cost for coal purchases from USIMINAS' affiliated supplier to reflect the higher market price.

Comment 51: USIMINAS' Interest Revenue Offset. Petitioners argue that the Department should deny USIMINAS' claimed interest income offset in its entirety because USIMINAS was unable to segregate the long- and short-term components of the consolidated interest revenue. Petitioners argue that the segregation of long- and short-term interest revenue for the producing entity alone is inappropriate because the producer's interest income may include amounts derived from affiliated party transactions which would be eliminated in the preparation of consolidated financial statements.

USIMINAS argues that if the Department does not accept USIMINAS' submitted short-term financial income values identified in the response, the Department should use the ratio between USIMINAS' short-term and long-term financial income as a surrogate to derive short-term income from the total consolidated financial income for USIMINAS companies. USIMINAS notes that the Department examined USIMINAS' interest income for the purposes of distinguishing short-term and long-term portions. USIMINAS argues that the Department must allow interest on accounts receivable and accounts receivable discounts as an offset to interest expense because these two items are short-term in nature. In addition, USIMINAS argues that given the sizable increase in total financial income from the USIMINAS parent company to the USIMINAS consolidated entity, the Petitioners' theory, that the short-term financial income may include revenue derived from affiliated party transactions, has no merit.

Department's position: We agree with USIMINAS that it is reasonable to use the USIMINAS company-specific short-term to long-term financial income ratio as a surrogate to derive the short-term portion of total interest income from the USIMINAS consolidated financial

statements. While USIMINAS was unable to document the short-term portion of interest income for the consolidated entity, we found that the USIMINAS company-specific interest income represented the majority of the consolidated entity's interest income. Therefore, we have found it reasonable to use the USIMINAS company-specific short-term to long-term financial income ratio as a surrogate to derive the short-term interest income from the total USIMINAS consolidated financial income.

We disagree with USIMINAS that interest income earned on accounts receivable and accounts receivable discounts should be included as an offset to interest expense. Interest charged to customers relating to specific sales are more appropriately treated as sales revenue. In fact, there is a separate field identified in the section B and C questionnaires in which this revenue is to be reported (*i.e.*, INTREVH for home market sales and INTREVU for U.S. sales). Accordingly, we have disallowed this interest income on accounts receivable and accounts receivable discounts as an offset to interest expense.

Comment 52: USIMINAS' SG&A. USIMINAS argues that the Department incorrectly excluded the income from certain USIMINAS operations, while including the associated expenses (for example USIMINAS ownership of the Ipatinga airport) in the preliminary determination. USIMINAS argues that if Department excludes the income from any non-operational activity, it should also exclude the expense associated with that activity.

Petitioners argue that USIMINAS has not demonstrated that the revenue in question is related to operations for which SG&A expenses were reported. Petitioners further argue that it would be improper to use revenue as an offset if no related expenses were included in the SG&A, thus, USIMINAS does not qualify for an offset to its SG&A expenses.

Department's position: We agree with USIMINAS. In the preliminary determination we excluded the income from certain USIMINAS operations, while including the associated expenses (for example USIMINAS ownership of the Ipatinga airport). At verification, we reviewed source documents and obtained explanations from company officials on all the income items that were used to offset USIMINAS' SG&A costs. We found that certain revenue items (*e.g.*, airport leases and rent) were related to investments, and not to the general operations of the company as a whole. In addition, we found that certain expense items related to the activities which produced this income were included in the SG&A calculation. For the final determination we have excluded the expenses which directly relate to the excluded revenues.

Comment 53: COSIPA's Errors in Reporting Sales Quantities. Petitioners argue that errors in COSIPA's calculation of sales quantity result in an understatement of the total cost of manufacturing which requires the use of facts available. Petitioners assert that to correct this error the Department should increase the total cost of manufacturing for each product by the same percentage since the product-specific impact of these errors is not known.

COSIPA retorts that the errors in sales quantity as originally submitted do not result in an understatement of the total cost of manufacturing but an overstatement of costs. COSIPA argues that petitioners' justification for using facts available is flawed since the product-specific corrections were submitted at the Department's request.

Department's Position: We agree with COSIPA. The sales quantities as originally reported overstated the total cost of manufacturing. The Department obtained at the first day of verification an exhibit explaining the error in sales quantities and in the provisions account. We verified the accuracy and impact of the product-specific corrections and obtained revised databases. As a result, no additional adjustment as a result of this correction is necessary.

Comment 54: COSIPA's Iron Ore Purchases from Affiliates. Petitioners argue that COSIPA failed to provide CVRD's COP for the major input iron ore, despite repeated requests from the Department throughout the course of this investigation. Petitioners advocate the use of facts available to value iron ore.

COSIPA argues that the Department should accept the iron ore costs based on the transfer price because COSIPA acted to the best of its ability to obtain cost information from CVRD but were unable to do so because of the nature of affiliation with CVRD. COSIPA also states that the affiliated prices from CVRD are higher than iron ore prices from unaffiliated suppliers. COSIPA claims that this would be consistent with the Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Brazil 63 FR 12744, 12751 (March 16, 1998) where the Department decided to accept COSIPA's submitted iron ore costs from CVRD.

Department's Position: In determining whether an input is considered major in accordance with section 773(f)(3) of the Act, among other factors, the Department considers both the percentage of the input obtained from affiliated suppliers (versus un-affiliated suppliers) and the percentage the individual element represents of the product's total cost of manufacturing. COSIPA purchased iron ore from an affiliate, CVRD. We have determined that the quantity and value of iron ore purchased during the POI from CVRD are not of enough significance to be considered a major input in accordance with section 773(f)(3). However, pursuant to section 773(f)(2) of the Act, the Department may disregard the transfer price from an affiliated supplier if it is less than the market price for the same input. We compared the transfer price of iron ore purchased from CVRD to the market price (*i.e.*, prices for purchases from unaffiliated suppliers) and found that the market price was higher. Therefore, for the final determination, we adjusted the submitted iron ore costs to reflect a market price.

Comment 55: COSIPA's Coal Purchases from Affiliates. Petitioners assert that the cost of coal obtained by COSIPA from affiliated parties is undervalued, requiring the use of facts available. Petitioner states that coal is a major input and since the affiliate's cost, excluding freight, is higher than the price charged to COSIPA, the Department should increase the reported value for coal by the percentage difference between the cost and the transfer price.

In comparing transfer price to cost, respondents state that the petitioners' analysis is flawed due to double-counting of COSIPA expenses. Respondents argue that it is incorrect to include any of COSIPA Overseas' financial expenses as a cost because these expenses are already captured in the consolidated financial expenses for COSIPA using the COSIPA/USIMINAS consolidated financial statement. Second, respondents state the inclusion of SG&A expenses of COSIPA Overseas is also incorrect, as the SG&A used by the Department in the preliminary determination was apparently the consolidated SG&A for both COSIPA and COSIPA Overseas.

Department's Position: COSIPA purchased coal from an affiliate, COSIPA Overseas. We have determined that the quantity and value of coal purchased during the POI from the affiliate were significant. Pursuant to sections 773(f)(2) and (3) of the Act, the Department may value major inputs purchased from affiliated suppliers at the higher of market value, transfer

price or the affiliated supplier's COP. See Comment 49.

In accordance with sections 773 (f)(2) and (3) of the Act we attempted to compare the transfer price of the coal purchased from the affiliated supplier to the market price for coal and to the affiliate's COP. Since COSIPA did not purchase coal from any other supplier nor did the affiliate sell coal to another customer during the period of investigation, we were unable to establish a market price for coal. We agree with the respondent's assertion that the Department's cost verification report double counted financial expenses in calculating the affiliate's COP. The double counting occurred as a result of consolidating the affiliate's expenses into COSIPA's financial statements. After adjusting for this duplication, the transfer price from the affiliate is higher than the affiliate's calculated COP. Since our testing indicated that the transfer price between COSIPA and its affiliate was higher than COP, no adjustment was necessary. We disagree with respondent's contention that we used the consolidated SG&A for the preliminary determination. In fact we used the unconsolidated COSIPA SG&A expenses.

Comment 56: COSIPA's SG&A Expenses. Petitioners state that COSIPA's SG&A rate was understated and must be revised to reflect all related expenses. Petitioners point out that COSIPA failed to include expenses related to the depreciation and amortization on administrative assets in its SG&A rate calculation. Petitioners also point out that accruals for lawsuit contingencies were omitted. Petitioners argue these amounts should be included in the SG&A rate calculation.

The respondent did not comment on this issue.

