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Tuesday
February 28, 1995

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Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
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Presidential Documents

Title 3—

The President

Executive Order 12951 of February 22, 1995

Release of Imagery Acquired by Space-Based National Intelligence Reconnaissance Systems

By the authority vested in me as President by the Constitution and the laws of the United States of America and in order to release certain scientifically or environmentally useful imagery acquired by space-based national intelligence reconnaissance systems, consistent with the national security, it is hereby ordered as follows:

Section 1. *Public Release of Historical Intelligence Imagery*. Imagery acquired by the space-based national intelligence reconnaissance systems known as the Corona, Argon, and Lanyard missions shall, within 18 months of the date of this order, be declassified and transferred to the National Archives and Records Administration with a copy sent to the United States Geological Survey of the Department of the Interior consistent with procedures approved by the Director of Central Intelligence and the Archivist of the United States. Upon transfer, such imagery shall be deemed declassified and shall be made available to the public.

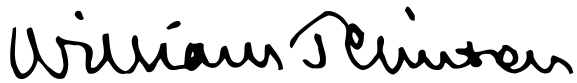
Sec. 2. *Review for Future Public Release of Intelligence Imagery*. (a) All information that meets the criteria in section 2(b) of this order shall be kept secret in the interests of national defense and foreign policy until deemed otherwise by the Director of Central Intelligence. In consultation with the Secretaries of State and Defense, the Director of Central Intelligence shall establish a comprehensive program for the periodic review of imagery from systems other than the Corona, Argon, and Lanyard missions, with the objective of making available to the public as much imagery as possible consistent with the interests of national defense and foreign policy. For imagery from obsolete broad-area film-return systems other than Corona, Argon, and Lanyard missions, this review shall be completed within 5 years of the date of this order. Review of imagery from any other system that the Director of Central Intelligence deems to be obsolete shall be accomplished according to a timetable established by the Director of Central Intelligence. The Director of Central Intelligence shall report annually to the President on the implementation of this order.

(b) The criteria referred to in section 2(a) of this order consist of the following: imagery acquired by a space-based national intelligence reconnaissance system other than the Corona, Argon, and Lanyard missions.

Sec. 3. *General Provisions.* (a) This order prescribes a comprehensive and exclusive system for the public release of imagery acquired by space-based national intelligence reconnaissance systems. This order is the exclusive Executive order governing the public release of imagery for purposes of section 552(b)(1) of the Freedom of Information Act.

(b) Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 4. *Definition.* As used herein, ''imagery'' means the product acquired by space-based national intelligence reconnaissance systems that provides a likeness or representation of any natural or man-made feature or related objective or activities and satellite positional data acquired at the same time the likeness or representation was acquired.



THE WHITE HOUSE,
February 22, 1995.

[FR Doc. 95–5050
Filed 2-24-95; 2:13 pm]
Billing code 3195–01–P

Presidential Documents

Memorandum of February 15, 1995

Delegation of Responsibilities Under Section 1205(d) and 1207(c) of Title XII of Public Law 103–337

Memorandum for the Secretary of State [and] the Secretary of Defense

By the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of Title 3 of the United States Code, I hereby delegate to the Secretary of State the authorities and duties vested in the President under sections 1205(d) and 1207(c) of Title XII of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337), to be exercised in consultation with the Secretary of Defense.

The Secretary of State is authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
Washington, February 15, 1995.

[FR Doc. 95–5075
Filed 2–24–95; 4:04 pm]
Billing code 4710–10–M

Presidential Documents

Memorandum of February 16, 1995

Delegation of Certain Presidential Authorities Under the Foreign Assistance Act of 1961 and Related Appropriations Legislation

Memorandum for the Secretary of State [and] the Administrator of the Agency for International Development

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate as follows certain authorities vested in the President:

(A) the functions under section 607 of the Foreign Assistance Act of 1961, as amended (FAA), to the Secretary of State and to the Administrator of the Agency for International Development, respectively, for matters within their respective areas of responsibility; and

(B) the functions in the first proviso under the heading ''Population, Development Assistance,'' contained in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995 (Public Law 103–306), and in comparable provisions in successor legislation, to the Secretary of State relating to those organizations and programs for which the Secretary of State has funding responsibility.

The delegations of authority described in subparagraph (A) are in addition to other delegations of such authority to the International Development Cooperation Agency.

The delegation of authority described above in subparagraph (B) shall be exercised in lieu of the delegation of the comparable authority to the Administrator of the Agency for International Development by section 1–102(a)(7) of Executive Order No. 12163, as amended.

Any reference in this memorandum to any Act, order, determination, or delegation of authority shall be deemed to be a reference to such Act, order, determination, or delegation of authority as amended from time to time.

The functions delegated by this memorandum may be redelegated within the Department of State or the Agency for International Development, as appropriate.

The Secretary of State is authorized and directed to publish this memorandum in the **Federal Register.**

THE WHITE HOUSE,
Washington, February 16, 1995.

[FR Doc. 95–5076
Filed 2–24–95; 4:05 pm]
Billing code 4710–10–M

Rules and Regulations

Federal Register

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1210

[FV–93–706FR-A]

RIN 0581–AB21

Watermelon Research and Promotion Plan; Amendments to the Plan, Rules and Regulations, and Rules of Practice for Petitions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Watermelon Research and Promotion Plan (Plan) to: eliminate the refund provision of the Plan; assess watermelon importers and add importer member(s) to the Plan; exempt from assessments producers with less than 10 acres of watermelons rather than 5 acres and importers of less than 150,000 pounds; cover all 50 States by the Plan; and revise the criteria for determining the eligibility of producers to serve on the Board. In addition, conforming changes would be made to the rules and regulations issued under the Plan and the rules of practice for petitions.

EFFECTIVE DATE: February 28, 1995.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535–S, Washington, DC 20090–6456; telephone (202) 720–9916.

SUPPLEMENTARY INFORMATION: This final rule amends the Watermelon Research and Promotion Plan [7 CFR part 1210], hereinafter referred as the Plan. The Plan is effective under the Watermelon Research and Promotion Act, as amended by the Watermelon Research and Promotion Improvement Act of 1993, [7 U.S.C. 4901–4916] hereinafter referred 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 12778, Civil Justice Reform. It is not intended to have retroactive effect. 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 § 1650 of the Act, a person subject to the Plan may file a petition with the Secretary stating that the Plan or any provision of the Plan, or any obligation imposed in connection with the Plan, is not in accordance with law and requesting a modification of the Plan or an exemption from the Plan. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

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.

There are approximately 750 watermelon handlers and 5,000 watermelon producers in the United States who are subject to the Plan. There are approximately 140 importers of watermelons. Small agricultural service firms are defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $5 million and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of watermelon handlers, producers, and importers may be classified as small entities.

The changes in the Plan, rules and regulations, and rules of practice for petitions reflect amendments to the Act. The overall economic impact of these changes is not expected to be significant. Including all 50 States and the District of Columbia under the Plan will have little impact. The producer exemption from assessments is being increased from 5 acres to 10 acres. This change will benefit small producers because it will increase the exemption level, and small producers will not have to pay the assessment. The eligibility criteria for determining if a person is a handler or a producer will not have any economic impact. The elimination of refunds may have some impact on a small amount of producers and handlers who are currently entitled to refunds. There will also be a new burden on importers caused by the assessment of imports, but importers are currently benefiting from the activities which promote watermelons without paying assessments. The research and promotion program is expected to continue to benefit producers, handlers, and importers subject to the Plan by expanding and maintaining new and existing markets. Accordingly, the Administrator of AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 [40 U.S.C. Chapter 35], the information collection requirements contained in the Plan have previously been approved by the Office of Management and Budget (OMB) and assigned OMB number 0581–0093. There will be a new reporting burden on importers, but the burden has been already approved by the OMB and assigned OMB control number 0581–0093. This action adds no additional reporting burden.

Background

Under the Plan, the National Watermelon Promotion Board (Board) administers a nationally coordinated program of research, development, advertising, and promotion designed to strengthen the watermelon's position in the market place and to establish, maintain, and expand markets for domestic watermelons. In the past, this program was financed by assessments on all producers, except those persons engaged in the growing of less than five acres of watermelons, and handlers of watermelons. The Plan specifies that handlers are responsible for collecting and submitting both the producer and handler assessments to the Board, reporting their handling of watermelons, and maintaining records necessary to verify their reporting.

U.S. production of watermelons is estimated through the use of U.S. shipment statistics. Shipments of U.S.-produced watermelons totaled about 1,895.6 million pounds in 1993, 7 percent less than in 1992. Imports of watermelons in 1993 totalled 343.5 million pounds, an increase of 12 percent. Therefore, domestic production is about six times as great as the volume of imports.

A referendum was conducted in 1989 to determine if majority of watermelon growers and handlers favored the passage of an industry funded research and promotion program for watermelons. The Plan was intended to collect assessments for research and promotion of watermelons. At that time, any individual not favoring the program could request a refund of the assessments paid by that individual. Procedures to request a refund of assessments were explained in the Plan.

A proposed rule was published in the **Federal Register** on April 14, 1994 [59 FR 17739]. That rule contained the proposed amendments to the Plan, rules and regulations, rules of practice for petitions, and referendum procedures. In order to have the referendum procedures in place for the referendum, the Department decided to separately make final the referendum procedures. A final rule was published in the **Federal Register** on August 30, 1994 [59 FR 44613] containing the referendum procedures. A proposed rule containing the proposed amendments to the Plan, rules and regulations, rules of practice for petitions, and ordering that a referendum be conducted was published separately on August 30, 1994 [59 FR 44646].

The deadline for comments on the proposed amendments published on April 14 was May 16, 1994. Twenty-one comments were received. The comments were addressed in the rules published on August 30, 1994.

A referendum was conducted in November 1994 among watermelon producers, handlers, and importers to determine whether they favor: (1) eliminating the provisions for assessment refunds and (2) implementing assessments on imported watermelons and adding importer member(s) to the Board.

The voting period was from November 1 through November 30, 1994. Ballots were mailed to all known eligible watermelon producers, handlers, and importers on October 14, 1994.

Sonia N. Jimenez and Martha B. Ransom were designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The Procedure for the Conduct of Referenda in Connection with the Watermelon Research and Promotion Plan were used to conduct the referendum.

The results of the referendum indicate that 61 percent of those who voted in the referendum favor elimination of refunds of assessments under the program and that 81 percent of those who voted in the referendum favor assessing watermelon imports and adding watermelon importers to the Board.

A simple majority of votes was required to approve each of the two changes.

The amendments to the Act authorize an assessment on watermelons imported into the United States and the addition of importer members to the Board. Watermelon imports enter the country primarily during the winter season. Imports of watermelons in 1993 totalled 343.5 million pounds. The assessment rate for imports will be the combined total assessment rate paid by producers and handlers of domestic watermelons. The current assessment rate for producers is 2 cents per hundredweight and for handlers is 2 cents per hundredweight. The combined assessment rate for importers, therefore, will be 4 cents per hundredweight. Assessments will be paid at the time the watermelons enter the country. The collection of assessments on imported watermelons will be expected to generate an additional $137,400 per year in revenue to the Board. In order to make these changes, this rule amends sections 1210.305, 1210.320, 1210.321, 1210.328, 1210.341, 1210.350, 1210.351, 1210.352, 1210.363, and 1210.364 of the Plan; sections 1210.402 and 1210.405 of the nomination procedures; and sections 1210.515, 1210.518, 1210.519, 1210.521, 1210.530, 1210.531, and 1210.532 of the rules and regulations. In addition, a new section 1210.314 will be added to the Plan.

To facilitate the collection of assessments on imported watermelons, the Secretary proposes that the Customs Service of the Department of the Treasury be designated as the collecting agency for assessments levied on such imports. Other commodity research and promotion programs utilize the Customs Service as a means of collecting assessments on imported products, and the Customs Service is agreeable to collecting these watermelon assessments. An agreement between the USDA and the Customs Service will be entered into to implement this action. In order to make this change, this rule would amend section 1210.518 of the Rules and Regulations.

The importer representation on the Board will be proportionate to the percentage of assessments paid by importers to the Board, except that at least one representative of importers will serve on the Board if importers are subject to the Plan. This representation will enable importers to participate in developing the Board's programs, plans, and projects, and express their views and concerns on how Board funds are used if imports are assessed under the Plan. Importers will nominate individuals to serve as importer members on the Board, and as required for other members of the Board, two nominees would be submitted to the Secretary for each vacancy. The Act requires the number of importers members to be proportionate to the assessments paid by importers. It is necessary to calculate the number of initial importer members on the volume of imports because imports are not currently being assessed. There are currently 14 producers and 14 handlers on the Board. This is the equivalent of one domestic industry member for every 67.7 million pounds of domestic production. Based on the average annual volume of imports during the last 3-year period (323.1 hundredweight), four importers would be added to the current Board. In order to make this change, this rule would amend sections 1210.320, 1210.321, and 1210.401.

The Act provides for the elimination of refunds of assessments after passed in the referendum. The refund provision has been in effect since the beginning of the program. Refunds have been increasing every year from 9 percent in 1990 to almost 29 percent in 1993. The elimination of the refund provision from the Plan is estimated to provide the Board with additional $250,000 per year for research and promotion activities. In order to make this change, this rule amends sections 1210.343 and 1210.520.

The Act increases the acreage for exempt producers from ''less than 5 acres'' to ''less than 10 acres'' of watermelons. Importers of less than 150,000 pounds of watermelons per year will be entitled to apply for a refund which will be the producer equivalent of the import assessments. The 150,000-

pound exemption level for importers is the level determined to be equivalent to 10 acres of watermelons for domestic producers. In addition, the Act provides that the Board has the authority to establish rules for producers to certify whether they are exempt from the assessments. In order to make these changes, this rule amends sections 1210.341, 1210.342, 1210.518, and 1210.521.

The Act also increases applicability of the law from the 48 contiguous States to the 50 States and the District of Columbia. This amendment would expand the Plan to cover producers, handlers, and importers in Hawaii, Alaska, and the District of Columbia. In order to make these changes, this rule amends section 1210.305 and would add a new section 1210.315.

Section 1647(f) of the Act permits changes in the assessment rate through notice and comment rulemaking. No change to the Plan is necessary to implement this amendment to the Act because section 1210.341 of the Plan states that assessment rates shall be fixed by the Secretary in accordance with section 1647(f) of the Act.

The Act provides that a producer is eligible to serve on the Board as a representative of handlers (1) if a producer purchases watermelons from other producers in a combined total volume that is equal to 25 percent or more of the producer's own production or (2) if the combined total volume of watermelons handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production. This provision facilitates the eligibility of producers and handlers to serve on the Board as representatives of their specific group. In order to make these changes, this rule amends sections 1210.321, 1210.363, 1210.368, and 1210.402.

The Act also provides that all future promulgation and amendment referenda do not have to be conducted at Extension Service county offices. This procedure proved to be expensive and difficult to administer. The Act now allows referenda to be conducted by mail ballot which reduces the costs involved in conducting referenda and facilitates a more timely tabulation of the results. In order to make this change, this rule amends section 1210.363.

In addition, the Act changes the criteria for determining the outcome of referenda. The Act previously provided that the Plan should not be effective unless approved by not less than two-thirds of the producers and handlers voting in the referendum, or producers and handlers of not less than two-thirds of the watermelons produced and handled during the representative period by producers and handlers voting in the referendum, and by not less than a majority of the producers and a majority of the handlers voting in the referendum. The Act now specifies that the determination of the results of a referendum should be on the basis of a simple majority of the producers, handlers, and importers voting in the referendum. In order to make this change, this rule amends section 1210.363.

Furthermore, section 1210.252 will be revised to correct a wording error made during the promulgation of the Plan and section 1210.322 will be revised to delete obsolete language.

In addition, section 1210.325 will be changed to reflect a change in the number of Board members that constitute a majority. This revision reflects the addition of importer members to the Board.

Section 1210.505 will be amended to reflect the fact that the Department issues user fee bills to the Board monthly rather than quarterly.

In addition, miscellaneous conforming changes will be made to sections 1210.251, 1210.302, 1210.328, 1210.340, and 1210.362.

Minor changes are made in this final rule for the purpose of clarity.

After consideration of all relevant material presented, it is found that this regulation, as set forth herein, tends to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This rule amends the Plan and the Rules and Regulations issued thereunder, in accordance with the provisions of the Act as amended by the Watermelon Research and Promotion Improvement Act of 1993; (2) watermelon producers, handlers, and importers voted in November 1994 to implement two of the major changes; and (3) no useful purpose will be served in delaying the effective date until 30 days after publication of this final rule. Therefore, this final rule will be effective on the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1210

Agricultural promotion, Agricultural research, Market development, Reporting and recordkeeping requirements, Watermelons.

For the reasons set forth in the preamble, part 1210, chapter XI of title 7 is amended as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

1. The authority citation for 7 CFR part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901–4916.

Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Plans

§ 1210.251 [Amended]

2. In Section 1210.251, paragraph (a) is amended by removing '';'' and adding in its place '', as amended;''.

§ 1210.252 [Amended]

3. In Section 1210.252, paragraph (b)(3) is amended by removing the word ''order'' and adding in its place ''Plan''.

Subpart—Watermelon Research and Promotion Plan

§ 1210.302 [Amended]

4. Section 1210.302 is amended by adding '', as amended'' at the end of the sentence.

5. Section 1210.305 is revised to read as follows:

§ 1210.305 Watermelon.

''Watermelon'' means all varieties of the Family Curcubitaceae; Genus and Species; Citrullus Lanatus, popularly referred to as watermelon grown by producers in the United States or imported into the United States.

§ 1210.306 [Amended]

6. Section 1210.306 is amended by removing the word ''five'' and adding in its place ''10''.

7. A new § 1210.314 is added to read as follows:

§ 1210.314 Importer.

''Importer'' means any person who imports watermelons into the United States as a principal or as an agent, broker, or consignee for any person who produces watermelons outside of the United States for sale in the United States.

8. A new section 1210.315 is added to read as follows:

§ 1210.315 United States.

''United States'' means each of the several States and the District of Columbia.

9. Section 1210.320 is amended by revising paragraph (a) and adding new paragraphs (d), (e), and (f) to read as follows:

§ 1210.320 Establishment and membership.

(a) There is hereby established a National Watermelon Promotion Board, hereinafter called the ''Board.'' The

Board shall be composed of producers, handlers, importers, and one public representative appointed by the Secretary. An equal number of producer and handler representatives shall be nominated by producers and handlers pursuant to § 1210.321. The Board shall also include one or more representatives of importers, who shall be nominated in such manner as may be prescribed by the Secretary. The public representative shall be nominated by the Board members in such manner as may be prescribed by the Secretary. If producers, handlers, and importers fail to select nominees for appointment to the Board, the Secretary may appoint persons on the basis of representation as provided in § 1210.324. If the Board fails to adhere to procedures prescribed by the Secretary for nominating a public representative, the Secretary shall appoint such representative.

* * * * *

(d) Importer representation on the Board shall be proportionate to the percentage of assessments paid by importers to the Board, except that at least one representative of importers shall serve on the Board.

(e) Not later than 5 years after the date that importers are subject to the Plan, and every 5 years thereafter, the Secretary shall evaluate the average annual percentage of assessments paid by importers during the 3-year period preceding the date of the evaluation and adjust, to the extent practicable, the number of importer representatives on the Board.

(f) The Board consists of 14 producers, 14 handlers, at least one importer, and one public member appointed by the Secretary.

10. Section 1210.321 is amended by redesignating paragraphs (a), (b), and (c) as (b), (c), and (e) respectively; redesignating paragraph (d) as paragraph (f); removing new paragraph (f)(1) and redesignating new paragraphs (f)(2) and (f)(3) as paragraphs (f)(1) and (f)(2); revising new paragraphs (b) introductory text, (b)(1), (b)(4), (e), (f) introductory text, and (f)(1); removing in new paragraph (c) the word ''positions'' and adding in its place the phrase ''producer and handler positions''; and adding new paragraphs (a) and (d) to read as follows:

§ 1210.321 Nominations and selection.

* * * * *

(a) There shall be two individuals nominated for each vacant position.

(b) The Board shall issue a call for nominations by February first of each year in which an election is to be held. The call shall include at a minimum, the following information:

(1) A list of the vacancies and qualifications as to producers and handlers by district and to importers nationally for which nominees may be submitted.

* * * * *

(4) The date, time, and location of any next scheduled meeting of the Board, national and State producer or handler associations, importers, and district conventions, if any.

* * * * *

(d) Nominations for importers positions that become vacant may be made by mail ballot, nomination conventions, or by other means prescribed by the Secretary. The Board shall provide notice of such vacancies and the nomination process to all importers through press releases and any other available means as well as direct mailing to known importers. All importers may participate in the nomination process: *Provided*, That a person who both imports and handles watermelons may vote for importer members and serve as an importer member if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person.

(e) All producers and handlers within the district may participate in the convention: *Provided*, That a person that produces and handles watermelons may vote for handler members only if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production; or the combined total volume of watermelon handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production; and *provided further*, That if a producer or handler is engaged in the production or handling of watermelons in more than one State or district, the producer or handler shall participate within the State or district in which the producer or handler so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board.

(f) The district convention chairperson shall conduct the selection process for the nominees in accordance with procedures to be adopted at each such convention, subject to requirements set in § 1210.321(e).

(1) No State in Districts 3, 4, 5, and 7 as currently constituted shall have more than three producers and handlers representatives concurrently on the Board.

* * * * *

11. Section 1210.322 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 1210.322 Term of office.

(a) The term of office of Board members shall be three years.

(b) Except in the case of mid-term vacancies, the term of office shall begin on January 1, or such other date as may be recommended by the Board and approved by the Secretary.

* * * * *

(d) No person shall serve more than two successive terms of office.

12. Section 1210.325 is amended by revising paragraph (a) to read as follows:

§ 1210.325 Procedure.

(a) A simple majority of Board members shall constitute a quorum and any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings all votes shall be cast in person.

* * * * *

§ 1210.328 [Amended]

13. Section 1210.328 is amended by removing in paragraphs (d) and (g) the word ''collected'' and adding in its place ''received''; removing in paragraphs (g), (i), and (m) the phrase ''and handlers'' and adding in its place '', handlers, and importers''; removing in paragraph (k) the phrase ''or handler'' and adding in its place '', handler or importer''; and removing in paragraph (n) the word ''handlers'' and adding in its place ''handlers, importers,''.

§ 1210.340 [Amended]

14. Section 1210.340 is amended by removing in paragraph (b) the word ''collected'' and adding in its place ''received''.

15. Section 1210.341 is amended by revising paragraphs (a), and (b); redesignating paragraphs (d) through (i) as (e) through (j); revising redesignated paragraph (e); adding a new paragraph (d); removing in redesignated paragraphs (f) and (g) the word ''handler'' wherever it appears and adding in its place ''handler or importer''; removing in redesignated paragraph (h) the word ''handlers'' wherever it appears and adding in its place ''handlers and importers''; and removing redesignated in paragraph (f) the letter ''(d)'' and adding in its place ''(e)'' to read as follows:

§ 1210.341 Assessments.

(a) During the effective period of this subpart, assessments shall be levied on all watermelons produced and first handled in the United States and all watermelons imported into the United States for consumption as human food. No more than one assessment on a producer, handler, or importer shall be made on any lot of watermelons. The handler shall be assessed an equal amount on a per unit basis as the producer. If a person performs both producing and handling functions on any same lot of watermelons, both assessments shall be paid by such person. In the case of an importer, the assessment shall be equal to the combined rate for domestic producers and handlers and shall be paid by the importer at the time of entry of the watermelons into the United States.

(b) Assessment rates shall be fixed by the Secretary in accordance with section 1647(f) of the Act. No assessments shall be levied on watermelons grown by producers of less than 10 acres of watermelons.

* * * * *

(d) Each importer shall be responsible for payment of the assessment to the Board on watermelons imported into the United States through the U.S. Customs Service or in such other manner as may be established by rules and regulations approved by the Secretary.

(e) Producer-handlers and handlers shall pay assessments to the Board at such time and in such manner as the Board, with the Secretary's approval, directs, pursuant to regulations issued under this part. Such regulations may provide for different handlers or classes of handlers and different handler payment and reporting schedules to recognize differences in marketing practices or procedures used in any State or production area.

* * * * *

16. Section 1210.342 is amended by designating the existing text as paragraph (a) and adding new paragraphs (b), (c), and (d) to read as follows:

§ 1210.342 Exemption from assessment.

* * * * *

(b) Importers of less than 150,000 pounds of watermelons per year shall be entitled to apply for a refund that is equal to the rate of assessment paid by domestic producers.

(c) The Secretary may adjust the quantity of the weight exemption specified in paragraph (b) of this section on the recommendation of the Board after an opportunity for public notice and comment to reflect significant changes in the 5-year average yield per acre of watermelons produced in the United States.

(d) The Board shall have the authority to establish rules, with the approval of the Secretary, for certifying whether a person meets the definition of a producer under section 1210.306.

§ 1210.343 [Removed and Reserved]

17. Section 1210.343 is removed and reserved.

18. Section 1210.350 is amended by redesignating paragraphs (a) through (d) as (a) (1) through (4); designating the introductory paragraph as paragraph (a) introductory text; and adding new paragraphs (b) and (c) to read as follows:

§ 1210.350 Reports.

* * * * *

(b) Each importer of watermelons shall maintain a separate record that includes a record of:

(1) the total quantity of watermelons imported into the United States that are included under the terms of this Plan;

(2) the total quantity of watermelons that are exempt from the Plan; and

(3) such other information as may be prescribed by the Board.

(c) Each importer shall report to the Board at such times and in such manner as it may prescribe such information as may be necessary for the Board to perform its duties under this part.

§ 1210.351 [Amended]

19. Section 1210.351 is amended by removing the word ''handler'' and adding in its place ''handler and importer'' and removing the word ''two'' and adding in its place ''2''.

§ 1210.352 [Amended]

20. Section 1210.352 is amended by removing in paragraph (a)(1) the word ''handlers'' and adding in its place ''handlers or importers''.

§ 1210.362 [Amended]

21. Section 1210.362 is amended by removing the word ''collected'' and adding in its place ''received''; and removing the word ''plan'' and adding in its place ''Plan''.

22. Section 1210.363 is amended by revising paragraph (b) to read as follows:

§ 1210.363 Suspension or termination.

* * * * *

(b) The Secretary may conduct a referendum at any time and shall hold a referendum on request of the Board or at least 10 percent of the combined total of the watermelon producers, handlers, and importers to determine if watermelon producers, handlers, and importers favor termination or suspension of this Plan. The Secretary shall suspend or terminate this Plan at the end of the marketing year whenever the Secretary determines that the suspension or termination is favored by a majority of the watermelon producers, handlers, and importers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production, handling, or importing of watermelons and who produced, handled, or imported more than 50 percent of the combined total of the volume of watermelons produced, handled, or imported by those producers, handlers, and importers voting in the referendum. For purposes of this section, the vote of a person who both produces and handles watermelons will be counted as a handler vote if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production; or the combined total volume of watermelon handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production. *Provided*, That the vote of a person who both imports and handles watermelons will be counted as an importer vote if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person. Any such referendum shall be conducted by mail ballot.

§ 1210.364 [Amended]

23. Section 1210.364 is amended by removing in paragraph (d) the phrase ''and handlers'' and adding in its place '', handlers and importers''.

24. The subpart heading ''Subpart—Procedures for Nominating Producer and Handler Members to the National Watermelon Promotion Board'' is revised; and a new undesignated center heading is added to read as follows:

Subpart—Procedures for Nominating Members to the National Watermelon Promotion Board

Producer and Handler Members

25. In Section 1210.401, paragraph (b) is revised to read as follows:

§ 1210.401 District conventions.

* * * * *

(b) District conventions are to be held to nominate producers and handlers as candidates for membership on the National Watermelon Promotion Board. Each district, as defined in § 1210.501, is entitled to two producer and two handler members on the Board.

* * * * *

26. Section 1210.402 is amended by revising paragraph (a); removing in paragraph (b) the phrase ''or first handling'' and adding in its place '', first handling or importing''; and removing

in paragraph (b) the phrase ''§ 1210.403'' and adding in its place ''§ 1210.403 and § 1210.404'' to read as follows:

§ 1210.402 Voter and board member nominee eligibility.

(a) All producers and handlers within a district may participate in their district convention for the purpose of nominating candidates for appointment to the Board: *Provided*, That a producer who both produces and handles watermelons may vote for handler member nominees and serve as a handler member nominee only if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production or the combined total volume of watermelons handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production; and *Provided further,* That if a producer or handler is engaged in the production or handling of watermelons in more than one State or district, the producer or handler shall participate within the State or district in which the producer or handler so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board. For the purpose of participation in initial nominating conventions, such election shall be made in writing, at the address provided, to the Department official identified in the call for a district convention.

* * * * *

27. A new undesignated center heading and section 1210.404 are added to read as follows:

Importer Members

§ 1210.404 Importer member nomination and selection.

(a) The Board shall include one or more representatives of importers, who shall be appointed by the Secretary from nominations submitted by watermelon importers. Importers' representation on the Board shall be proportionate to the percentage of assessments paid by importers to the Board, except that at least one representative of importers shall serve on the Board if importers are subject to the Plan. Nominations for importer positions that become vacant shall be made by importers at nomination conventions or by mail ballot.

(b) The initial nomination of importer members shall be made not later than 90 days after the Plan is amended.

(c) There shall be two individuals nominated for each vacant position. The importer receiving the highest number of votes for a vacancy shall be the first choice nominee, and the importer receiving the second highest number of votes shall be the second choice nominee submitted to the Secretary.

(d) Any individual, group of individuals, partnership, corporation, association, cooperative or any other entity which is engaged in the production, first handling or importing of watermelons is considered a person and as such is entitled to only one vote, except that such person may cast proxy votes as provided in paragraph (e)(1) of this section.

(e) *Nomination Conventions.* If nominations are made by nomination conventions, the Board shall widely publicize such conventions and provide importers and the Secretary at least 10 days notice prior to each convention.

(1) Proxy voting by importers shall be permitted at all conventions. Any person wanting to cast proxy votes must demonstrate authorization to do so. Authority to cast a proxy vote on behalf of another person shall be demonstrated through documentation containing:

(i) The proxy voter's name, address, and telephone number;

(ii) Signature and date signed;

(iii) A certification identifying the proxy voter as an importer; and

(iv) A statement identifying the person being given authority by the proxy voter to cast the proxy vote.

(2) The Board shall provide to the Secretary a typed copy of each convention's minutes and shall arrange for completion of qualification statements and other specified information by each nominee and forward such to the Secretary within 14 calendar days of completion of a convention.

(f) *Mail balloting.* If nominations are conducted by mail ballot, the Board shall request importers to submit nominations of eligible importers. It is the importer's responsibility to prove the individual's eligibility. After the names of nominees are received, the Board shall print ballots and ask eligible importers to vote to nominate their candidates. After the vote is received, the Board shall tabulate the results and shall send to the Department the nominees in order of preference. The Board shall provide the Secretary with a report on the results, number of importers participating in the vote, and the volume of imports, and shall arrange for completion of qualification statements and other specified information by each nominee and forward such to the Secretary within 14 calendar days of receiving the ballots.

(g) Any individual who both imports and handles watermelons will be considered an importer if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person.

§ 1210.503 [Redesignated as § 1210.405]

28. Section 1210.503 is redesignated as § 1210.405, the first sentence of paragraph (a) is revised, and a new undesignated center heading is added to read as follows:

Public Member

§ 1210.405 Public member nominations and selection.

(a) The public member shall be nominated by the other members of the Board. * * *

* * * * *

Subpart—Rules and Regulations

§ 1210.505 [Amended]

29. Section 1210.505 is amended by removing the word ''quarterly'' and adding in its place ''monthly''.

30. Section 1210.515 is amended by revising paragraph (a); redesignating paragraph (b) as (c); and adding a new paragraph (b) to read as follows:

§ 1210.515 Levy of assessments.

(a) An assessment of two cents per hundredweight shall be levied on all watermelons produced for ultimate consumption as human food, and an assessment of two cents per hundredweight shall be levied on all watermelons first handled for ultimate consumption as human food. An assessment of four cents per hundredweight shall be levied on all watermelons imported into the United States for ultimate consumption as human food at the time of entry in the United States.

(b) The import assessment shall be uniformly applied to imported watermelons that are identified by the numbers 0807.10.30007 and 0807.10.40005 in the Harmonized Tariff Schedule of the United States or any other number used to identify fresh watermelons for consumption as human food. The U.S. Customs Service (USCS) will collect assessments on such watermelons at the time of entry and will forward such assessment as per the agreement between USCS and USDA. Any importer or agent who is exempt from payment of assessments may submit the Board adequate proof of the volume handled by such importer for the exemption to be granted.

* * * * *

31. Section 1210.518 is amended by revising paragraphs (a) and (b);

removing in paragraph (c)(1) the letter ''(e)'' and adding in its place ''(b) and (e)'' and removing the word ''handler'' and adding in its place ''handler and importer''; removing in paragraph (c)(2)(viii) the word ''five'' and adding in its place ''10''; and removing in paragraph (d)(1) the word ''handler'' wherever it appears and adding in its place ''handler and importer'' to read as follows:

§ 1210.518 Payment of assessments.

(a) Time of payment. The assessment on domestically produced watermelons shall become due at the time the first handler handles the watermelons for non-exempt purposes. The assessment on imported watermelons shall become due at the time of entry, or withdrawal, into the United States.

(b) Responsibility for payment.

(1) The first handler is responsible for payment of both the producer's and the handler's assessment. The handler may collect the producer's assessment from the producer or deduct such producer's assessment from the proceeds paid to the producer on whose watermelons the producer assessment is made. Any such collection or deduction of producer assessment shall be made not later than the time when the first handler handles the watermelons.