Department's Position: We agree with petitioners that the costs associated with depreciation and amortization on administrative assets and accruals for lawsuit contingencies should be included in COSIPA's SG&A expense rate calculation. We consider these costs to be related to the general operations of the company as a whole. We have therefore revised COSIPA's SG&A calculation to include these costs. Since we did not include ICMS taxes in the COP and CV computations, we did not allow income recognized from rescheduling of ICMS taxes as an offset to SG&A expense.

Comment 57: Dufer's Further Processing Costs. Petitioners argue that the Department should use facts available to determine the cost of further processing at Dufer because Dufer has no product-specific cost records.

Respondents argue that Dufer has no basis for determining product-specific costs as required by the Department. Respondents state that Dufer is a small company and cooperated to the best of its ability by providing all of the information it could to the Department. Respondent's cite Annex II of the 1994 Agreement on Implementation of Article VI of the GATT in arguing that the Department should use information provided to it by respondents, ''provided the interested party has acted to the best of its ability.'' In the instant case, respondents argue that Dufer provided all of the information it had to the best of its ability and fully cooperated with the Department at verification, and thus there is no basis for the Department to use facts available to determine Dufer's costs.

Department's Position: These comments on Dufer's cost issues are moot due to the Department's decision to use adverse facts available for sales from Dufer. See Comment 18.

Suspension of Liquidation

On July 6, 1999, the Department signed a suspension agreement with CSN, USIMINAS, and COSIPA suspending this investigation. Pursuant to section 734(f)(2)(A) of the Act, we are instructing Customs to terminate the suspension of liquidation of all entries of hot-rolled flat-rolled, carbon-quality steel products from Brazil. Any cash deposits of entries of hot-rolled flat-rolled, carbon-quality steel products from Brazil shall be refunded and any bonds shall be released.

On July 2, 1999, the Department received a request from petitioners requesting that we continue the investigation. Pursuant to this request, we have continued and completed the investigation in accordance with section 734(g) of the Act. We have found the following weighted-average dumping margins:

Exporter/manufacturer	Weighted-average margin (percent)
CSN	41.27
USIMINAS/COSIPA	43.40
All Others	42.12

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC's injury determination is negative, the agreement will have no force or effect, and the investigation will be terminated (see section 734(f)(3)(A) of the Act). If the ITC's determination is affirmative, the Department will not issue an antidumping duty order as long as the suspension agreement remains in force (see section 734(f)(3)(B) of the Act).

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: July 6, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–18225 Filed 7–16–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828]

Suspension of Antidumping Duty Investigation: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil

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

SUMMARY: The Department of Commerce (the Department) has suspended the antidumping duty investigation involving hot-rolled flat-rolled carbon-quality steel products (hot-rolled steel) from Brazil. The basis for this action is an agreement between the Department and producers/exporters accounting for substantially all imports of hot-rolled steel from Brazil wherein each signatory producer/exporter has agreed to revise its prices to eliminate completely the injurious effects of exports of this merchandise to the United States.

EFFECTIVE DATE: July 6, 1999.

FOR FURTHER INFORMATION CONTACT: Linda Ludwig at (202) 482–3833, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 1998, the Department initiated an antidumping duty investigation under section 732 of the Tariff Act of 1930 (the Act), as amended, to determine whether imports of hot-rolled steel from Brazil are being or are likely to be sold in the United States at less than fair value (63 FR 56607, October 22, 1998). On November 16,

1998, the United States International Trade Commission (''ITC'') notified the Department of its affirmative preliminary finding of threat of material injury in this case. Additionally, on November 25, 1998, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of the subject merchandise from Brazil (63 FR 65221). On February 12, 1999, the Department preliminarily determined that hot-rolled steel is being, or is likely to be sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act (64 FR 8299, February 19, 1999).

The Department and the Brazilian producers/exporters of hot-rolled steel initialed a proposed agreement suspending this investigation on June 6, 1999. On June 6, 1999, we invited interested parties to provide written comments on the agreement. We received comments from petitioners (Bethlehem Steel Corp., Ispat Inland Inc., LTV Steel Company, Inc., National Steel Corp., U.S. Steel Group (a Unit of USX Corp.), California Steel Industries, Gallatin Steel Company, Geneva Steel, Gulf States Steel Inc., Ipsco Steel Inc., Steel Dynamics, Weirton Steel Corporation, and Independent Steelworkers Union).

The Department and the Brazilian producers/exporters of hot-rolled steel signed the final suspension agreement on July 6, 1999.

Scope of Investigation

See Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil, signed July 6, 1999.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. In accordance with section 734(c) of the Act, we have determined that extraordinary circumstances are present in this case, as defined by section 734(c)(2)(A) of the Act. (See July 6, 1999, Extraordinary Circumstances Memorandum to Robert S. LaRussa).

The suspension agreement provides that: (1) The subject merchandise will be sold at or above the established reference price; and (2) for each entry of each exporter, the amount by which the estimated normal value exceeds the export price (or constructed export price) will not exceed 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or constructed export price) for all less-than-fair-value entries of the producer/exporter examined during the course of the investigation. We have determined that this suspension agreement will: (1) Eliminate completely the injurious effect of exports to the United States of the subject merchandise; and (2) prevent the suppression or undercutting of price levels of domestic hot-rolled steel by imports of that merchandise from Brazil.

We have also determined that the suspension agreement can be monitored effectively and is in the public interest, pursuant to section 734(d) of the Act. (See July 6, 1999, Public Interest Memorandum to Robert S. LaRussa.) We find, therefore, that the criteria for suspension of the investigation pursuant to section 734(c) of the Act have been met. The terms and conditions of the suspension agreement, signed July 6, 1999, are set forth in Appendix 1 of this notice.

The suspension of liquidation ordered in the preliminary affirmative determination in this case shall continue in effect, subject to section 734(h)(3) of the Act. Section 734(f)(2)(B) of the Act provides that the Department may adjust the security required to reflect the effect of the Agreement. Pursuant to this provision, the Department has found that the Agreement eliminates completely the injurious effects of imports and, thus, the Department is adjusting the security required from signatories to zero. The security rates in effect for imports from non-signatory producers/exporters remain as published in our final determination.

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: July 6, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

Appendix 1—Agreement Suspending the Antidumping Investigation on Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil

Pursuant to section 734(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c(c)) (the ''Act''), and section 208 of part 351 of Title 19 of the Code of Federal Regulations (the ''Regulations''), the U.S. Department of Commerce (the ''Department'') and the signatory producers/exporters of Hot-Rolled Steel from Brazil (the ''Signatories'') agree as follows:

I. Definitions

For purposes of this Agreement, the following definitions apply:

A. Agreement—means this suspension agreement.

B. Date of Sale—means the date on which a Signatory confirms an order for a fixed quantity of Hot-Rolled Steel at a fixed price. Each Signatory and the Department will determine individual dates of sale for deliveries of Hot-Rolled Steel more than one year after the confirmation date.

C. Effective Date—means the date on which this Agreement is signed and on which the Parties to the Proceeding are notified of its signature.

D. Hot-Rolled Steel—means the certain hot-rolled, flat-rolled carbon-quality steel products from Brazil described in Appendix I and sometimes referred to as the ''subject merchandise'' of the suspended investigation. The individual categories of Hot-Rolled Steel for which the Department will determine Reference Prices are listed in Paragraph IV.B.

E. Party to the Proceeding—means any producer, exporter, or importer of Hot-Rolled Steel, union of workers engaged in the production of Hot-Rolled Steel, associations of such parties, or the government of Brazil, as provided for in section 771(9) of the Act, that actively participated in the antidumping investigation, through written submission of factual information or written argument.

F. Producer/Exporter—means: (1) A foreign manufacturer or producer of Hot-Rolled Steel; (2) a foreign producer or reseller that also exports Hot-Rolled Steel; and (3) an affiliated person by whom or for whose account Hot-Rolled Steel is imported into the United States, as defined in section 771(33) of the Act.

G. Quarter—means the relevant quarter calendar year, consistent with the following schedule:

First Quarter—January 1–March 31;
Second Quarter—April 1–June 30;
Third Quarter—July 1–September 30; and
Fourth Quarter—October 1–December 31.

H. Reference Price—means the price for Hot-Rolled Steel established under Section IV of this Agreement. Reference prices include all transportation charges to the U.S. port of entry, together with port fees, duties, offloading, wharfage and other charges incurred in bringing the steel to the first customs port of discharge in the U.S. market. If the sale for export is on terms that do not include these expenses, the Signatories will ensure that the actual terms are equivalent to a price that is not lower than the Reference Price.