(2) The U.S. Customs Service shall collect assessments on imported watermelons from importers and forward such assessments under an agreement between the U.S. Customs Service and the U.S. Department of Agriculture. Importers shall be responsible for payment of assessments directly to the Board of any assessments due but not collected by the U.S. Customs Service at the time of entry, or withdrawal, on watermelons imported into the United States for human consumption.

* * * * *

§ 1210.519 [Amended]

32. Section 1210.519 is amended by removing in the introductory paragraph the word ''handler'' and adding in its place ''handler and importer''; by removing in paragraph (a) the word ''handler's'' and adding in its place ''handler's and importer's''; and removing the word ''Watermelon'' from the introductory paragraph and paragraphs (a) and (b).

33. Section 1210.520 is revised to read as follows:

§ 1210.520 Refunds.

Each importer of less than 150,000 pounds of watermelons during any calendar year shall be entitled to apply for a refund of the assessments paid in an amount equal to the amount paid by domestic producers.

(a) Application form. The Board shall make available to all importers a refund application form.

(b) Submission of refund application to the Board. The refund application form shall be submitted to the Board within 90 days of the last day of the year the watermelons were actually imported. The refund application form shall contain the following information:

(1) Importer's name and address;

(2) Number of hundredweight of watermelon on which refund is requested;

(3) Total amount to be refunded;

(4) Proof of payment as described below; and

(5) Importer's signature.

(c) Proof of payment of assessment. Evidence of payment of assessments satisfactory to the Board shall accompany the importer's refund application. An importer must submit a copy of the importer's report or a cancelled check. Evidence submitted with a refund application shall not be returned to the applicant.

(d) Payment of refund. Immediately after receiving the properly executed application for refund, the Board shall make remittance to the applicant.

34. Section 1210.521 is revised to read as follows:

§ 1210.521 Reports of disposition of exempted watermelons.

The Board may require reports by handlers or importers on the handling/importing and disposition of exempted watermelons and/or on the handling of watermelons for persons engaged in growing less than 10 acres of watermelons or in the case of importers, the importing of less than 150,000 pounds per year. Authorized employees of the Board or the Secretary may inspect such books and records as are appropriate and necessary to verify the reports on such disposition.

§ 1210.530 [Amended]

35. Section 1210.530 is amended by removing the word ''handler'' from the introductory text and adding in its place ''handler and importer''.

§ 1210.531 [Amended]

36. Section 1210.531 is amended by removing the word ''handler'' and adding in its place ''handler and importer''.

37. Section 1210.532 is revised to read as follows:

§ 1210.532 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handlers and importers and all information with respect to refunds of assessments made to importers shall be kept confidential in the manner and to the extent provided for in § 1210.352.

Dated: February 21, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–4736 Filed 2–27–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–128–AD; Amendment 39–9146; AD 95–03–09]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker F28 Mark 0100 series airplanes, that requires inspecting the teleflex cable of the landing gear to detect corrosion, moisture, or improper greasing, and replacing discrepant teleflex cables with serviceable parts. This amendment is prompted by reports of difficulties with the operation of the selector handle of the landing gear when ''gear down'' is selected, due to improper greasing of the teleflex cable of the landing gear during production. The actions specified by this AD are intended to prevent moisture from accumulating on the teleflex cable, which could result in corrosion of the teleflex cable that could inhibit operation of the selector handle of the landing gear.

DATES: Effective March 30, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 30, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

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 all Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on October 18, 1994 (59 FR 52479). That action proposed to require removing the teleflex cable of the landing gear, part number D76351–001, and inspecting it to detect corrosion, moisture, or improper greasing. If no discrepancies are detected, the cable would be cleaned, greased, and reassembled. If any discrepancy is detected, the cable would be replaced with a serviceable part.

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

The commenter supports the proposed rule.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

Additionally, the applicability of the final rule has been revised to clarify that only airplanes equipped with a teleflex cable of the landing gear, having part number D76351–001, are applicable to the requirements of the AD.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

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 with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 119 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10.9 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $77,826, or $654 per airplane.

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

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

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. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

95–03–09 Fokker: Amendment 39–9146. Docket 94–NM–128–AD.

Applicability: Model F28 Mark 0100 series airplanes; equipped with a teleflex cable of the landing gear, having part number D76351–001; 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 use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent moisture from accumulating on the teleflex cable, which could result in corrosion of the teleflex cable that could inhibit operation of the selector handle of the landing gear, accomplish the following:

(a) Within 4 months after the effective date of this AD, remove the teleflex cable of the landing gear, part number D76351–001, and perform an inspection of it to detect corrosion, moisture, or improper greasing, in accordance with Fokker Service Bulletin SBF100–32–071, dated June 22, 1993.

(1) If no discrepancies are found, prior to further flight, clean, grease, and reinstall the teleflex cable, in accordance with the service bulletin.

(2) If any discrepancy is found, prior to further flight, replace the teleflex cable with a serviceable part in accordance with the service bulletin.

(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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with §§ 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) The actions shall be done in accordance with Fokker Service Bulletin SBF100–32–071, dated June 22, 1993. 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 Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 30, 1995.

Issued in Renton, Washington, on February 6, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–3357 Filed 2–27–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–ANE–81; Amendment 39–9091; AD 94–25–07]

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing telegraphic airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT8D series turbofan engines, that currently requires repetitive ultrasonic inspections of a combustion chamber outer case (CCOC) weld, but also allows visual inspection or fluorescent magnetic penetrant inspection (FMPI) of certain CCOC's under specified conditions. This amendment allows ultrasonic inspections only. This amendment is prompted by the greater availability of ultrasonic inspection equipment, which provides a more definitive means of discovering cracks than either visual inspections or FMPI. The actions specified by this AD are intended to prevent rupture of the CCOC, which could result in fire, engine cowl release, or aircraft damage.

DATES: Effective March 30, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 30, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7137, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: On March 1, 1989, the Federal Aviation Administration (FAA) issued telegraphic airworthiness directive (AD) T89–05–52, applicable to Pratt & Whitney (PW) JT8D series turbofan engines, which requires repetitive ultrasonic inspections for cracks in the combustion chamber outer case (CCOC). In addition, that telegraphic AD allowed operators who did not have ultrasonic inspection capability to perform visual inspections and fluorescent magnetic penetrant inspections (FMPI) of CCOC's. That action was prompted by reports of two CCOC's, both part number (P/N) 796761, which were found in service with severe cracking and distress at the weld which joins the forward case detail to the rear flange detail. These cracks initiated from an area of incomplete weld created during the manufacturing process and were not detected during the final inspection process. Another CCOC, P/N 806675, is manufactured using a similar process and has the same potential for incomplete welds, but to date have not been found cracked. That condition, if not corrected, could result in rupture of the CCOC, which could result in fire, engine cowl release, or aircraft damage.

Since the issuance of that telegraphic AD, the FAA has received reports that most operators now have the capability to perform ultrasonic inspections, which provides a more definitive means of discovering cracks than either visual inspections or FMPI. In telegraphic AD T89–05–52, reinspection of all CCOC's is required, including reinspection of those CCOC's that exhibited minimal ultrasonic indications during initial inspection. The FAA has determined analytically that CCOC's that exhibit maximum signal amplitudes of less than 40 percent are not life limited at the defined weld area. Therefore, CCOC's that meet this signal criteria for two consecutive ultrasonic inspections may be marked with a new P/N, provided the second ultrasonic inspection is accomplished at least 2,500 cycles in service (CIS) after the first inspection and the second inspection is performed in accordance with Appendix C of PW Alert Service Bulletin (ASB) No. 5842, Revision 3, dated October 10, 1990.

Finally, the FAA has determined that certain CCOC's, P/N 806675, were ultrasonically inspected by PW during the manufacturing process, and therefore do not need to be inspected again until they are accessible in the shop.

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding telegraphic AD T89–05–52 was published in the **Federal Register** on January 27, 1994 (59 FR 3797). That action proposed to require repetitive ultrasonic inspections of CCOC's for cracks. The proposed AD would also allow CCOC's that meet certain signal criteria for two consecutive ultrasonic inspections to be marked with a new P/N. Once remarked, those CCOC's would not need to meet the repetitive ultrasonic inspection requirements of this AD. Finally, the proposed AD would require ultrasonic inspections on certain CCOC's, P/N 806675, identified by serial number, that were ultrasonically inspected by PW during the manufacturing process, when they are accessible in the shop.

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 operators should be exempt from the initial 10 days or 75 cycles in service (CIS) after the effective date of this AD, whichever occurs later, ultrasonic inspection if they have already accomplished the inspection in accordance with telegraphic AD T89–05–52. The FAA concurs and paragraphs (a) and (b) of the compliance section of this final rule have been revised in accordance with this comment.

Three commenters state that they agree with eliminating visual inspections and only allowing ultrasonic inspections. The FAA concurs.

One commenter states that the proposed rule will have negligible effect on operations and maintenance. The FAA concurs.

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 with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 1,000 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per engine to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $110,000.

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

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. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive, Amendment 39–9091, to read as follows:

94–25–07 Pratt & Whitney: Amendment 39–9091. Docket 93–ANE–81. Supersedes telegraphic airworthiness directive (AD) T89–05–52.

Applicability: Pratt & Whitney (PW) Models JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines, with combustion chamber outer case (CCOC), Part Number (P/N) 796761 or 806675. These engines are installed on but not limited to Boeing 727 and 737 series, and McDonnell Douglas DC–9 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent rupture of the CCOC, which could result in fire, engine cowl release, or aircraft damage, accomplish the following:

(a) Except for CCOC's cited in paragraph (c) of this airworthiness directive (AD), ultrasonically inspect CCOC's installed in engines that have not previously been ultrasonically inspected in accordance with telegraphic AD T89–05–52 for cracks within 10 days or 75 cycles in service (CIS) after the effective date of this AD, whichever occurs later, in accordance with paragraph 2.A.(3) and Appendix B of PW Alert Service Bulletin (ASB) No. 5842, Revision 3, dated October 10, 1990.

(b) For CCOC's not installed in engines and not cited in paragraph (c) of this AD, and that have not previously been ultrasonically inspected in accordance with telegraphic AD T89–05–52, ultrasonically inspect for cracks prior to returning the CCOC's to service in accordance with paragraph 2.A.(5) and Appendix C of PW ASB No. 5842, Revision 3, dated October 10, 1990.

(c) For CCOC's, P/N 806675, listed by serial number in Table 1 and paragraph 2.A.(10) of PW ASB No. 5842, Revision 3, dated October 10, 1990, accomplish the following:

(1) At the next removal of the CCOC from the engine after the effective date of this AD, ultrasonically inspect CCOC's for cracks in accordance with paragraph 2.A.(5) and Appendix C of PW ASB No. 5842, Revision 3, dated October 10, 1990.

(2) Remove from service or reinspect CCOC's in accordance with paragraphs (d) and (e), respectively, of this AD.

(3) Mark CCOC's with new part numbers in accordance with paragraphs 2.A.(5)(c) and 2.A.(11) of PW ASB No. 5842, Revision 3, dated October 10, 1990, that;

(i) have accumulated at least 2,500 CIS since new; and

(ii) exhibit a maximum ultrasonic signal amplitude of less than 40% during the inspection conducted subsequent to 2,500 CIS since new.

(d) Remove from service and replace with a serviceable part CCOC's with maximum ultrasonic signal amplitude determined as follows:

(1) CCOC's with greater than or equal to 360%, prior to further flight, with no ferry flight permitted in accordance with paragraph (i) of this AD below.

(2) CCOC's with less than 360%, but greater than or equal to 240%, prior to further flight, with ferry flight permitted, in accordance with paragraph (i) of this AD below.

(e) Thereafter, ultrasonically inspect CCOC's, P/N's 796761 and 806675, for cracks at intervals determined by maximum ultrasonic signal amplitude, in accordance with paragraph 2.A.(3) and Appendix B of PW ASB No. 5842, Revision 3, dated October 10, 1990, for installed CCOC's; or paragraph 2.A.(5) and Appendix C of PW ASB No. 5842, Revision 3, dated October 10, 1990, for uninstalled CCOC's; as applicable, as follows:

(1) For those CCOC's that meet the criteria described in paragraph (d) of this AD, remove from service and replace with a serviceable part.

(2) For those CCOC's with less than 240%, but greater than or equal to 100%, at intervals of 1,000 CIS since last inspection.

(3) For those CCOC's with less than 100%, but greater than or equal to 40%, at intervals of 2,500 CIS since last inspection.

(4) For those CCOC's with less than 40%, inspect at the next removal of the CCOC from the engine since last inspection.

(f) Mark CCOC's with new P/N's, in accordance with paragraphs 2.A.(5)(c) and 2.A.(11) of PW ASB No. 5842, Revision 3, dated October 10, 1990, that meet the following criteria:

(1) At least two consecutive ultrasonic inspections have been performed on the CCOC; and

(2) The second inspection was performed in accordance with paragraph (b) of this AD; and

(3) Have accumulated at least 2,500 CIS since the first ultrasonic inspection; and

(4) That exhibit a maximum ultrasonic signal amplitude of less than 40% in both inspections.

(g) Remarking of CCOC's with a new P/N in accordance with paragraph (f) of this AD constitutes terminating action to the inspection requirements of this AD.

(h) 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. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the Engine Certification Office.

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

(j) The actions required by this AD shall be done in accordance with the following alert service bulletin:

Document No.	Pages	Revision	Date
PW ASB No. 5842	1–17	3	Oct. 10, 1990.
Appendix A	1–2	Original	May 26, 1989.
Appendix B	1–23	3	Oct. 10, 1990.
Appendix C	1–7	Original	May 26, 1989.
Total pages: 49.			

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 Pratt & Whitney, 400 Main St., East Hartford, CT 06108. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief 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.

(k) This amendment becomes effective on March 30, 1995.

Issued in Burlington, Massachusetts, on January 26, 1995.

Michael H. Borfitz,

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

[FR Doc. 95–2693 Filed 2–27–95; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 94–NM–84–AD; Amendment 39–9145; AD 95–03–08]

Airworthiness Directives; Aerospatiale Model ATR42–300 and –320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–300 and –320 series airplanes, that requires an inspection to determine the model and orientation of certain flight control rods, and replacement with modified rods, if necessary. This amendment is prompted by reports of corrosion found on the pitch trim and rudder trim rods. The actions specified by this AD are intended to prevent problems associated with corrosion of the flight control rods, which could compromise the required strength of these items.

DATES: Effective on March 30, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 30, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sam Grober, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1187; fax (206) 227–1100.

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 certain Aerospatiale Model ATR42 series airplanes was published in the **Federal Register** on July 21, 1994 (59 FR 37182). That action proposed to require an inspection to determine the orientation of the end of rudder trim and elevator trim fail-safe rods, and replacement of those rods having upwards-oriented ends.

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

The commenter, Aerospatiale, requests that the compliance time specified in proposed paragraph (a)(1) for replacement of SARMA-type rods be extended to 18 months. The proposed rule would require that these rods be replaced prior to further flight after they are identified during the proposed inspection. The commenter considers this replacement requirement to be too restrictive. The FAA does not concur. The rule provides for a compliance time of 18 months for accomplishing the one-time inspection to determine if these types of rods are installed on the airplane. The FAA finds no justification for providing an additional time thereafter for replacement of the discrepant rods. The FAA does not consider the 18-month compliance time to be overly restrictive, since it provides ample time for operators to schedule the inspection during regularly scheduled maintenance and to acquire necessary parts for replacement. However, under the provisions of paragraph (b) of the final rule, if an operator were to find itself in a situation in which replacement parts were not immediately available, it could request approval for the use of an alternative method of compliance until parts became available.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement.

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

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 with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 128 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $30,720, or $240 per airplane.

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

Should replacement of any of the flight control rods be necessary, the number of work hours and the cost of required parts would vary according to the type of replacement accomplished. In a ‘‘worst case scenario’’ (both subject rods needing replacement), the cost of parts would be approximately $6,000 per airplane. Labor necessary to accomplish replacement of a rod(s) would vary from 54 to 87 work hours, at an average labor rate of $60 per work hour.

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

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. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

95–03–08 Aerospatiale: Amendment 39–9145. Docket 94–NM–84–AD.

Applicability: Model ATR42–300 and -320 series airplanes on which Aerospatiale Modification 02723 has not been installed, 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 use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent problems associated with corrosion of the flight control rods, which could compromise the required strength of these items, accomplish the following:

(a) Within 18 months after the effective date of this AD, visually inspect the elevator trim and rudder trim fail-safe rods to determine the model and the orientation of the open end of the rod, in accordance with Aerospatiale Service Bulletin ATR42–27–0071, dated February 23, 1994.

(1) If a SARMA-type rod is installed at either of these locations, prior to further flight, replace that rod with a modified rod, in accordance with Aerospatiale Service Bulletin ATR42–27–0049, Revision 2, dated May 16, 1991.

(2) If a TAC-type rod is installed at either of these locations, and if the open end of the rod is oriented in any direction other than downwards, prior to further flight, accomplish the reverse installation procedures specified in Aerospatiale Service Bulletin ATR42–27–0048, Revision 2, dated May 16, 1991.

(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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with §§ 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) The actions shall be done in accordance with the following Aerospatiale Service Bulletins, which contain the specified effective pages:

Service bulletin number and date	Page No.	Revision level shown on page	Date shown on page
ATR42–27–0071, Feb. 23, 1994	1–8	Original	Feb. 23, 1994.
ATR42–27–0048	1, 2, 4–6	2	May 16, 1991.
Revision 2	3, 8, 9	Original	June 22, 1990.
May 16, 1991	7	1	Nov. 21, 1990.
ATR42–27–0049	1, 2, 4	2	May 16, 1991.
Revision 2	3, 5, 6, 8, 11	Original	Sept. 14, 1990.
May 16, 1991	7, 9, 10	1	Nov. 21, 1990.

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 Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 30, 1995.

Issued in Renton, Washington, on February 6, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–3355 Filed 2–27–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–83–AD; Amendment 39–9144; AD 95–03–07]

Airworthiness Directives; Aerospatiale Model ATR72–101, –102, –201, and –202 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR72 series airplanes, that requires an inspection to determine the model and orientation of certain flight control rods, and replacement of the rods with modified rods, if necessary. This amendment is prompted by reports of corrosion found on the pitch and rudder trim and rudder travel limiter fail-safe rods. The actions specified by this AD are intended to prevent problems associated with corrosion of the flight control rods, which could compromise the required strength of these items.

DATES: Effective March 30, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 30, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sam Grober, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1187; fax (206) 227–1320.

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 certain Aerospatiale Model ATR72 series airplanes was published in the **Federal Register** on July 27, 1994 (59 FR 38139). That action proposed to require an inspection to determine the model and orientation of certain flight control rods, and replacement of the rods with modified rods, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effects of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been added to this final rule to clarify this requirement. The FAA has determined that this addition will neither increase the economic burden on any operator nor increase the scope of the AD.

Additionally, the FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The economic impact information, below has been revised to reflect this increase in the specified hourly labor rate.

The FAA estimates that 28 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $10,080, or $360 per airplane.

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

Should replacement of any of the flight control rods be necessary, the number of work hours and the cost of required parts will vary according to the type of replacement accomplished. In a ''worst case scenario'' (all subject rods needing replacement), the cost of parts will be approximately $8,200 per airplane. Labor necessary to accomplish replacement of a rod(s) will vary from 2 work hours to 10 work hours, at an average labor rate of $60 per work hour.

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

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. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

95–03–07 Aerospatiale: Amendment 39–9144. Docket 94–NM–83–AD.

Applicability: Model ATR72–101, –102, –201, and –202 series airplanes; as listed in Aerospatiale Service Bulletin ATR72–27–1033, dated February 23, 1994; 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 use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent problems associated with corrosion of the flight control rods, which could compromise the required strength of these items, accomplish the following:

Note 2: Rods replaced and installed in accordance with the instructions of any version of Aerospatiale Service Bulletin ATR72–27–1010 prior to the effective date of this AD are not affected by the requirements of this AD.

(a) For airplanes having Manufacturer's Serial Numbers (MSN) 126 through 183, inclusive: Within 18 months after the effective date of this AD, visually inspect the elevator trim fail-safe rods to determine the model and the orientation of the open end of the rod, in accordance with Part A of Aerospatiale Service Bulletin ATR72–27–1033, dated February 23, 1994.

(1) If a SARMA-type rod is installed, prior to further flight, replace that rod with a modified rod, in accordance with Aerospatiale Service Bulletin ATR72–27–1012, Revision 3, dated October 7, 1991.

(2) If a TAC-type rod is installed, and if the open end of the rod is oriented in any direction other than downwards, prior to further flight, accomplish the reverse installation procedures specified in Aerospatiale Service Bulletin ATR72–27–1010, Revision 4, dated February 23, 1994.

(b) For airplanes having MSN's 126 through 198 inclusive, 204, and 207: Within 18 months after the effective date of this AD, visually inspect the rudder trim fail-safe rods to determine the model and the orientation of the open end of the rod, in accordance with Part B of Aerospatiale Service Bulletin ATR72–27–1033, dated February 23, 1994.

(1) If a SARMA-type rod is installed, prior to further flight, replace that rod with a modified rod, in accordance with Aerospatiale Service Bulletin ATR72–27–1012, Revision 3, dated October 7, 1991.

(2) If a TAC-type rod is installed, and if the open end of the rod is oriented in any direction other than downwards, prior to further flight, accomplish the reverse installation procedures specified in Aerospatiale Service Bulletin ATR72–27–1010, Revision 4, dated February 23, 1994.

(c) For airplanes having MSN's 198, and 126 through 237 inclusive: Within 18 months after the effective date of this AD, visually inspect the rudder travel limitation unit fail-safe rods to determine the model and the orientation of the open end of the rod, in accordance with Part C of Aerospatiale Service Bulletin ATR72–27–1033, dated February 23, 1994.

(1) If a SARMA-type rod is installed, prior to further flight, replace that rod with a new rod in accordance with Aerospatiale Service Bulletin ATR72–27–1027, dated July 28, 1993.

(2) If a TAC-type rod is installed at the rudder travel limitation rod location, and if the open end of the rod is oriented in any direction other than downwards, prior to further flight, inspect that rod in accordance with Aerospatiale Service Bulletin ATR72–27–1027, dated July 28, 1993.

(i) If no crack(s), deformation, or corrosion of the rod is found, prior to further flight, reinstall the rod so that the open end is oriented downwards, in accordance with the service bulletin.

(ii) If any crack(s), deformation, or corrosion of the rod is found, prior to further flight, replace the rod with a modified rod in accordance with the service bulletin.

(d) 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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with §§ 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.

(f) The inspections, replacements, reverse installations, and reinstallation shall be done in accordance with the following Aerospatiale service bulletins, as applicable, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
ATR72–27–1012, Revision 3, October 7, 1991	1	3	Oct. 7, 1991.
	2, 4, 6, 9	Original	Oct. 29, 1990.
	5, 7, 8	1	Nov. 21, 1990.
	3	2	May 16, 1991.
ATR72–27–1033 Original Issue, February 23, 1994	1–10	Original	Feb. 23, 1994.
ATR72–27–1027, Original Issue, July 28, 1993	1–11	Original	July 28, 1993.
ATR72–27–1010, Revision 4, February 23, 1994	1, 3	4	Feb. 23, 1994.
	2, 7	Original	June 22, 1990.
	4	2	Jan. 10, 1991.
	5, 6	1	Nov. 21, 1990.

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 Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 30, 1995.

Issued in Renton, Washington, on February 6, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–3356 Filed 2–27–95; 8:45 am]

BILLING CODE 4910–13–U

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Eligibility: Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation (''Corporation'') is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the Federal Poverty Guidelines as issued by the Department of Health and Human Services.

EFFECTIVE DATE: February 28, 1995.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Legal Services Corporation, 750 First Street NE, Washington, D.C. 20002–4250; 202–336–8810.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act (''Act''), 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that other specified factors shall be taken into account along with income.

Section 1611.3(b) of the Corporation's regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the official Federal Poverty Income Guidelines.

Responsibility for revision of the official Federal Poverty Income Guidelines was shifted in 1982 from the Community Services Administration to the Department of Health and Human Services. The revised figures for 1995 set out below are equivalent to 125% of the current official Poverty Guidelines as set out at 60 FR 7772 (Feb. 9, 1995).

List of Subjects in 45 CFR Part 1611

Legal services.

PART 1611—ELIGIBILITY

1. The authority citation for Part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1) Legal Services Corporation Act of 1974, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

2. Appendix A of Part 1611.is revised to read as follows:

APPENDIX A OF PART 1611.—LEGAL SERVICES CORPORATION 1995 POVERTY GUIDELINES*

Size of family unit	All states but Alaska and Hawaii [1]	Alaska [2]	Hawaii [3]
1	$9,338	$11,675	$10,763
2	12,538	15,675	14,438
3	15,738	19,675	18,113
4	18,938	23,675	21,788
5	22,138	27,675	25,463
6	25,338	31,675	29,138
7	28,538	35,675	32,813
8	31,738	39,675	36,488

* The figures in this table represent 125% of the poverty guidelines by family size as determined by the Department of Health and Human Services.

[1] For family units with more than eight members, add $3,200 for each additional member in a family.

[2] For family units with more than eight members, add $4,000 for each additional member in a family.

[3] For family units with more than eight members, add $3,675 for each additional member in a family.

Victor M. Fortuno,

General Counsel.

[FR Doc. 95–4837 Filed 2–27–95; 8:45 am]

BILLING CODE 7050–01–P

Proposed Rules

Federal Register

Vol. 60, No. 39

Tuesday, February 28, 1995

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

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 3

[Docket No. 93–076–4]

RIN 0579–AA59

Animal Welfare; Marine Mammals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: We are extending the comment period for our proposed rule regarding the establishment of standards for ''swim-with-the-dolphin'' interactive programs. This extension will provide interested persons with additional time to prepare comments on the proposed rule.

DATES: Consideration will be given only to comments on Docket No. 93–076–2 that are received on or before March 9, 1995.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. Please state that your comments refer to Docket No. 93–076–2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Ave. SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, P.O. Drawer 810, Riverdale, MD 20738. The telephone number for the agency contact will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during February 1995. Telephone: (301) 436–7833 (Hyattsville); (301) 734–8699 (Riverdale).

SUPPLEMENTARY INFORMATION: On January 23, 1995, we published in the **Federal Register** (60 FR 4383–4389, Docket No. 93–076–2) a proposal to amend the Animal Welfare regulations to establish standards for ''swim-with-the-dolphin'' interactive programs.

Comments regarding the proposed rule were required to be received on or before February 22, 1995. During the comment period, we received a request that we extend the comment period beyond February 22. The requestor, a marine mammal industry association, stated that additional time is necessary to allow its members to meet and to formulate comments.

In response to this request, we are extending the comment period for Docket No. 93–076–2 through March 9, 1995. This will allow time for the requestor and other interested persons to develop comments on the proposed rule.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.17, 2.51, and 371.2(g).

Done in Washington, DC, this 22nd day of February 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–4881 Filed 2–27–95; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50, 52 and 100

RIN 3150–AD93

Reactor Site Criteria Including Seismic and Earthquake Engineering Criteria for Nuclear Power Plants and Proposed Denial of Petition From Free Environment, Inc., et al.

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On October 17, 1994, the NRC published (59 FR 52255) for public comment a proposed revision of 10 CFR parts 50, 52, and 100 to update the criteria used in decisions regarding power reactor siting, including geologic, seismic, and earthquake engineering considerations for future nuclear power plants. The comment period was to expire on February 14, 1995.

On February 8, 1995, the Commission stated (60 FR 7467) that it intended to extend the comment period to allow interested persons adequate time to provide comments on staff guidance documents consisting of five draft regulatory guides and three standard review plan sections that were to accompany the proposed rule, but were delayed in issuance. The Commission stated that it would extend the comment period 75 days after the staff guidance documents became available.

Availability of the above staff guidance documents is being announced in the Notices section of this issue of the **Federal Register**. The comment period for the proposed rule is hereby extended to May 12, 1995.

DATES: Comment period now expires May 12, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm, Federal workdays.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board (BBS) on FEDWORLD. The bulletin board may be accessed with a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Certain background documents on the rulemaking are also available for downloading and viewing.

With a personal computer and modem, the NRC rulemaking subsystem can be accessed on FEDWORLD, toll free, by directly dialing 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC rulemaking subsystem can be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' For further information about options available for

NRC at FEDWORLD, consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users may also find the ''FEDWORLD Online User's Guides'' helpful.

The NRC subsystem on FEDWORLD also may be accessed directly by dialing 703–321–8020 for the main FEDWORLD BBS, or by using Telnet via Internet: fedworld.gov. If 703–321–8020 is dialed, the NRC subsystem can be accessed from the main FEDWORLD menu first by selecting ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' A menu will display an option ''U.S. Nuclear Regulatory Commission'' that will lead to the NRC Online main menu. The NRC Online area also may be accessed directly by typing ''/go nrc'' at a FEDWORLD command line. If NRC is accessed from FEDWORLD's main menu, one may return to FEDWORLD by selecting the ''Return to FEDWORLD'' option from the NRC Online Main Menu. If NRC at FEDWORLD is accessed via NRC's toll-free number, full access will be available to all NRC systems, but there will be no access to the main FEDWORLD system.

If FEDWORLD is contacted using Telnet, the NRC area and menus will be available, including the Rules Menu. While documents may be downloaded and messages left, it is not possible to write comments or upload files (comments). If FEDWORLD is contacted using FTP, all files can be accessed and downloaded but uploads are not possible; a list of files without their descriptions (normal Gopher look) will be seen. An index file listing all files within a subdirectory, with descriptions, is available. There is a 15 minute time limit for FTP access.

Although FEDWORLD also may be accessed through the World Wide Web, this only provides access to download files and does not display the NRC Rules Menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Single copies of the proposed rule may be obtained by written request or telefax (301–504–2260) from: Distribution Services, Printing and Mail Services Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents may also be viewed and downloaded electronically via the Electronic Bulletin Board established by NRC for this rulemaking as indicated above.

FOR FURTHER INFORMATION CONTACT: Dr. Andrew J. Murphy, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6010, concerning the seismic and earthquake engineering aspects, and Mr. Leonard Soffer, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6574, concerning other siting aspects.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 22nd day of February 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 95–4872 Filed 2–27–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–56]

Airworthiness Directives; Textron Lycoming ALF502L Series Turbofan Engines

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 Textron Lycoming ALF502L series turbofan engines. This proposal would establish reduced retirement life limits for stage 1 and stage 3–7 compressor disks, and stage 2 turbine disks, and provide a drawdown schedule for disks already beyond the reduced retirement life limits. This proposal is prompted by new life analyses of these components. The actions specified by the proposed AD are intended to prevent disk failure, which could result in an inflight engine shutdown and extensive engine damage.

DATES: Comments must be received by May 1, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–56, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AlliedSignal Engines, 550 Main Street, Stratford, CT 06497; telephone (203) 385–1470. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

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 (617) 238–7148, fax (617) 238–7199.

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 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 94–ANE–56.'' 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, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–56, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

Textron Lycoming conducted new life analyses for various components in ALF502L series turbofan engines. Textron Lycoming has determined that stage 1 and stage 3–7 compressor disks, and stage 2 turbine disks require reduced retirement life limits. No failures have occurred in service on the ALF502L series engines, but inspections of these components from ALF502R series engines have found cracks prior to attaining current service retirement lives. This condition, if not corrected, could result in disk failure, which could result in an inflight engine shutdown and extensive engine damage.

On October 28, 1994, AlliedSignal Inc. purchased the turbine engine product line of Textron Lycoming, but as of this date the anticipated name change on the type certificate for the ALF502L series engines has not occurred. However, the service bulletins (SB) issued for these engines now bear the title, ''AlliedSignal Engines.'' The Federal Aviation Administration (FAA) has reviewed and approved the technical contents of AlliedSignal Engines SB No. ALF 502 72–0004, Revision 12, dated November 30, 1994, that describes reduced retirement lives for affected components; and AlliedSignal Engines SB No. ALF502L 72–281, dated November 30, 1994, that describes a drawdown schedule for disks already beyond the reduced retirement life limits.

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 establish reduced retirement life limits for stage 1 and stage 3–7 compressors disks, and stage 2 turbine disks, and provide a drawdown schedule for disks already beyond the reduced retirement life limits. The actions would be required to be accomplished in accordance with the service bulletins described previously.

There are approximately 184 engines of the affected design in the worldwide fleet. The FAA estimates that 50 engines installed on aircraft of U.S. registry would be affected by this proposed AD, and that the prorated reduced service life cost based on the cost of a new disk would be approximately $16,400 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $820,000.

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. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13—[Amended]

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

Textron Lycoming: Docket No. 94–ANE–56.

Applicability: Textron Lycoming ALF502L, L–2, L–2A, L–2C, and L–3 turbofan engines installed on but not limited to Canadair Challenger CL600 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent disk failure, which could result in an inflight engine shutdown and extensive engine damage, accomplish the following:

(a) Remove from service stage 1 and stage 3–7 compressor disks, and stage 2 turbine disks, in accordance with the drawdown schedule and procedures described in AlliedSignal Engines Service Bulletin (SB) No. ALF502L 72–281, dated November 30, 1994.

(b) This AD establishes new, reduced retirement life limits for stage 1 and stage 3–7 compressor disks, and stage 2 turbine disks, in accordance with AlliedSignal Engines SB No. ALF 502 72–0004, Revision 12, dated November 30, 1994.

(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. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

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

Issued in Burlington, Massachusetts, on February 16, 1995.

James C. Jones,

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

[FR Doc. 95–4852 Filed 2–27–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 944

[Docket No. 950222055–5055–01]

RIN 0648–AH92

Restricting or Prohibiting Attracting Sharks by Chum or Other Means in the Monterey Bay National Marine Sanctuary

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration's Sanctuaries and Reserves Division (SRD) is considering amending the regulations for the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) to restrict or prohibit the attracting of sharks by the use of chum or other means in the MBNMS. This advance notice of proposed rulemaking (ANPR) discusses the reasons SRD is considering restricting or prohibiting this activity in the MBNMS. Any restrictions or prohibitions SRD places on attracting sharks by the use of chum or other means would be to ensure that Sanctuary resources or qualities would not be adversely impacted and/or to avoid conflict among various users of the Sanctuary. SRD is issuing this ANPR

specifically to inform the public of the issue and course of action under consideration by SRD, and to invite submission of written information, advice, recommendations and other comments.

DATES: Comments must be received by March 30, 1995.

ADDRESSES: Comments should be sent to Elizabeth Moore, Sanctuaries and Reserves Division, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMC4, 12th Floor, Silver Spring, Maryland, 20910. Comments will be available for public inspection at the same address and at the Monterey Bay National Marine Sanctuary office at 299 Foam Street, Suite D, Monterey, California, 93940.

FOR FURTHER INFORMATION CONTACT: Elizabeth Moore at (301) 713–3141.

SUPPLEMENTARY INFORMATION: In recognition of the national significance of the unique marine environment centered around Monterey Bay, California, the MBNMS was designated on September 18, 1992. SRD issued final regulations, effective January, 1993, to implement the Sanctuary designation (15 CFR Part 944). The MBNMS regulations at 15 CFR 944.5(a) prohibit a relatively narrow range of activities to protect Sanctuary resources and qualities.

In January of 1994, SRD became aware that chum was being used to attract white sharks for viewing by SCUBA divers while in underwater cages. This activity occurred in the nearshore area off of Año Nuevo in the MBNMS, during the time of year white sharks come to feed. While California state law generally makes it unlawful to ''take'' (e.g., catch, capture, or kill) white sharks in state waters, it does not appear to address attracting sharks for other purposes, nor does it prohibit the taking of sharks in those portions of the MBNMS outside of state waters. SRD has also received expressions of concern over this activity and inquiries as to whether attracting sharks for viewing and other purposes is allowed in the MBNMS.

There is currently no MBNMS regulation specifically addressing the attracting of sharks in the MBNMS. There is a general regulatory prohibition against discharging or depositing any material or other matter in the Sanctuary. 15 CFR 944.5(a)(2). The discharge and deposit prohibition contains an exemption for, *inter alia,* the discharge or deposit of ''fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary''. While fishing activities in the Sanctuary are subject to various Federal and state regulations, traditional fishing activities are not regulated as part of the Sanctuary regulatory regime. Sanctuary regulations that could indirectly regulate traditional fishing operations were specifically crafted to avoid doing so. Thus, while fishing vessels are subject to the general regulatory prohibition against discharging or depositing any material or other matter in the Sanctuary, the exemption for the discharge or deposit of ''fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary'' was designed to prevent the prohibition from indirectly regulating the conduct of traditional fishing operations. However, an argument has been raised that the phrase in the regulatory exemption ''used in or resulting from'' could be interpreted to allow the discharge or deposit of ''fish, fish parts, chumming materials or bait'' at any time or in conjunction with any activity, as long as the discharge or deposit is of the same material used by or generated during traditional fishing operations in the Sanctuary. As one option, SRD could amend the exemption for the discharge of ''fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary'' to clarify that it applies only to such discharges if they are incidental to and during the conduct of traditional fishing operations.

SRD, with input from its MBNMS Advisory Council, and a number of interested parties, has identified a number of concerns regarding the issue of attracting sharks within the MBNMS: (1) Attracting sharks by chum or other means may cause behavioral changes in the attracted species (e.g., feeding, migration); (2) attracting sharks by chum or other means may cause behavioral changes in the attracted species resulting in increased predation on prey or non-prey marine species; and (3) attracting sharks by chum or other means may increase the risk of attack to other Sanctuary users, or otherwise create user conflict in the area of the activity. Consequently, along with considering amending the regulatory exemption to the discharge and deposit prohibition as discussed above, SRD is considering specifically restricting or prohibiting attracting sharks in the Sanctuary.

The Designation Document for the MBNMS, the constitution for the Sanctuary, contains a list of activities subject to regulation, including prohibition, to the extent necessary and reasonable to ensure the protection and management of the conservation, ecological, recreational, research, educational, historical and esthetic resources and qualities of the area. Included as an activity subject to regulation is the following:

> d. Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy or cause the loss of a marine mammal, sea turtle, seabird, historical resource *or other Sanctuary resource.*

See 57 FR 43310, 43316 (September 18, 1992) (emphasis added). Therefore, amending the Sanctuary regulations to restrict or prohibit the taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss of sharks within the MBNMS, or attempt thereto, is authorized by the Designation Document. ''Take or taking'' is defined broadly in the Sanctuary regulations (15 CFR 944.3), and includes harassment of the species it currently addresses (marine mammals, seabirds and sea turtles).

To amend the regulations, SRD must follow the appropriate procedures of notice and comment rulemaking under the Administrative Procedure Act. Further, SRD is required by the National Marine Sanctuaries Act at 16 U.S.C. 1434(a)(5) to consult with the appropriate Regional Fishery Management Council before it issues any Sanctuary regulations ''for fishing''. SRD has sent a letter to the Pacific Fishery Management Council for its input regarding the issues identified in this ANPR.

This ANPR is an optional preliminary step to notice and comment rulemaking. SRD is issuing this ANPR specifically to inform the public of the issue and that it is considering restricting or prohibiting attracting sharks within the MBNMS, and to invite submission of written information, advice, recommendations and other comments. In particular, SRD requests comments on:

(1) What methods are used to attract sharks in the MBNMS;

(2) What methods are used to attract sharks in other areas;

(3) Whether attracting sharks by chum or other means is necessary if they are known to be naturally present in a given area;

(4) Whether attracting sharks by chum or other means causes short- or long-term behavioral changes in the attracted species or associated species that are disruptive to their normal behavior (e.g., feeding, migration, predation);

(5) Whether attracting sharks by chum or other means has adverse impacts on other MBNMS resources;

(6) Whether attracting sharks by chum or other means in nearshore areas creates a risk to other users of those areas (e.g., surfers, swimmers, SCUBA divers, snorklers, fishermen, boaters);

(7) Whether other Sanctuary users (e.g., surfers, swimmers, SCUBA divers, snorklers, fishermen, boaters) actively avoid areas where attracting sharks occurs;

(8) Whether there are other impacts, risks or concerns resulting from attracting sharks by chum or other means in the MBNMS;

(9) Whether a restriction or prohibition against attracting sharks by chum or other means should be Sanctuary-wide or only in the nearshore areas of the MBNMS (and if the latter, what should constitute nearshore); and

(10) Any other information that may be pertinent to this issue.

During the comment period of this ANPR, SRD will hold a public meeting allowing the public to provide written or oral comments. Notice of the date, time and location of the meeting will appear in the **Federal Register**.

Executive Order 12866

For purposes of Executive Order 12866, this advance notice of proposed rulemaking is determined to be not significant.

List of Subjects in 15 CFR Part 944

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Authority: 16 U.S.C. 1431 *et seq.*

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program

Dated: February 15, 1995.

Frank W. Maloney,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–4854 Filed 2–27–95; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[DEA No. 128P]

RIN 1117–AA26

Records, Reports, and Exports of Listed Chemicals

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This rule proposes to include methyl isobutyl ketone (MIBK) as a List II Chemical under the Controlled Substances Act (CSA) for the purpose of imposing controls on exports which may be destined for cocaine producing regions. This proposed action by the DEA Deputy Administrator is based on substantial evidence that MIBK is increasingly being used as a solvent in the production of cocaine hydrochloride during the conversion of cocaine base to cocaine hydrochloride. The recent steps by the Government of Colombia (GOC) to control MIBK further support this proposed action.

This proposed action will only effect export transactions; international transactions in which a U.S. broker or trader participates; and transshipments through the U.S., which are greater than 500 gallons or 1523 kilograms of MIBK destined for countries in the Western Hemisphere (with the exception of transactions destined for Canada).

DATES: Written comments and objections must be received on or before March 30, 1995.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain Jr., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537 at (202) 307–7183.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act (CSA), specifically 21 U.S.C. section 802, provides the Attorney General with the authority to specify by regulation, additional precursor and essential chemicals as ''listed chemicals'' if they are used in the illicit manufacture of controlled substances. Section 802(39) also provides the Attorney General with authority to establish a threshold amount for ''listed chemicals'' if the Attorney General so elects. This authority has been delegated to the Administrator of DEA by 28 CFR 0.100 and redelegated to the Deputy Administrator under 28 CFR 0.104 (subpart R) appendix sec. 12.

While methyl ethyl ketone (MEK) has become the solvent of choice in the processing of cocaine base to cocaine hydrochloride, recent regulatory and enforcement efforts in Latin America have resulted in a reduced availability of MEK. Information available to DEA indicates that in response to this shortfall of MEK, cocaine laboratory operators have moved to the utilization of MIBK for the processing of cocaine base to cocaine hydrochloride. Due to information regarding the use of MIBK for cocaine processing, the dramatic increase in MIBK importation, and the importation of MIBK by some firms that the Government of Colombia (GOC) considers suspect, the GOC has recently taken steps to control the sale and distribution of MIBK.

In making the determination regarding the possible control of MIBK under the CSA, the DEA considered the following:

(1) The chemistry of the compound
(2) The legitimate use and commerce of the compound
(3) Evidence of illicit use

An examination of the chemistry of MIBK shows that it appears to be ideally suited for the conversion of cocaine base to cocaine hydrochloride. MIBK possesses the correct solubility characteristics, is partially miscible with water and is relatively volatile.

The U.S. is a major producer of MIBK and exports this chemical to Latin America. The major commercial application for MIBK is as a solvent for vinyl, epoxy and acrylic resins, for natural resins, for nitrocellulose and for dyes in the printing industry. It is also a versatile extracting agent, e.g. for the production of antibiotics, or the removal of paraffins from mineral oil for the production of lubricating oils. MIBK's uses are similar to those of MEK. There is a legitimate need for these chemicals in Colombia.

Although Colombian imports of MEK have decreased, U.S. firms believe that the legitimate need for MEK is being met. In contrast, however, importations into Colombia of MIBK have increased dramatically in 1994 following regulatory and enforcement actions taken by the GOC and other countries against MEK. No significant increase in the legitimate need for MIBK has been identified. The amount of MIBK imported into Colombia in the second quarter of 1994 exceeded the total quantity imported over the preceding 15 months. Some of these importations were to firms which the GOC considers suspect.

The use of MIBK in cocaine hydrochloride production has recently been scientifically confirmed via the identification of MIBK in seized cocaine hydrochloride. While MEK is the most frequently seen solvent appearing in cocaine hydrochloride, MIBK has also been identified in seized material. Recent samples show an increased incidence of MIBK in seized cocaine hydrochloride. During the fourth quarter of 1994, 54 percent of the cocaine hydrochloride exhibits received under DEA's solvent analysis program contained MIBK. The recent increase in the incidence of MIBK in seized cocaine hydrochloride is consistent with the timing of initial reports regarding its illicit use.

Given these factors, DEA has determined that the control of MIBK as a List II Chemical is warranted. Since the illicit use of MIBK for cocaine processing occurs in Latin America, the DEA proposes that MIBK shipments exported from the U.S., shipments transshipped or transferred through the U.S., and international transactions in which a U.S. broker or trader participates, be considered regulated transactions if destined for any country in the Western Hemisphere (with the exception of transactions destined for Canada) 21 U.S.C. section 802(39)(A)(iii). In addition, the DEA proposes that a threshold similar to that of MEK be established for MIBK. DEA proposes that a threshold of 500 gallons (by volume) or 1523 kilograms (by weight) be established for MIBK. Therefore, this proposed action will only effect (1) export transactions; (2) international transactions in which a U.S. broker or trader participates; and (3) transshipments through the U.S., which are greater than 500 gallons or 1523 kilograms of MIBK destined for designated countries. Import transactions of MIBK into the U.S. (not destined for transshipment or transfer to designated countries), and domestic transactions of MIBK are excluded from the definitions of regulated transactions contained in 21 CFR 1310.01(f) and 1313.02(d).

The Deputy Administrator hereby certifies that this proposed rulemaking will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. A review of maritime shipments of MIBK reveals that during a two year period, there were less than 100 above-threshold export transactions destined for designated countries. This proposed rule is not a significant regulatory action and therefore has not been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1310

Durg traffic control, reporting and recordkeeping requirements.

For reasons set out above, it is proposed that 21 CFR part 1310 be amended as follows:

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.02 is proposed to be amended by adding a new paragraph (b)(10) to read as follows:

§ 1310.02 Substances covered.

* * * * *

(b) * * *

(10) Methyl Isobutyl Ketone (MIBK)

* * * * *

3. Section 1310.04 is proposed to be amended by adding new paragraph (f)(2)(v) to read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(f) * * *

(2) * * *

(v) Export and International Transactions to Designated Countries, and Importations for Transshipment or Transfer to Designated Countries.

Chemical	Treshold by volume	Threshold by weight
(A) Methyl Isobutyl Ketone (MIBK)	500 gallons	1523 kilograms.
(B) Reserved		

4. Section 1310.08 is proposed to be amended by adding new paragraphs (c), (d) and (e) to read as follows:

§ 1310.08 Excluded transactions.

* * * * *

(c) Domestic transactions of Methyl Isobutyl Ketone (MIBK).

(d) Import transactions of Methyl Isobutyl Ketone (MIBK) destined for the United States.

(e) Export transactions, international transactions, and import transactions for transshipment or transfer of Methyl Isobutyl Ketone (MIBK) destined for Canada or any country outside of the Western Hemisphere.

Dated: February 16, 1995.

Stepehn G. Greene,

Deputy Administrator.

[FR Doc. 95–4795 Filed 2–27–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–95–008]

RIN 2115–AE47

Drawbridge Operation Regulations; Apponagansett River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing a change to the regulations governing the Padanaram Bridge at mile 1.0 over the Apponagansett River in Dartmouth, Massachusetts. This proposal will allow the Pandanaram Bridge to open on signal from May 1 through October 31 once an hour on the hour, between 9 a.m. and 8 p.m. instead of twice an hour on the hour and half hour. This change should help relieve traffic congestion created by bridge openings while still providing for the needs of navigation.

DATES: Comments must be received on or before May 1, 1995.

ADDRESSES: Comments may be mailed to Commander (obr), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, Massachusetts 02110–3350, or may be hand-delivered to room 628 at the same address between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays. The telephone number is (617) 223–8364. The comments will become part of this docket and will be available for inspection and copying by appointment at the above address.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, Bridge Branch, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–95–008), the specific section of this proposal to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format no larger than 8½″ by 11″, suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons desiring acknowledgment that their comments have been received should enclose a stamped self-addressed post card or envelope.

The Coast Guard will consider all comments received during the comment period, and may change this proposal in light of comments received. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (obr), First Coast Guard District at the address listed under ADDRESSES. The request should include reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The drafters of this notice are Mr. John W. McDonald, Project Officer, Bridge Branch, and Lieutenant Commander Samuel R. Watkins, Project Counsel, District Legal Office.

Background and Purpose

The Padanaram Bridge at mile 1.0 over the Apponagansett River between Dartmouth and South Dartmouth, MA, has a vertical clearance of 9′ above mean high water (MHW) and 12′ above mean low water (MLW).

The current operating regulations require the bridge to open on signal on the hour and half hour, 5 a.m. to 9 p.m. May 1, through October 31. At all other times at least six hours advance notice must be given.

In the spring of 1993, the Town of Dartmouth requested a change from the operating regulations to permit openings once an hour rather than twice an hour. The town selectmen felt that the traffic congestion during peak summer months was a result of the bridge opening every 30 minutes and was causing village commerce to suffer. The selectmen also considered the 30 minute opening schedule a serious risk to public safety because emergency vehicles could not travel to and from South Dartmouth during the traffic delays caused by the bridge opening every half hour. The Town of Dartmouth requested that the bridge be required to open only once an hour between 5 a.m. and 9 p.m., for a test period of 60 days, to evaluate the effects on vehicular and marine traffic. This request was approved and the first deviation from the permanent regulations, published in the **Federal Register** (58 FR 38056; July 15, 1993), was effective from July 1, 1993 through August 29, 1993. It provided an opportunity to evaluate the effects of the hourly openings on marine and vehicular traffic. The Coast Guard implemented a second deviation, published in the **Federal Register** (58 FR 47067; September 7, 1993), for a thirty-two day period to evaluate an alternative opening time period for the Padanaram Bridge. This second deviation added two time periods when the bridge could still open on the hour and half hour: between 5 a.m. and 9 a.m. and between 8 p.m. and 9 p.m. The Coast Guard received 29 letters commenting on the two deviations. Twenty were in favor of hourly openings and nine were opposed to any change. Most of the comments in opposition to any change were based on the concern over the lack of facilities to tie up vessels while awaiting openings.

After the two deviation periods expired, the Town of Dartmouth installed traffic signals, automatic traffic gates, navigational lights and clearance gauges at the bridge. The Coast Guard subsequently authorized a third deviation for a period of 90 to evaluate the effects of these improvements to the bridge. This third deviation, published in the **Federal Register** (59 FR 31931; July 21, 1994), was effective from June 3, 1994 through August 31, 1994. It allowed the Padanaram Bridge to open on signal on the hour and half hour between 5 a.m. and 9 a.m. between 8 p.m. and 9 p.m., and once an hour on the hour between 9 a.m. and 8 p.m. The Coast Guard received two letters commenting on the third deviation. One letter favored the hourly openings and one letter was opposed to the hourly openings.

Discussion of Proposed Amendments

The Town of Dartmouth has requested that the Coast Guard make a permanent change to the operating regulations for the Padanaram Bridge to allow the draw to open on signal from May 1 through October 31, on the hour and half hour between 5 a.m. and 9 a.m. and between 8 p.m. and 9 p.m., and on the hour between 9 a.m. and 8 p.m. At all other times a four hour advance notice would be required for bridge openings. The drawtenders will be on call to open the draw when the advance notice is given.

As part of this action, the bridge owner would be required to keep, in good legible condition, clearance gauges for each draw with figures not less than twelve inches high designed, installed and maintained according to the provisions of 33 CFR 118.160.

The provision for the passage of emergency vessels at any time is published at 33 CFR 117.31 for all bridges and is no longer required to be published for each waterway.

Appendix A to part 117 would be amended to add the Apponagansett River entry under the State of Massachusetts subheading to advise mariners that a marine radio is installed at the bridge for opening requests.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the regulation will not prevent mariners from transiting the bridge. It will require only that mariners plan their transits.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. ‘‘Small entities’’ include independently owned and operated small businesses that are not dominant in their fields and that otherwise qualify as ‘‘small business concerns’’ under section 3 of the Small Business Act (15 U.S.C. 632). Because of the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this action, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order

12612 and has determined that this proposal does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under paragraph 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' will be available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.587 is revised to read as follows:

§ 117.587 Apponagansett River.

The Padanaram Bridge, mile 1.0 at Dartmouth, shall operate as follows:

(a) From May 1 through October 31, the bridge shall open on signal:

(1) Twice an hour, on the hour and the half hour between 5 a.m. and 9 a.m. and between 8 p.m. and 9 p.m.;

(2) Once an hour, on the hour between 9 a.m. and 8 p.m.

(b) At all other times the bridge shall open if at least four (4) hours advance notice is given.

(c) Mooring facilities shall be maintained for vessels to make fast while waiting for the bridge to open.

(d) The owners of this bridge shall provide, and keep in good legible condition, clearance gauges for each draw with figures not less than twelve (12) inches high designed, installed and maintained according to the provisions of § 118.160 of this chapter.

3. Appendix A to part 117 is amended by adding the Apponagansett River entry in alphabetical order under the State of Massachusetts subheading to read as follows:

APPENDIX A TO PART 117—DRAWBRIDGES EQUIPPED WITH RADIOTELEPHONES

Waterway	Mile	Location	Bridge name and owner	Call signs	Calling channel	Working channel
*	*	*	*	*	*	*
Massachusetts						
*	*	*	*	*	*	*
Apponagansett River	1.0	Dartmouth	Padanaram, Town of Dartmouth		13	13
*	*	*	*	*	*	*

Dated: February 6, 1995.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 95–4906 Filed 2–27–95; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD01–95–001]

RIN 2115–AE47

Drawbridge Operation Regulations; Lagoon Pond, Tisbury, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a change to the regulations governing the Lagoon Pond Bridge over Lagoon Pond at mile 0.0 in Tisbury, Massachusetts. The special operating regulations formerly published at 33 CFR 117.79 were deleted in error. The bridge has not been operating in accordance with the existing general regulations. This proposal is being considered to correct the deletion error and republish the operating regulations for the bridge.

DATES: Comments must be received on or before May 1, 1995.

ADDRESSES: Comments may be mailed to Commander (obr), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, Massachusetts 02110–3350, or may be hand-delivered to room 628 at the same address between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays. The telephone number is (617) 223–8364. The comments will become part of this docket and will be available for inspection and copying by appointment at the above address.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, Bridge Branch, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–95–001), the specific section of the proposal to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format no larger than 8½″ by 11″, suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed post card or envelope.

The Coast Guard will consider all comments received during the comment period, and may change this proposal in light of comments received. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (obr), First Coast Guard District at the address listed under ADDRESSES. The request should include reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are Mr. John W. McDonald, Project Officer, Bridge Branch, and Lieutenant

Commander Samuel R. Watkins. Project Counsel, District Legal Office.

Background and Purpose

The Lagoon Pond Bridge over Lagoon Pond in Tisbury, Massachusetts, has a vertical clearance of 15′ above mean high water (MHW) and 17′ above mean low water (MLW). Through an error, the previous special operating regulations for this bridge were deleted from 33 CFR 117.79. Therefore, the bridge currently is required to open on signal at all times under the general operating regulations for drawbridges. Regulations published in the **Federal Register** of October 7, 1982 (47 FR 44258) required that the draw:

(a) Open on signal from September 16 through May 14 provided 24 hours advance notice is given.

(b) From May 15 through September 15, open on signal only from 8:15 a.m. to 8:45 a.m., 10:15 a.m. to 11 a.m., 3:15 p.m. to 4 p.m., 5 p.m. to 5:45 p.m., and 7:30 p.m. to 8 p.m. Throughout the remainder of this period, the draw was required to open for the passage of vessels if 4 (four) hours advance notice is given.

(c) Open at any time for public vessels of the United States, any vessels of state or municipal governments used for public safety, and in case of emergency or during severe storm conditions.

The bridge owner, the Massachusetts Highway Department (MHD), has been operating the bridge in accordance with the deleted regulations on an unofficial basis. The Coast Guard is proposing to publish regulations that reinstate the operating hours of the bridge contained in the erroneously deleted rule.

Discussion of Proposed Amendments

The MHD, after being advised of the deletion of the regulations covering the Lagoon Pond Bridge, requested that operating hours for the bridge be published to read as follows:

(a) The draw shall open on signal from May 15 through September 15, from 8:15 a.m. to 8:45 a.m., from 10:15 a.m. to 11 a.m., from 3:15 p.m. to 4 p.m., from 5 p.m. to 5:45 p.m., and from 7:30 p.m. to 8 p.m. At all other times the draw will open for the passage of vessels if at least four (4) hours advance notice is given by calling the number posted at the bridge.

(b) The draw shall open on signal from September 16 through May 14, if at least twenty-four (24) hours advance notice is given by calling the number posted at the bridge.

(c) The owners of this bridge shall provide, and keep in good legible condition, clearance gauges for each draw with figures not less than twelve (12) inches high designed, installed and maintained according to the provisions of § 118.160 of this chapter.

Under the proposed rule, Appendix A to Part 117 also will be amended to add the Lagoon Pond Bridge (under the Massachusetts subheading) to advise mariners that a marine radio is installed at the bridge for requesting openings.

The public vessel/emergency opening provisions of the deleted rule will not be incorporated into the proposed new rule. Those provisions are now contained in 33 CFR 117.31, a general regulation applicable to all drawbridges.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the regulation will not prevent mariners from transiting the Lagoon Pond Bridge. It will require only that mariners plan their transits.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal if adopted, will have a significant economic impact on a substantial number of small entities. ‘‘Small entities’’ include independently owned and operated small businesses that are not dominant in their fields and that otherwise qualify as ‘‘small business concerns’’ under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under paragraph 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A ‘‘Categorical Exclusion Determination’’ is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.600 is added to read as follows:

§ 117.600 Lagoon Pond.

The draw of the Lagoon Pond Bridge, mile 0.0, in Tisbury, Massachusetts, shall operate as follows:

(a) The draw shall open on signal from May 15 through September 15, from 8:15 a.m. to 8:45 a.m., from 10:15 a.m. to 11 a.m., from 3:15 p.m. to 4 p.m., from 5 p.m. to 5:45 p.m., and from 7:30 p.m. to 8 p.m. At all other times the draw will open from the passage of vessels if at least four (4) hours advance notice is given by calling the number posted at the bridge.

(b) The draw shall open on signal from September 16 through May 14 if at least twenty-four (24) hours advance notice is given by calling the number posted at the bridge.

(c) The owners of this bridge shall provide and keep in good legible condition, clearance gauges for each draw with figures not less than twelve (12) inches high designed, installed and maintained according to the provisions of § 118.160 of this chapter.

3. Appendix A to part 117 is amended by adding an entry in alphabetical order under the heading ‘‘Massachusetts’’ for Lagoon Pond to read as follows:

APPENDIX A TO PART 117—DRAWBRIDGES EQUIPPED WITH RADIOTELEPHONES

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
*	*	*	*	*	*	*
Massachusetts.						
*	*	*	*	*	*	*
Lagoon Pond	0.0	Tisbury	Lagoon Pond	MHD	13	13
*	*	*	*	*	*	*

Dated: January 11, 1995.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 95–4905 Filed 2–27–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL–5162–5]

Open Meeting of the Negotiated Rulemaking Advisory Committee for Small Nonroad Engine Regulations

AGENCY: Environmental Protection Agency.

ACTION: FACA committee meeting; Negotiated rulemaking on small nonroad engine regulations.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), EPA is giving notice of the next meeting of the Advisory Committee to negotiate a rule to reduce air emissions from small nonroad engines. The meeting is open to the public without advance registration. The purpose of the meeting is to continue identification and discussion of issues, discuss interests of committee members, and hear reports from task groups.

DATES: The committee will meet on March 21 and 22, 1995 from 10 a.m. to 6 p.m.

ADDRESSES: The location of the meeting will be the Holiday Inn East, 3750 Washtenaw, Ann Arbor, MI 48104, (313) 971–2000.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the technical and substantive matters of the rule should contact Betsy McCabe, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Rd., Ann Arbor Michigan 48105, (313) 668–4344. Persons needing further information on committee procedes should call Deborah Dalton, Consensus and Dispute Resolution Program, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–5495, or the Committee's facilitator, Lucy More or John Folk-Williams, Western Network, 616 Don Gaspar, Santa Fe, New Mexico 87501, (505) 982–9805.

Dated: February 23, 1995.

Deborah Dalton,

Designated Federal Official, Deputy Director, Consensus and Dispute Resolution Program.

[FR Doc. 95–4892 Filed 2–27–95; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[CA 78–2–6824; FRL–5162–4]

Approval and Promulgation of Implementation Plans; California Implementation Plan Revision; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to conditionally approve revisions to the California State Implementation Plan (SIP) which concern the control of oxides of nitrogen (NO_X) and oxides of sulfur (SO_X) emissions using an emissions-limiting economic incentives program, the NO_X and SO_X Regional Clean Air Incentives Market (NO_X and SO_X RECLAIM). This program, which consists of twelve rules and associated appendices known as Regulation XX, applies to facilities in the South Coast Air Quality Management District (SCAQMD) with four or more tons of NO_X or SO_X emissions per year from permitted equipment. The subject facilities, in order to meet annual emission reduction requirements, will participate in an economic incentive program (EIP) in order to reduce emissions at a significantly lower cost.

The intended effect of proposing approval of Regulation XX is to regulate emissions of NO_X and SO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPRM) will incorporate this regulation into the federally approved SIP. EPA has evaluated this regulation and is proposing to conditionally approve it under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas. The EPA's final conditional approval is contingent on the SCAQMD providing the Agency with an enforceable commitment which addresses and cures all of the deficiencies associated with NO_X and SO_X RECLAIM within 12 months of the publication of the proposed conditional approval. In the event that SCAQMD fails to provide EPA with such a commitment, then EPA will publish a final rule to approve NO_X and SO_X RECLAIM in the form of a limited approval/limited disapproval action. Both the conditional approval action and the limited approval/limited disapproval action are discussed in this NPRM.

DATES: Comments must be received on or before March 30, 1995.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the new regulation and EPA's evaluation report of the regulation are available for public inspection at EPA's Region 9 office (address above) during normal business hours. Copies of the submitted regulation are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Kenneth Israels, Rulemaking Section (A–5–3), Air and Toxics Division, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1194.

SUPPLEMENTARY INFORMATION:

Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a NPRM entitled ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement) which describes the requirements of section 182(f). The November 25, 1992, notice should be referred to for further information on the NO_X requirements and is incorporated into this proposal by reference.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rules covering NO_X sources and submitted as SIP revisions are expected to require final installation of the actual NO_X controls by May 31, 1995, for those sources where installation by that date is practicable. Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X (''major'' as defined in section 302 and section 182 (c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. The Los Angeles-South Coast Air Basin is classified as extreme,[1] therefore this area was subject to the RACT requirements of section 182(b)(2), cited above, and the November 15, 1992 deadline.[2]

On April 7, 1994, EPA published a final rule concerning EIPs entitled ''Economic Incentive Program Rules,'' (EIP Rules) in order to fulfill the requirements of section 182(g)(4)(A) of the Act (see 59 FR 16690). The EIP Rules establish several requirements which State programs must meet.

These requirements are:

- *Statement of goals and rationale.* This element shall include a clear statement as to the environmental problem being addressed, the intended environmental and economic goals of the program, and the rationale relating the incentive-based strategy to the program goals.
- *Program scope.* This element shall contain a clear definition of the sources affected by the program.
- *Program baseline.* A program baseline shall be defined as a basis for projecting program results and, if applicable, for initializing the incentive mechanism (e.g., for marketable permits programs). The program baseline shall be consistent with, and adequately reflected in, the assumptions and inputs used to develop an area's reasonable further progress (RFP) plans and attainment and maintenance demonstrations, as applicable. The State shall provide sufficient supporting information from the areawide emissions inventory and other sources to justify the baseline used in the State or local EIP.
- *Replicable emission quantification methods.* This program element, for programs other than those which are categorized as directionally-sound, shall include credible, workable, and replicable methods for projecting program results from affected sources and, where necessary, for quantifying emissions from individual sources subject to the EIP. Such methods, if used to determine credit taken in attainment, RFP, and maintenance demonstrations, as applicable, shall yield results which can be shown to have a level of certainty comparable to that for source-specific standards and traditional methods of control strategy development.
- *Source requirements.* This program element shall include all source-specific requirements that constitute compliance with the program. Such requirements shall be appropriate, readily ascertainable, and State and federally enforceable.
- *Projected results and audit/reconciliation procedures.* This program element includes a commitment to ensure the timely implementation of programmatic revisions or other measures which the State, in response to the audit, deems necessary for the successful operation of the program in the context of overall RFP and attainment requirements. (see 40 CFR 51.493(f)(3)(i))
- *Implementation schedule.* The program shall contain a schedule for the adoption and implementation of all State commitments and source requirements included in the program design.
- *Administrative procedures.* The program shall contain a description of State commitments which are integral to the implementation of the program, and the administrative system to be used to implement the program, addressing the adequacy of the personnel, funding, and legislative authority.
- *Enforcement mechanisms.* The program shall contain a compliance instrument(s) for all program requirements, which is legally binding and enforceable by both the State and EPA. This program element shall also include a State enforcement program which defines violations, and specifies auditing and inspections plans and provisions for enforcement actions. The program shall contain effective penalties for noncompliance which preserve the level of deterrence in traditional programs. For all such programs, the manner of collection of penalties must be specified.

The EIP Rule should be referred to for further information on the EIP requirements and is incorporated into this proposal by reference.

The State of California submitted the regulation being acted on in this document on March 21, 1994. This document addresses EPA's proposed action for SCAQMD, Regulation XX, NO_X and SO_X RECLAIM. SCAQMD adopted Regulation XX on October 15, 1993. This submitted regulation was found to be complete on April 11, 1994, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51, Appendix V,[3] and is being proposed for approval into the SIP.

NO_X emissions contribute to the production of ground level ozone and smog. The regulation was adopted as part of SCAQMD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for this regulation.

EPA Evaluation and Proposed Action

In determining the approvability of a NO_X regulation, EPA must evaluate the

[1] The Los Angeles-South Coast Air Basin was designated nonattainment and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[2] EPA made a finding of nonsubmittal for NO_X RACT in SCAQMD on April 21, 1993. NO_X RECLAIM in combination with other measures satisfy this requirement. On October 21, 1994, EPA found that SCAQMD had submitted measures satisfying the NO_X RACT requirements.

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

regulation for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents.[4] Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared the NO_X supplement to the General Preamble, cited above (57 FR 55620). In the NO_X supplement, EPA provides guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c) EPA is issuing alternative control technique documents (ACTs) that identify alternative controls for all categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 or more tons per year of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

In determining the approvability of an EIP, EPA must evaluate the regulation for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 4 of this notice. Among these provisions is the requirement that an EIP rule must, at a minimum, be consistent with attainment and RFP requirements found in the CAA.