I. U.S. Price—means the export price or constructed export price at which

Hot-Rolled Steel is sold by the producer or exporter to the first unaffiliated party in the United States or for export to an unaffiliated party in the United States, including the amount of any discounts, rebates, price protection or ship and debit adjustments, and other adjustments affecting the net amount paid or to be paid by the unaffiliated purchaser, as determined by the Department consistent with section 772 of the Act.

J. U.S. Market Price—The U.S. market price is the Purchasing Magazine spot market price for Hot-Rolled Steel.

K. Violation—means noncompliance with the terms of this Agreement, whether through an act or omission, except for noncompliance that is inconsequential, inadvertent, or does not substantially frustrate the purposes of this Agreement.

II. Suspension of Investigation

On the Effective Date, the Department will suspend its antidumping investigation of Hot-Rolled Steel from Brazil initiated on October 15, 1998 (63 FR 56607, October 22, 1998), in accordance with Section 734(c) of the Act and 19 CFR 351.208.

III. U.S. Import Coverage

The Signatories collectively are the producers and exporters in Brazil that, during the antidumping duty investigation of Hot-Rolled Steel from Brazil, accounted for substantially all of the subject merchandise exported from Brazil to the United States, as defined in § 351.208(c) of the regulations. The Department may at any time during the operation of the Agreement require additional producers/exporters in Brazil to sign the Agreement in order to ensure that not less than substantially all sales of Hot-Rolled Steel from Brazil to the United States are covered by the Agreement.

IV. Revised prices

A. On and after the Effective Date, no Signatory will sell Hot-Rolled Steel from Brazil in, or for direct or indirect delivery to, the United States at prices that are less than the Reference Price in effect on the Date of Sale for that category of Hot-Rolled Steel, as established under Paragraphs B and C of this Section.

B. The Reference Prices for the fourth Quarter of 1999 shall be as follows:

Product category	Price per metric ton
1. Commercial Quality, not pickled and oiled, not temper-rolled, not edge-trimmed.	$327.00.
2. Structural quality, not pickled and oiled, not temper-rolled, not edge-trimmed.	The price for Prod. Category 1 plus $16.35.
3. Commercial quality pickled and oiled, temper-rolled, and edge-trimmed.	The price for Prod. Category 1 plus $47.00.
4. Structural Quality, pickled and oiled, temper-rolled, and edge-trimmed.	The price for Prod. Category 2 plus $47.00.

C. The Reference Price for Category one steel (commercial quality, not pickled and oiled, not tempter-rolled, and not edge-trimmed) shall be fixed on the last day of that Quarter (and Quarterly, thereafter) at the higher of the average U.S. Market Price for that Quarter, less 6 percent, or $327. The prices for the other categories of Hot-Rolled Steel shall be adjusted accordingly.

D. Until such time as the Department and the Signatories agree, after consultations, upon Reference Prices for other Hot-Rolled Steel products, only the products listed in Appendix II may be exported from Brazil to the United States. Consultations regarding Reference Prices for other Hot-Rolled Steel products shall be held within 30 days of a request and shall be completed within 15 days.

E. In order to satisfy the requirements of section 734(c)(1)(B) of the Act, each Signatory agrees that, for each entry of Hot-Rolled Steel subject to this Agreement, the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 per cent of the weighted average amount by which the estimated normal value exceeded the export price (or the constructed export price) for all less-than-fair-value entries of the Signatory examined during the investigation.

V. Reporting Requirements

A. Each Signatory will supply to the Department 30 days after the end of each Quarter all information that the Department determines is necessary to ensure that the Signatory is in full compliance with the terms of this Agreement. Such information shall include complete price information on each sale of Hot-Rolled Steel directly or indirectly to unaffiliated purchasers in the United States, including information supporting any relevant adjustments to the price under section 772 of the Act.

B. Each Signatory shall include, as part of the documentation presented to U.S. Customs for entry of Hot-Rolled Steel subject to this Agreement into the United States, an export license issued by the Government of Brazil that includes the price at which that Hot-Rolled Steel is sold to the first unaffiliated purchaser in the United States.

C. The Department may reject any information submitted under this Agreement that is untimely or any information which it is unable to verify to its satisfaction.

VI. Disclosure

The Department may make available to representatives of each domestic Party to the Proceeding, under administrative protective orders drawn in accordance with section 777 of the Act and § 351.305 of the regulations, business proprietary information submitted to the Department for each Quarter, as well as the results and methodology of its calculation of Reference Prices.

VII. Monitoring

A. The Department will monitor entries of Hot-Rolled Steel from Brazil to ensure compliance with this Agreement. Among other means, the Department will review publicly-available data and other official import data, including, as appropriate, records maintained by the U.S. Customs Service, to determine whether there have been imports that are inconsistent with the provisions of this Agreement.

B. The Department may require, and each Signatory agrees to provide, confirmation, through documentation provided to the Department, that the price received on any sale subject to this Agreement was not less than the established reference price. The Department may require that such documentation be provided, and be subject to verification, within 30 days of the sale.

C. The Department may require, and each Signatory agrees to report, on computer disk in the prescribed format and using the prescribed method of data compilation, each sale of the merchandise subject to this Agreement, either directly or indirectly to unaffiliated purchasers in the United States, including each adjustment applicable to each sale, as specified by the Department.

D. Each Signatory agrees to permit review and on-site inspection of all information deemed necessary by the Department to verify the reported information.

VIII. Administrative Reviews

The Department may conduct administrative reviews under section

751 of the Act, upon request or upon its own initiative, to ensure that exports of Hot-Rolled Steel from Brazil are at prices consistent with the terms of this Agreement.

IX. Anticircumvention

The Signatories will not circumvent this Agreement. Together with each sales report provided pursuant to Section V.A, each Signatory will certify to the Department in writing that the sales reported therein include all sales directly or indirectly to unaffiliated purchasers in the United States or for delivery to the United States, and that the Signatory did not make any other such sales pursuant to any bundling arrangement, on-site processing arrangement, discounts/free goods/ financing package, swap, exchange, or other arrangement in circumvention of this Agreement.

X. Consultations

A. The Department and any Signatory may request consultations with the other at any time regarding the implementation, operation (including any changes in the relationship of the reference price to market prices), and/or enforcement of this Agreement.

B. If the Department requests consultations with any Signatory concerning potential noncompliance with, or Violation of, this Agreement, it may simultaneously request that Signatory to provide the Department with all information relating to the allegation, including all sales information pertaining to covered and non-covered merchandise manufactured or sold by the Signatory. The Signatory will provide the requested information to the Department within 15 days of the Department's request. Any Party to the Proceeding may submit comments on the information submitted by the Signatory within 10 days after the information is received by the Department. The consultations shall be held within 45 days after the Department's request for consultations or for relevant information, unless the Department and the Signatory agree on a later date.

XI. Violations

A. In reviewing the operation of this Agreement for the purpose of determining whether this Agreement has been violated or no longer meets the requirements of section 734(d)(1) of the Act, the Department will consider imports of Hot-Rolled Steel into the United States from all sources, and factors including, but not limited to, the volume of trade, patterns of trade, whether any reseller is an original equipment manufacturer, any reseller's export price, and the extent to which the Agreement Suspending the Countervailing Duty Investigation of Hot-Rolled Steel from Brazil is being complied with and is satisfying the conditions under section 704 of the Act.

B. If the Department determines that this Agreement is being or has been violated or no longer meets the requirements of section 734(c) or (d) of the Act, the Department shall take whatever action it deems appropriate under section 734(i) of the Act and the Regulations.

C. In the event that the Department resumes the original investigation, it will conduct the resumed investigation on the basis of the original administrative record and the statutes, regulations, policies, and practices in effect on the Effective Date.

XII. Other Provision

By entering into this Agreement, the Signatories do not admit that any sales of Hot-Rolled Steel have been made at less than fair value.

XIII. Duration

A. This Agreement will remain in force until the underlying antidumping proceeding is terminated in accordance with U.S. law.

B. Any Signatory may terminate this Agreement at any time upon notice to the Department. Termination shall be effective 60 days after such notice is received by the Department. Upon termination, the Department shall follow the procedures outlined in section 734(i)(1) of the Act.

Robert Larussa,

Assistant Secretary for Import Administration.

William H. Barringer,

Counsel to: Companhia Siderurgica Paulista (COSIPA); Usinas Siderurgicas de Minas Gerais (USIMINAS); and Companhia Siderurgica Nacional (CSN).

Appendix I

Definition of Hot-Rolled Steel

For purposes of this investigation, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (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 thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of HTSUS definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below 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
0.012 percent of boron, 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 of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.

• Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.

• ASTM specifications A710 and A736.

• USS Abrasion-resistant steels (USS AR 400, USS AR 500).