For the purpose of assisting state and local agencies in developing rules which incorporate economic incentive strategies, EPA prepared the EIP Rules, cited above (59 FR 16690). In the EIP Rules, EPA provides guidance on how EIPs can be designed to be consistent with the attainment and RFP requirements of the CAA. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted EIPs meet federal requirements and are fully enforceable and strengthen or maintain the SIP.

SCAQMD's Regulation XX, NO_X and SO_X RECLAIM, is a new rule which was adopted to control NO_X and SO_X emissions using an emissions-limiting economic incentives program applicable to facilities with four or more tons of NO_X or SO_X emissions per year. Facilities with NO_X or SO_X emissions from permitted equipment participate in a pollutant-specific market in order to reduce emissions at a significantly lower cost. The program subsumes fourteen SCAQMD Air Quality Management Plan (AQMP) control measures and is projected to reduce emissions by an equivalent amount.

The regulation discussed below is being proposed for conditional approval under Section 110(k)(4) of the CAA because it strengthens the SIP and EPA is optimistic that the SCAQMD will provide EPA a commitment within 12 months of the publication of this proposal and prior to the publication of the final rule. Such a commitment must obligate the SCAQMD to revise Regulation XX to correct the identified Appendix D deficiencies, within one year after the date of publication of the final rule. The conditional approval shall be treated as a disapproval if the SCAQMD fails to comply with the submitted commitment.

The NO_X and SO_X RECLAIM program strengthens the SIP by placing a declining emissions cap on subject facilities. The declining cap is based on the application of RACT (or requirements more stringent than RACT) at the facility and is reduced to overall emissions below RACT levels in order to bring the South Coast Air Basin into attainment of the ozone NAAQS. Regulation XX is comprised of 12 rules and 2 associated appendices which are described below:

- Rule 2000—General. This rule provides the program's objective, its purpose, and applicable definitions;
- Rule 2001—Applicability. This rule provides the criteria for inclusion in NO_X and SO_X RECLAIM, requirements for sources electing to enter NO_X and SO_X RECLAIM and identifies provisions in SCAQMD rules and regulations that do not apply to NO_X and SO_X RECLAIM sources;
- Rule 2002—Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SO_X). This rule establishes the methodology for calculating initial facility allocations for NO_X and SO_X RECLAIM;
- Rule 2004—Requirements. This rule establishes requirements for operating under the NO_X and SO_X RECLAIM program. The rule includes provisions pertaining to permits, allocations, reporting, variances, penalties, and breakdowns;
- Rule 2005—New Source Review (NSR) for RECLAIM. This rule sets forth pre-construction review requirements for new facilities subject to the requirements of the NO_X and SO_X RECLAIM program and for modifications to existing NO_X and SO_X RECLAIM facilities;
- Rule 2006—Permits. This rule sets forth procedures for issuing and amending NO_X and SO_X RECLAIM facility permits;
- Rule 2007—Trading Requirements. This rule defines the NO_X and SO_X RECLAIM trading credit (RTC) and establishes the trading requirements for NO_X and SO_X RECLAIM;
- Rule 2008—Mobile Source Credits. This rule establishes criteria for and requirements on utilizing emission reductions generated from SCAQMD 1600 series rules as RTCs;
- Rule 2010—Administrative Remedies and Sanctions. This rule specifies provisions to ensure that NO_X and SO_X RECLAIM facilities which exceed their allocation provide compensating emission reductions. This rule also provides for administrative penalties for NO_X and SO_X RECLAIM rule violations;
- Rule 2011—Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur Emissions. This rule and its appendix (Appendix A) establish the monitoring, reporting, and recordkeeping requirements for SO_X emissions under the NO_X and SO_X RECLAIM program;
- Rule 2012—Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen Emissions. This rule and its appendix (Appendix A) establish the monitoring, reporting, and recordkeeping

[4] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

requirements for NO_X emissions under the NO_X and SO_X RECLAIM program; and

- Rule 2015—Backstop Provisions. This rule specifies NO_X and SO_X RECLAIM program auditing requirements and actions that the SCAQMD will take in the event that the environmental goals of RECLAIM program are not achieved.
- Although the approval of Regulation XX will strengthen the SIP, the regulation still contains deficiencies, identified below and in the associated technical support document (TSD), which are required to be corrected pursuant to section 182(b)(2) of the CAA. The NO_X and SO_X RECLAIM program contains the following deficiencies:
- The program allows the use of variances to avoid compliance with program requirements; this results in the program failing to meet the requirements of section 110(i) of the Act,
- The program does not meet certain new source review requirements of the Act and Part D,
- The program allows the use of Executive Officer discretion in the implementation of certain emissions monitoring provisions; this results in the program failing to meet the requirements of section 110(i) of the Act,
- The program's references to other programs, notably those involving the use of mobile source emission reduction credits (MERCs) is inconsistent with section 110(i) of the Act, and
- The submittal does not provide all of the necessary demonstrations to ensure that the requirements of EPA's EIP Rules are being met.

A detailed discussion of the rule deficiencies can be found in the TSD for Regulation XX (January 5, 1995), which is available from the U.S. EPA, Region 9 office. Because SCAQMD is not using Regulation XX as a means to achieve or maintain attainment of the SO_2 NAAQS,[5] the PM_{10} NAAQS,[6] or the NO_2 NAAQS, EPA does not believe that Regulation XX will interfere with SCAQMD's ability to meet the requirements necessary in the Act for achieving or maintaining these standards. EPA believes that the penalty provisions found in RECLAIM Rule 2004 will be adequate for enforcement of the RECLAIM program. However, EPA does not believe that such penalty provisions would necessarily be adequate for other program designs. EPA will evaluate the penalty provisions of each program design on an individual basis, paying particular attention to the program elements found in the EIP rule (see 40 CFR 51.493(i) and 59 FR 16700–16701 dated April 7, 1994) where applicable.

Because of the above deficiencies, EPA cannot grant approval of this regulation under section 110(k)(3), section 110(a)(2), section 169A, and Parts C and D of the Act. Also, because the submitted regulation is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the regulation under section 110(k)(3). However, EPA may grant a conditional approval under section 110(k)(4) based on a commitment by the SCAQMD to revise the regulation to correct the identified deficiencies within one year of the Notice of Final Rulemaking of the conditional approval. EPA is optimistic that the SCAQMD will commit to adopt a regulation correcting the deficiencies within the required timeframe. The commitment letter must contain a schedule of interim steps (with dates) for the regulation. The State of California must submit the commitment letter to EPA. Therefore, EPA is proposing to give conditional approval to submitted Regulation XX under section 110(k)(4) of the CAA.

Under section 110(k)(4), the conditional approval shall be treated as a disapproval of a rule if the SCAQMD fails to adopt rules correcting the deficiencies within the time allowed. Under 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the CAA, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c). It should be noted that the regulation covered by this NPRM has been adopted by the SCAQMD and is currently in effect in the SCAQMD.

In the event that SCAQMD is unable to provide EPA with a commitment which addresses all of the deficiencies identified by EPA within 12 months of the publication of this NPRM, then EPA will publish a final rule which finalizes a limited approval/limited disapproval action on the NO_X and SO_X RECLAIM program in lieu of publishing a final rule which finalizes a conditional approval action on the NO_X and SO_X RECLAIM program. In the instance in which SCAQMD fails to provide the commitment within 12 months of the publication of the NPRM, the limited approval/limited disapproval would be finalized based on the same deficiencies noted elsewhere in this document and the associated TSD. As noted above, because of the noted deficiencies, EPA cannot grant approval or partial approval of this regulation under section 110(k)(3) and part D. However, EPA may grant a limited approval of the submitted regulation under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In the instance where a commitment from SCAQMD is not submitted within 12 months of the publication of the NPRM, in order to strengthen the SIP, EPA will finalize a limited approval of SCAQMD's submitted Regulation XX under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA will also finalize a limited disapproval of this regulation because it contains deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the regulation does not fully meet the requirements of part D of the Act. As noted above, if the identified deficiencies are not corrected within 18 months of EPA's final limited disapproval, the sanctions described in section 179 of the CAA will be applied. It should be noted that the regulation covered by this NPRM has been adopted by the SCAQMD and is currently in effect in the SCAQMD. EPA's final limited disapproval action in this NPRM will not prevent the SCAQMD or the EPA from enforcing this regulation.

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

[5] SCAQMD is presently in attainment of the SO_2 NAAQS.

[6] In this instance, SCAQMD is not asserting and EPA is not finding that SO_X RECLAIM is designed to be used as a means to identify or implement best available control measures (BACM) for PM_{10} in the South Coast Air Basin. If at some point in the future SCAQMD decides to use SO_X RECLAIM as a means of fulfilling this requirement, an additional SIP submittal must be made at which time EPA will apply the appropriate review criteria.

relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittals under sections 110 and 301 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2). This discussion applies in the case where EPA finalizes a limited approval/limited disapproval action as well.

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the submitted 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, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing state requirements nor does it impose any new federal requirements.

The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds, Nitrogen dioxide.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 15, 1995.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–4891 Filed 2–27–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR PART 52

[IL97–1–6575; FRL–5158–6]

Clean Air Act Approval and Promulgation of Employee Commute Options Program; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA is proposing to approve the State Implementation Plan (SIP) revision request submitted by the State of Illinois on July 8, 1994, for the purpose of establishing an Employee Commute Options Program (ECO Program) in the Chicago area, including the counties of Cook, Lake, DuPage, McHenry, Kane and Will and the townships of Aux Sable and Gooselake in Grundy County and Oswego in Kendall County. The rationale for the proposed approval is set forth below; additional information is available at the address indicated below.

DATES: Comments on this proposed rule must be received on or before March 30, 1995.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch, (AR–18J) USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Copies of the ECO Program SIP revision request and USEPA's analysis are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

(It is recommended that you telephone Jessica Radolf at (312) 886–3198 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Jessica Radolf, Regulation Development Section, Regulation Development Branch, (AR–18J) USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 886–3198.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the section 182(d)(1)(B) of the Clean Air Act, as amended in 1990 (amended Act), requires employers with 100 or more employees in the counties of Cook, Lake, Dupage, McHenry, Kane, and Will and the townships of Aux Sable and Gooselake in Grundy County and Oswego in Kendall County to participate in a trip reduction program. The concerns that lead to the inclusion of this Employee Commute Options (ECO) provision in the amended Act are that more people are driving and they are driving longer distances. The increase in the number of drivers and the increase in the number of vehicle miles traveled (VMT) currently offset a large part of the emissions reductions achieved through the production and sale of vehicles that operate more cleanly. It is widely accepted that shortly after the year 2000, without limits on increased travel, the increased emissions caused by more vehicles being driven more miles under more congested conditions will outweigh the fact that each new vehicle pollutes less, resulting in an overall increase in emissions from mobile sources. The ECO provision outlines the requirements for a program designed to minimize the use of single occupancy vehicles in commuting trips in order to gain emissions reductions beyond what can be and will be obtained through stricter tailpipe and fuel standards.

Section 182(d)(1)(B) of the amended Act requires that employers in severe and extreme ozone and carbon monoxide (CO) nonattainment areas submit their compliance plans to the State two years after the SIP is submitted to USEPA. These compliance plans developed by employers must be designed to convincingly demonstrate an increase in the average passenger occupancy (APO) of vehicles used by their employees who commute to work during the peak period by no less than 25 percent above the average vehicle occupancy (AVO) of the nonattainment area. These compliance plans must convincingly demonstrate that the employers will meet the target no later than 4 years after the SIP is submitted. Where there are important differences in terms of commute patterns, land use, or AVO, the States may establish different zones within the nonattainment area for purposes of calculation of the AVO.

Section 110(k) of the amended Act contains provisions governing USEPA's action on SIP submittals. The USEPA can take one of three actions on ECO Program SIP submittals. If the submittal satisfactorily addresses all of the required ECO Program elements, the USEPA shall grant full approval. If the submittal contains approvable commitments to implement all required ECO Program elements, but the State does not yet have all of the necessary regulatory authority to do so, the USEPA may grant conditional approval. Finally, if the submittal fails to adequately address one or more of the mandatory ECO Program elements, the USEPA shall issue a disapproval.

On July 8, 1994, the State of Illinois submitted a SIP revision request including Title 92 of the Illinois Administrative Code Part 600: Employee Commute Options to USEPA in order to satisfy the requirements of section 182(d)(1)(B) of the amended Act in the counties of Cook, Lake, DuPage, McHenry, Kane and Will and the townships of Aux Sable and Gooselake in Grundy County and Oswego in Kendall County, Illinois. The USEPA issued a finding of completeness on this submittal on July 14, 1994.

In order to gain approval, the State submittal must contain each of the following ECO Program elements: (1) The AVO for each nonattainment area or for each zone if the area is divided into zones; (2) the target APO which is no less than 25 percent above the AVO(s); (3) an ECO Program that includes a process for compliance demonstration; and, (4) enforcement procedures to ensure submission and implementation of compliance plans by subject employers. The USEPA issued guidance on December 17, 1992, interpreting various aspects of the statutory requirements (Employee Commute Options Guidance, December, 1992). A copy of this guidance has been included in this rulemaking docket.

II. Analysis

The State has met the requirements of section 182(d)(1)(B) of the amended Act by submitting a SIP revision that implements all required ECO Program elements as discussed below.

1. The Average Vehicle Occupancy

Section 182(d)(1)(B) requires that the State determine the AVO at the time the SIP revision is submitted. The State has met this requirement by establishing an AVO for the entire Chicago severe ozone nonattainment area. The AVO was determined to be 1.092 based on the most recent census data and was included as part of the Illinois SIP on July 8, 1994. Illinois has affirmed that this AVO is representative of the AVO at the time of submittal as required by section 182(d)(1)(B).

The Chicago area AVO was calculated using a methodology that did not include transit ridership in the numerator of the AVO calculation, resulting in a lower AVO than if transit riders had been included. Transit ridership is, however, included in the APO calculation. USEPA staff had informed Illinois on November 19, 1992, that USEPA could approve a definition of AVO that did not include transit. Final ECO guidance was issued on December 17, 1992, that would not allow for this type of AVO calculation.

Illinois' position is that including transit ridership in the AVO calculation would require a 25 percent increase above the average vehicle occupancy over existing conditions, which already relies very heavily on transit ridership, and this would penalize the Chicago area for having invested heavily in an extensive public transit infrastructure.

The State points out that the Illinois program has the support of affected employers that feel that the Illinois AVO target is attainable. It is the State's position that adoption of a transit oriented definition, with a much higher target, would be perceived by employers as unattainable and would erode their support.

In a June 10, 1994, letter from Administrator Carol M. Browner to Senator Frank R. Lautenberg, USEPA affirmed that ''our continuing effort here at EPA is to make the ECO Program work in ways that make sense at the local level.'' USEPA believes that Illinois' calculation of the AVO baseline without transit ridership reflects local concerns, recognizes the already significant investment in local and Federal dollars to develop and operate an existing major public transit infrastructure, and is approvable because it is consistent with Clean Air Act section 182 (d)(1)(B) language that allows for average vehicle occupancy rates, ''* * * reflecting existing occupancy rates and the availability of high occupancy modes.'' Illinois correctly points out that if transit ridership is included in the AVO baseline then cities like Chicago will have a much higher target AVO than some other cities simply because there is an efficient rail system already in place.

In light of USEPA's prior indication to Illinois that it could approve the AVO calculation, and the agency expressed desire to allow flexibility in implementing the ECO program, USEPA proposes to approve the AVO calculation.

2. The Target APO

Section 182(d)(1)(B) indicates that the target APO must be not less than 25 percent above the AVO for the nonattainment area. An approvable SIP revision for this program must include the target APO. Illinois has met this requirement by setting the target APO at 1.36 which is 25 percent above the AVO of 1.092.

3. ECO Program

State or local law must establish ECO Program requirements for employers with 100 or more employees at a worksite within severe and extreme ozone nonattainment areas and serious carbon monoxide areas. In the ECO Program Guidance issued December 1992, USEPA states that automatic coverage of employers of 100 or more should be included in the law. In addition, States should develop procedures for notifying subject employers regarding the ECO Program requirements.

State and/or local laws must require that initial compliance plans convincingly demonstrate prospective compliance. Approval of the SIP revision depends on the ability of the State/local regulations to ensure that the Act's requirement that initial compliance plans convincingly demonstrate compliance will be met. This demonstration can have any of four forms or any combination of these.

One option is for the State to include in the SIP evidence that State agency resources are available for the effective plan-by-plan review of employer-selected measures to ensure the high quality of compliance plans, and that plans that are not convincing will be rejected.

A second option is for the regulations in the SIP to contain a convincing minimum set of measures that all employers must implement. These measures will be subject to review and approval by USEPA as adequate when the SIP is processed.

A third option is for the regulations in the SIP to provide that failure by the employer to meet the target APO will result in implementation of a regulation-specified, multi-measure contingency plan. This plan will be reviewed by USEPA for adequacy when the SIP is processed.

A fourth option is for the regulations in the SIP to include financial penalties for employers who fail to meet the target APO, and/or compliance incentives that are large enough to result in a significant prospective incentive for the employer to design and implement an effective initial compliance plan of its own.

Illinois has met these requirements by providing evidence in the SIP that Illinois Department of Transportation resources are available to implement the first option. Illinois has contracted with several consulting firms to administer and monitor the program, to develop a training program for employers, and to prepare informational and educational materials.

Illinois will begin to notify the approximately 5,400 employers in the Chicago area with 100 or more employees in three staggered groups. Beginning in January 1995, registration packages were to be sent to the largest 250 employers representing approximately one third of all affected employees. Registration packages will be mailed to the second and third groups of employers in April 1995, and July 1995, respectively. Registration packages will include a complete guidance document, all necessary forms, information regarding training and information regarding how to withdraw from the program if the number of employees at the worksite falls below 100. Registration, APO surveys, and compliance or maintenance plans will be required from employers 30, 90, and 240 days, respectively, following receipt of the registration packet.

Each affected employer will receive program guidance that explains the requirements of the program and provides guidelines for developing approvable compliance plans for two phases of the program. In Phase 1—Start-Up (1994 to 1996) employers have the option of developing initial compliance plans using one of 14 start-up packages or the option of utilizing the value-added system. In Phase 2—Compliance (1996 to 1998) employers that have implemented their initial compliance plan for two years, must develop a renewal compliance plan using the value-added approach.

Phase 1—Start-Up (1994 to 1996)

Option A, ECO Start-up packages, allows employers to choose one of 14 start-up packages, each of which contains a fixed set of support measures that must be implemented. The required measures are minimum requirements and employers may supplement these packages by implementing additional strategies.

The start-up packages include: (1) Rideshare with Support; (2) Ride-share with Guaranteed Ride Home; (3) Rideshare with On-Site Amenities; (4) Rideshare with Vanpool Support; (5) Transit with Guaranteed Ride Home; (6) Transit with On-Site Transit Pass/Token Sales; (7) Transit with Transit Check Participation; (8) Transit with Shuttle Service; (9) Bicycle/Walk Program; (10) Telecommuting; (11) Compressed Work Week; (12) Parking Cash Out; (13) Transportation Allowance; and, (14) Episodic Program. Each of these packages requires that a trained employee transportation coordinator be hired by the employer to develop and implement the package. USEPA believes that initial employer compliance plans that include any of thes start-up packages could convincingly demonstrate compliance during the first four years of the program.

Option B, the Value-Added System, would allow employers to develop an initial compliance plan that is customized to the worksite. Employers would work through a series of steps for building up the value of a compliance plan to a level that will ensure compliance by selecting from a menu of trip reduction strategies that each has a designated vehicle reduction value. These steps include: (1) Work hour programs (telecommuting and compressed work week); (2) trip reduction support functions for carpool, vanpool, transit, bicycle, and walk programs; and (3) use of financial incentives and disincentives. Vehicle reduction estimates were developed for each support function and financial incentive and disincentive for three APO ranges and three transportation environments. These values are applied using a series of worksheets to estimate both the singular and additive effects of the proposed trip reduction strategies.

Phase 2—Compliance (1996–1998)

After employers have implemented their initial compliance plan for two years, they must develop and implement a renewal compliance plan based on the value-added approach that is designed to attain the target APO.

The Illinois Department of Transportation shall within 90 days of a plan submittal evaluate the compliance plan. An employer whose compliance plan is not approved will be required to submit a revised plan within 60 days of notification.

USEPA proposes to accept the Illinois program as a viable ECO Program that will reduce vehicle miles traveled (VMT) in the Chicago severe ozone nonattainment area. The June 10, 1994, letter from Administrator Carol Browner to Senator Frank R. Lautenberg stresses USEPA's commitment to policies that demonstrate ongoing flexibility in the ECO Program. USEPA will allow ''states to grant employers credit for any measure that reduces employee commute vehicle trips in gasoline-fueled vehicles.'' Further, the letter provides that States may approve employer plans that include seasonal components if the plans will achieve the trip reduction goal as determined by the State.

USEPA believes approval of the Illinois' episodic Start-up package provides full flexibility in establishing a viable, longterm ECO Program in Illinois. The Illinois Episodic Start-up package is a temporary, seasonal option in a program that phases-in increasingly stringent requirements in which employers must achieve the State's trip reduction goals four years after the SIP submittal. Employer's may implement the episodic start-up package only during the first two years of the ECO Program. After which, all employers must switch to the value-added approach and be in compliance by July 8, 1998. For these reasons the episodic start-up package is being proposed for approval as part of Phase 1 of the Illinois ECO Program. During the Phase 1 period USEPA expects the episodic start-up package to serve as a demonstration project and for the purpose of collecting information on its effectiveness. The episodic strategy is not being proposed for approval for the period after the first two years of the ECO Program and all employers must meet the requirements associated with the value-added approach.

4. Enforcement Procedures

States and local jurisdictions need to include in their ECO regulations penalties and/or compliance incentives for an employer who fails to submit a compliance plan or an employer who fails to implement an approved compliance plan according to the compliance plan's implementation schedule. Penalties should be sufficient to provide an adequate incentive for employers to comply and no less than the expected cost of compliance.

Illinois' ECO SIP has met this requirement by including in its ECO legislation substantial penalties for failure to comply with any provision of the regulation. A violator may be subject to a fine of up to $10,000 and up to $1000 per day for each violation. Violations include: (1) Knowingly failing to register or to submit a survey, or a compliance plan for an affected worksite; (2) knowingly falsifying or misrepresenting information provided in an employer survey or compliance plan; (3) failing to make a good faith effort to implement a compliance plan. Affected employers who make a good faith effort to implement their approved compliance plans, but fail to achieve the target APO will not be subject to penalties.

III. Proposed Rulemaking Action and Solicitation of Comments

The USEPA proposes to approve the ECO SIP revision submitted by the State of Illinois. The State of Illinois has submitted a SIP revision that includes each of the ECO Program elements required by section 182(d)(1)(B) of the amended Act. The SIP includes a verifiable estimate of the areawide AVO at the time that the SIP was submitted and a target APO that is at least 25 percent above the areawide AVO. Employers with more than 100 employees are required to submit compliance plans to the State that convincingly demonstrate that the plan will increase the APO per vehicle in commuting trips between home and the worksite during peak travel periods to a level not less than 25 percent above the areawide AVO for all such trips. Employer notification was scheduled to begin in January 1995. Registration forms, APO surveys, and compliance or maintenance plans will be required from employers 30, 90, and 240 days, respectively, following receipt of the registration packet. Mailing of renewal notices will begin in January 1997.

Substantial penalties that will provide an adequate incentive for employers to comply and are no less than the expected cost of compliance are included in the regulation. USEPA is, therefore, proposing to approve this submittal. Public comments are solicited on the requested SIP revision and on USEPA's proposed rulemaking action. Comments received by March 30, 1995 will be considered in the development of USEPA's final rule.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

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 any 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.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

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 impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 10, 1995.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 95–4789 Filed 2–27–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–27, RM–8582]

Radio Broadcasting Services; Yazoo City, Mississippi

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mississippi College, licensee of Station WHJT(FM), Channel 228A, Clinton, Mississippi, proposing the deletion of vacant Channel 229A at Yazoo City, Mississippi. Any party wishing to express an interest in Channel 229A Yazoo City, Mississippi, should file their expression of interest by the initial comment deadline specified herein.

DATES: Comments must be filed on or before April 17, 1995, and reply comments on or before May 2, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Shaun A. Maher, Smithwick & Belediuk, P.C., 1990 M Street, NW, Suite 510, Washington, D.C. 20036 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–27, adopted February 9, 1995, and released February 23, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

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

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–4846 Filed 2–27–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

48 CFR Part 5416

DLA Acquisition Regulation; Type of Contracts

AGENCY: Defense Logistics Agency, DoD.

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Logistics Agency proposes to add coverage by adding a new part to 48 CFR Chapter 54, the Defense Logistics Acquisition Regulation (DLAR) Part 5416. The proposed coverage affects regulations on the use of solicitation provisions and contract clauses for Economic Price Adjustments (EPA). Comments are hereby requested on the proposed rule. The proposed DLAR coverage expands

the use of EPA based on established prices to encompass industry-wide and geographically based market price references, expands the use of EPA based on indexes to encompass indexes for commercial products or services which are identical or similar to the end products to be provided under the contract, and authorizes the development and use, subject to established agency review and approval procedures, of clauses using EPA references described above. The proposed coverage is being published because it is expected to have an effect beyond the internal operating procedures of DLA and to provide an opportunity for public participation and comment.

DATES: Comments on the proposed DLAR rule must be submitted in writing to the address shown below on or before May 1, 1995, to be considered in the formulation of the final rules.

ADDRESSES: Interested parties should submit written comments to Defense Logistics Agency, Directorate of Procurement, Contract Policy Team (AQPLL), Ms. Melody Reardon, Cameron Station, Alexandria, Virginia 22304–6100 FAX: (703) 274–0310.

FOR FURTHER INFORMATION CONTACT: Melody Reardon, Defense Logistics Agency, AQPLL, (703) 274–6431.

SUPPLEMENTARY INFORMATION:

A. Background

The Defense Fuel Supply Center, a major contracting activity of DLA, has historically utilized a method of price adjustment in the bulk petroleum area using price indexes for the same or similar end products (most recently, actual monthly sales price averages published by the Department of Energy in the Petroleum Marketing Monthly) and using market price assessments for commercial products published in industry trade journals. For the past few years, these EPA clauses have either been approved by the Director, Defense Procurement, or authorized under individual deviations granted by the Executive Director, Procurement, DLA. Deviations were requested because the types of EPA references used in these clause are not specifically recognized under the three general types of EPA references at FAR 16.203. Currently, FAR 16.203–1(a) and its related coverage and clauses, recognize EPA references based on established market or catalog prices of the individual contractor only. The proposed DLAR coverage will expand this to include industry-wide and geographically specific market price assessments and authorize the development and use of clauses on that basis. FAR 16.203–1(c) and its related coverage recognize EPA references based only on indexes for labor or materials. The proposed DLAR coverage would expand this to include indexes for the same or similar commercial end products and authorize the development and use of clauses on that basis.

None of the three EPA types currently encompassed by the FAR are appropriate for many of the competitive procurements of commercial products undertaken by DFSC and other DLA contracting offices. The use of an EPA reference based on an individual contractor's established price or cost of materials is impractical for procurements under which indefinite quantity contracts will be issued. Unique EPA references for each offeror engender relative price variations during the delivery period, making it impossible to determine the most favorable offer at time of award. This creates a significant price risk for the Government and undermines the competitive process. Use of an index based on raw material cost ignores the effect of market conditions which affect producer margins. This creates a price risk for the Government in periods where margins are contracting and for the contractors in periods where the margins are expanding. Such fluctuations can be significant in petroleum markets. Given the need for a common EPA reference, a reference that more closely follows market prices for the end item reduces price risk for both the Government and the contractor. Such references are also more in conformance with commercial practice.

B. Regulatory Flexibility Act

The proposed change is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The primary user of the new DLAR coverage will be the Defense Fuel Supply Center, which has been utilizing these types of EPA references since the early 1980s. The proposed rule will therefore not represent a change for small entities doing business with the DFSC. Flexibility is also limited by the need to establish a common EPA reference for competing offerors, as discussed above. Given this need, establishing the reference based on the same or similar end products as being provided under the contract, as opposed to labor or material costs, minimizes the price risk experienced by small entities. An initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments will also be considered concerning the effect of the proposed rule on small entities in accordance with section 612 of the Act. Such comments must be submitted separately and cite this case in correspondence.

C. Paperwork Reduction Act

The proposed rules do not impose any reporting or record keeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 5416

Government procurement.

Therefore, it is proposed that 48 CFR Chapter 54, as proposed in the **Federal Register** (59 FR 21954, April 28, 1994) be amended by adding part 5416 to read as follows:

PART 5416—TYPES OF CONTRACTS

Subpart 5416.2—Fixed Price Contracts

5416.203 Fixed-Price Contracts with Economic Price Adjustment
5416.203–1 Description
5416.203–3 Limitations
5416.203–4 Contract Clauses

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, 48 CFR Part 1, subpart 1.3 and 48 CFR Part 201, subpart 201.3.

Subpart 5416.2—Fixed Price Contracts

5416.203 Fixed Price Contracts with Economic Price Adjustment

5416.203–1 Description.

(a)(S–90) *Adjustments based on established prices.* Established prices may reflect industry-wide and/or geographically based market price fluctuations for commodity groups, specific supplies or services, or contract end items.

(c)(S–90) *Adjustments based on cost indexes of labor or materials.* These price adjustments may also be based on increases or decreases in indexes for commodity groups specific supplies or services, or contract end items.

5416.203–3 Limitations.

(S–90) A fixed price contract with economic price adjustment may also be used to provide for price adjustments authorized in this section.

5416.203–4 Contract clauses.

(S–90) When the contracting officer determines that an existing EPA clause is not appropriate, the contracting officer may develop and use another EPA clause in accordance with 5416.203–1 (a)(S–90) or (c)(S–90). Established prices in such clauses need not be verifiable using the criteria in 48 CFR (FAR) 15.804–3. Established prices and cost indexes need not reflect changes in the costs or established prices of a specific contractor. The established price or cost index may be derived from sales prices in the marketplace, quotes, or assessments as reported or made available in a consistent manner in a publication, electronic database, or other form, by an independent trade association, Governmental body, or other third party independent of the contractor. More than one established price or cost index may be combined in a formula for economic price adjustment purposes in the absence of an appropriate single price or cost index.

Dated: February 15, 1995.

Margaret J. Janes,

Assistant Executive Director (Procurement Policy).

[FR Doc. 95–4574 Filed 2–27–95; 8:45 am]

BILLING CODE 5000–04–M

Notices

Federal Register

Vol. 60, No. 39

Tuesday, February 28, 1995

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95–009–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that five environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance and renewal of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Animal and Plant Health Inspection Service, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, 4700 River Road Unit 147, Riverdale, MD 20737–1237. The telephone number for the agency will change when agency offices in Hyattsville, MD, move to Riverdale, MD, during February. Telephone: (301) 436–7612 (Hyattsville); (301) 734–7612 (Riverdale). For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance and renewal of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
94–284–01	University of Chicago	1–06–95	*Arabidopsis thaliana* plants genetically engineered to express tolerance to the herbicide chlorsulfuron.	Illinois.
94–326–01	University of Chicago	1–06–95	Rapeseed plants genetically engineered to express either a gene from *Bacillus thurin-giensis* subsp. *kurstaki* for resistance to lepidopteran insects or a gene from potato plants for resistance to chewing insects.	Illinois.
94–306–01	Union Camp Corporation	1–26–95	American sweetgum trees genetically engineered to express a gene for tolerance to the herbicide 2, 4–D.	Georgia.
94–326–03, renewal of permit 94–055–01, issued on 4–13–94.	Upjohn Company	1–26–95	Tomato plants genetically engineered for resistance to tomato spotted wilt virus.	Georgia.
94–326–04, renewal of permit 94–055–02, issued on 6–16–94.	Upjohn Company	1–26–95	Cucumber plants genetically engineered for resistance to cucumber mosaic virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	Michigan.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 22nd day of February 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–4882 Filed 2–27–95; 8:45 am]

BILLING CODE 3410–34–M

ARMS CONTROL AND DISARMAMENT AGENCY

U.S. Government Sponsored Chemical Weapons Convention (CWC); Seminars for the Chemical and Related Industry

AGENCIES: Arms Control and Disarmament Agency (ACDA) and the Department of Commerce (DOC).

ACTION: ACDA and DOC will sponsor regional one-day seminars to explain the CWC and its significance for U.S. industry.

SUMMARY: The Chemical Weapons Convention (CWC) will directly affect a significant number of private sector chemical producers, consumers and processors. The CWC imposes requirements on certain industrial facilities. Depending on the specific chemical, the CWC requires:

- Detailed reports of the quantities produced, processed, or consumed in your facilities;
- Detailed production plans and site (plant) information;
- Short-notice on-site inspections of industry facilities and records by international inspection teams.

The key issues for U.S. chemical and related industry managers:

- Compliance with CWC Requirements;
- Protection of confidential/proprietary business information;
- Prevention of adverse publicity/controversy;
- Prevention of unnecessary costs/production disruptions;
- Inspection readiness;
- Schedule for implementation.

The U.S. Arms Control and Disarmament Agency (ACDA) and the Department of Commerce (DOC) are sponsoring regional one-day seminars to explain the CWC, the domestic draft implementation legislation that is currently being reviewed by the Senate, and their significance to U.S. industry. You are invited to attend one of the following:

Atlanta, GA	April 6, 1995.
Oakland, CA	April 20, 1995.
Newark, NJ	April 26, 1995.
Washington, DC	May 2, 1995.
Houston, TX	May 11, 1995.
Detroit, MI	May 18, 1995.

FOR FURTHER INFORMATION CONTACT: For registration materials and more information on how the CWC affects your company, contact: Naomi Lopez, EAI Corporation, 2111 Eisenhower Avenue, Suite 302, Alexandria, VA 22314–4679, Telephone: (800) 528–1041 or (703) 739–1033, Fax: (703) 739–1525.

Cathleen E. Lawrence,

Director of Administration.

[FR Doc. 95–3562 Filed 2–27–95; 8:45 am]

BILLING CODE 6820–32–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To Give Firms an Opportunity to Comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 01/19/95–02/15/95

Firm name	Address	Date petition accepted	Product
Ball Variometers, Inc	6595 Odell Place, Suite C, Boulder, CO 80301.	12/20/94	Variometers—Electrical Instruments for Aeronautical use.
Kashier Specialties DBA Redford Coffee	5302 E. Harbor Rd., P.O. Box 1430, Freeland, WA 98249.	01/12/95	Textile Filters.
Binder Brothers Incorporated	663 Grand Avenue, Ridgefield, NJ 07657	01/25/95	Jewelry.
Electro Plasma, Inc	4400 Martin-Moline Road, Millbury, OH 43447.	01/26/95	Information display panels which can be used as a replacement for CRT's.
Silver Cloud, Inc	2417 Baylor, Southeast, Albuquerque, NM 87106.	02/01/95	Jewelry.
Water & Power Technologies, Inc	3740 West 1987 South, Salt Lake City, UT 84127–0836.	02/02/95	Reverse osmosis equipment for the purpose of filtrating and dionizing water for purification.
Interplex Electronics, Inc	70 Fulton Terrace, New Haven, CT 06512.	02/06/95	Breadboards, Electronic Trainers and Custom Electronic Trainers.
Orscheln Co. (including Elisha Technologies Co.).	1177 N. Morley, Moberly, MO 65270	02/08/95	Levers, Cables, Fittings and Plating.
Jilarous, Inc	35 West 36th Street, New York, NY 10018–7906.	02/10/95	Jewelry—Earrings.
Geophysical Survey Systems, Inc	13 Klein Drive, North Salem, NH 03073	02/13/95	Subsurface Interface Radar Systems.
Harrington Mold/California Pony Cars	1906 Quaker Ridge, Ontario, CA 91761	02/13/95	Production Molds and Auto Parts—Mirrors, Horns, Bracket, Insignia, etc.
Nulco Manufacturing Corporation	30 Beecher St., Pawtucket, RI 02862	02/15/95	Chandeliers.
Klein Bicycle Corporation	118 Klein Road, Chehalis, WA 98532	02/17/95	Bicycle Frames.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease is sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, Room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: February 15, 1995.

Lewis R. Podolske,

Acting Director, Trade Adjustment Assistance Division.

[FR Doc. 95–4899 Filed 2–27–95; 8:45 am]

BILLING CODE 3510–24–M

International Trade Administration

[A–201–806]

Steel Wire Rope From Mexico; Affirmative Final Determination of Circumvention of Antidumping Duty Order

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

ACTION: Notice of affirmative final determination of circumvention of antidumping duty order.

SUMMARY: On June 3, 1994, the Department of Commerce (the Department) preliminarily determined that imports into the United States of steel wire strand from Mexico, which are assembled in the United States into steel wire rope for sale in the United States, were circumventing the antidumping duty order on steel wire rope from Mexico. The inquiry into the possible circumvention of this order covers one Mexican manufacturer/ exporter of the subject merchandise, and a related party in the United States. This inquiry covers the period October 1, 1992, through September 30, 1993. Interested parties were invited to comment on the preliminary affirmative determination of circumvention. We received comments from only one party, supporting the Department's preliminary affirmative determination of circumvention. The findings of the preliminary determination remain unchanged; as a result, we have determined that the respondent, Grupo Camesa S.A. de C.V. and its United States affiliate, Camesa Inc. (collectively, Camesa), are circumventing the order and that steel wire strand produced in Mexico by Camesa and imported into the United States for use in the production of steel wire rope falls within the scope of the antidumping duty order on steel wire rope from Mexico.

EFFECTIVE DATE: February 28, 1995.

FOR FURTHER INFORMATION CONTACT: Wendy Frankel, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 1994, the Department published in the **Federal Register** (59 FR 29176) a preliminary affirmative determination that imports into the United States of steel wire strand from Mexico were circumventing the order on steel wire rope within the meaning of section 781(a) of the Tariff Act of 1930, as amended (the Tariff Act), and 19 CFR 353.29(e), and a subsequent finding that the imported product subject to the inquiry, steel wire strand manufactured in Mexico, fell within the order. Pursuant to this determination, the Department instructed the U.S. Customs Service (Customs) to suspend liquidation of, and require cash deposits on entries of, the imported product, steel wire strand, manufactured in Mexico. Interested parties were invited to comment on this preliminary determination. We received comments from the petitioner, the Committee on Domestic Steel Wire Rope and Specialty Cable Manufacturers (the Committee), on July 5, 1994, supporting the Department's preliminary affirmative determination of circumvention. No other party submitted comments.

In accordance with section 781(e) of the Tariff Act, the Department also notified the International Trade Commission (ITC) of its preliminary determination that the imported product fell within the scope of the order. In response, the ITC notified the Department that consultations between the Department and the ITC regarding the Department's preliminary determination were unnecessary.

The Department has now completed this inquiry in accordance with section 781(a) of the Tariff Act.

Scope of Antidumping Duty Order

The product covered by the order is steel wire rope, which is defined in the Department's antidumping duty order on steel wire rope from Mexico as: ''ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of plated wire.''

During the period of this inquiry (POI), such merchandise was classifiable under subheadings 7312.10.9030, 7312.10.9060, and 7312.10.9090 of the Harmonized Tariff Schedule (HTS). HTS subheadings are provided for convenience and for Customs purposes. The Department's written description of the scope of the order remains dispositive.

Scope of the Circumvention Inquiry

Products subject to this circumvention inquiry are entries of strand, which are defined as stranded wire having a lay or twist of not more than one revolution for a length equal to the strand diameter multiplied by 8.5. During the inquiry, such merchandise was classifiable under subheading 7312.10.3020 of the HTS. The HTS subheading is provided for convenience and for Customs purposes. The Department's written description of the scope of the inquiry remains dispositive.

Nature of the Circumvention Inquiry

As set forth in our preliminary determination, we examined whether (A) steel wire rope sold in the United States is of the same class or kind as merchandise that is subject to the order; (B) such steel wire rope sold in the United States is completed or assembled in the United States from parts or components (*i.e.*, steel wire strand) produced in Mexico, the foreign country with respect to which such order applies; and (C) the difference between the value of such steel wire strand reffered to in (B) above, is small. Section 781(a)(2) of the Tariff Act further provides that, in determining whether to includes parts or components in an antidumping duty order, the Department shall take into account such factors as (A) pattern of trade; (B) whether the manufacturer or exporter of the parts or components is related to the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order applies; and (C) whether imports into the United States of the parts or components produced in such foreign country have increased after issuance of such order.

I. Statutory Criteria

Class or Kind, U.S. Assembly From Components Produced in the Foreign Country, and Difference In Value

Neither the Committee nor Camesa challenged our preliminary determination that the steel wire rope sold in the United States was of the same class or kind of merchandise as that subject to the order and that the subject steel wire rope was processed in the United States from steel wire strand produced in Mexico, the country to which the antidumping duty order applies. In addition, neither the Committee nor Camesa challenged our preliminary determination, based on the best information available (BIA), that the difference between the value of the wire strand produced in Mexico and the value of the steel wire rope sold in the United States is small within the meaning of section 781(a) of the Tariff Act. Therefore, we affirm our preliminary determination regarding these three criteria.

II. Factors

Subsequent to our preliminary determination, we did not request additional information regarding the pattern of trade, the relationship between the parties, and the volume of imports of steel wire strand. Neither party challenged our preliminary determination regarding these factors. Based on our analysis of these factors, we affirm our preliminary determinations that (A) the data on the pattern of trade indicate a shift from sales in the United States of steel wire rope produced in Mexico toward sales of steel wire rope processed in the United States from steel wire strand produced in Mexico; (B) respondents are related parties; and (C) imports of steel wire strand into the United States increased subsequent to the issuance of the antidumping duty order.

Final Affirmative Determination of Circumvention

Based on the foregoing analysis, we determine that the respondent, Camesa, is circumventing the antidumping duty order on steel wire rope from Mexico. The merchandise produced in the United States, steel wire rope, is of the same class or kind of merchandise as that subject to the order, and is completed from an intermediate product produced in Mexico, the country to which the order applies. Further, based on BIA, we determine that the difference in value between the imported and finished products is small. We also determine that the pattern of trade, increase in imports of the intermediate product, and relationship between Grupo Camesa and Camesa Inc., are consistent with an affirmative determination of circumvention. We note that our analysis of the difference in value and resulting determination of ‘‘small’’ in this case are not necessarily synonymous with such determinations that the Department will formulate in future circumvention inquiries since Congress has directed us to make determinations regarding the difference in value on a case-by-case basis.

Based on this final affirmative determination of circumvention, we have determined that steel wire strand, when manufactured in Mexico by Camesa and imported into the United States for use in the production of steel wire rope, falls within the scope of the antidumping duty order on steel wire rope from Mexico. We will inform Customs of this decision, and will instruct it to continue to suspend liquidation of, and require cash deposits, at the applicable rate, on entries of steel wire strand manufactured in Mexico by Camesa.

No suspension of liquidation or collection of cash deposits is required for steel wire strand produced by other manufacturers in Mexico. In addition, no suspension of liquidation or collection of cash deposits is required for steel wire strand produced by Camesa in Mexico that enters with an end-use certificate certifying that the steel wire strand will not be used for processing into steel wire rope. However, if this documentation is not presented at the time of entry, the merchandise produced by Camesa should be subject to the applicable cash deposit requirement.

Interested parties should be advised that data and statements supporting the exclusion of steel wire strand from this antidumping duty order are subject to verification by the United States Government.

Interested parties may request disclosure within five days of the date of publication of this notice.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibilities concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This final affirmative determination of circumvention is in accordance with section 781(a) of the Tariff Act (19 U.S.C. 1677j(a)) and 19 CFR 353.29(e).

Dated: February 17, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–4900 Filed 2–27–95; 8:45 am]

BILLING CODE 3510–DS–M

National Institute of Standards and Technology

[Docket No. 950124027–5027–01]

RIN 0693–AB38

Intent To Develop a Federal Information Processing Standard (FIPS) for a Data Standard for Record Description Records—Request for Comments

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Request for comments.

SUMMARY: NIST is considering the development of a Federal Information Processing Standard (FIPS) for the data elements which, when taken together, will describe information objects of many different kinds, both electronic and non-electronic. The standard would apply to a wide range of information-creating software products. It would apply also to document management and object repository software products. Federal agencies would use the standard in specifying many software products used to create documents or information objects (e.g., electronic mail systems), and also when specifying document or object storage and management software products. This notice uses the word ‘‘record’’ as a broadly-encompassing term to include ‘‘documents’’ and ‘‘objects,’’ regardless of media or application.

The framework for this proposed FIPS was developed by a working group of the interagency Integrated Services Panel, under the Federal Information Resources Management Policy Council. NIST solicits comments on the scope, purpose, background, and rationale for the proposed standard, and on certain technical issues. After analyzing the comments, NIST may propose a FIPS for review and comment.

DATES: Comments on this effort must be received on or before May 30, 1995.

ADDRESSES: Written comments should be sent to: Director, Computer Systems

Laboratory, ATTN: Data Standard for Records Description, Technology Building, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Inspection Facility, Room 5020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, N.W., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:

Mr. Bruce K. Rosen, National Institute of Standards and Technology, Technology Building, Room A–266, Gaithersburg, MD 20899, (301) 975–3246, Internet mail brosen@nist.gov.

SUPPLEMENTARY INFORMATION: The Computer Systems Laboratory of the National Institute of Standards and Technology is considering the development of a Federal Information Processing Standard (FIPS) for the data elements—their identification, representation, arrangement, and object binding—to describe information objects. Such objects include but are not limited to electronic mail messages, word processing documents, spreadsheets, forms, voice-mail messages, images, and publications. This notice refers to all such objects with the single term ‘‘record’’ as a generic term to encompass documents, messages, and information objects of all kinds.

The set of data elements will constitute a Record Description Record (RDR). The RDR will be created whenever e-mail messages, word processing documents, image documents, spreadsheet documents, voice-mail messages, etc., are created, using either commercial-off-the-shelf (COTS) software products or non-COTS software. It will accompany those information objects when they are passed to a document management (storage and retrieval) or object repository product (either COTS or non-COTS), or when they are passed to some other software being used to store and retrieve them.

By applying the standard to document management or object repository software products, it will become possible to use these products to manage non-electronic records stored externally in addition to the electronic information objects stored in and under the control of the document management or repository products.

Terminology

1. Record

The computer industry is developing a new class of information technology products designed to organize, store, retrieve, and manage such electronic expressions of information as textual memos and reports, sound recordings, scanned images, and computer software. As a group, the information expressions are called ‘‘documents,’’ or ‘‘objects.’’ The latter tends to be a broader term, to include computer software. Both my include sound recordings, images, and what are being called ‘‘compound documents’’ and ‘‘multimedia’’ documents or objects. The products being developed are usually called object repositories or document repositories or document management systems or document storage and retrieval systems.

2. Record Management System

Throughout this notice, the term ‘‘record management system’’ is used broadly to include all software products intended to store, retrieve, and manage electronic documents and information objects. It is intended to encompass such products as those that are called ‘‘object repository,’’ ‘‘document repository,’’ ‘‘document manager,’’ and ‘‘document storage and retrieval system.’’ These products may be stand-alone or they may be integrated with other products in an office suite. They may have their own directory, or they may share directory services with other software products with which they are integrated. What distinguishes them is their functionality of receiving documents or information objects—what this notice calls ‘‘records’’, storing them for future retrieval, use, and disposition, and also managing their integrity, access, and life-cycles.

Background, Purpose and Rationale

Like many private sector enterprises, Federal Government agencies are re-engineering their programs, missions and administrative activities to perform them faster, better, and at less cost. In general, this means replacing paper-based processes with electronic, computer-based workflows. Examples include the electronic commerce programs, and electronic submission of regulatory reports and filings.

As activities are migrated from paper to electronic workflows, transactions, and submissions, information objects pass between different software environments. Those records must be identified and described not only to support search and retrieval, but also to substantiate their trustworthiness in legal proceedings and support their transfer to the National Archives should such transfer be required.

Federal Government agencies will be procuring record management products, both COTS and non-COTS, some of which will be stand-alone and some of which will be integrated with such creation software as word processing, e-mail, and workgroup computing. Thus, the possible interfaces between the software used to create records and the software used to store and retrieve them can very from many different packages bought from many different vendors in many different procurements, to a single integrated suite of software bought at one time in one procurement from one contractor.

This proposed standard would enable Federal agencies to avoid reinventing in every procurement or system installation the identification data for messages, letters, images, etc., and the way that data is recorded and arranged. It will avoid the necessity for suppliers of software products to customize their products differently for different Federal agencies, or for Federal agencies to engage individually in complex integration efforts and to develop agency-unique solutions to a requirement common to all.

Issues

1. Basic Architecture and Applicability

The Record Description Record (RDR) is a set of descriptive attribute that are identified, arrange, and bound in a prescribed manner to whatever is being described. The attributes are sometimes referred to as metadata, because they identify and describe the record, and may or may not be a part of it. The RDR is itself called a record because it a logically-related set of discrete data elements.

Whenever a record is created using a computer, the creating software would be expected to generate a corresponding RDR. That RDR would be passed to a record management system along with the record itself. For records created and stored outside the computer environment, e.g., non-electronic records or electronic records stored ‘‘off-line,’’ the RDR information may be entered manually into a record management system, thereby using the system to manage records in general, without restriction as to the record media. In essence, the FIPS would be specifying a standard record to be used to describe other records of many different kinds.

The RDR is envisioned as comprising three sets of data elements. The first is a small set that wou8ld be mandatory in all RDRs and would apply universally to all records, regardless of their nature or content. The second is a small set that would be mandatory for certain classes of records, or conditions that apply to them. An example would be records sent electronically from one party to another, as contrasted with those that are printed and communicated by hand, mail, messenger, or facsimile. The third is a potentially large set of optional data elements to be specified by individual agencies.

This approach would yield a single RDR standard that would prescribe how the data elements are identified, arranged, and represented, and how the RDR for an electronic record is to be bound to the record it describes. It presents two issues on which public comment is desired. One is whether it is reasonable to establish a single RDR standard for all applications, e.g., word processing, e-mail, voice-mail, groupware, etc. The second is whether the three-level specification of data elements is appropriate.

2. RDR Binding

There must be some binding between an electronic record and the RDR that describes it. Because of the different ways in which record management systems work, the actual RDR contents are likely to be handled differently, stored differently, and used differently in the various proprietary products. The RDR contains the kind of descriptive data that these systems put in their directories, if they have directories. To a great degree, the RDR may be viewed as being a support to or enhancement of the directory functions of those record management systems that have directories.

Record management systems need to know how the RDRs for electronic records will be delivered to them—whether they will come as physically separate records, as headers, or as trailers. If this aspect is not standardized, then software products that create records would be free to create the corresponding RDRs in any way whatsoever. A standard approach could be established by which an RDR is bound to what it describes, so that record management system products can accept records from any source and understand their accompanying RDRs.

The RDR standard is seen as essential to support a Federal agency's mix-and-match of software products from different vendors. However, in the case of integrated office suites where the passing of a record from the creating software to the storing/retrieving software is handled internally or where the record is created and stored in just one place, a standard for data element identification and arrangement and for object binding may not be needed, and when adopted might not necessarily apply. However, the RDR information content would still be necessary. When a record is transferred out of a record management system, to either another record management system or to the National Archives, the accompanying RDR would have to be bound according to the standard.

Both implementors of software products that create records and implementors of record management system software products are asked to comment on how binding should be accomplished, and why. Prospective implementors are invited to propose specification language.

3. E-Mail Receipt Data

Just the conduct of electronic commerce and regulatory activities—let alone intra-agency and inter-agency communications—requires that agencies keep data about the origin and receipt of electronic transactions and submissions. Much of that data is generated internally by e-mail software packages.

The treatment of e-mail receipt data poses a special binding case. An e-mail message may be sent to one or more receivers, who may receive it at different times, or not at all. At some point, the e-mail system may transfer the message and its accompanying data from its own message store to a record management system. If some receipt data for that message is generated in the e-mail system after the message to which it applies has been transferred out, there is a question about what the e-mail system should do with that subsequent receipt data. It could, of course, be purged by the e-mail system. Alternatively, it could be put into an RDR and passed out to the record management system. If put into an RDR and passed out, the record management system would need to link it to the message to which it applies, and for which one or more RDRs already exist.

Both implementors of e-mail software and implementors of a record storage software are asked to comment on how this issue might be resolved, and are invited to propose specification language to address it.

4. Data Element Identification

The RDR will be a set of data elements. A standard mechanism must be established to identify the elements that are present, because the record will be a combination of mandatory and optional data elements. If a record management system is receiving records from e-mail, word processing, voice-mail, electronic commerce, etc., it will be receiving different RDRs depending on which package created the record, and perhaps also on the kind of record being stored. Thus, the format of the RDR must be standardized in a fashion analogous to a message header or a file label. Because there are many possible ways of formatting RDRs, the lack of a standard format would result in the creating software packages putting out RDRs that record management systems might not understand.

Comments are desired on how the RDR should be formatted, and how data elements should be identified and represented, and why. Prospective implementors are invited to propose specification language.

5. Universal Mandatory Elements

In general, these elements will address the questions of (a) what kind of record it is, or what software was used to create it; (b) which individual or organization created it; (c) when it was created; (d) what it deals with; and (e) what unique identifier(s) has been given to it. With respect to these and all other data elements, relevant existing FIPS for data element representations would be expected to be used. Representation standards would be established only for those elements for which such Federal standards do not presently exist.

Comments are solicited on the specific data elements that should be considered to be universal and mandatory. Their selection criteria are (1) their importance in record identification and description, and (2) their applicability across the broad spectrum of software used to create records of different kinds.

6. Conditional Mandatory Elements

Conditional mandatory elements are those that would be prescribed for records based on such characteristics as their application of origin, their storage media or location, or some statutory or regulatory requirement. The condition of greatest immediate concern is electronic communication, where the process of communication adds its own dimensions of time and place. Examples would be electronic mail, file transfer, and the many other applications that exist at the application layer of a multi-layer data communications reference model.

As mentioned above, electronic commerce and electronic submission of regulatory reports and filings necessitate the inclusion of ''transmission'' data in the RDR for an electronic mail message. It is expected that these activities will necessitate a comparable requirement in such other communications-based applications as file transfers and electronic data interchange transactions. Thus far, all that is reasonably certain is that some data that is generated internally by e-mail systems or created by message originators—e.g., the identities of message originators, identities of receivers, the date and time of origination, and/or the date and time of receipt—must be bound to the message in the RDR. That is a relatively small set of data elements. However, two important questions surround it. The first is which of those elements should be mandatory and which optional, and the second is whether those mandatory elements should apply to all applications.

Comments are desired on both of these questions, as well as on the mandatory descriptive elements that should apply to voice-mail, scanned image documents, compound documents, and multimedia documents.

7. Optional Elements

Optional elements may be associated with records such as e-mail messages that are common across many Federal agencies, or they may be associated with common descriptive characteristics such as case number or client number, or they may be unique to a particular agency. Some common elements may be candidates for standardization, but that is not an issue in this context.

What is of principal concern with respect to the RDR is the production of optional elements by the information creation software, and their acceptance by the record management system. The data element identification standard discussed above should cover the aspect of identifying each optional element that is present in an RDR, but questions remain concerning the number of optional elements that a record management system must be able to accept, and what specifications should apply to information creation software for the creation of the optional elements.

Comments are solicited on these, and any other aspects of optional data elements in RDRs.

Dated: February 22, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–4855 Filed 2–27–95; 8:45 am]

BILLING CODE 3510–CN–M

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet on Tuesday, March 14, 1995, from 10:45 a.m. to 5:00 p.m., and on Wednesday, March 15, 1995, from 8:30 a.m. to 10:00 a.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. On Tuesday, March 14, 1995, presentations will be given on the Board on Assessment of NIST Programs' annual report; the Applied Technology Program focus report on Materials Processing for Heavy Manufacturing; the National Quality Award's pilot programs in healthcare and education; and national and international standards. A discussion on the Institute's budget, including funding of the Applied Technology Program and staffing of management positions at NIST, scheduled to begin at 10:45 a.m. and to end at 11:45 a.m. on March 14, 1995, will be closed. On Wednesday, March 15, 1995, the committee members will tour the molecular measurement laboratory.

DATES: The meeting will convene March 14, 1995, at 8:30 a.m. and will adjourn at 10:00 a.m. on March 15, 1995.

ADDRESSES: The meeting will be held in Lecture Room A, Administration Building, National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Chris E. Kuyatt, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone number (301) 975–6090.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 7, 1995, that portions of the meeting of the Visiting Committee on Advanced Technology which involve examination and discussion of the budget for the Institute may be closed in accordance with Section 552(b)(9)(B) of Title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Dated: February 22, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–4856 Filed 2–27–95; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 021495C]

New Bedford Harbor Trustee Council; Scoping Meetings

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; and Office of Environmental Policy and Compliance, U.S. Department of the Interior (DOI).

ACTION: Notice of intent to prepare an environmental impact statement (EIS); request for comments.

SUMMARY: NMFS, acting as Administrative Trustee, and DOI announce the intention of the New Bedford Harbor Trustee Council (Council) to prepare an EIS for a proposed plan to address the restoration of natural resources that have been injured by the release of hazardous substances, including polychlorinated biphenyls (PCBs), in the New Bedford Harbor environment. The Council also announces its initiation of a public process to determine the scope of issues under consideration. The purpose of this notice is to inform the public of this process and of the opportunity to participate in the development of the restoration plan/EIS. All persons affected by, or otherwise interested in, the proposed restoration plan are invited to participate in determining the scope of significant issues to be considered in the EIS by submitting written comments or by attending scoping meetings. The scoping process will identify and prioritize alternatives for potential restoration activities.

DATES: The Council will hold scoping meetings in each of the affected communities within the New Bedford Harbor environment. The scoping meetings are scheduled as follows:

1. February 28, 1995, 6:30 p.m.–9 p.m., New Bedford, MA

2. March 1, 1995, 6:30 p.m.–9 p.m., North Dartmouth, MA

3. March 8, 1995, 6:30 p.m.–9 p.m., Acushnet, MA

4. March 9, 1995, 6:30 p.m.–9 p.m., Fairhaven, MA

ADDRESSES: The meetings will be held at the following locations:

1. New Bedford—New Bedford Whaling Museum, 18 Johnny Cake Hill, New Bedford, MA 02740

2. North Dartmouth—University of Massachusetts/Dartmouth, Old Westport Road, North Dartmouth, MA 02714

3. Acushnet— Acushnet Elementary School, 80 Middle Road, Acushnet, MA 02743

4. Fairhaven—Hastings Middle School, 30 School Street, Fairhaven, MA 02719

Additional meetings will be announced as they are scheduled. Public hearings will be scheduled upon completion of the Draft EIS. Send written comments on the scoping process and scope of the EIS to Jack Terrill, Coordinator, New Bedford Harbor Trustee Council, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930–2298, or fax number 508–281–9301.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Coordinator, 508–281–9136.

SUPPLEMENTARY INFORMATION:

New Bedford Harbor is an urban tidal estuary on the western shore of Buzzards Bay, MA, situated between the City of New Bedford on the west and the towns of Fairhaven and Acushnet on the east, with the Acushnet River flowing into the harbor from the north. The area contains approximately 6 square miles (15.54 square kilometers) of open water, tidal creeks and salt marshes.

New Bedford Harbor is an active port frequented by both commercial and recreational fishing vessels, as well as merchant vessels delivering produce for distribution throughout the Northeast. For many years, the commercial landings of predominantly scallops and groundfish species resulted in either the highest or second highest value of any port in the country. Historically, approximately 300 to 400 commercial fishing vessels have landed in the port each year. Located along the shores of the harbor are support services for the fishing industry (ice, fuel, provisions, etc.) and manufacturing facilities, as well as residential neighborhoods.

Also situated along the shore were electronic manufacturers which were major users of PCBs from the time their operations commenced in the late 1940's until 1977, when the Environmental Protection Agency (EPA) banned the use and manufacture of PCBs. These industries discharged wastewaters containing PCBs directly into the Acushnet River estuary and Buzzards Bay and indirectly via the municipal wastewater treatment system.

PCBs are considered to be human carcinogens that can be introduced through the eating of contaminated fish and shellfish. PCBs found at high concentration may be released into the air for further deposit on surfaces affecting vegetation. PCBs are concentrated in fish and shellfish through the process of biomagnification in which fish and shellfish eat smaller organisms such as plankton, and the PCBs within the smaller organisms are retained in the tissue of the larger organism. Subsequent exposure further accumulates the PCBs in these tissues.

PCBs can also have adverse effects on natural resources particularly birds and higher mammals. Birds exposed to PCBs have exhibited reproductive failure and birth defects. Some shellfish species will die after exposure to even small concentrations of PCBs. Some fish species can have relatively high concentrations without serious effect but pose a danger when eaten by other natural resources such as birds.

Between 1974 and 1982, a number of environmental studies were conducted to assess the magnitude and extent of contamination by PCBs and heavy metals in New Bedford Harbor. These studies showed PCB contamination in marine sediment over a 985–acre area to range from a few parts per million (ppm) to over 100,000 ppm. Portions of western Buzzards Bay are also contaminated with sediment PCB concentrations in excess of 50 ppm. Water-column concentrations were found in excess of Federal ambient water quality criteria (0.030 ppm based on chronic impacts to marine organisms). Fish and shellfish PCB concentrations were found in excess of the U.S. Food and Drug Administration tolerance limit (2 ppm for edible tissue).

To reduce the potential for human exposure to PCBs, the Massachusetts Department of Public Health closed much of the New Bedford Harbor area to fishing or fishing for selected species with the establishment of three closure areas on September 25, 1979. New Bedford Harbor was added to EPA's Superfund National Priorities List in July 1982 and was simultaneously identified as the Commonwealth of Massachusetts' priority Superfund site.

Executive Order 12580 and the National Contingency Plan, which is the implementing regulation for the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), designates the Secretaries of Agriculture, Commerce, Defense, Energy, and Interior to be Federal Trustees for natural resources. Federal Trustees are designated because of their statutory responsibilities for protection and/or management of natural resources, or management of federally owned land. In addition, the governors of each state are required to designate a state Trustee. The Trustees' responsibilities include assessing damages from the release of hazardous substances, pursuing recoveries of both damages and costs, and using the sums to restore, replace, or acquire the equivalent of the resources that were injured by the release.

In 1983, the Federal and state trustees filed complaints in Federal District Court in Boston alleging causes of action under CERCLA against the electronics manufacturers for injuries to natural resources under their trusteeship that had resulted from releases of hazardous substances, including PCBs. The eventual outcome of the complaints was monetary settlement agreements with defendants to: (1) Fund the cleanup of the harbor by EPA, (2) restore the natural resources by the Trustees, and (3) reimburse the governments for funds expended.

The Council was created as a result of the settlement agreements. There are three natural resource trustees on the Council representing Commerce, DOI, and the Commonwealth of Massachusetts. The Secretary of Commerce has delegated trustee responsibility to NOAA, with NMFS having responsibility for restoration. The Secretary of the Interior has delegated trustee responsibility to the Regional Office of Policy and Compliance. The Governor of Massachusetts has delegated trustee responsibility to the Executive Office of Environmental Affairs. These are the only Trustees having identified trust responsibilities for natural resources present in the New Bedford Harbor environment.

The Trustees are required to develop a restoration plan before settlement money can be spent on restoration projects. Such a plan will include a range of projects including near-term restoration efforts though restoration may continue for 10 to 15 years or more. The Trustees primary task is to determine how best to restore the injured natural resources and the Trustees are seeking the assistance of the public in this process. There are many projects that can be done to restore the injured natural resources but there are also limited funds with which to accomplish this. By incorporating the public in the process and by developing a formal restoration plan, there is greater likelihood of success and acceptance.

Federal actions require adherence to the National Environmental Policy Act. This Act requires the development of an environmental assessment or an EIS which analyzes the effects of the proposed Federal action(s) on the environment. This notice initiates the process of developing an EIS. Alternatives developed though this process will be included in the EIS as well as an analysis of their potential impacts on the environment.

The Trustees have scheduled four meetings to initiate this process. The purpose of these meetings is to introduce the public to the Trustee Council, define the Council's role and responsibilities, explain what restoration means and the legal requirements that must be followed: Describe and seek comment on the Trustee Council's goals, objectives, and project selection criteria; and provide guidance and receive comment on how restoration projects should be presented for consideration.

These meetings are the first step in the restoration plan/EIS development process. Meetings of the Trustee Council are open to the public and the public is invited to attend and participate. The Trustees will be seeking public participation through citizen advisors who can play a continuing role in restoration plan development. Once a draft restoration plan/EIS is developed, public hearings will be held on the content before any such plan is finalized.

Authority: 42 U.S.C. 4321 *et seq.* and 9601 *et seq.*

Dated: February 21, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–4847 Filed 2–27–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 021795E]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a meetings on March 13 through 16, 1995 at the Holiday Inn Downtown-Superdome, 330 Loyola Street, New Orleans, LA; telephone: 504–581–1600.

Council Meetings:

March 15, 1995

The Council will convene at 8:30 a.m. and recess at 5:30 p.m., 8:45 a.m. to 4:00 p.m.—Receive public testimony on the red grouper size limit and the harvest of ''live rock'' off Florida (*NOTE*: Testimony cards must be turned in to staff *before* the start of public testimony);

4:00 p.m. to 5:30 p.m.—Amendment 3 to the Fishery Management Plan for Coral and Coral Reefs.

March 16, 1995

8:30 a.m. to 9:30 a.m.—Receive reports of the Mackerel Management Committee;

9:30 a.m. to 11:30 a.m.—Receive reports of the Reef Fish Management Committee;

11:30 a.m. to 2:00 p.m.—Receive the ICCAT Meeting Report, SAFMC Liaison Report, Enforcement Reports, Directors' Reports and Other Business;

(CLOSED SESSION—2:00 p.m. to 8:00 p.m.)—Consider appointment of Scientific and Statistical Committee (SSC) members; and

(CLOSED SESSION—3:00 p.m. to 5:00 p.m.)—Consider appointment of Advisory Panel (AP) members.

Committee Meetings:

March 13, 1995

(CLOSED SESSION—10:00 a.m. to 5:30 p.m.)—Meetings of the AP Selection Committee, the SSC Selection Committee, and the Coral Management Committee.

March 14, 1995

8:00 a.m. to 5:00 p.m.—Meetings of the Mackerel Management Committee and Reef Fish Management Committee.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, Florida 33609; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the address above by March 6, 1995.

Dated: February 22, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–4848 Filed 2–27–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 022195B]

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Demersal Species Committee, Information and Education Committee, and Coastal Migratory Committee will hold public meetings on March 14–16, 1995, at the Holiday Inn City Centre, 1800 Market Street, Philadelphia, PA 19103; telephone 215–561–7500. On March 14, the Demersal Species Committee will meet from 10:00 a.m. to 4:00 p.m. and the Information and Education Committee will meet from 4:00 to 5:00 p.m. On March 15, the Council will meet from 8:30 a.m. to 2:00 p.m. and the Coastal Migratory Committee will meet from 2:00 to 5:00 p.m. On March 16, the Council will meet from 8:00 a.m. until approximately noon.