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Min	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max.

Width=44.80 inches maximum;
Thickness=0.063—0.198 inches;
Yield Strength=50,000 ksi minimum;
Tensile Strength=70,000—88,000 psi.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Min	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16% ...	0.70–0.90% ..	0.025% Max	0.006% Max	0.30–0.50% ..	0.50–0.70% ..	0.25% Max ...	0.20% Max ...	0.21% Max

Width=44.80 inches maximum;
Thickness=0.350 inches maximum;
Yield Strength=80,000 ksi minimum;
Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

	C	Min	P	S	Si	Cr	Cu	V(wt.)	Cb
10–0.14%	1.30–1.80%	0.025% Max.	0.005% Max.	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20%	0.10 Max ...	0.08% Max

Width=44.80 inches maximum;
Thickness=0.350 inches maximum;
Yield Strength=80,000 ksi minimum;
Tensile Strength=105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Min	P	S	Si	Cr	Cu	Nb	Ca	Al
0.15% Max ..	1.40% Max	0.025% Max.	0.010% Max.	0.50% Max	1.00% Max	0.20% Max	0.005% Min	Treated	0.01–0.07%

Width=39.37 inches;
Thickness=0.181 inches maximum;
Yield Strength=70,000 psi minimum for thicknesses>0.148 inches and 65,000 psi minimum for thicknesses >0.148 inches; 16Tensile Strength=80,000 psi minimum.

Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm² and 640 N/mm² and an elongation percentage ≤ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm² and 690 N/mm² and an elongation percentage ≤ 25 percent for thicknesses of 2mm and above.

• Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

• Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this investigation, including: Vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Appendix II

Products Initially Covered by Reference Prices

Not painted
Not varnished
Not coated with plastics
Structural Quality (not including High Strength Low Alloy) or Commercial Quality
In coils
Width greater than or equal to 600mm
Nominal Thickness greater than 0.09 inches
Minimum Specified Yield Strength of less than 50,000 psi
Carbon content less than or equal to 0.25%
Carbon content greater than 0.06%
Without patterns in relief

Either including all of these extras or none of them: temper rolled; pickled & oiled; edge trimmed

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BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–829]

Suspension of Countervailing Duty Investigation: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil

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

SUMMARY: The Department of Commerce (the Department) has suspended the countervailing duty investigation involving certain hot-rolled flat-rolled carbon-quality steel products from Brazil. The basis for the suspension is an agreement between the Department and the Government of Brazil wherein the GOB has agreed not to provide any new or additional export or import substitution subsidies on the subject merchandise and has agreed to restrict the volume of direct or indirect exports to the United States of hot-rolled flat-rolled carbon-quality steel products from all Brazilian producers/exporters in order to eliminate completely the injurious effects of exports of this merchandise to the United States.

EFFECTIVE DATE: July 6, 1999.

FOR FURTHER INFORMATION CONTACT: Linda Ludwig at (202) 482–3833, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 1998, the Department initiated a countervailing duty investigation under section 702 of the Tariff Act of 1930 (the Act), as amended, to determine whether manufacturers, producers, or exporters of certain hot-rolled flat-rolled carbon-quality steel products from Brazil receive subsidies (63 FR 56623). On November 25, 1998, the International Trade Commission (ITC) published its affirmative preliminary injury determination. On December 1, 1998 and January 22, 1999, we postponed the preliminary determination until no later than February 12, 1999. *See Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Postponement of Time Limit for Countervailing Duty Investigation,* 63 FR 67459 (December 7, 1998) and *Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Postponement of Time Limit for Countervailing Duty Investigation,* 64 FR 4638 (January 29, 1999).

On February 12, 1999, the Department preliminary determined that countervailable subsidies are being provided to Companhia Siderugica Nacional (CSN), Usinas Siderugicas de Minas Gerais (USIMINAS) and Companhia Siderurgica Paulista (COSIPA). *See Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil,* 64 FR 8313 (February 19, 1999). We conducted verification of the questionnaire responses of the Government of Brazil (GOB), CSN, USIMINAS and COSIPA from April 5 through April 16, 1999.

The Department and the GOB initialed a proposed agreement suspending the investigation on June 6, 1999. Interested parties were informed that the Department intended to finalize the Agreement on July 6, 1999, and were invited to provide written comments on the agreement. We received comments from petitioners (Bethlehem Steel Corp., Ispat Inland Inc., LTV Steel Company, Inc., National Steel Corp., U.S. Steel Group (a Unit of USX Corp.), California Steel Industries, Gallatin Steel Company, Geneva Steel, Gulf States Steel Inc., Ipsco Steel Inc., Steel Dynamics, Weirton Steel Corporation, and Independent Steelworkers Union).

The Department and the GOB signed the final suspension agreement on July 6, 1999.

Scope of Suspension Agreement

See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, signed on July 6, 1999.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered their positions with respect to the proposed suspension agreement. In accordance with section 704(c) of the Act, we have determined that extraordinary circumstances are present in this case as defined by section 704(c)(4) of the Act. (*See* July 6, 1999, Extraordinary Circumstances Memorandum to Robert S. LaRussa.)

The suspension agreement provides that: (1) The GOB will not provide any new or additional export or import substitution subsidies on the subject merchandise; and (2) the GOB will restrict the volume of direct or indirect exports to the United States of subject merchandise from all Brazilian producers/exporters.

We have also determined that the suspension agreement can be monitored effectively and is in the public interest, pursuant to section 704(d) of the Act. (*See* July 6, 1999, Public Interest Memorandum to Robert S. LaRussa.) We find, therefore, that the criteria for suspension of the investigation pursuant to section 704(c) of the Act have been met. The terms and conditions of the suspension agreement, signed July 6, 1999, are set forth in Appendix I to this notice.

The suspension of liquidation ordered in the final affirmative determination in this case shall continue in effect, subject to section 704(h)(3) of the Act. Section 704(f)(2)(B) of the Act provides that the Department may adjust the security required to reflect the effect of the Agreement. Pursuant to this provision, the Department has found that the Agreement eliminates completely the injurious effects of the imports and, thus, the Department is adjusting the security required from producers and/or exporters to zero. The security rates in effect for imports from non-signatory producers/exporters remain as published in our final determination.

On July 6, 1999, we received a request from petitioners requesting that we continue the investigation. Pursuant to this request, we are continuing the investigation in accordance with section 704(g) of the Act and have notified the ITC of our determination. If the ITC's injury determination is negative, the agreement will have no force or effect, and the investigation will be terminated

(*see* section 704(f)(3)(A) of the Act). If the ITC's determination is affirmative, the Department will not issue a countervailing duty order as long as the suspension agreement remains in force (*see* section 704(f)(3)(B) of the Act).

This notice is published pursuant to section 704(f)(1)(A) of the Act.

Dated: July 6, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

Appendix I: Agreement Suspending the Countervailing Duty Investigation on Hot-Rolled Flat-Rolled Carbon-Quality Steel From Brazil

The U.S. Department of Commerce (the ''DOC'') enters into this countervailing duty suspension agreement (''the Agreement'')[1] with the Government of Brazil (the ''GOB'') through the Ministry of Foreign Relations. Pursuant to this suspension agreement, the GOB will restrict exports to the United Sates of certain hot-rolled flat-rolled carbon-quality steel products (hereinafter called Hot-Rolled Steel) from all Brazilian producers/exporters, subject to the terms and conditions set forth below.

I. Definitions

For purposes of this Agreement, the following definitions apply:

A. Date of Export—of Hot-Rolled Steel into the United States shall be the date on which the GOB's export license issuing authority issued the Export License.

B. Effective Date—means date on which this Agreement and the notice of suspension of investigation are published in the **Federal Register**.

C. Export License—is the document issued by the GOB's export license issuing authority that serves as both an export limit certificate and a certificate of origin.

D. Export and Import Substitution Subsidies—include those subsidies that have been determined to be export or import substitution subsidies in the preliminary determination in the countervailing duty investigation underlying this agreement (unless the investigation is continued and a contrary decision is reached in the final determination), in any final U.S. countervailing duty investigation of a Brazil product, or in any final review of a Brazil product under section 751 of the Act, and include subsidies which may apply to other products or exports to other destinations to the extent that such subsidies cannot be segregated as applying solely to such other products or exports.

D. Hot-Rolled Steel means the certain hot-rolled, flat-rolled, carbon quality steel products from Brazil described in Appendix II and sometimes referred to as the ''subject merchandise'' of the suspended investigation.

E. Indirect Exports means exports of Hot-Rolled Steel from Brazil to the United States through one or more third countries, whether or not such exports are further processed, provided that the further processing does not result in a substantial transformation or a change in the country of origin.