The following topics may be discussed:

1. Recreational fishery measures for summer flounder for 1995;

2. Discuss the Information and Education Committee's itinerary for the remainder of 1995;

3. Possible adoption of Amendment 5 for Squid, Mackerel, and Butterfish;

4. Review Bluefish Fishery Management Plan Amendment 1 scoping/informational process; and

5. Other fishery management matters.

The Council agenda may be revised, and the meeting lengthened or shortened based on the progress of the meeting. The Council may go into closed session to discuss personnel or national security matters.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis on (302) 674–2331, at least 5 days prior to the meeting date.

Dated: February 22, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–4850 Filed 2–27–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 022195A]

North Pacific Fishery Management Council; Team Meetings

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

ACTION: Notice of public meetings.

SUMMARY: A joint meeting of the Bering Sea/Aleutian Islands groundfish and crab plan teams will be held between 8:30 a.m. and 5:00 p.m., March 21–22, 1995, in Rooms A and B, Building 9, Alaska Fisheries Science Center, 7600 Sand Point Way NE, Seattle, WA. The teams will discuss the sources of crab mortality and habitat considerations relative to development of a rebuilding plan for depressed crab stocks. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: David Witherell, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen on (907) 271–2809, at least 5 days prior to the meeting date.

Dated: February 22, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–4849 Filed 2–27–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 021495D]

Pacific Coast Groundfish Fishery; Experimental Fishing Permits

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

ACTION: Receipt of experimental fishing permit applications; request for comments.

SUMMARY: NMFS has received applications from the states of Washington, Oregon, and California for experimental fishing permits (EFPs) for vessels participating in bycatch observation programs. The purpose of the observation programs is to enumerate the bycatch of non-target species in the groundfish fishery. If granted, the EFPs would allow designated vessels operating in the groundfish fishery in the exclusive economic zone off the coasts of Washington, Oregon, and California to delay sorting, until offloading, of prohibited species and groundfish catch in excess of trip limits. The California program would allow participating vessels with observers to retain Pacific whiting in excess of the nearshore trip limit in the Eureka subarea. These activities would otherwise be prohibited by Federal regulations.

DATES: Comments must be received by February 27, 1995.

ADDRESSES: Comments should be addressed to and copies of the EFP applications are available from William Stelle, Jr., Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN-C15700, Seattle, WA 98115–0070; or Hilda Diaz-Soltero, Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 4200,

Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Rodney R. McInnis at 310–980–4030.

SUPPLEMENTARY INFORMATION: This action is authorized by the Pacific Coast Groundfish Management Plan and implementing regulations (50 CFR 663), which specify that EFPs may be issued to authorize fishing that would otherwise be prohibited by the FMP and regulations. The procedures for issuing EFPs are found at 50 CFR 663.10.

At the October 1994 meeting of the Pacific Fishery Management Council (Council), three EFP applications were received from the States of Oregon, California, and Washington (WOC) for vessels participating in observation programs.

The first application is from the State of Washington and is for the continuation of the observation program in which information is collected on the bycatch of salmon and other prohibited species in Pacific whiting harvests delivered to shoreside processing plants. This application differs from previous years in that there would be no observer coverage; all observer coverage would occur onshore after the catch is landed.

Under the second EFP application, submitted by California Department of Fish and Game, the focus is on shore-based whiting operations inside the 100 fathom contour in the Eureka subarea (from 43°00’00’’ N. lat. to 40°30’00’’ N. lat.), where large-scale whiting operations are currently prohibited in order to minimize the impacts on salmon (50 CFR 663.23(b)(3)(iii)). The California EFP application is for the collection of data on the relative incidental catch rates of salmon inside and outside 100 fathoms in the Eureka subarea. The applicant requests that vessels be allowed to fish for and retain Pacific whiting in excess of the nearshore 10,000–lb (4,536 kg) trip limit if an observer is on board at all times, even when the vessel operates outside the area.

The third EFP application, submitted by Oregon Department of Fish and Wildlife would allow the landing of unsorted catches taken in accordance with the proposed Oregon Trawl Commission data collection program that is planned to begin in 1995. The intent is to obtain representative bycatch and discard rates for groundfish and prohibited species. Observers would gather biological data on species’ age, length, weight, sex, maturity, viability and mortality rates. The Oregon program would be similar to the whiting observer program that has been in effect for three seasons. Groundfish regulations at 50 CFR 663.7(b) stipulate that prohibited species must be returned to sea as soon as practicable with a minimum of injury when caught and brought aboard. Groundfish trip limits restrict the amount of certain groundfish species that may be landed by a vessel (50 CFR 663.7(f)).

The EFPs, if granted, would authorize vessels participating in the observation program to land unsorted Pacific whiting at designated shoreside processing plants where the incidence of salmon and other bycatch species can be monitored, on the condition that the prohibited species and groundfish trip limit overages are turned over to the state of landing for disposition. The states anticipate that about 30 vessels may participate in the experimental fisheries from March 1, 1995, to December 31, 1995. Under the EFPs, unsorted Pacific whiting catch could be delivered to shoreside processing plants in Newport, Hammond, Charleston, and Warrenton, OR; Crescent City, CA; and Westport and Ilwaco, WA. State port samplers would monitor the offloading of unsorted Pacific whiting, collect biological information on salmon and other bycatch, and arrange for the disposal of salmon. Prohibited species taken could not be sold; disposal options, to be determined by the states, would include donation to charitable organizations or reduction to fish meal.

If 71,360 metric tons (mt) of Pacific whiting were landed under the EFPs, it is estimated that about 414 salmon would be caught incidentally, based on the observed salmon bycatch rate of 0.0058 salmon per mt of whiting observed in 1994 (the salmon bycatch rate was 0.0110 in 1993). The continuing shoreside monitoring program is being pursued by the states at the request of the Council. Similar EFPs were issued to 21 vessels in 1993 and 31 vessels in 1994 (58 FR 64296, December 6, 1993).

The Director, Northwest Region, NMFS, Regional Director has made a preliminary determination that the applications contain all of the required information and constitute a valid experimental program appropriate for further consideration.

At the October meeting of the Council, the Regional Director consulted with the Council and the directors of the state fishery management agencies concerning the applications for permits. The Council recommended that all three EFP applications be approved with terms and conditions similar to those applied to the EFPs in 1994. The decision on whether to issue EFPs and determinations on appropriate permit conditions will be based on a number of considerations, including the Council's recommendation and comments received from the public.

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

Dated: February 22, 1995.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–4794 Filed 2–22–95; 3:38 pm]

BILLING CODE 3510–22–F

National Telecommunications and Information Administration

Spectrum Planning and Policy Advisory Committee (SPAC); Meeting

AGENCY: National Telecommunications and Information Administration, DOC.

ACTION: Notice of Meeting, Spectrum Planning and Policy Advisory Committee (SPAC).

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. Appendix, notice is hereby given that the Spectrum Planning and Policy Advisory Committee (SPAC) will meet on March 24, 1995 from 9:30 a.m. to 4:30 p.m. in Room 1605 at the United States Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Committee was established on July 19, 1965 as the Frequency Management Advisory Council (FMAC). The name was changed in April, 1991, and in July, 1993, to reflect the increased scope of its mission. The objective of the Committee is to advise the Secretary of Commerce on radio frequency spectrum planning matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Committee consists of nineteen members, fifteen from the private sector, and four from the Federal Government, whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) National Spectrum Projections and Trends Report;

(2) NTIA Automated Spectrum Monitoring System;

(3) APCO Projects 25 and 31;

(4) FLEWUG Activity Report;

(5) CITEL Activities/Proposals;

(6) ITU Plenipot Update.

The meeting will be open to public observations. Public entrance to the building is on 14th Street between Pennsylvania Avenue and Constitution Avenue. A period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before March 4, 1995. Other public statements regarding Committee affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Federal Information Relay Service (FIRS) on 1–800–877–8339.

Copies of the minutes will be available upon request 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Inquires may be addressed to the Executive Secretary, SPAC, Mr. Richard A. Lancaster, National Telecommunications and Information Administration, Room 1617M–7, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone 202–482–4487.

Dated: February 21, 1995.

Richard A. Lancaster,

Executive Secretary, Spectrum Planning and Policy Advisory Committee, National Telecommunications and Information Administration.

[FR Doc. 95–4830 Filed 2–27–95; 8:45 am]

BILLING CODE 3510–60–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Registration for Scientific and Technical Information Services; DD Form 1540; OMB Control Number 0704–0264.

Type of Request: Reinstatement.

Average Burden Hours Per Response: 25 minutes.

Responses Per Respondent: 1.

Number of Respondents: 500.

Annual Burden Hours: 208 hours.

Annual Responses: 500.

Needs and Uses: The information collected hereby, is utilized to register Federal Government agencies and their contractor community to access Defense-related information services from the Defense Technical Information Center (DTIC). The collected information is retained in an automated system at DTIC as the ongoing authority to release information against each year's certification.

Affected Public: State or local governments; Businesses or other for profit; Non-profit institutions; Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: February 22, 1995.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 95–4788 Filed 2–27–95; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Meeting of the Commission on Roles and Missions of the Armed Forces

AGENCY: Department of Defense, Commission on Roles and Missions of the Armed Forces.

ACTION: Notice.

SUMMARY: Notice is hereby given of a forthcoming meeting of the Commission on Roles and Missions of the Armed Forces. The Commission will meet in closed session from 9:00 a.m. until approximately 12:00 p.m., in open session from 1:00 p.m. until approximately 2:30 p.m., and in closed session from approximately 2:45 p.m. until 5:00 p.m.

During the open part of the meeting, the Commission will consider medical readiness and central logistics issues. During the closed portions of the meeting, the Commission will address topics that require the disclosure of classified information, including Department of Defense decisionmaking processes and other classified issues.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–453, as amended (5 U.S.C. App II), it has been determined that these portions of the Commission on Roles and Missions meeting concern matters listed in 5 U.S.C. 552b(c)(1), and that, accordingly, the meeting will be closed to the public during these times.

DATES: March 8, 1995, 9:00 a.m. until 5:00 p.m.

ADDRESSES: Hyatt Regency Arlington, 1325 Wilson Boulevard, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT:
Commander Gregg Hartung, Director for Public Affairs, Commission on Roles and Missions, 1100 Wilson Boulevard, Suite 1200F, Arlington, Virginia 22209; telephone (703) 696–4250.

SUPPLEMENTARY INFORMATION:
Extraordinary circumstances compel notice of this meeting to be posted in less than the 15-day requirement.

Seating will be available on a first-come, first-served basis. Members of the press who wish to reserve seating should contact Commander Gregg Hartung, Director of Public Affairs, in advance at (703) 696–4250.

Dated: February 22, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–4787 Filed 2–27–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Office of Environmental Management; Proposed Site Treatment Plans

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy's (DOE) is delaying submission of the Proposed Site Treatment Plans (Proposed Plans) for developing treatment capacity and technologies for mixed radioactive and hazardous waste required by the Federal Facility Compliance Act (FFCAct or Act). DOE expects to submit the Proposed Plans to the State or the U.S. Environmental Protection Agency (EPA), as appropriate, at the end of March 1995, but in any event no later than April 6, 1995. Originally scheduled for submission in February 1995, DOE is revising the submission date for the Proposed Plans with the support of the affected States and EPA to allow additional time for further discussions on schedules for developing treatment capacity in light of anticipated funding limitations. This revised date still provides the States and EPA the six months allowed by the FFCAct to solicit public comments and approve the Site Treatment Plans, and to issue compliance orders by October 6, 1995.

ADDRESSES: Additional information on the Site Treatment Plan development process and related activities can be obtained from the Center for Environmental Management Information at 1–800–7EM–DATA (1–800–736–3282).

SUPPLEMENTARY INFORMATION:

I. Background

The Resource Conservation and Recovery Act (RCRA), as amended by the FFCAct, requires DOE to prepare Site Treatment Plans for developing treatment capacities and technologies for treating mixed waste for each site at which DOE stores or generates mixed waste (section 3021 (b)). Mixed waste is defined by the FFCAct as waste containing both hazardous waste subject to RCRA, and source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954. Site Treatment Plans are being prepared for approximately 48 sites located in 22 States.

DOE must submit the Site Treatment Plan to the State or EPA, as appropriate, for approval, disapproval, or approval with modification. The FFCAct provides six months for the regulatory agency to review the Plan and make it publicly available. Upon approval, the agency is to issue an Order requiring compliance with the approved Plan. Sites that are in compliance with approved Plans and Orders by October 1995 will not be subject to fines and penalties related to the storage prohibitions under section 3004(j) of RCRA.

After consultation with affected States and EPA, DOE issued a **Federal Register** Notice on April 6, 1993 (58 FR 17875), which set a schedule for submission of the Site Treatment Plans in three stages. The first stage, the Conceptual Site Treatment Plans, were submitted in October 1993 and described a wide range of possible treatment alternatives for each mixed waste stream. The Draft Plans were submitted in August 1994, and included one or two options identified by the site, with input from the State, as the preferred treatment for each mixed waste stream. After further analysis of the preferred options for the DOE complex as a whole, discussions among the States, and consideration of public comments, DOE planned to submit Proposed Site Treatment Plans in February 1995 to the appropriate regulatory agency (i.e., the State or EPA).

II. Rescheduling of Proposed Plan Submittal Date

DOE has worked closely with the States and EPA, which will approve and enforce the final Plans, throughout the Site Treatment Plan development process. The National Governors Association (NGA) is facilitating interactions among the States at the national level under a cooperative agreement with DOE. At an NGA-sponsored meeting early in December 1994 that included affected States, EPA, and Tribal governments, several States asked DOE to consider delaying submission of the Proposed Site Treatment Plans to allow additional time for discussions on funding availability and the potential impacts of current and future budgetary constraints on schedules for constructing new mixed waste treatment facilities. After NGA confirmed with the other States involved in the FFCAct process that such a delay was acceptable, DOE postponed submittal of the Proposed Plans.

DOE expects to submit the Proposed Plans to the appropriate regulatory agencies for approval at the end of March 1995, but in any event no later than April 6, 1995. This will still allow the States and EPA the six months provided by the Act to review the Proposed Plans and make them available to the public, and to issue Compliance Orders by October 6, 1995. Sites that are in compliance with approved Plans and Compliance Orders after October 6, 1995, are not subject to fines and penalties related to the RCRA storage prohibitions for their mixed waste.

III. Activities in Progress

During January and February 1995, DOE site offices met with representatives of the States that host the largest DOE facilities to provide information on the overall Environmental Management budget for their sites, and the work in progress and work that needs to be accomplished within that budget.[1] These general discussions were supplemented by specific discussions on the activities and associated schedules to be proposed in the Site Treatment Plans, along with potential funding impacts on those activities. The smaller DOE sites were also encouraged to hold discussions with their States during this period on their proposed schedules and funding situation.

In addition, in February 1995, DOE, the affected States, EPA, and Tribal representatives again met collectively to discuss funding issues related to all of DOE's environmental management activities as well as to Site Treatment Plan activities, and to discuss strategies for working cooperatively to address anticipated funding limitations.

DOE believes that communication with, and the involvement of affected States, EPA, Tribal representatives, and other interested parties is essential in developing Proposed Plans that are acceptable to the regulatory agency and the public. However, DOE does not expect that all concerns or questions about the schedules for new facilities, particularly for large and costly facilities, will be resolved before the Proposed Plans are submitted. DOE, like many other Federal agencies, will face increasingly limited funding in the future. Accordingly, DOE anticipates that discussions will continue with regulatory agencies and the public after the Proposed Plans are submitted on the relative priority of mixed waste treatment and other environmental management activities at each site and across the DOE complex before the Plans and schedules are approved.

IV. For Further Information

Additional information on the development process for the Site Treatment Plans, a list of facilities preparing Plans and their locations, and related activities can be obtained from the DOE Center for Environmental Management Information at 1–800–7EM–DATA (1–800–736–3282), or through the Internet at address http://www.em.doe.gov/ffcabb/ffcamain.html.

Issued in Washington DC on February 22, 1995.

Jill E. Lytle,

Deputy Assistant Secretary for Waste Management, Office of Environmental Management.

[FR Doc. 95–4877 Filed 2–27–95; 8:45 am]

BILLING CODE 6450–01–P

[1] The host States are Colorado, Idaho, Nevada, New Mexico, Ohio, South Carolina, Tennessee, and Washington.

Federal Energy Regulatory Commission

[Project No. 11058 Massachusetts]

A.L.L. Natural Resources, Inc.; Notice of Availability of Final Environmental Assessment

February 22, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Fitchburg Paper Mill Dam #4 Hydroelectric Project located on the North Nashua River in the City of Fitchburg, Worcester County, Massachusetts, and has prepared a Final Environmental Assessment (FEA) for the proposed project. In the FEA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4824 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2306–016–VT]

Citizens Utilities Companies; Notice of Intent to Hold a Public Meeting in Newport, Vermont, to Discuss Staff's Draft Environmental Impact Statement (DEIS) for the Clyde River Hydroelectric Project

February 22, 1995.

On February 3, 1995, the Commission staff mailed the Clyde River DEIS to the Environmental Protection Agency, resource and land management agencies, and interested organizations and individuals. This document evaluates the environmental consequences of operating the applicant's existing 6.5-megawatt (MW) hydroelectric project, located on the Clyde River in northern Vermont, near the town of Newport.

The applicant proposes to: (1) Operate run-of-river at the Seymore Lake, Echo Pond, and West Charleston developments; (2) limit pond fluctuations at the Newport 1,2,3 development; provide minimum flows in the bypassed reaches of West Charleston and Newport No. 11 developments and the lower bypass reach of the Newport 1,2,3 development; provide a fish passage flow and various enhancements for recreation and other environmental resources.

The subject DEIS also evaluates the environmental effects of: (1) The project as proposed; (2) the proposed project with additional modifications and enhancements;(3) removal of Newport No. 11 dam with and without repowering the Newport No. 11 powerhouse; and (4) the no action alternative.

The public meetings on the Clyde River Project will be recorded by an official stenographer. The meeting will be held from 7:00 P.M. to 11:00 P.M. on Tuesday, March 14, 1995, at the North Country Union High School on Veterans Avenue in Newport, Vermont.

At the subject meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the Clyde River DEIS for the Commission's public record.

For further information, please contact Kathleen Sherman, at (202) 219–2834.

Lois D. Cashell,

Secretary.

[FR Doc. 94–4825 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2551–004–MI and 2579–010–IN]

Indiana Michigan Power Company; Notice of Availability of Draft Environmental Assessment

February 22, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No.

486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the applications for new license for two existing licensed hydropower projects on the St. Joseph River owned and operated by the Indiana Michigan Power Company: the Buchanan Project, No. 2551, located in Berrien County, Michigan; and the Twin Branch Project, No. 2579, located in St. Joseph County, Indiana. Subsequently, the Commission's staff prepared one Draft Environmental Assessment (DEA) that discusses the relicensing of the two projects.

In the DEA, staff evaluates the potential environmental impacts that would result from the continued operation of the projects. Staff concludes that relicensing the projects with appropriate enhancement measures would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project Nos. 2551 and 2579 to the first page of all comments.

For further information, please contact Jim Haimes, Environmental Coordinator, at (202) 219–2780.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4826 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11285–001 California]

Lake Casitas Municipal Water District; Notice of Availability of Final Environmental Assessment

February 22, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for an original, minor license for the Lake Casitas Power Recovery Facility (project), and has prepared a Final Environmental Assessment (FEA) for the project. The project is located on the Bureau of Reclamation's existing pipeline between its Casitas dam Venture, in Ventura County, California.

In the FEA, the Commission's staff has analyzed the potential future environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4827 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–207–000]

East Tennessee Natural Gas Company; Notice of Request Under Blanket Authorization

February 22, 1995.

Take notice that on February 17, 1995, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–207–000, a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, and 157.212) for authorization to establish a new delivery point for its firm transportation customer, Sevier County Utility District (Sevier County) under East Tennessee's blanket certificate issued in Docket No. CP82–412–000, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

East Tennessee proposes to establish a new delivery point for Sevier County on its 3300 Mainline System at M.P. 3302–1+6.28 located in Sevier County, Tennessee. East Tennessee states that a 4-inch hot tap assembly and approximately 40-feet of 4-inch interconnecting pipe will be installed on its existing right-of-way; and that the measurement facilities will be located on property provided by Sevier County located immediately adjacent to East Tennessee's right-of-way.

East Tennessee estimates that the cost for the construction of this new facility will be $68,596, which will be fully reimbursed by Sevier County. East Tennessee states that the purpose of this installation is to provide Sevier County with delivery point flexibility.

East Tennessee asserts that the total quantities to be delivered to Sevier County after installation of the new delivery point will not exceed the total quantities currently authorized to be delivered. East Tennessee notes that the installation of this new delivery point is not prohibited by its existing tariff. Further, East Tennessee states that it has sufficient capacity to accomplish the delivery of natural gas without detriment or disadvantage to its other customers. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4810 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP92–182–007; RP95–103–000]

Florida Gas Transmission Company; Notice on Technical Conference

February 22, 1995.

On January 31, 1995, the Commission issued an order in the captioned proceeding requiring, among other things, a technical conference on the Florida Gas Transmission Company's proposed changes to its operating conditions. The conference will be held 10:00 a.m., March 22, 1995, at 810 First Street NE., Washington, D.C., in a room to be designated at that time. Any questions concerning the conference should be directed to John M. Robinson (202) 208–0808, or Kerry Noone (202) 208–0285.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4809 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–30–002]

Great Lakes Gas Transmission Co.; Notice of Filing

February 22, 1995.

Take notice that on February 10, 1995, Great Lakes Gas Transmission Company (Great Lakes) filed revised standards of conduct governing the business relationship between Great Lakes and its marketing/brokering affiliates.[1]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before March 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4811 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

Notice

February 22, 1995.

Notice is hereby given that the five members of the Federal Energy Regulatory Commission (FERC) will attend a meeting sponsored by the National Association of Regulatory Utility Commissioners' Committee on Electricity on Tuesday, February 28, 1995, in Washington, D.C. The topic to be discussed is: NARUC/FERC—Working Together in the Changing World.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4806 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[1] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707, (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed sub nom. Conoco, Inc. v. FERC,* D.C. Cir. No. 94–1745 (December 13, 1994).

[Docket No. RP95–120–000]

NorAm Gas Transmission Company; Notice of Change in Date of Technical Conference

February 22, 1995.

Take notice that the technical conference originally scheduled to be held on Tuesday, February 28, 1995, at 10:00 a.m., will now be held on Thursday, March 9, 1995, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington D.C. 20426. All interested parties and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4813 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–53–000]

NorAm Gas Transmission Company; Notice of Change in Date of Technical Conference

February 22, 1995.

Take notice that the technical conference originally scheduled to be held on Tuesday, February 28, 1995, at 2:00 p.m., will now be held on Thursday, March 9, 1995, at 2:00 p.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington D.C. 20426. All interested parties and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4812 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–72–000]

Northern Natural Gas Company; Notice of Technical Conference

February 22, 1995.

In the Commission's order issued December 30, 1994, the Commission held that the filing in the above captioned proceeding raises issues that should be addressed in a technical conference. Take notice that the technical conference will be held on Friday, March 24, 1995, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington D.C. 20426. All interested parties and staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4814 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–416–000]

Northern Natural Gas Company; Notice of Technical Conference

February 22, 1995.

In the Commission's order issued February 15, 1995, the Commission held that the filing in the above captioned proceeding raises issues that should be addressed in a technical conference. Take notice that the technical conference will be held on Thursday, March 23, 1995, at 2:00 p.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington D.C. 20426. All interested parties and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4807 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–65–000 and RP95–69–000]

Northern Natural Gas Company; Notice of Technical Conference

February 22, 1995.

In the Commission's orders issued December 30, 1994, the Commission held that the filings in the above captioned proceedings raise issues that should be addressed in a technical conference. Take notice that the technical conference will be held on Thursday, March 23, 1995, at 1:00 p.m., in a room to be designed at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426. All interested parties and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4808 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–165–000]

Pacific Gas Transmission Co.; Notice of Proposed Changes to FERC Gas Tariff

February 22, 1995.

Take notice that on February 17, 1995, Pacific Gas Transmission Company (PGT) tendered for filing certain revised tariff sheets to be a part of its FERC Gas Tariff, First Revised Volume No. 1–A and Second Revised Volume No. 1 and requested that they be made effective March 19, 1995.

PGT states that the tariff sheets which it is submitting eliminate an ambiguity in calculating the Reservation Charge credit mechanism for Rate Schedules T–

3 and FTS–1. In addition, PGT is correcting minor typographical errors to the table of contents of the Transportation Terms and Conditions of its First Revised Volume No. 1–A.

PGT further states it has served a copy of this filing upon all interested state regulatory agencies and PGT's jurisdictional customers.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 2, 1995. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4815 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–262–030 and RP88–88–006]

Panhandle Eastern Pipe Line Company; Notice of Refund Report

February 22, 1995.

Take notice that on February 17, 1995, Panhandle Eastern Pipe Line Company (Panhandle), tendered for filing its Refund Report made pursuant to Article II, Section 2 of the Stipulation and Agreement (Settlement) dated September 26, 1994 in the above docket. Such Settlement was approved by the Commission on December 7, 1994.

Panhandle states that the Summary of Settlement Refund Amounts by Customer filed herewith sets forth Panhandle's refund obligation for Sponsoring Parties and Subject Parties for the Docket No. RP88–262–000 Rate Period (April 1, 1989 through March 31, 1992) and that payments to Sponsoring Parties and Subject Parties were made on February 3, 1995.

Panhandle states that a copy of the information filed with its report has previously been sent to affected customers and respective state regulatory agencies and that each customer has received its detail of interest calculations. Panhandle also states that a copy of the transmittal letter and summary of Settlement Refund Amounts submitted with this filing have been served on all affected customers and respective State Regulatory Commissions.

Any person desiring to protest the said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 3, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4816 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–189–003 and RP94–38–002]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 22, 1995.

Take notice that on February 17, 1995, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 20
First Revised Sheet No. 21
First Revised Sheet No. 22
First Revised Sheet No. 23

Texas Gas states that the revised tariff sheets are being filed to implement Article IV of the Stipulation and Agreement of Partial Settlement (Settlement) pursuant to Rule 602 of the Commission's Rules of Practice and Procedure filed on September 20, 1994. The Settlement was intended to resolve all issues in Texas Gas's pending Order No. 528 cost recovery filing in the dockets referenced above. The Settlement contained pro forma tariff sheets in Appendix B. The revised tariff sheets listed above are identical to such pro forma tariff sheets and are to be effective January 20, 1995, the effective date of the Settlement, as described in Article IV.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers, interested state commissions, and those appearing on the official service lists of Docket Nos. RP93–189 and RP94–38.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 3, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4817 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–4–17–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 22, 1995.

Take notice that on February 16, 1995, Transcontinental Gas Pipe Line Corporation (TPGL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Twentieth Revised Sixth Revised Sheet No. 28, which tariff sheet is proposed to be effective February 1, 1995.

TGPL states that the purpose of the instant filing is to track a rate change attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule S–2. The tracking filing is being made pursuant to Section 26 of the General Terms and Conditions of TGPL's Volume No. 1 Tariff.

Included in Appendix A attached to the filing is an explanation of the rate change and details regarding the computation of the revised S–2 rates.

TGPL states that copies of the filing are being mailed to each of its S–2 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 2, 1995. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4818 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG95–5–000]

Viking Gas Transmission Company; Notice of Filing

February 22, 1995.

Take notice that on February 15, 1995, Viking Gas Transmission Company (Viking) filed revised standards of conduct to reflect changes mandated by Order Nos. 566 and 566–A.[1]

Viking states that copies of its filing were mailed to each of Viking's customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before March 9, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4819 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

[1] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707, (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed sub nom. Conoco, Inc. v. FERC,* D.C. Cir. No. 94–1745 (December 13, 1994).

[Docket No. CP93–541–004]

Young Gas Storage Company, Ltd.; Notice of Petition To Amend

February 22, 1995.

Take notice that on February 17, 1995, Young Gas Storage Company, Ltd. (Young), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP93–541–004 an application to amend the Order issued on June 22, 1994, in Docket Nos. CP93–541–000 and CP93–541–001 by deleting two tracts of land totaling 240 acres that were previously included as protective acreage and observation wells #4 and #6 located on the subject 240 acres, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Young states that upon further study, it has determined that the storage reservoir does not extend as far east as originally thought and, accordingly, the 240 acres specified as protective acreage and the two above-mentioned observation wells located on the acreage may be deleted. Young indicates that the deletion of the acreage would help to resolve certain disputes with an affected landowner. Additionally, Young states that the originally proposed injection/withdrawal wells #26, #28, and #31 will not be injection/withdrawal wells. Instead, Young states that wells #26 and #28 will be observation wells and well #31 will be a saltwater disposal well. Young claims that the deletion of the protective acreage will allow it to proceed with the development of the Storage Field and to perform the service that was authorized by the Commission in Docket Nos. CP93–541–000 and CP93–541–001.

Young finally asserts that there would be a possibility that as the project develops that further facts could arise which would require Young to revise its present judgment and to conclude that acquisition of the subject acreage is necessary to fulfill its duties under its certificate. Young states that if this would occur then it would request that the Commission authorize Young to acquire the acreage. Young states that it reserves the right to make that filing should it prove necessary.

Any person desiring to be heard or to make any protests with reference to said petition to amend should on or before March 15, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 95–4820 Filed 2–27–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of December 26 Through December 30, 1994

During the week of December 26 through December 30, 1994 the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Requests for Exception

Farm, Fuel & Feed, 12/30/94, LEE–0164

Farm, Fuel & Feed filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. Accordingly, on November 14, 1994, the DOE issued a Proposed Decision and Order tentatively determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and Order was filed at the Office of Hearings and Appeals of the DOE within the prescribed time period. Therefore, the DOE issued the Proposed Decision and Order in final form, denying Farm, Fuel & Feed's Application for Exception.

Farmers Union Coop Oil Co., 12/27/94, LEE–0162

Farmers Union Coop Oil Co. (Farmers) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B. The ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. Accordingly, the DOE denied Farmers' exception request.

Galaxie Oil Ltd., 12/30/94, LEE–0110

Galaxie Oil Ltd. filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. On August 1, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and Order was filed at the Office of Hearings and Appeals of the DOE within the prescribed time period. Therefore, the DOE issued the Proposed Decision and Order in final form, denying Galaxie's Application for Exception.

Hood River Supply Association, 12/30/94, LEE–0134

Hood River Supply Association (Hood River) of Hood River, Oregon, filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. On November 14, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and Order was filed at the Office of Hearing and Appeals of the DOE within the prescribed time period. Therefore, on the DOE issued the Proposed Decision and Order in final form, denying Hood River's Application for Exception.

Quint Cities Petroleum Co., 12/30/94, LEE–0154

Quint Cities Petroleum Company filed an Application for Exception from the Energy Information Administration requirement that it file Form EIA–782B, the ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' In considering Quint Cities' request, the DOE found that the firm was not experiencing a serious hardship or gross inequity. According, exception relief was denied.

Refund Applications

Gulf Oil Corporation/Wayne F. Johnson, Inc., 12/30/94, RF300–606

The DOE issued a Decision and Order concerning an Application for Refund filed by Wayne F. Johnson, Inc. in the Gulf Oil Corporation refund proceeding. The DOE found that the firm had failed to submit sufficient information to support a full volumetric refund beyond the presumptive injury level. The DOE also found that the firm's volume information was scant. Nevertheless, the DOE determined that in view of the length of time the case had been pending and the good faith efforts by the claimant to submit corroborative evidence, the claimant should receive a refund based on the evidence currently in the file. The DOE found that there was sufficient information available to grant the firm a refund at the small claims presumptive level. Accordingly, the firm was granted a refund of $5,000, plus $4,609 in interest.

Texaco Inc./Bituminous Materials, Inc., 12/27/94, RR321–173

The DOE issued a Decision and Order denying a Motion for Reconsideration filed by William L. Walton in the Texaco Inc. Subpart V special refund proceeding on behalf of Bituminous Materials, Inc. (Bituminous). The DOE had previously rescinded a refund granted to Bituminous because a different firm was eligible to receive the refund based on Bituminous' Texaco purchases. The Motion for Reconsideration requested that the DOE vacate its determination to assess interest on the rescinded refund amount. The DOE determined that in the absence of a compelling reason not to assess interest, it should adhere to its usual practice in the Texaco refund proceeding of restoring the Texaco escrow account to its correct level. Accordingly, the Motion was denied.