F. Party to the Proceeding means any producer, exporter, or importer of Hot-Rolled Steel, union of workers engaged in the production of Hot-Rolled Steel, associations of such parties, or the government of any country from which such merchandise is exported, that actively participated in the countervailing duty investigation, through written submission of factual information or written argument, as provided for in section 771(9) of the Act.

G. Export Limit Period means one of the following periods:

H. Initial Export Limit Period—The Initial Export Limit Period shall begin on October 1, 1999, and end on September 30, 2000. The Subsequent Export Limit Periods shall consist of each subsequent year period from October 1 through the following September 30.

I. United States means the customs territory of the United States of America (the 50 States, the District of Columbia and Puerto Rico) and foreign trade zones located within the territory of the United States.

J. Violation means noncompliance with the terms of this Agreement, whether through an act or omission, except for noncompliance that is inconsequential, inadvertent, or does not substantially frustrate the purposes of this Agreement.

II. Suspension of Investigation

On the Effective Date, the DOC will suspend its countervailing duty investigation of Hot-Rolled Steel from Brazil initiated on October 15, 1998 (63FR56607, published October 22, 1998), in accordance with Section 704 of the Act and Section 208 of the Regulations.

III. Non-provision of Export Subsidies

A. The GOB will not bestow any Export Subsidies or Import Substitution Subsidies upon the subject merchandise.

B. The GOB recognizes that the provision of export or import substitution subsidies on the production or shipment of Hot-Rolled Steel exported directly or indirectly from Brazil to the United States may result in termination of this Agreement and resumption of the investigation pursuant to the provisions of section 704(i) of the Act.

C. The GOB shall notify the DOC in writing of any new benefit which is, or which the GOB has reason to know would be, an export or import substitution subsidy on shipments of Hot-Rolled Steel exported, directly or indirectly, from Brazil to the United States, including subsidies which may apply to both the subject merchandise and other products or exports to other destinations, to the extent such benefits cannot be segregated as applying solely to such other products or exports.

IV. Export Limits

A. The quota level in metric tons (MT) for each of the periods shall be as follows:

Effective Date through September 30, 1999: 0 MT
October 1, 1999 through September 30, 2000: 295,000 MT
October 1, 2000 through September 30, 2001: 295,000 MT
October 1, 2001 through September 30, 2002: 295,000 MT
October 1, 2002 through September 30, 2003: 295,000 MT
October 1, 2003 through September 30, 2004: 295,000 MT

B. No Hot-Rolled Steel covered by this Agreement, whether exported directly or indirectly from Brazil, shall be entered into the United States unless, when cumulated with all prior entries of Hot-Rolled Steel exported from Brazil during each yearly Export Limit Period in which that Hot-Rolled Steel was exported, it does not exceed the export limits set forth in the previous paragraph.

C. When Hot-Rolled Steel is imported into the United States and is subsequently re-exported, or re-packaged and re-exported, or further processed (but still covered by this Agreement) and re-exported, the amount re-exported shall be deducted from the amount of exports that have been counted against the export limit for the Export Limit Period in which the re-export takes place. The deduction will be applied only after the DOC has received, and has had the opportunity to verify, evidence demonstrating the original importation, any repackaging or

[1] Pursuant to Section 704(b) and (c) of the Tariff Act of 1930, as amended (19 U.S.C. 1671c(b) & (c)) (the ''Act''), and Section 208 of part 351 of Title 19 of the Code of Federal Regulations (the ''Regulations'').

further processing, and subsequent exportation.

D. The GOB's export license issuing authority will not issue export licenses authorizing the exportation to the United States of Hot-Rolled Steel covered by this Agreement in any half of any Export Limit Period that exceeds 60 percent of the export limit for that Export Limit Period.

E. Notwithstanding any other provision of this Agreement, up to 15 percent of the export limit for any Export Limit Period may be carried over to the Subsequent Export Limit Period and up to 15 percent of the export limit for any Export Limit Period may be carried back to the last 90 days of the previous Export Limit Period. Any carried over or carried back allowance shall be counted against the export limit for the subsequent or previous Export Limit Period, respectively.

V. Implementation

A. The United States shall require presentation of an original stamped Export License as a condition for entry into the United States of Hot-Rolled Steel covered by this Agreement, except where there are multiple shipments under a single license. For multiple shipments at multiple ports, the original license shall be presented at each port and deductions made upon that original license for individual entries at each Port. For multiple entries at one port, the original license will be presented and deductions made for the first entry drawn from that license. Subsequent entries at that port can be made from certified copies of the original which reflect all of the deductions made from the original license. The United States will prohibit the entry of any Hot-Rolled Steel from Brazil not accompanied by an original stamped Export License, except as provided herein.[1]

B. Export Licenses must contain, for each Hot-Rolled Steel product covered by the license, the exact product description, applicable reference price, the quantity in metric tons, and dimensions (gauge, width, and, in the case of coils, length, if appropriate). If necessary, additional information may be included on the Export License or, if necessary, a separate page attached to the Export License. DOC will deduct the quantity listed on each Export License from the export limit for the Export Limit Period in which the Date of Export falls. However, if the bills of lading for all of the shipments under an Export License establish that the actual imports into the United States under that license were less than the total volume listed on the license, DOC will reflect the actual amount as having been deducted from the volume listed on the export license, but, notwithstanding the carry-over and carry-back limitations in section IV.D., will authorize the export license issue a new Export License in the same or Subsequent Export Licensing Period authorizing additional exports equal in volume to the volume of the undershipment. Exports under such additional licenses will be counted against the export limit for the Export Limit Period containing the Date of Export of the undershipment.

C. The GOB will ensure compliance with all of the provisions of this Agreement. In order to ensure such compliance, the GOB will take at least the following measures:

1. Ensure that no steel subject to this Agreement is exported from Brazil for entry into the United States during any Export Limit Period that exceeds the export limit for that Export Limit Period.

2. Establish an export limit licensing and enforcement program for all direct and indirect exports of Hot-Rolled Steel to the United States no later than 120 days after the Effective Date.

3. Require that applications for Export Licenses be accompanied by a report containing all of the information listed in Appendix III (Exports of Hot-Rolled Steel).

4. Refuse to issue an Export License to any applicant that does not permit full verification and reporting under this Agreement of all of the information in the application.

5. Issue Export Licenses sequentially, endorsed against the export limit for the relevant Export Limit Period, and reference any notice of export limit allocation results for the relevant Export Limit Period. Export Licenses shall remain valid for entry into the United States for six months. DOC and GOB may agree to an extension of the validity of the Export License in extraordinary circumstances.

6. Issue Export Licenses in the English language and, at the discretion of the export license issuing authority, also in the Portugese language.

7. Issue Export Licenses no earlier than 90 days before the day on which the Hot-Rolled Steel is accepted by a transportation company, as indicated in the bill of lading or a comparable transportation document, for export.

8. Permit full verification of all information related to the administration of this Agreement on an annual basis or more frequently, as deemed necessary, to ensure that the GOB is in full compliance with this Agreement.

9. Ensure compliance with all procedures established in order to effectuate this Agreement by any official Brazilian institution, chamber, or other authorized Brazilian company, and any Brazilian producer, exporter, broker, and trader of Hot-Rolled Steel.

10. Impose strict measures, such as prohibition from participation in the export limits allowed by the Agreement, in the event that any Brazilian company does not comply in full with the requirements established by GOB pursuant to this Agreement.

D. If any Hot-Rolled steel from Brazil is entered into the United States in excess of the Export Limit or without a valid Export Licence, DOC shall notify GOB of the entry(ies) and provide to GOB all of the information concerning the entry(ies) that DOC is able to disclose consistent with U.S. law. GOB shall respond within 21 days. If DOC determines that entry of Hot-Rolled Steel from Brazil in excess of the Export Limit or without a valid Export License has occurred, DOC shall provide GOB with an opportunity for prompt consultations, which shall be completed within 60 days after DOC notified GOB of the excessive or unlicensed entry. Once the consultations have been completed, unless DOC has concluded that the excessive or unlicensed entry did not occur, DOC shall count against the Export Limit for the period in which the excessive or licenced entry occurred twice the volume of the entry. If the Export Limit for the period in which the excessive or unlicensed entry occurred has been reached, any remaining portion of the excessive or unlicensed entry will be subtracted from the next period's Export Limit.

VI. Anticircumvention

A. The GOB will take all necessary measures to prevent circumvention of this Agreement. These measures shall include requiring that all Brazilian exporters of Hot-Rolled Steel agree, as a condition of receiving any Export License under this Agreement, not to export directly or indirectly to the United States Hot-Rolled Steel that is not accompanied by an Export License issued pursuant to this Agreement.