Texaco Inc./Hank Texaco & Towing, Lee Paradise Texaco, Lee's Texaco, 12/27/94, RF321–20237, RF321–21046, RF321–21056

The Department of Energy (DOE) issued a Decision and Order granting a refund to Hank Metevier and rescinding a refund that had been granted to Lee Paradise and Mary J. Paradise in the Texaco special refund proceeding. In that Decision, the DOE found that Mr. Metevier was the Texaco retailer at one of the locations for which Mr. & Mrs. Paradise received a refund. Accordingly, Lee Paradise and the Estate of Mary Paradise were each directed to remit $221 to the DOE.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Wehah Farms, Inc. et al	RF304–14640	12/28/94
Gulf Oil Corporation/City of North Olmsted	RF300–20425	12/30/94
Gulf Oil Corporation/Lazy 8, Inc	RF300–21816	12/30/94
J. Laurance Nicholson & Son, Inc. et al	RF272–91001	12/28/94
Northrop Corporation	RF272–92554	12/30/94
Suburban Transfer Service, Inc	RF272–93035	12/30/94
Texaco Inc./Major Oils	RR321–321	12/30/94

Dismissals

The following submissions were dismissed:

Name	Case No.
B&B Texaco	RF321–9046
Braswell Sand & Gravel Co., Inc	RF300–16531
Ethyl Petroleum Additives, Inc	RF272–93279
Ganado Unified School District #20	RF272–90142
Olin Corporation	RF272–93307
Prospect Heights School #23	RF272–82565
State of Louisiana	RF272–98927
Super Service Oil Co	RF321–7456

Name	Case No.
Syd Smith	RF321–14088
Vitamilk Dairy	RF272–90917

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: February 21, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–4878 Filed 2–27–95; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders During the Week of January 2 Through January 6, 1995

During the week of January 2 through January 6, 1995 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Howard W. Spaletta, 01/04/95, LWA–0010

Howard W. Spaletta filed a whistleblower complaint against EG&G Idaho, Inc. in which he alleged that the contractor retaliated against him for making health and safety disclosures. After investigating the complaint, the Office of Contractor Employee Protection found that Spaletta had made protected disclosures and that thereafter the contractor had retaliated against him by referring fewer work assignments to him and by reducing his annual merit pay increases. At the same time OCEP also found that Spaletta had not shown that the contractor had retaliated against him by failing to assign him important and meaningful work, by requiring him to solicit work, or by requiring him to take unpaid leave during a Christmas holiday curtailment of work. Spaletta requested a hearing to challenge OCEP's finding and conclusions.

Subsequent to the hearing, an OHA Hearing Officer issued an Initial Agency Decision, setting forth his findings. As explained below, in the Initial Agency Decision, the OHA Hearing Officer found that some of Spaletta's claims were meritorious.

The OHA Hearing Officer found that Spaletta's disclosures were protected by the DOE's contractor employee protection program. In that regard, the Hearing Officer found that Spaletta made his disclosures with a good faith belief that a final report concerning the evaluation of welds at the Tennessee Valley Authority's Watts Bar nuclear power plant did not disclose that the evaluation used a weld inspection code that was not mentioned in the plant's Final Safety Analysis Report (FSAR) and, as a consequence, evaluated employee weld safety concerns against a standard different from the standard contained in the FSAR. The Hearing Officer also found that Spaletta believed that these conditions impacted on safety at the Watts Bar plant.

The Hearing Officer also found that the contractor retaliated against Spaletta by referring fewer work assignments to him and by reducing his annual merit pay increases for a three-year period. The Hearing Officer rejected Spaletta's claims (i) that the contractor retaliated against him by requiring him to take leave during a Christmas holiday curtailment of work and (ii) that Spaletta was constructively terminated. The Hearing Officer also rejected Spaletta's request that the Hearing Officer order the contractor to withdraw the report in question. Finally, the Hearing Officer directed the parties to submit additional information concerning the amount of back pay, attorney's fees, and costs that should be awarded in the case.

Refund Application

Standard Oil Company (Indiana) et al./Oklahoma, 01/04/95, RM21–277 et al.

The DOE issued a Decision and Order granting a Motion for Modification (Motion) filed by the State of Oklahoma in the Standard Oil Company (Indiana), Belridge Oil Company, Palo Pinto Oil & Gas, OKC Corporation, and Vickers Energy Corporation refund proceedings. In its Motion, Oklahoma proposed to reallocate $21,080 in interest from funds which the State received for other second-stage refund plans to provide a transportation service for individuals departing from three self-help organizations in downtown Oklahoma City and traveling to jobs outside the inner city. The vehicle to be used is a 15-passenger compressed natural gas (CNG) van. In accordance with prior Decisions, where we have noted the benefits of alternative fuel vehicles and the increased use of public transportation, the DOE approved Oklahoma's Motion.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Edmonds Arco	RF304–13881	01/06/95
Florence Car Wash	RF304–13908	
Smith Motor Sales	RF304–13998	
Enron Corp./Nixon Company	RF340–74	01/04/95
Pioneer Energy, Inc	RF340–88	
Bonesteel Oil Company	RF340–117	
Gulf Oil Corporation/Vic's Gulf Service et al	RF300–21603	01/06/95
Shellabarger Chevrolet	RF272–94629	01/03/95
Texaco Inc./Norm's Texaco et al	RF321–20582	01/04/95
Texaco Inc./Rommel's Holiday Inn Texaco et al	RF321–11298	01/04/95
Texaco Inc./Von's Texaco Service et al	RF321–20610	01/06/95
Town of Oelwein et al	RF272–96608	01/06/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Bill's Texaco	RF321–19630
Les Texaco	RF321–19705
Marathon Letourneau Company	RF272–95057

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: February 21, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–4879 Filed 2–27–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5161–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 30, 1995.

FOR FURTHER INFORMATION CONTACT: For further information, or a copy of this ICR, contact Sandy Farmer at (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: California Pilot Program: Vehicle Credit Program EPA ICR #1590.02; OMB #2060–0229). This ICR requests renewal of the existing clearance.

Abstract: Manufacturers who sell more clean-fuel vehicles in California than the law requires or who sell vehicles in California which are cleaner than the law requires may earn credits which may be banked and applied to future years' sales requirements or traded to other manufacturers. These manufacturers will submit annual reports containing information on vehicle sales in California and the number of credits created, banked, traded and/or used. EPA will use the information to determine compliance with the sales requirements and the credit program.

Burden Statement: Public reporting and recordkeeping burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

Respondents: Manufacturers of clean-fueled vehicles sold in California.

Estimated Number of Respondents: 20.

Estimated Total Annual Burden on Respondents: 10 hours.

Frequency of Collection: Annually.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW.,Washington, DC 20503.

Dated: February 22, 1995.

Paul Lapsley,

Director, Regulation Management Division.

[FR Doc. 95–4895 Filed 2–27–95; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5162–6]

Common Sense Initiative Council, Petroleum Refining Sector Subcommittee; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amended Notice of Meeting—Common Sense Initiative Council, Petroleum Refining Sector Subcommittee.

SUMMARY: The Environmental Protection Agency established the Common Sense Initiative Council (CSIC) on October 17, 1994, to provide independent advice and counsel to EPA on environmental issues associated with the petroleum refining industry and other industrial sectors. The charter for the CSIC was authorized through October 17, 1996, under regulations established by the Federal Advisory Committee Act (FACA). The Petroleum Refining Sector (PRS) Subcommittee operates as a subcommittee of the CSIC.

AMENDED OPEN MEETING NOTICE: Notice is hereby given of a change in dates for the upcoming CSIC-PRS Subcommittee meeting from a one day meeting, March 10, 1995, to a two day meeting to be held March 9 and 10, 1995. The meeting was previously noticed in the **Federal Register** for a one day meeting on Friday, March 10, 1995, from 9:00 a.m. to 5:30 p.m. at the Radisson Inn Hotel, 2150 Veterans Blvd., Kenner, LA 70062 (1–800–333–3333 or 504–467–3111). The meeting is now scheduled for two days, March 9 and 10 in the same location. An additional day is needed to conduct the full range of committee business and to convene in workgroups that will begin identifying specific issues and formulating a CSIC-PRS subcommittee workplan. Seating will be available on a first come, first served basis.

INSPECTION OF SUBCOMMITTEE DOCUMENTS: Documents relating to the topics above will be publicly available at the meeting. Thereafter, these documents, together with the CSIC-PRS meeting minutes, will be available for public inspection in Room 2417M of EPA Headquarters, 401 M Street, SW., Washington, D.C., Mail Code 6101, phone (202) 260–7417.

FOR FURTHER INFORMATION CONTACT: Anyone who would like further information should contact the Common Sense Initiative Program Staff office by phone on (202) 260–7417, or by FAX on (202) 260–9766. Members of the public may submit written comments of any length prior to the meeting. One hour of meeting time each day will be set aside for oral presentations. Each individual or group making an oral presentation will be limited to a total of five minutes. Attendees should provide their names and telephone numbers to the Common Sense Initiative Program Staff so that the Agency can advise them of any schedule changes.

Dated: February 22, 1995.

Prudence Goforth,

Acting, Designated Federal Officer.

[FR Doc. 95–4893 Filed 2–27–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5162–3]

Ozone Transport Commission for the Northeast United States; Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing its Winter meeting of the Ozone Transport Commission to be held on February 28, 1995.

This meeting is for the Transport Commission to deal with appropriate matters within the transport region, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The meeting will be held on February 28, 1995 from 10:00 a.m. to 4:00 p.m.

PLACE: The meeting will be held at: The Hotel du Pont, 11th and Market Streets, Wilmington, DE 19801.

FOR FURTHER INFORMATION CONTACT:

EPA

Doug Gutro, State Relations Coordinator, Region I, U.S. Environmental Protection Agency, John F. Kennedy Federal Building, Boston, MA 02203, (617) 565–3383

THE STATE CONTACT:

Host Agency:

Carol Brown, Delaware Department of Natural Resources and Environmental Control, P.O. Box 1401, 89 Kings Highway, Dover, DE 19903, (302) 739–4403

FOR DOCUMENTS AND PRESS INQUIRIES CONTACT: Stephanie A. Cooper, Ozone Transport Commission, 444 North Capitol Street, N.W., Suite 604, Washington, DC 20001, (202) 508–3840.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the ''Control of Interstate Ozone Air Pollution.'' Section 184(a) establishes an ozone transport region comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia.

The Assistant Administrator for Air and Radiation of the Environmental Protection Agency convened the first meeting of the commission in New York City on May 7, 1991. The purpose of the Transport Commission is to deal with appropriate matters within the transport region.

The purpose of this notice is to announce that this Commission will meet on February 28, 1995. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of Transport Commissions are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from Stephanie Cooper of the OTC office (202) 508–3840 on Monday, February 20, 1995. The purpose of this meeting is to review air quality needs within the Northeast and Mid-Atlantic States, consider the development of market-based programs in the region, and to discuss ozone State Implementation Plans.

Dated: February 16, 1995.

John DeVillars,

Regional Administrator, EPA Region I.

[FR Doc. 95–4896 Filed 2–27–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5163–2]

Proposed CERCLA Section 122(h)(1) Administrative Cost Recovery Settlement for the Metamora Landfill

AGENCY: Environmental Protection Agency (''U.S. EPA'').

ACTION: Proposal of CERCLA Section 122(h)(1) Administrative Cost Recovery Settlement for the Metamora Landfill.

SUMMARY: U.S. EPA proposes to address the potential liability of U.S. Chemical Company (hereinafter referred to as ''the Settling Party'') under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), 42 U.S.C. Section 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 (''SARA''), Pub. L. 99–499, for response costs incurred at the Metamora Landfill Site (''the Site''). The U.S. EPA proposes to address the potential liability of the Settling Party by execution of a CERCLA Section 122(h)(1) Administrative Cost Recovery Settlement (''AOC'') prepared pursuant to 42 U.S.C. Section 9622(h)(1). The key terms and conditions of the AOC may be briefly summarized as follows: (1) the Settling Party agrees to pay U.S. EPA $332,256.00; (2) the Settling Party agrees to assign to EPA all payments and rights to receive payments from and including March 1, 1995 pursuant to its Land Contract Receivable and its Asset Purchase and Sale Agreement; (3) the Settling Party agrees to waive all claims against the United States that arise out of response activities conducted at the Site; and (4) U.S. EPA affords the Settling Party a covenant not to sue for all response costs incurred and to be incurred at the Site upon satisfactory completion of obligations under the Settlement. The Site is on the NPL and is currently being remediated pursuant to the terms of a Consent Decree entered by the United States District Court for the Eastern District of Michigan Southern Division—Flint on March 17, 1993.

DATES: Comments on the proposed AOC must be received by U.S. EPA on or before March 30, 1995.

ADDRESSES: A copy of the proposed AOC is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Connie Puchalski at (312) 886–6719, prior to visiting the Region 5 office.

Comments on the proposed AOC should be addressed to Connie Puchalski, Office of Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard (Mail Code CS–29A), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Connie Puchalski at (312) 886–6719, of the U.S. EPA Region 5 Office of Regional Counsel.

A 30-day period, commencing on the date of publication of this notice, is open pursuant to Section 122(i) of CERCLA, 42 U.S.C. Section 9622(i), for comments on the proposed AOC. Comments should be sent to the addressee identified in this notice.

Robert Springer,

Acting Regional Administrator, Environmental Protection Agency, Region 5.

[FR Doc. 95–4999 Filed 2–27–95; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–62145; FRL–4937–4]

Accredited Training Programs Under the Asbestos Hazard Emergency Response Act (AHERA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: National Directory of AHERA Accredited Courses (NDAAC); notice of availability of new edition.

SUMMARY: Effective February 28, 1995, the EPA is announcing the availability of a new edition of its National Directory of AHERA Accredited Courses (NDAAC). This publication, updated quarterly, provides information to the public about training providers and courses approved for accreditation purposes pursuant to the Asbestos Hazard Emergency Response Act (AHERA). As a nationwide listing of approved asbestos training programs and courses, the NDAAC has replaced the similar listing which was formerly published quarterly by EPA in the **Federal Register**. The February 28, 1995, directory, which supersedes the version released on November 30, 1994, may be ordered through the NDAAC Clearinghouse along with a variety of related reports.

ADDRESSES: Parties interested in receiving a brochure which describes the national directory and provides ordering information should contact: EPA AHERA-NDAAC, c/o VISTA Computer Services, 3rd Floor, 6430 Rockledge Drive, Bethesda, Maryland 20817, Telephone: 1–800–462–6706.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Pursuant to AHERA, as amended by the Asbestos School Hazard Abatement Reauthorization Act (ASHARA), contractors who prepare management plans for schools, inspect for asbestos in schools or public and commercial buildings, or design or conduct response actions with respect to friable asbestos-containing materials in schools or public and commercial buildings, are required to obtain accreditation by completing prescribed training requirements. EPA therefore maintains a current national listing of AHERA-accredited courses and approved training providers so that this information will be readily available to assist the public in accessing these training programs and obtaining the necessary accreditation. The information is also maintained so that the Agency and approved state accreditation and licensing programs will have a reliable means of identifying and verifying the approval status of training courses and organizations.

Previously, EPA had published this listing in the **Federal Register** on a quarterly basis. The last **Federal Register** listing required by law was published on August 30, 1991. EPA recognized the need to continue publication of this document even though the legislative mandate had expired. The NDAAC fulfills the public need for this information while at the same time, it reduces EPA cost and improves the service's capabilities.

List of Subjects

Environmental protection.

Dated: Feburary 16, 1995.

Susan B. Hazen,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 95–4600 Filed 2–27–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Intent to Cancel Tariffs of Common Carriers by Water and To Suspend Licenses of Ocean Freight Forwarders for Failure To File Anti-Rebate Certifications

Notice is given that the Federal Maritime Commission (''Commission'') intends to cancel the tariffs of certain common carriers and suspend the licenses of certain licensed ocean freight forwarders who have failed to file the Anti-Rebate Certification required by section 15 of the Shipping Act of 1984. 46 U.S.C. app. 1714. The common carriers by water and ocean freight forwarders shown in Parts A, B and C respectively on the attached lists have not timely filed with the Commission the Anti-Rebate Certification which was due on or before December 31, 1994. The Commission's regulations at 46 CFR 582.1(a) and 582.3(a) require every common carrier by water and ocean freight forwarder in the foreign commerce of the United States to file an Anti-Rebate Certification by December 31 of each even numbered calendar year.

The firms listed in Parts A, B and C were notified by certified mail dated and mailed on February 21, 1995, that, if within 45 days of the date of such notice, they have not either filed an Anti-Rebate Certification or established that it had been filed, their tariffs would be cancelled in accordance with 46 CFR 514.1(c)(1)(iii)(C) and their licenses would be suspended in accordance with 46 CFR 510.16(a)(6). The license suspension shall remain in effect until such time as the license is reinstated by the Commission after an Anti-Rebate Certification is filed.

Firms filing the Anti-Rebate Certification during the 45-day notice period will not have their tariffs cancelled or licenses suspended, however these firms may be subject to a civil penalty of up to $5,000 for each day the firm is in violation.

Newton J. Frank,

Deputy Director, Bureau of Tariffs, Certification and Licensing.

Part A: Common Carriers by Water in the Foreign Commerce of the United States that Have Not Filed Anti-Rebate Certifications

Acronym: A.A. Freight Forwarding, Inc.
Organization No.: 002518
Acronym: A.L.S. Associazione Logistica Spedizionieri
Organization No.: 012259
Acronym: A.M.Z. International Shipping Co.
Organization No.: 012328
Acronym: AA Forwarding Inc.
Organization No.: 009386
Acronym: ABCO International Freight (H.K.), Ltd.
Organization No.: 012754
Acronym: Ace Shipping Corp.
Organization No.: 002158
Acronym: Active Cargo Services Limited
Organization No.: 010553
Acronym: AFS Freight Management (USA) Inc.
Organization No.: 012403
Acronym: Air Market Express Limited
Organization No.: 012720
Acronym: Air Tiger Express (U.S.A.), Inc.
Organization No.: 007319
Acronym: Airfreight Master Limited, The
Organization No.: 010629
Acronym: Airtrade Express, Inc.
Organization No.: 010967
Acronym: Airtruk/Seatruk, Inc.
Organization No.: 012827
Acronym: Alfons Koster
Organization No.: 010619
Acronym: All Shipping Company, Inc.
Organization No.: 012901
Acronym: Allegro International Service
Organization No.: 010608
Acronym: Aloyd International, Corp.
Organization No.: 011242
Acronym: Amco Shipping International Limited
Organization No.: 012523
Acronym: Amerasa Rapid Transport USA, Inc.

Organization No.: 012831
Acronym: America First International, Inc.
Organization No.: 007266
Acronym: American Caribbean Express Shipping Co., Inc.
Organization No.: 013140
Acronym: American Liner System, Inc.
Organization No.: 013231
Acronym: American Rate, Inc.
Organization No.: 012251
Acronym: American Ship Management, Inc.
Organization No.: 012847
Acronym: American Tri-Net Express, Inc.
Organization No.: 005862
Acronym: Amership, Inc.
Organization No.: 005871
Acronym: Amexcaribe, Inc.
Organization No.: 009678
Acronym: Amzone International, Inc.
Organization No.: 008795
Acronym: Arctic Shipping Management S.A.
Organization No.: 011292
Acronym: Armada Anz Parcel Service B.V.
Organization No.: 011990
Acronym: Arms Ocean Systems, Inc.
Organization No.: 013257
Acronym: Arrow Shipping Limited
Organization No.: 011413
Acronym: Asia Fortune Shipping, Inc.
Organization No.: 012115
Acronym: Asia Pacific Shipping, Inc.
Organization No.: 011996
Acronym: Asia Top Shipping Limited
Organization No.: 011997
Acronym: Asia Transportation Co., Ltd.
Organization No.: 012481
Acronym: Asiamerica Lines
Organization No.: 012220
Acronym: Asian Shipping, Ltd.
Organization No.: 008492
Acronym: Atlas Freight Consolidators, Inc.
Organization No.: 011991
Acronym: Atlas Intermodal Services, Inc.
Organization No.: 012373
Acronym: Aton Shipping Corporation
Organization No.: 012291
Acronym: Aust-Asia Worldwide Shipping Pty., Ltd.
Organization No.: 010650
Acronym: Australian Freight Services, Ltd.
Organization No.: 011722
Acronym: Babun Shipping Corporation
Organization No.: 011570
Acronym: Bank Line East Africa Limited
Organization No.: 008549
Acronym: Basle Line Nigeria Limited
Organization No.: 012560
Acronym: Bekins Moving & Storage
Organization No.: 005328
Acronym: Benemerito, Lisenio R.
Organization No.: 013151
Acronym: Bering Orient, Inc.
Organization No.: 013002
Acronym: Best Air & Sea Services (HK), Ltd.
Organization No.: 013010
Acronym: Bogo Shipping Co., Ltd.
Organization No.: 010439
Acronym: Bolivian Intermodal Containers Lines S.R.L.
Organization No.: 011947
Acronym: Bosco Atlantic Lines, Inc.
Organization No.: 012228
Acronym: Brazil Consolidating Services, Inc.
Organization No.: 012574
Acronym: Brazilian Overseas Shipping Services, Ltd.
Organization No.: 009604
Acronym: Brighten Ocean Forwarding, Ltd.
Organization No.: 010582
Acronym: C & T International N.V.
Organization No.: 013207
Acronym: C.A. Venezolana De Navegacion
Organization No.: 000010
Acronym: Caicos Seafreight, Ltd.
Organization No.: 012898
Acronym: Calberson International Paris Nord II
Organization No.: 008856
Acronym: Cargo Co-Ordinators Shipping (H.K.), Ltd.
Organization No.: 012836
Acronym: Cargo Trader, Inc., The
Organization No.: 011378
Acronym: Cargo Transport Lines, Inc.
Organization No.: 012292
Acronym: Caribbean Express Line, Inc.
Organization No.: 012221
Acronym: Caribe Basin Services, Inc.
Organization No.: 006284
Acronym: Caribe U.S.A., Inc.
Organization No.: 010864
Acronym: Carpe Air & Sea Shipping, Inc.
Organization No.: 008655
Acronym: Catcor Services, Inc.
Organization No.: 012581
Acronym: CCAL (Canada), Inc.
Organization No.: 000754
Acronym: CCCA/FNC
Organization No.: 012551
Acronym: Central America Shippers L.L.C.
Organization No.: 012849
Acronym: Central American Container Line, S.A.
Organization No.: 010790
Acronym: Central States Transport Ltd.
Organization No.: 010627
Acronym: Chat, Inc.
Organization No.: 011260
Acronym: Chavez, Ninfa V.
Organization No.: 012343
Acronym: Cheng Ho Forwarding Co., Ltd.
Organization No.: 011103
Acronym: China Express Forwarders Co., Ltd.
Organization No.: 011245
Acronym: China National Foreign Trade Transportation C
Organization No.: 000747
Acronym: China Trading Service USA Inc.
Organization No.: 013152
Acronym: Choice Container Corp.
Organization No.: 011060
Acronym: City Cargo International
Organization No.: 011388
Acronym: Clare Freight International Inc.
Organization No.: 011999
Acronym: Clear Link Shipping Company Inc.
Organization No.: 012329
Acronym: Clipper Shipping Ltd.
Organization No.: 011636
Acronym: Club Prestige Antilles N.V.
Organization No.: 012199
Acronym: CMB Transport NV
Organization No.: 011178
Acronym: CMS International Co.
Organization No.: 007321
Acronym: Colex Ltd.
Organization No.: 001811
Acronym: Colombia Transport Line, Incorporated
Organization No.: 011240
Acronym: Colombo Marine Cargo, Inc.
Organization No.: 012000
Acronym: Commodity Forwarders, Inc.
Organization No.: 004682
Acronym: Commonwealth Shipping Ltd.
Organization No.: 009587
Acronym: Compagnie Nationale Algerienne De Navigation
Organization No.: 000787
Acronym: Companhia De Navegacao Maritima Neutumar
Organization No.: 001537
Acronym: Complete Cargo Services, Inc.
Organization No.: 012453
Acronym: Con-Carriers GMBH
Organization No.: 010482
Acronym: Conship Maritime Agency, Inc.
Organization No.: 007590
Acronym: Consorcio Naviero Del Occidente, C.A.
Organization No.: 007527
Acronym: Container Development Group Corporation
Organization No.: 012120
Acronym: Conterm Consolidation Services (USA) Inc.
Organization No.: 007913
Acronym: Conti-Lines N.V.
Organization No.: 00189
Acronym: Continental Container Lines Ltd.
Organization No.: 012818
Acronym: Continental Seacorp Shipping, Ltd.
Organization No.: 007318
Acronym: Continental World Movers, Inc.

Organization No.: 002700
Acronym: Corporate World Relocation International, Inc.
Organization No.: 012121
Acronym: Covenant Container Line, Inc.
Organization No.: 009624
Acronym: Croatia Line
Organization No.: 011097
Acronym: Cross Ocean International, Inc.
Organization No.: 008941
Acronym: CTL Maritime (USA) Inc.
Organization No.: 012105
Acronym: D.T. Gruelle Company
Organization No.: 012187
Acronym: Dammers Chartering N.V.
Organization No.: 011642
Acronym: Danfast Freight Limited
Organization No.: 011862
Acronym: Dantransport (UK) Limited
Organization No.: 011167
Acronym: Dart Express (Los Angeles) Inc.
Organization No.: 008448
Acronym: Deckwell Sky Express Ltd.
Organization No.: 013164
Acronym: Deep-Sea Consolidation AB
Organization No.: 012862
Acronym: Dennis Shipping & Photography Co.
Organization No.: 012293
Acronym: Devoted Cargo Services (H.K.) Ltd.
Organization No.: 011059
Acronym: DSR/Senator Joint Service
Organization No.: 009934
Acronym: Dynasty Express Co., Ltd.
Organization No.: 012695
Acronym: East Indies Shipping Company
Organization No.: 011132
Acronym: Eastern Mediterranean Shipping Corp.
Organization No.: 013236
Acronym: Eastern Worldwide Company, Limited
Organization No.: 007780
Acronym: Eastop Shipping Ltd.
Organization No.: 011246
Acronym: Econolines Ltd.
Organization No.: 012674
Acronym: Ecuadorian Line, Inc.
Organization No.: 001775
Acronym: EES Shipping (Australia) Pty Ltd.
Organization No.: 010227
Acronym: Egyptian Navigation Company
Organization No.: 001228
Acronym: Empremar/CTE Agreement No. 207–011397
Organization No.: 011358
Acronym: Empremar/MSC Agreement
Organization No.: 011013
Acronym: Empresa Mocambicana De Navegacao Internaciona
Organization No.: 009333
Acronym: Empresa Naviera Andina S.A.
Organization No.: 012223
Acronym: Empresa Naviera Santa Ltd.
Organization No.: 009405
Acronym: Encinal Terminals
Organization No.: 001929
Acronym: EOS/McArthur (Belgium) BVBA
Organization No.: 012122
Acronym: Esbo Shipping Inc.
Organization No.: 011959
Acronym: Euro Trans International, Inc.
Organization No.: 011944
Acronym: Euro-Link Cargo Service Ltd.
Organization No.: 008863
Acronym: Ever Concord Ltd.
Organization No.: 010805
Acronym: Exx-Ortz International, Inc.
Organization No.: 012038
Acronym: FC Wright International Ltd.
Organization No.: 011496
Acronym: F.S. Cargo, Inc.
Organization No.: 012599
Acronym: Falcon Freight International Limited
Organization No.: 010347
Acronym: Far Eastern Shipping Company
Organization No.: 010823
Acronym: Fast Forward Container Line
Organization No.: 008862
Acronym: Filipinas Cargo Forwarders
Organization No.: 012104
Acronym: First Maritime Company, Inc.
Organization No.: 005731
Acronym: Fordson Shipping Limited
Organization No.: 011280
Acronym: Formerica Consolidation Service, Inc.
Organization No.: 011336
Acronym: Foss Maritime Company
Organization No.: 010863
Acronym: Franco Vago International Inc.
Organization No.: 013029
Acronym: Freight Liner SA
Organization No.: 012455
Acronym: Freightlink International Inc.
Organization No.: 013112
Acronym: French International Movers, Inc.
Organization No.: 013178
Acronym: Freshtainer Operations Limited
Organization No.: 012025
Acronym: Frontier Liner Services Inc.
Organization No.: 010779
Acronym: Fuchuen Transportation Company Limited
Organization No.: 011864
Acronym: Fuji Unyu Co., Ltd.
Organization No.: 008464
Acronym: Fund on Shipping Limited
Organization No.: 011692
Acronym: Fushiki Kairiku Unso Co., Ltd.
Organization No.: 010715
Acronym: Gateway Express Co., Inc.
Organization No.: 007078
Acronym: GFI Express Corp.
Organization No.: 012717
Acronym: Global Container Lines Limited
Organization No.: 012227
Acronym: Global Forwarding Ltd.
Organization No.: 012552
Acronym: Global International Forwarding Ltd.
Organization No.: 010392
Acronym: Global Worldwide, Inc.
Organization No.: 007842
Acronym: Global Cargo, Inc.
Organization No.: 012086
Acronym: Globus International Packing, Shipping & Movi
Organization No.: 012912
Acronym: Glorious Shipping
Organization No.: 009697
Acronym: Goldline Limited
Organization No.: 012555
Acronym: Graybar Navigation Inc.
Organization No.: 008850
Acronym: Green Sail Ltd.
Organization No.: 011364
Acronym: Gruenhut International Ltd.
Organization No.: 010375
Acronym: Guardship America, Inc.
Organization No.: 008016
Acronym: Gulf and Eastern Steamship & Chartering Corp.
Organization No.: 008901
Acronym: Gulf Coast Shipping
Organization No.: 011383
Acronym: Gulf-Atlantic Refrigerated Line, Inc.
Organization No.: 011573
Acronym: H. Schumacher Associates
Organization No.: 009867
Acronym: Haewoo Air & Shipping Co., Ltd.
Organization No.: 009837
Acronym: Hallmark Transport (Taiwan) Co., Ltd.
Organization No.: 010807
Acronym: Hamda International Freight Ltd.
Organization No.: 011363
Acronym: Han Maritime Limited
Organization No.: 011150
Acronym: Hanshin Air Cargo USA Inc.
Organization No.: 010633
Acronym: Helka Expresss International Ltd.
Organization No.: 008783
Acronym: Henriques, Beverly
Organization No.: 012708
Acronym: Hintex International Limited
Organization No.: 012534
Acronym: Horizon Steamship Line Ltd.
Organization No.: 013100
Acronym: Hudson Int'l Transport (Taiwan) Corp.
Organization No.: 012522
Acronym: Hudson Shipping (Hong Kong) Ltd.
Organization No.: 012624
Acronym: Hyaline Shipping (H.K.) Co., Ltd.
Organization No.: 010663
Acronym: Hycob Maritime, Inc.