1. When GOB has received an allegation that circumvention has occurred, including an allegation from DOC, GOB shall promptly initiate an inquiry, normally complete the inquiry within 45 days and notify DOC of the results of the inquiry within 15 days after the conclusion of the inquiry.

2. If GOB determines that a Brazilian company has participated in a

[1] The validity of an Export License will not be affected by a subsequent change of an HTS number.

transaction circumventing this agreement, GOB shall impose penalties upon such company including, but not limited to, denial of access to export certificates for hot-rolled steel under this agreement.

3. If GOB determines that a Brazilian company has participated in the circumvention of this agreement, GOB shall count against the export limit for the Export Limit Period in which the circumvention took place and amount of hot-rolled steel equivalent to the amount involved in such circumvention and shall immediately notify DOC of the amount deducted. If sufficient tonnage is not available in the current Export Limit Period, then the remaining amount shall be deducted from the subsequent Export Limit Period or Periods.

4. If GOB determines that a company from a third country has circumvented the Agreement and DOC and GOB agree that no Brazilian company participated in or had knowledge of such activities, then the parties shall hold consultations for the purpose of sharing information regarding such circumvention and reaching mutual agreement on the appropriate measures to be taken to eliminate such circumvention. If the parties are unable to reach mutual agreement within 45 days, then DOC may take appropriate measures, such as deducting the amount of hot-rolled steel involved in such circumvention from the export limit for the then-current Export Limit Period or a subsequent Period. Before taking such measures, DOC will notify GOB of the facts and reasons constituting the basis for DOC's intended action and will afford GOB 15 days in which to comment.

B. DOC will investigate any allegations of circumvention which are brought to its attention both by asking GOB to investigate such allegations and by itself gathering relevant information. GOB will respond to requests from DOC for information relating to such allegations. In distinguishing normal arrangements from those which would result in the circumvention of the export limits established by this Agreement, DOC will take the following factors into account:

1. Existence of any verbal or written agreement leading to circumvention of this agreement;

2. Existence and function of any subsidiaries or affiliates of the parties involved;

3. Existence and function of any historical and traditional patterns of production and trade among the parties involved, and any deviation from such patterns;

4. Existence of any payments unaccounted for by previous or subsequent deliveries, or any payments to one party for Hot-rolled steel delivered or swapped by another party;

5. Sequence and timing of the arrangements; and

6. Any other information relevant to the transaction or circumstances.

C. In the event that DOC determines that a Brazilian company has participated in a transaction circumventing this Agreement, DOC and GOB shall hold consultations for the purpose of sharing evidence regarding such circumvention and reaching mutual agreement on an appropriate resolution of the problem. If DOC and GOB are unable to reach mutual agreement within 60 days, DOC may take appropriate measures, such as deducting the amount of hot-rolled steel involved in such circumvention from the export limit for the current Export Limit Period (or, if necessary, the Subsequent Export Limit Period) or instructing U.S. Customs to deny entry to any Brazilian hot-rolled steel sold by the company found to be circumventing the Agreement. Before taking such measures, DOC will notify GOB of the basis for DOC's intended action and GOB will comment within 30 days. DOC will enter its determinations regarding circumvention into the record of the Agreement. GOB may request an extension of up to 15 days for any of the deadlines mentioned in this Section.

VII. Monitoring and Notifications

A. GOB will collect and provide to DOC such information as is necessary and appropriate to monitor the implementation of, and compliance with, this Agreement, including the following:

1. Thirty days following the allocation of export rights for any Export Limit Period, GOB shall notify DOC of each allocation recipient and the volume granted to each recipient. GOB also shall inform DOC of any changes in the volume allocated to individual quota recipients within 60 days of the date on which such changes become effective.

2. GOB shall collect and provide to DOC information on exports to the United States in the format in Appendix III to this Agreement, and on the aggregate quantity and value of exports of Hot-Rolled Steel to all other countries. This information will be based on semi-annual periods (October 1 through March 31 and April 1 through September 30), and will be provided no later than 90 days following the end of each half year period, beginning on June 30, 2000 (for the period from the Effective Date through March 31, 2000).

3. The GOB shall certify to DOC, in accordance with the reporting schedule in section VII.A.2., whether it continues to be in compliance with the Agreement by providing that all exports of Hot-Rolled Steel to the United States are not and will not be eligible for any export subsidies, as provided in Section III. The GOB shall notify the DOC if any producer/exporter of Hot-Rolled Steel to the United States applies for or receives, directly or indirectly, any export or import substitution subsidy.

4. The GOB shall immediately notify and provide copies to the DOC of any resolution, decree, legislation or equivalent Government action governing any export or import substitution subsidy which is issued, altered or amended in any way as to be applicable or available to producers/exporters of Hot-Rolled Steel to the United States.

5. The GOB will inform the DOC of any violations of any provisions of this Agreement that come to its attention and of the measures taken with respect thereto.

6. The GOB and the DOC recognize that the effective monitoring of this Agreement may require that the GOB provide information additional to that identified above. Accordingly, after consulting with the GOB, the DOC may request additional reporting requirements consistent with U.S. law and regulations during the course of this Agreement. The GOB shall also collect and provide to DOC, within 45 days of the request, any such additional information requested by DOC.

B. The DOC will verify all information related to the administration of this Agreement, including all information relating to potential circumvention of this Agreement, annually or more frequently as deemed necessary.

C. The DOC may disregard any information submitted after the deadlines set forth in this Section or any information which it is unable to verify to its satisfaction.

VIII. Disclosure and Comment

A. The DOC shall make available to representatives of each Party to the Proceeding, under appropriately-drawn administrative protective orders consistent with U.S. laws and regulations, business proprietary information submitted to the DOC semi-annually or upon request pursuant to this Agreement, and in any administrative review of this Agreement.

B. Not later than 45 days after the date of disclosure of information pursuant to section VII.A., the Parties to the Proceeding may submit written

comments to DOC, not to exceed 30 pages.

C. At the end of each Export Limit Period, each Party to the Proceeding may request a hearing on issues raised during the preceding Export Limit Period. If such a hearing is requested, it will be conducted in accordance with U.S. laws and regulations.

IX. Consultations

A. The DOC and the GOB may request consultations with the other concerning this agreement at any time.

B. If the DOC requests consultations with the GOB concerning potential noncompliance with, or Violation of, this Agreement, it may simultaneously request the GOB to provide the DOC with all information relating to the allegation. The GOB will provide the requested information to the DOC within 21 days of the DOC's request. Any Party to the Proceeding may submit comments on the information submitted by the Signatory within 10 days after the DOC receives the information. The consultations shall be held within 45 days after the DOC's request for consultations or for relevant information, unless the DOC and the GOB agree on a later date.

X. Violations

A. If the DOC determines that this Agreement is being or has been violated, DOC will take such action as it determines appropriate under U.S. laws and regulations.

B. If the DOC determines that this Agreement no longer meets the requirements of the Act, the DOC shall take whatever action it deems appropriate under Section 704(i) of the Act and the Regulations.

C. In the event that the DOC resumes the original investigation, it will conduct the resumed investigation on the basis of the original administrative record and the statutes, regulations, policies, and practices in effect on the Effective Date.

XI. Duration

A. This Agreement will remain in force until the underlying countervailing duty proceeding is terminated in accordance with U.S. law.

B. The GOB may terminate this Agreement at any time upon written notice to the DOC. Termination shall be effective 60 days after such notice is given to the DOC. Upon termination at the request of the GOB, the provisions of U.S. countervailing duty law and regulations shall apply.

XII. Other Provisions

A. The DOC determines that extraordinary circumstances are present in this case, that this Agreement is in the public interest, that effective monitoring of this Agreement by the United States is practicable, and that this Agreement will completely eliminate injury to the domestic industry producing the like product by imports of Hot-Rolled Steel from Brazil.

B. For all purposes hereunder, the signatory Parties shall be represented by, and all communications and notices shall be given and addressed to:

DOC:
U.S. DOC of Commerce, Assistant Secretary for Import Administration, International Trade Administration, Washington, D.C. 20230

GOB:
Ministrio das Relaçõ6es Exteriores, Divisão de Política Comercial, 70.170–900—Brasília—DF—Brazil
Embassy of Brazil, 3006 Massachusetts Ave. NW, Washington, D.C. 20008

Signed on this 6th of July 1999. 3

Robert Larussa,

Assistant Secretary for Import Administration, U.S. Department of Commerce.

Regis Arslanian,

Minister-Counselor, Embassy of Brazil.

Appendix I—Definition of Hot-Rolled Steel

For purposes of this investigation, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*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 thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of HTSUS definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below 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
0.012 percent of boron, 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 of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max.

Width = 44.80 inches maximum; Thickness = 0.063—0.198 inches;
Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000—88,000 psi.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16% ..	0.70–0.90% ..	0.025% Max	0.006% Max	0.30–0.50% ..	0.50–0.70% ..	0.25% Max ...	0.20% Max ...	0.21% Max.

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V(wt.)	Cb
0.10–0.14%	1.30–1.80%	0.025% Max.	0.005% Max.	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max	0.10 Max ...	0.08% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% Max	1.40% Max.	0.025% Max.	0.010% Max.	0.50% Max.	1.00% Max.	0.50% Max.	0.20% Max.	0.005% Min.	Treated	0.01–0.07%

Width = 39.37 inches; Thickness = 0.181 inches maximum;
Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses >0.148 inches;
Tensile Strength = 80,000 psi minimum.

- Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm^2 and 640 N/mm^2 and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm^2 and 690 N/mm^2 and an elongation percentage ≥ 25 percent for thicknesses of 2mm and above.
- Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.
- Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this investigation, including: Vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Appendix II—Information To Be Contained in Export Licenses

1. Export License: Indicate the number(s) relating to each sale and or entry.
2. Complete Description of Merchandise: Include the 10 digit HTS category, the ASTM or equivalent grade, and the width and thickness of merchandise.
3. Quantity: Indicate in metric tons.
4 F.O.B. Sales Value: Indicate value and currency used.
5. Unit Price: Indicate unit price per metric ton and currency used, and reference price.
6. Date of Sale: The date all essential terms of the order (i.e, price and quantity) become fixed.
7. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
8. Date of Export: Date the Export License is issued.
9. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.
10. Importer of Record: Name and address.
11. Trading Company: Name and address of trading company involved in sale.
12. Customer: Name and address of the first unaffiliated party purchasing from the Brazilian exporter.
13. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated to the Brazilian exporter.
14. Allocation to Exporter: Indicate the total amount of quota allocated to the individual exporter during the Relevant Period.
15. Allocation Remaining: Indicate the remaining export limit allocation available to the individual exporter during the export limit period.
16. Destination: The complete name and address of the first unaffiliated purchaser.
17. Other: The identity of any party(ies) in the transaction chain between the producer and the first unaffiliated purchaser.

List of Heat Numbers

GOB shall ensure that all shipments of Hot-Rolled Steel exported to the United States pursuant to this Agreement, shall be accompanied by a list of heat numbers under the shipment. GOB understands that DOC intends to fully verify this data during verifications.

Appendix III—Information on Exports of Hot-Rolled Steel

In accordance with the established format, the GOB's license issuing authority shall collect and provide to DOC all information necessary to ensure compliance with this Agreement. This information will be provided to DOC on a semi-annual basis.

The GOB's license issuing authority will collect and maintain data on exports to the United States on a continuous basis. Data for exports to countries other than the United States, will be reported upon request.

The GOB's license issuing authority will provide a narrative explanation to substantiate all data collected in accordance with the following formats.

The GOB's license issuing authority will provide all Export Licenses issued to Brazilian entities, which shall contain the following information with the exception that information requested in item #9, date of entry, item #10, importer of record, item #16, final destination, and item #17, other, may be omitted if unknown to the licensing authority and the licensee.

1. Export License: Indicate the number(s) relating to each sale and or entry.
2. Complete Description of Merchandise: Include the 10 digit HTS category, the ASTM or equivalent grade, and the width and thickness of merchandise.
3. Quantity: Indicate in metric tons.
4 F.O.B. Sales Value: Indicate value and currency used.
5. Unit Price: Indicate unit price per metric ton, currency used, and reference price
6. Date of Sale: The date all essential terms of the order (i.e, price and quantity) become fixed.
7. Sales Order Number(s): Indicate the number(s) relating to each sale and/or entry.
8. Date of Export: Date the Export License is issued.
9. Date of Entry: Date the merchandise entered the United States or the date book transfer took place.
10. Importer of Record: Name and address.
11. Trading Company: Name and address of trading company involved in sale.
12. Customer: Name and address of the first unaffiliated party purchasing from the Brazilian exporter.
13. Customer Relationship: Indicate whether the customer is affiliated or unaffiliated to the Brazilian exporter.
14. Allocation to Exporter: Indicate the total amount of quota allocated to the individual exporter during the Relevant Period.
15. Allocation Remaining: Indicate the remaining export limit allocation available to the individual exporter during the export limit period.
16. Destination: The complete name and address of the first unaffiliated purchaser.
17. Other: The identity of any party(ies) in the transaction chain between the producer and the first unaffiliated purchaser.

List of Heat Numbers

The GOB's license issuing authority shall ensure that all shipments of Hot-Rolled Steel exported to the United States pursuant to this Agreement, shall be accompanied by a list of heat numbers under the shipment. The GOB's license issuing authority understands that DOC intends to fully verify this data during verifications.

[FR Doc. 99–18227 Filed 7–16–99; 8:45 am]

BILLING CODE 3510–DS–P

federal register

Monday
July 19, 1999

Part IV

Department of Education

The Native Hawaiian Family-Based Education Centers Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.209A]

The Native Hawaiian Family-Based Education Centers Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 1999.

Purpose of Program

To expand the operation, throughout the Hawaiian Islands, of Family-Based Education Centers that include: (1) Parent-infant programs for prenatal through three-year-olds; (2) preschool programs for four-and five-year-olds; (3) continued research and development; and (4) a long-term follow-up and assessment program, which may include educational support services for Native Hawaiian language immersion programs or transition to English speaking programs.

Eligible Applicants

Native Hawaiian educational organizations or educational entities with experience in developing or operating Native Hawaiian programs or programs of instruction conducted in the Native Hawaiian language.

Applications Available: July 19, 1999.

Applications Must Be Received By: August 17, 1999.

Note: Applications must be received on or before the deadline date. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

This requirement takes exception to the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.102 Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested partied the opportunity to comment on proposed regulations. However, this exception to EDGAR makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Deadline for Intergovernmental Review: August 17, 1999.

Available Funds: $475,000.

Estimated Number of Awards: 1–2.

Estimated Size of Awards: $200,000–$475,000.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 81, 82, and 85.

SUPPLEMENTARY INFORMATION: A notice inviting applications for new awards under the Native Hawaiian Family-Based Education Centers Program was published in the **Federal Register** on April 6, 1999 (64 FR 16718). In response to this notice, the Secretary did not receive a sufficient number of quality applications to allocate all of the funds available under this program. Therefore, the Secretary is conducting a new competition and inviting applications for the remaining $475,000 available under the Native Hawaiian Family-Based Education Centers.

Applicants should refer to the April 6, 1999 notice inviting applications (64 FR 16718) in developing their proposals for funding. Applicants are reminded that all proposals must meet the requirements of the Native Hawaiian Family-Based Education Centers Program (20 U.S.C. 7905). Applications will be reviewed on the basis of the selection criteria announced in the April 6, 1999 notice inviting applications.

For Applications or Information Contact: Madeline E. Baggett, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202–6140. Telephone (202) 260–2502. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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 person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format also by contacting that person. However, the Department is not able to reproduce in an alternate format the standards 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) on the World Wide Web 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 pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498. **Note:** The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at:

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

Program Authority: 20 U.S.C. 7905.

Dated: July 14, 1999.

Judith Johnson,

Acting Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 99–18339 Filed 7–16–99; 8:45 am]

BILLING CODE 4000–01–P

federal register

Monday
July 19, 1999

Part V

Department of Education

The Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.297A]

The Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 1999.

Purposes of Program

The Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program supports—

(1) *Curricula*—the development of curricula to address the needs of Native Hawaiian students, particularly elementary and secondary students, which may include programs of instruction conducted in the Native Hawaiian language and mathematics and science curricula incorporating the relevant application of Native Hawaiian culture and traditions;

(2) *Preteacher training*—the development and implementation of preservice teacher training to ensure that student teachers within the State, particularly those who are likely to be employed in schools with a high concentration of Native Hawaiian students, are prepared to better address the unique needs of Native Hawaiian students within the context of Native Hawaiian culture, language, and traditions;

(3) *Inservice teacher training*—the development and implementation of inservice teacher training to ensure that teachers, particularly those employed in schools with a high concentration of Native Hawaiian students, are prepared to better address the unique needs of Native Hawaiian students within the context of Native Hawaiian culture, language, and traditions; and

(4) *Teacher recruitment*—the development and implementation of teacher recruitment programs to enhance teacher recruitment within communities with a high concentration of Native Hawaiian students and to increase the numbers of teachers who are of Native Hawaiian ancestry.

Eligible Applicants

Native Hawaiian educational organizations or educational entities with experience in developing or operating Native Hawaiian programs or programs of instruction conducted in the Native Hawaiian language.

Applications Available: July 19, 1999.

Applications Must Be Received By: August 17, 1999.

Note: All applications must be received on or before the deadline date. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

This requirement takes exception to the Education Department General Administrative Regulations (EDGAR), 34 CFR75.102 Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, this exception to EDGAR makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Deadline for intergovernmental Review: August 17, 1999.

Available Funds: $120,000 for computer literacy and technology education; $250,000 for prisoner education programs; and $250,000 for waste management programs.

Estimated Number of Awards: 1 for computer literacy and technology education; 1 to 2 for prisoner education; and 1 to 2 for waste management.

Estimated Size of Awards: $120,000 for computer literacy and technology education; $125,000 to $250,000 for prisoner education and for waste management.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 81, 82, and 85.

SUPPLEMENTARY INFORMATION: A notice inviting applications for new awards under the Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program was published in the **Federal Register** on April 6, 1999 (64 FR 16716). A notice of final funding priorities was published at the same time (64 FR 16715). The Secretary invited applications to address one of six absolute priorities—(1) Computer literacy and technology education; (2) agriculture education partnerships; (3) astronomy; (4) indigenous health; (5) waste management; and (6) prisoner education programs.

In response to the original notice inviting applications, the Secretary did not receive a sufficient number of quality applications in three of the priority areas—computer literacy and technology education; waste management; and prisoner education—to make the awards that were intended to be granted in these areas. Therefore, the Secretary is running a new competition and inviting applications that address one of these three priority areas.

Absolute Priorities

Applicants should refer to the original notice inviting applications (64 FR 16716) and the notice of final funding priorities (64 FR 16715) in developing their proposals for funding. Applicants are reminded that all proposals must meet the requirements of the Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program (20 U.S.C. 7909) and address one of the following absolute priorities—computer literacy and technology education; waste management; or prisoner education—as announced in the April 6, 1999 notice of final funding priorities. Applications will be reviewed on the basis of the selection criteria announced in the April 6, 1999 notice inviting applications. Applications addressing the agriculture partnerships, astronomy or indigenous health priorities will not be considered for funding.

For Applications or Information Contact: Madeline E. Baggett, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202–6140. Telephone (202) 260–2502. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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 person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format also by contacting that person. However, the Department is not able to reproduce in an alternate format the standards forms included in the application package.

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

Program Authority: 20 U.S.C. 7909.

Dated: July 14, 1999.

Judith Johnson,

Acting Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 99–18340 Filed 7–16–99; 8:45 am]

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federal register

Monday
July 19, 1999

Part VI

Department of Housing and Urban Development

24 CFR Part 570

Community Development Block Grant (CDBG) Program; Clarification of the Nature of Required CDBG Exenditure Documentation; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–4449–I–01]

RIN 2506–AC00

Community Development Block Grant (CDBG) Program; Clarification of the Nature of Required CDBG Expenditure Documentation

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule.

SUMMARY: This rule clarifies the level of expenditure documentation that is needed to meet the financial management requirement that grantees and subrecipients maintain adequate records to identify the use of Community Development Block Grant (CDBG) funds provided for assisted activities. This change will provide the public with more assurance that CDBG funds are used only for allowable purposes.

DATES: *Effective Date:* August 18, 1999.

Comments Due Date: September 17, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Regulations Division, Office of the General Counsel, Room 10276, Department of Housing & Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (fax) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Sue Miller, Entitlement Communities Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1577. Persons with hearing or speech-impairments may call 1–800–877–8339 (Federal Information Relay Service TTY). (Other than the ''800'' number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2506–0077. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Background

The Office of Inspector General (OIG) audits have found various cases in which grantees and subrecipients were not maintaining sufficient documentation to clearly identify the actual use of Community Development Block Grant (CDBG) funds provided to assisted projects. This issue has particularly arisen in regard to special economic development activities where the funds are ultimately expended by for-profit businesses. Such lack of appropriate documentation increases the potential for misuse of CDBG funds. This rule clarifies the level of documentation that is needed for grantees and subrecipients to demonstrate compliance with the existing financial management requirements in 24 CFR parts 84 and 85 relating to maintaining adequate records to identify the use of funds provided for assisted activities. This change will provide the public with more assurance that CDBG funds are used only for allowable purposes.

OMB Uniform Administrative Requirements for grants to local governments and nonprofit organizations have long required that grantees and subrecipients maintain records which adequately identify the source and application of funds provided for financially-assisted activities. This requirement is found at § 85.20(b)(2) for local governments and at § 84.21(b)(2) for nonprofit organizations. These requirements are specifically made applicable to the CDBG program by §§ 570.502(a)(4) and (b)(3), respectively. The CDBG regulations at § 570.506(h) also require maintaining financial records in accordance with the applicable requirements listed in § 570.502.

Most grantees and subrecipients comply satisfactorily with the subject requirement, particularly for those activities that the grantee and/or subrecipient directly implements or for which it procures goods or services. Problems are most likely to occur in instances where the grantee and/or subrecipient provides CDBG financial assistance to an entity that is neither a contractor nor a subrecipient, but rather possesses characteristics of a ''beneficiary.'' Such entities carry out assisted activities directly and are not subject to the provisions of 24 CFR part 84 or part 85.

A common example of these latter type of assisted activities is that of a grantee making a CDBG economic development loan to a for-profit business to carry out an economic development project. The private business is then generally responsible for all direct implementation actions and is not governed by the OMB uniform administrative requirements. The grantee must thus exercise due diligence in obtaining documentation from the business to support the use of CDBG funds in order to ensure that the grantee is in compliance with its responsibilities under the uniform administrative requirements which only allow costs that are necessary, reasonable, and adequately supported to be charged to the CDBG program.

In the example case, the grantee's records relating to its review and approval of the business' loan application are not sufficient to provide the adequate documentation of the ''application of funds'' required by § 85.20(b)(2). The grantee's loan agreement with the business and related security filings, while important, are also not in themselves adequate to document the actual use of the funds. The grantee must have records to support the scope of the activity that is actually accomplished and to clearly demonstrate how the CDBG funds were used to assist the activity.

This interim rule amends 24 CFR 570.506(h) to clarify the extent of documentation needed to meet the financial management requirement that grantees and subrecipients maintain adequate records to identify the use of funds provided for assisted activities. A broad range of types of documentation is described in an effort to reflect the myriad of different activities and financing mechanisms that can be undertaken with CDBG funds. Comment on this method of addressing the issue of adequate financial support documentation is welcome.

Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is ''impracticable, unnecessary, or contrary to the public interest.''

The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment because this rule clarifies requirements already in place for grantees and subrecipients. In consideration of this fact, advance public comment was determined not necessary, but HUD welcomes comments from the public and is soliciting comment on this rule.

Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in so doing certifies that this rule will not have a substantial economic impact on small entities. This interim rule will have no economic impact on small entities since it is a clarification of existing policy. Notwithstanding HUD's determination regarding small entities, HUD specifically invites comments regarding alternatives to this rule that would meet HUD's objectives as described in this preamble.

Environmental Impact

This amendment is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321). In keeping with the exclusion provided for in 24 CFR 50.19(c)(1), this amendment does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(2), this amendment is categorically excluded because it amends an existing document where the existing document as a whole would not fall under the exclusion in 24 CFR 50.19 (c)(1), but the amendment by itself would do so.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this interim rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The clarification resulting from this interim rule will not affect the relationship between the Federal Government and State and local governments.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the Community Development Block Grants program are 14.218, 14.219, 14.225, 14.227, 14.246, and 14.248.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, 24 CFR part 570 is amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

2. Section 570.506 is amended by revising paragraph (h) to read as follows:

§ 570.506 Records to be maintained.

* * * * *

(h) Financial records, in accordance with the applicable requirements listed in § 570.502, including source documentation for entities not subject to parts 84 and 85 of this title. Grantees shall maintain evidence to support how the CDBG funds provided to such entities are expended. Such documentation must include, to the extent applicable, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by appropriate parties (e.g., general contractor and/or a project architect), and/or other documentation appropriate to the nature of the activity.

* * * * *

Dated: June 16, 1999.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

[FR Doc. 99–18378 Filed 7–16–99; 8:45 am]

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1997 to June 30, 1998. The volume issued July 1, 1997, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

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