Organization No.: 011563
Acronym: Imex Trans Line Inc.
Organization No.: 012535
Acronym: Inchcape Shipping Services (HK) Ltd.
Organization No.: 011414
Acronym: Industrial Maritime Carriers, Inc.
Organization No.: 009370
Acronym: Inteks, Inc.
Organization No.: 010587
Acronym: Interamericana Shipping Line, Inc.
Organization No.: 013131
Acronym: International Caribbean Shipping (USA) Inc.
Organization No.: 005833
Acronym: International Express Consolidators Co.
Organization No.: 013168
Acronym: International Express Shipping Co., Ltd.
Organization No.: 012701
Acronym: International Tomas Consolidated Ltd.
Organization No.: 008971
Acronym: International Transport Systems
Organization No.: 012336
Acronym: International Transportation and Cargo Service
Organization No.: 008220
Acronym: Isabella Shipping Company Limited (Bermuda)
Organization No.: 012071
Acronym: J-Mar Overseas Transport, Inc.
Organization No.: 007861
Acronym: J.R.C. Corp.
Organization No.: 012691
Acronym: Jardine Shoushan Int'l Co., Ltd.
Organization No.: 011495
Acronym: Jasper Freight Inc.
Organization No.: 012834
Acronym: Jefferson Shipping Ltd.
Organization No.: 013088
Acronym: Jet Compania Naviera S.A.
Organization No.: 011151
Acronym: Jet-Speed Sea Freight Ltd.
Organization No.: 011014
Acronym: Jeuro Incorporation.
Organization No.: 010519
Acronym: Jiangsu Commercial Transportation (HK) Co. Ltd.
Organization No.: 012053
Acronym: JMS International Services
Organization No.: 012444
Acronym: K.S. Shipping Line
Organization No.: 011952
Acronym: Kaitone Shipping Co., Ltd.
Organization No.: 006938
Acronym: Kam International Line
Organization No.: 006585
Acronym: Kawanishi Shipping Service (H.K.) Ltd.
Organization No.: 010564
Acronym: Khana Enterprise Co., Ltd.
Organization No.: 010595
Acronym: Kintetsu Intermodal (Taiwan) Inc.
Organization No.: 009664
Acronym: Kunyoung Shipping Co., Ltd.
Organization No.: 010192
Acronym: KWE-Kintetsu World Express (S) Pte Ltd.
Organization No.: 009661
Acronym: L.C. Shipping, Inc.
Organization No.: 008397
Acronym: Latin Freight Corporation
Organization No.: 013122
Acronym: Latinmar, Inc.
Organization No.: 012673
Acronym: Leader Ocean Freight Forwarder, Inc.
Organization No.: 010651
Acronym: Leadway Express Co., Ltd.
Organization No.: 010880
Acronym: Lextrans Co.
Organization No.: 013165
Acronym: Lianfeng Shipping Co. Ltd.
Organization No.: 010923
Acronym: Lineas Agromar S.A.
Organization No.: 001608
Acronym: Ling Bridge Transport Incorporation
Organization No.: 008546
Acronym: Lockson Services Limited
Organization No.: 012020
Acronym: Logistics International Management Services
Organization No.: 009696
Acronym: Lonkon Investments Limited
Organization No.: 012564
Acronym: Lucky Accord Co. Ltd.
Organization No.: 011571
Acronym: Lucky Ocean Shipping Limited
Organization No.: 011973
Acronym: M. I. International, Inc.
Organization No.: 013093
Acronym: Macs Maritime Carrier Shipping Gmbh & Company
Organization No.: 001639
Acronym: Magenta Overseas Limited
Organization No.: 012826
Acronym: Magnus International
Organization No.: 009382
Acronym: Main Chain, America Corporation
Organization No.: 011974
Acronym: Mares Transport.
Organization No.: 012128
Acronym: Marine Cargo Containers
Organization No.: 012485
Acronym: Marine Shipping Lines, Inc.
Organization No.: 012536
Acronym: Marlin Marine Services, Inc.
Organization No.: 001678
Acronym: Marmex Line, S.A.
Organization No.: 011498
Acronym: Marquez, Rolando L.
Organization No.: 012245
Acronym: Masco International Inc.
Organization No.: 011341
Acronym: Massan Shipping Industries, Inc.
Organization No.: 009468
Acronym: Massworld Maritime Ltd.
Organization No.: 009742
Acronym: Master Air Cargo, Inc.
Organization No.: 011296
Acronym: Master Freight Ltd.
Organization No.: 009507
Acronym: Max Gruenhut Gmbh
Organization No.: 010493
Acronym: Max International Freight Service Ltd.
Organization No.: 010855
Acronym: Maxcaribe, Inc.
Organization No.: 011352
Acronym: Maxfine Shipping Limited
Organization No.: 011695
Acronym: MCC (Mercantile Europe) Gmbh
Organization No.: 010418
Acronym: MCC Distribution AB
Organization No.: 010386
Acronym: Meng Horng Shipping Pte Ltd.
Organization No.: 009789
Acronym: Merks Southern Star Line Ltd.
Organization No.: 011968
Acronym: Mexus Ro/Ro Line, Inc.
Organization No.: 012821
Acronym: Miller Intermodal Logistics Services
Organization No.: 012539
Acronym: MM Lines Inc.
Organization No.: 011228
Acronym: Modern Line Service, Inc.
Organization No.: 012746
Acronym: Mondial Freight (HK) Limited
Organization No.: 012068
Acronym: Morex Line Corp.
Organization No.: 011177
Acronym: MSS Maritime Shipping Services, Ltd.
Organization No.: 012300
Acronym: Multimodal Services (NY) Inc.
Organization No.: 011326
Acronym: Multimodal Shipping Company, Inc.
Organization No.: 011953
Acronym: Myers Maritime International Ltd.
Organization No.: 002226
Acronym: N.G.K., Inc.
Organization No.: 012398
Acronym: National Container Line (H.K.) Limited
Organization No.: 011375
Acronym: National Shipping Company of Saudi Arabia, TH
Organization No.: 001497
Acronym: Naviera Comercial Naylamp S.A.
Organization No.: 012229
Acronym: Naviera Interamericana ''Navicana'', S.A.
Organization No.: 006809
Acronym: Navimar Lines, C.A.
Organization No.: 011046
Acronym: Net Ocean, Inc.
Organization No.: 001536

Acronym: New Zealand Van Lines Ltd.
Organization No.: 010584
Acronym: Noble Shipping Corporation
Organization No.: 012410
Acronym: Norstar Shipping Agency, Inc.
Organization No.: 012457
Acronym: Norte/Sur Americana Logistics.
Organization No.: 012264
Acronym: North Star Airlines, Inc.
Organization No.: 013141
Acronym: North Star Ocean Services, Inc.
Organization No.: 008337
Acronym: Norvanco International, Inc.
Organization No.: 011038
Acronym: Ocean Conco Line, Inc.
Organization No.: 012757
Acronym: Ocean Focus Int'l (USA) Inc.
Organization No.: 009571
Acronym: Ocean Horizon Shipping Co.
Organization No.: 010612
Acronym: Ocean Marine Line
Organization No.: 007088
Acronym: (Oceangate Container Line
Organization No.: 002789
Acronym: (Oceanic Comp. Ltd.
Organization No.: 012413
Acronym: Oceanic Lloyd Limited
Organization No.: 011192
Acronym: Oceanlink Forwarder Co., Ltd.
Organization No.: 010226
Acronym: Omni-Express International Inc.
Organization No.: 011054
Acronym: Orient Freight International, Inc.
Organization No.: 010507
Acronym: Orient Overseas Container Line Ltd.
Organization No.: 011398
Acronym: Orient Star Trading & Shipping, Inc.
Organization No.: 007802
Acronym: Orion Express Line
Organization No.: 010961
Acronym: Overseas International Corporation
Organization No.: 009618
Acronym: Overseas Transportation Corporation
Organization No.: 013074
Acronym: P&O Swire Containers Ltd.
Organization No.: 012648
Acronym: P.O.L. (HK) Ltd.
Organization No.: 012333
Acronym: Pacific Ameritrans Shipping Corporation
Organization No.: 012683
Acronym: Pacific Champion Express Co., Ltd.
Organization No.: 011283
Acronym: Pacific Glory Shipping Limited
Organization No.: 012281
Acronym: Pakistan National Shipping Corporation
Organization No.: 000977
Acronym: Pan Trans International Freight Service Co., L
Organization No.: 010407
Acronym: Panama Line, Inc.
Organization No.: 009474
Acronym: Pangaea Enterprises
Organization No.: 011036
Acronym: Pantainer Ltd.
Organization No.: 008092
Acronym: Pearcy Marine, Inc.
Organization No.: 006584
Acronym: Peltransport Ltd.
Organization No.: 010573
Acronym: Peninsula Navigation Corporation
Organization No.: 011420
Acronym: Piff Shipping Ltd.
Organization No.: 013142
Acronym: Polamer, Inc.
Organization No.: 010526
Acronym: Polar Steamship and Commerce Company Inc
Organization No.: 011090
Acronym: Poseidon Freight Forwarding Co., Ltd.
Organization No.: 010972
Acronym: PPS Enterprise
Organization No.: 008604
Acronym: Professional Cargo Services Int'l Inc.
Organization No.: 013015
Acronym: Protexa Burlington International-Bahamas, Ltd
Organization No.: 011306
Acronym: Puma International Forwarding Service
Organization No.: 011148
Acronym: R. T. Shipping Limited
Organization No.: 013027
Acronym: R.F.S. International, Corp.
Organization No.: 013139
Acronym: Rae Cargo Services
Organization No.: 011693
Acronym: Raf International Forwarding Inc.
Organization No.: 009854
Acronym: Rainbow World Transport, Inc.
Organization No.: 013250
Acronym: Rambaud International
Organization No.: 010611
Acronym: Rapid Transport Ltd.
Organization No.: 011683
Acronym: Red Oak Industries, Inc.
Organization No.: 011318
Acronym: Rennies Group Limited
Organization No.: 010422
Acronym: Riva International Freight Management Ltd.
Organization No.: 008594
Acronym: Rockwood International Freight Limited
Organization No.: 010710
Acronym: Rong-Shang International Corp.
Organization No.: 013150
Acronym: Rusflot Shipping Line N.V.
Organization No.: 011301
Acronym: S.A.F.E. Shipping USA, Inc.
Organization No.: 011625
Acronym: Safco International Freight Corp.
Organization No.: 010545
Acronym: Sampaguita Group, The
Organization No.: 013028
Acronym: Samson Transport Company (UK) Ltd.
Organization No.: 010732
Acronym: Samson Transport Company A/S
Organization No.: 010400
Acronym: Sanko Steamship Co. Ltd., The
Organization No.: 001070
Acronym: Savino Del Bene (Texas) Ind.
Organization No.: 013191
Acronym: Scanam Transport (USA) Inc.
Organization No.: 013087
Acronym: Scanfreight Limited
Organization No.: 012080
Acronym: SCN Container Line, Inc.
Organization No.: 012577
Acronym: SDV Management Services, Inc.
Organization No.: 011682
Acronym: Sea Star Marine Corporation
Organization No.: 012222
Acronym: Seabridge Transport (HK) Ltd.
Organization No.: 011308
Acronym: Seajet Express, Inc.
Organization No.: 008514
Acronym: Seamar Shipping Corporation
Organization No.: 010718
Acronym: Seanav International, Ltd.
Organization No.: 007564
Acronym: Seawinds Freight Services, Inc.
Organization No.: 011365
Acronym: Sesko Marine Trailers, Inc.
Organization No.: 001133
Acronym: Seven Seas Steamship Line, Inc.
Organization No.: 012385
Acronym: Sextans S.A. Cia. Argentina De Navegacion
Organization No.: 012584
Acronym: Sharp Base Shipping and Transport Ltd.
Organization No.: 007634
Acronym: Shipair Express (HK) Limited
Organization No.: 011668
Acronym: Shui Nam Navigation (H.K.) Ltd.
Organization No.: 012602
Acronym: Siam Paetra International Co., Ltd.
Organization No.: 013102
Acronym: Sino Ocean Shipping (HK) Co.
Organization No.: 010788
Acronym: Sino-American Corporation
Organization No.: 006365
Acronym: Societe Nationale Malgache De Transports Mari
Organization No.: 007982
Acronym: Sofrana Holding Limited
Organization No.: 012011

Acronym: Sotbi Trading Inc.
Organization No.: 012670
Acronym: South Atlantic Cargo Shipping NV
Organization No.: 005769
Acronym: Southern Caribbean Shipping, Inc.
Organization No.: 011107
Acronym: Southern Oceans Container Line Limited
Organization No.: 011376
Acronym: Speedtrans (Int'l) Consolidator Co., Ltd.
Organization No.: 008310
Acronym: Speedy Freight Systems Inc.
Organization No.: 012419
Acronym: Stalwart Shipping, Inc.
Organization No.: 011272
Acronym: Star Ocean Shipping Company
Organization No.: 009844
Acronym: Sunlex Shipping Limited
Organization No.: 011961
Acronym: Sunrise Agency Ltd.
Organization No.: 010654
Acronym: Sunshine Shipping Ltd.
Organization No.: 011562
Acronym: T.V.L. Shipping (H.K.) Co., Ltd.
Organization No.: 012379
Acronym: Taehwa Aerosea Forwarders Inc.
Organization No.: 011639
Acronym: Taiwan Consolidation Co., Ltd.
Organization No.: 010331
Acronym: Taiwan Dispatch Forwarding Inc.
Organization No.: 008922
Acronym: Tak Shing Transportation Co., Ltd.
Organization No.: 009516
Acronym: TBI Limited
Organization No.: 005775
Acronym: TDY Freight Services, Ltd.
Organization No.: 000512
Acronym: Tellux Shipping Ltd.
Organization No.: 011704
Acronym: Tetramaris Agencies, S.A.
Organization No.: 013156
Acronym: Texas American Shipping Corp.
Organization No.: 005781
Acronym: Thompson Express Co.
Organization No.: 010896
Acronym: Tientsin Marine Shipping Company
Organization No.: 002337
Acronym: Tigerline Inc.
Organization No.: 012422
Acronym: Tokyo Container Lines Co., Ltd.
Organization No.: 007779
Acronym: Top Freight Systems, Inc.
Organization No.: 011142
Acronym: Topocean Consolidation Service Ltd.
Organization No.: 012067
Acronym: Tormont Shipping Inc.
Organization No.: 011754
Acronym: Trade Air, Inc.
Organization No.: 010846
Acronym: Traders Freight Systems (U.S.A.) Inc.
Organization No.: 010577
Acronym: Trans Am Sea Freight (HK) Ltd.
Organization No.: 009790
Acronym: Trans Power International Forwarder Corp.
Organization No.: 008414
Acronym: Trans-World Shipping APS
Organization No.: 013149
Acronym: Transcontinental Maritime Ltd.
Organization No.: 009681
Acronym: Transglobal Forwarding Co., Ltd.
Organization No.: 012655
Acronym: Translink Navigation S.A.
Organization No.: 012486
Acronym: Transnation Freight Services, Inc.
Organization No.: 010857
Acronym: Transportacion Maritime Mexicana, S.A. De C.V.
Organization No.: 000604
Acronym: Transtec Ocean Express Inc.
Organization No.: 011607
Acronym: Transway International Co., Ltd.
Organization No.: 013174
Acronym: Transworld Freight Services, Inc.
Organization No.: 007881
Acronym: Transworld Transportation Co., Ltd.
Organization No.: 008972
Acronym: Travima S.A.
Organization No.: 010330
Acronym: Treasure Coast Transport Company, Inc.
Organization No.: 012843
Acronym: Tri-Star Industries, Inc.
Organization No.: 012218
Acronym: Tri-Star Marine, Inc.
Organization No.: 011756
Acronym: Trinity Shipping Line, Inc.
Organization No.: 011330
Acronym: Triple Freight Marine Corp.
Organization No.: 010903
Acronym: Turbo Express Int'l Corp.
Organization No.: 010716
Acronym: U.C.S. Group Inc.
Organization No.: 010574
Acronym: U.C.T. International, Inc.
Organization No.: 011338
Acronym: U.S. Atlantic Freight Lines, Inc.
Organization No.: 007785
Acronym: U.S. Brokers, Inc.
Organization No.: 011476
Acronym: U.S. Intermodal Maritime Ltd.
Organization No.: 013190
Acronym: UAL Universal Africa (USA) Lines N.V. (N.A.)
Organization No.: 007781
Acronym: UCI Consolidator Ltd.
Organization No.: 009777
Acronym: UKL Shipping Company Limited
Organization No.: 011387
Acronym: Ultra Cargo Lines, Inc.
Organization No.: 012364
Acronym: Uni-Sea & Air Freight Co., Ltd.
Organization No.: 010728
Acronym: Unifreight Forwarder Inc.
Organization No.: 011251
Acronym: Union Marine International Co., Ltd.
Organization No.: 011304
Acronym: Union Star Line Limited
Organization No.: 009883
Acronym: Unipac Shipping Inc.
Organization No.: 002766
Acronym: Unishipping
Organization No.: 013052
Acronym: Unison Shipping Co., Ltd.
Organization No.: 007059
Acronym: Unitainer System Forwarder Inc.
Organization No.: 009870
Acronym: United American Consolidators Corp.
Organization No.: 007836
Acronym: United Distributors Service (Far East) Ltd.
Organization No.: 006161
Acronym: United Intermodal Line
Organization No.: 000056
Acronym: Unitrans Shipping & Air Cargo Limited
Organization No.: 012567
Acronym: Universal Maritima S.L.
Organization No.: 013095
Acronym: UTS International Forwarding Ltd.
Organization No.: 010892
Acronym: Van Ommeren Bulk Shipping BV
Organization No.: 005685
Acronym: Vav Universal Shipping
Organization No.: 007627
Acronym: Vector International Freight (HK) Ltd.
Organization No.: 012640
Acronym: Venconav USA Ltd.
Organization No.: 012424
Acronym: Venezuelan Container Line, C.A.
Organization No.: 007292
Acronym: Venture Shipping Inc.
Organization No.: 012357
Acronym: Vicon Shipping Corp.
Organization No.: 012589
Acronym: Votainer Europe B.V.
Organization No.: 010951
Acronym: W.B.E. International Ltd.
Organization No.: 012269
Acronym: Wah Shun Shipping Co., Ltd.
Organization No.: 010221
Acronym: Waterway Maritime Co., Ltd.
Organization No.: 012845
Acronym: Weita International Corporation

Organization No.: 010211
Acronym: West Coast Line, Inc.
Organization No.: 011565
Acronym: Western Bulk Carriers A/S
Organization No.: 006375
Acronym: Westwind Africa Line Limited
Organization No.: 001791
Acronym: Wide Tech Shipping Limited
Organization No.: 011984
Acronym: Williams Shipping & Delivery Services, Inc.
Organization No.: 012545
Acronym: Wilson (F.E.) Ltd.
Organization No.: 011428
Acronym: Windward Supplies Limited
Organization No.: 012515
Acronym: Winspeed Shipping Ltd.
Organization No.: 012315
Acronym: Woo Shin International Transport Co., Ltd.
Organization No.: 010373
Acronym: Woodlands International Transport Company Lim.
Organization No.: 012139
Acronym: World Cargo Corporation
Organization No.: 013129
Acronym: World Express Co., Ltd.
Organization No.: 011631
Acronym: Worldwide Ocean & Air Shipping Lines Inc.
Organization No.: 012678
Acronym: Y.K. Shipping International (USA), Inc.
Organization No.: 009346
Acronym: Yamato Transport (HK) Ltd.
Organization No.: 009339
Acronym: Yatari Express Co., Ltd.
Organization No.: 010887
Acronym: Yetion Shipping Ltd.
Organization No.: 012353
Acronym: Zonn Agency
Organization No.: 009709

Part B: Licensed Ocean Freight Forwarders That Have Not Filed Anti-Rebate Certifications

Acronym: A & M International Service Corp.
Organization No.: 012470
Acronym: A.J. Gugliatto
Organization No.: 005160
Acronym: Action Cargo International, Inc.
Organization No.: 013097
Acronym: Advance Brokers, Ltd.
Organization No.: 004030
Acronym: Air-Mar Shipping, Inc.
Organization No.: 004758
Acronym: All State International Freight Inc.
Organization No.: 012887
Acronym: Alpha Cargo Services, Inc.
Organization No.: 011440
Acronym: Alternative Freight Services, Inc.
Organization No.: 008709
Acronym: American Vanpac Carriers, Inc.
Organization No.: 013119
Acronym: Ameripack Freight Systems
Organization No.: 012172
Acronym: Ameritrans Express, Inc.
Organization No.: 007461
Acronym: Apollo International Forwarders Inc.
Organization No.: 006385
Acronym: Arrow Freight Services, Inc.
Organization No.: 012554
Acronym: ASG Forwarding, Inc.
Organization No.: 004622
Acronym: Atlantic International Freight Forwarders Inc.
Organization No.: 008033
Acronym: Automated Freight Systems, Inc.
Organization No.: 012184
Acronym: Bahl, Vandana C.
Organization No.: 013116
Acronym: Barnes, Robert Field
Organization No.: 004697
Acronym: Barry, Christopher Kevin
Organization No.: 012869
Acronym: Bench, Julia G.
Organization No.: 012863
Acronym: Best Freight Forwarding Inc.
Organization No.: 012796
Acronym: Bill Polkinhorn, Inc.
Organization No.: 004360
Acronym: C Port Miami Corporation
Organization No.: 011008
Acronym: C. J. Swift & Co., Inc.
Organization No.: 004679
Acronym: Camota, Virgilio A.
Organization No.: 010909
Acronym: Cargonauts, Inc.
Organization No.: 012195
Acronym: Cari World International, Inc.
Organization No.: 005649
Acronym: Caribbean Freight Forwarders, Inc.
Organization No.: 012626
Acronym: Carnisco International Custom House Brokers
Organization No.: 009766
Acronym: Charles A. Redden, Inc.
Organization No.: 004345
Acronym: Chicago Cargo Corporation
Organization No.: 005191
Acronym: Cole Forwarding, Inc.
Organization No.: 006487
Acronym: Colombo Service, Inc.
Organization No.: 004718
Acronym: Condor Shipping Company, Inc.
Organization No.: 005484
Acronym: Dean Forwarding Company, Inc.
Organization No.: 000920
Acronym: Dependable Freight Forwarding, Inc.
Organization No.: 004931
Acronym: E.R.A. Freight Forwarding Inc.
Organization No.: 013135
Acronym: Eagle Warehousing, Inc.
Organization No.: 011163
Acronym: Enterprise Forwarders, Inc.
Organization No.: 007464
Acronym: Express Service International, Inc.
Organization No.: 006170
Acronym: F.P. International Corporation
Organization No.: 013001
Acronym: Fabian Forwarding Company, Inc.
Organization No.: 005288
Acronym: Falcon Forwarding, Inc.
Organization No.: 012327
Acronym: Farag, Nabil M.
Organization No.: 007465
Acronym: Fari International, Inc.
Organization No.: 011187
Acronym: Florida Worldwide Citrus Products Group, Inc.
Organization No.: 007541
Acronym: Fontana International, Inc.
Organization No.: 009467
Acronym: Frama Forwarding Corp.
Organization No.: 011469
Acronym: Freight Connections International, Ltd.
Organization No.: 008346
Acronym: G & G International, Inc.
Organization No.: 013133
Acronym: Gayo International Forwarders, Inc.
Organization No.: 005169
Acronym: GCI Forwarding Company, Incorporated
Organization No.: 013098
Acronym: Guerra, Rosendo H.
Organization No.: 004558
Acronym: Gulf-Ocean Shipping Corporation
Organization No.: 012325
Acronym: H. G. Ollendorff, Inc.
Organization No.: 004172
Acronym: H. P. Blanchard & Co.
Organization No.: 010799
Acronym: Harvey Yaffe Forwarding, Inc.
Organization No.: 011583
Acronym: Hip Forwarding Co., Inc.
Organization No.: 006454
Acronym: Ideal Cargo Service, Inc.
Organization No.: 005349
Acronym: Imperial Freight Brokers, Inc.
Organization No.: 004652
Acronym: Independent Cargo Services, Inc.
Organization No.: 004626
Acronym: Inexco Corporation
Organization No.: 004818
Acronym: Integrated Traffic Systems, Incorporated
Organization No.: 008923
Acronym: Inter-American Moving Services, Inc.
Organization No.: 002770
Acronym: Inter-Orient Corporation
Organization No.: 004011
Acronym: Interamerican World Transport Corporation
Organization No.: 002402
Acronym: Intercarga U.S.A. Corporation
Organization No.: 012627
Acronym: Intercontinental Cargo Express, Ltd.

Organization No.: 011115
Acronym: International Consolidators & Freight Forward
Organization No.: 005114
Acronym: International Freight Agency
Organization No.: 011500
Acronym: International Transportation Network, Inc.
Organization No.: 012867
Acronym: Irwin Brown Company, The
Organization No.: 004543
Acronym: J.B. Fong & Co., Inc.
Organization No.: 004728
Acronym: J.R. Michels, Inc.
Organization No.: 004364
Acronym: J.G. International Freight Forwarding, Inc.
Organization No.: 012239
Acronym: Jamar Shipping, Inc.
Organization No.: 012509
Acronym: Jones, Richard L.
Organization No.: 004680
Acronym: K Line Air Service (U.S.A.), Inc.
Organization No.: 012671
Acronym: Keegan, Arthur
Organization No.: 004263
Acronym: Kenehan, John W.
Organization No.: 005012
Acronym: Kim, Young S.
Organization No.: 005464
Acronym: KNL International, Inc.
Organization No.: 011677
Acronym: Konoike Hayakawa Forwarding, Inc.
Organization No.: 005091
Acronym: Laufer Shipping Co., Inc.
Organization No.: 004268
Acronym: Leading Export Service Corp.
Organization No.: 004467
Acronym: Lee, Johnson
Organization No.: 011589
Acronym: Lewis, Leslie David
Organization No.: 005247
Acronym: Logistics Services Incorporated
Organization No.: 013113
Acronym: Maarten Intermodal Expeditors
Organization No.: 005532
Acronym: Manufacturers Export Service, Inc.
Organization No.: 005494
Acronym: Mara Shipping, Inc.
Organization No.: 004698
Acronym: Marco Forwarding International Co.
Organization No.: 012351
Acronym: Maritime Connections Corp.
Organization No.: 005475
Acronym: Martinez, Miriam
Organization No.: 005528
Acronym: Maust Corporation, The
Organization No.: 002001
Acronym: Maverick Distribution Services, Inc.
Organization No.: 013085
Acronym: Meiko America, Inc.
Organization No.: 005240
Acronym: Meteor Air Freight, Inc.
Organization No.: 006489
Acronym: Milton Snedeker Corporation
Organization No.: 004139
Acronym: Mountain Air Delivery
Organization No.: 010991
Acronym: Naimoli, Anthony
Organization No.: 012875
Acronym: Nettles & Co., Inc.
Organization No.: 004522
Acronym: New England Household International
Organization No.: 004920
Acronym: Newport Cargo Consolidated, Inc.
Organization No.: 012787
Acronym: Newport Cargo Consolidators, Inc.
Organization No.: 008685
Acronym: O'Hanneson Worldwide
Organization No.: 004477
Acronym: Oakland Van & Storage, Inc.
Organization No.: 004873
Acronym: Oceangate Forwarding, Inc.
Organization No.: 007381
Acronym: Olympic International Freight Forwarders, Inc.
Organization No.: 004809
Acronym: Omega Shipping, Inc.
Organization No.: 011680
Acronym: Page International, Inc.
Organization No.: 012726
Acronym: Palm Beach Forwarding International, Inc.
Organization No.: 007964
Acronym: Partec Forwarding Corporation
Organization No.: 013086
Acronym: Pasha International, Inc.
Organization No.: 006643
Acronym: Phil Thomas & Son International Co.
Organization No.: 004505
Acronym: Poseidon Forwarding Company, Inc.
Organization No.: 007965
Acronym: Posey International, Inc.
Organization No.: 004801
Acronym: Reedy Forwarding Co., Inc.
Organization No.: 004228
Acronym: Reliable International, Inc.
Organization No.: 004824
Acronym: Resolution, Inc.
Organization No.: 004164
Acronym: Rewico America, Inc.
Organization No.: 008347
Acronym: Roger Baum International, Inc.
Organization No.: 004861
Acronym: Rome International Freight Consultants, Inc.
Organization No.: 004969
Acronym: Ryan Freight Services, Inc.
Organization No.: 012784
Acronym: S. Swartz Co.
Organization No.: 004489
Acronym: S.A.I.M.A. America, Inc.
Organization No.: 004174
Acronym: S.J. Stile Associates, Ltd.
Organization No.: 012346
Acronym: San Diego Freight Services, Inc.
Organization No.: 011522
Acronym: Sankyu U.S.A., Incorporated
Organization No.: 007821
Acronym: Saudinvest Transportation & Traffic Services
Organization No.: 005125
Acronym: SCAC (USA), Inc.
Organization No.: 009858
Acronym: Schick Moving & Storage Company
Organization No.: 004578
Acronym: Sea Link Corporation
Organization No.: 012797
Acronym: Shippers, Inc.
Organization No.: 013175
Acronym: Solano, John J.
Organization No.: 005108
Acronym: Southern Steamship Agency
Organization No.: 004323
Acronym: Struyk, Carrie D.
Organization No.: 006554
Acronym: T C International Marketing Network, Inc.
Organization No.: 012505
Acronym: Thomas Hudson Enterprises, Inc.
Organization No.: 005648
Acronym: Total Transport, Inc.
Organization No.: 011438
Acronym: Traders of Miami, Inc.
Organization No.: 012672
Acronym: Trans-Global Expeditors Forwarding, Inc.
Organization No.: 013195
Acronym: Treset Corporation
Organization No.: 013115
Acronym: Triple Freight Corp.
Organization No.: 011544
Acronym: Trust Forwarding International, Inc.
Organization No.: 012800
Acronym: U.S.A. Shipping Corporation
Organization No.: 004930
Acronym: US International Transport, Inc.
Organization No.: 012155
Acronym: Vantage International Shipping, Inc.
Organization No.: 012185
Acronym: Vialoma Trading Corporation
Organization No.: 011585
Acronym: Victory Van Lines, Inc.
Organization No.: 009770
Acronym: Viking Sea Freight Inc.
Organization No.: 005341
Acronym: Walker, Alicia Seneca
Organization No.: 011175
Acronym: Westwind Overseas Limited
Organization No.: 004888
Acronym: World Destinations, Inc.
Organization No.: 011147
Acronym: Worldlink International, Inc.
Organization No.: 011467
Acronym: Worldwide Shipping Inc.
Organization No.: 006551
Acronym: Wu, Yvonne (Yihong)

Organization No.: 013146
Acronym: Yoon, In Joong
Organization No.: 011459
Acronym: Zappola, Denise
Organization No.: 007358

Part C: Common Carriers by Water in the Foreign Commerce of the United States and Licensed Ocean Freight Forwarders That Have Not Filed Anti-Rebate Certifications

Acronym: Alpine Express Corporation
Organization No.: 008556
Acronym: Bravo, Mario C.
Organization No.: 011074
Acronym: Chemical Leaman Tank Lines, Inc.
Organization No.: 008681
Acronym: Dateline Forwarding Services, Inc.
Organization No.: 008497
Acronym: Express Line Corporation
Organization No.: 006930
Acronym: Fast Cargo U.S. (LA), Inc.
Organization No.: 008607
Acronym: Inter-Continental Corporation
Organization No.: 004509
Acronym: Intermar Steamship Corp.
Organization No.: 001352
Acronym: Intersped Inc.
Organization No.: 001377
Acronym: Jagro Customs Brokers & International Freight
Organization No.: 001403
Acronym: John Cassidy & Sons, Inc.
Organization No.: 000727
Acronym: Kurz-Allen, Inc.
Organization No.: 011555
Acronym: Lancer International Corp.
Organization No.: 010938
Acronym: Latin American Express Corp.
Organization No.: 004904
Acronym: Nedrac Incorporated
Organization No.: 007561
Acronym: Premier Shipping Company, Inc.
Organization No.: 004388
Acronym: Ralex International Corp.
Organization No.: 011675
Acronym: Suntrans International, Inc.
Organization No.: 008622
Acronym: Total Cargo International, Inc.
Organization No.: 005214

[FR Doc. 95–4790 Filed 2–27–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, March 23, 1995. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The meeting is expected to begin at 9:00 a.m. and to continue until 4:00 p.m., with a lunch break from 1:00 p.m. until 2:00 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, D.C.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Community Reinvestment Act Reform. Discussion led by the Bank Regulation Committee on the implementation of the interagency proposal to revise regulations implementing the Community Reinvestment Act.

Consumer Leasing Disclosures. Discussion led by the Consumer Credit Committee on whether and how the Board should amend Regulation M (Consumer Leasing) to address technological and other developments in the leasing industry and to simplify compliance and reduce burdens without diminishing consumer protections.

Regulatory Coverage for Stored-Value Cards. Discussion led by the Depository and Delivery Systems Committee on whether and how the Board should amend Regulation E (Electronic Fund Transfers) to govern technologically advanced electronic products, such as smart cards, prepaid cards, and electronic purses.

Waiver of Consumer's Right of Rescission for Certain Loans. Update by the Consumer Credit Committee on its work in providing timely Council input to the Board on the issue of consumer waivers of the right to rescind certain mortgage transactions under Regulation Z (Truth in Lending). (This issue will be the subject of a March 1995 Board report to the Congress.)

Sale of Uninsured Investment Vehicles by Depository Institutions. Discussion led by the Depository and Delivery Systems Committee of nonregulatory actions by the Board to address consumers' information needs about uninsured investment products offered by depository institutions.

Governor's Report. Report by Federal Reserve Board Member Lawrence B. Lindsey on economic conditions, recent Board initiatives, and issues of concern, with an opportunity for questions from Council members.

Members Forum. Presentation of individual Council members' views on the economic conditions present within their industries or local economies (including whether there is a strong focus on lending in the inner cities).

Committee Reports. Reports from Council committees on their work and plans for 1995.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Comments must be received no later than close of business Wednesday, March 15, 1995, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Ann Marie Bray, 202-452-6470. Telecommunications Device for the Deaf (TDD) users may contact Dorothea Thompson, 202-452-3544.

Board of Governors of the Federal Reserve System,February 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–4844 Filed 2–27–95; 8:45am]

BILLING CODE 6210–01–F

Robert Lee & Beverly Sue Martin; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than March 20, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Robert Lee & Beverly Sue Martin, Jefferson, Wisconsin; to acquire an additional 1.6 percent for a total of 18.6 percent of the voting shares of Jefferson County Bancorp, Inc., Jefferson, Wisconsin, and thereby indirectly acquire Jefferson County Bank, Jefferson, Wisconsin.

Board of Governors of the Federal Reserve System, February 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–4840 Filed 2–27–95; 8:45 am]

BILLING CODE 6210–01–F

New Era Bancorporation, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 14, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. New Era Bancorporation, Inc., Fredericktown, Missouri; to acquire up to 9.9 percent of St. Francois County Financial Corp., Farmington, Missouri, and thereby acquire St. Francois County Savings and Loan Association, Fredericktown, Missouri, and thereby engage in operating a thrift institution, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–4841 Filed 2–27–95; 8:45 am]

BILLING CODE 6210–01–F

Ogle County Bancshares; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 14, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Ogle County Bancshares, Rochelle, Illinois; to engage *de novo* in making and servicing loans, pursuant to §225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–4842 Filed 2–27–95; 8:45 am]

BILLING CODE 6210–01–F

Peoples Independent Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 24, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Peoples Independent Bancshares, Inc., Boaz, Alabama; to merge with Randolph Bancshares, Inc., Roanoke, Alabama, and thereby indirectly acquire First Bank, Wadley, Alabama.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Community Bancshares, Inc., Neosho, Missouri; to acquire 100 percent of the voting shares of Seneca

Management Company, Seneca, Missouri, and thereby indirectly acquire State Bank of Seneca, Seneca, Missouri.

Board of Governors of the Federal Reserve System, February 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–4843 Filed 2–27–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[Dkt. C–2456]

Amerada Hess Corporation, et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set Aside Order.

SUMMARY: This order reopens a 1973 consent order—which required that the Clarco Pipe Line be divested and prohibited Amerada, VGS Corporation and Clarco Pipe Line Company from acquiring assets related to the transportation or refining of crude oil produced in either Mississippi or Alabama without prior Commission approval—and sets aside the consent order pursuant to the Commission's Sunset Policy Statement, under which the Commission presumes that the public interest require setting aside competition orders in effect for more than 30 years.

DATES: Consent order issued September 18, 1973. Set aside order issued January 3, 1995.

FOR FURTHER INFORMATION CONTACT: Daniel Ducore, FTC/S–2115, Washington, D.C. 20580. (202) 326–2526.

SUPPLEMENTARY INFORMATION: In the Matter of Amerada Hess Corporation, et al. The prohibited trade practices and/or corrective actions are removed as indicated.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Order Reopening Proceeding and Setting Aside Order

Commissioners: Janet D. Steiger, Chairman, Mary L. Azcuenaga, Roscoe B. Starek, III, Christine A. Varney.

On September 12, 1994, Amerada Hess Corporation (''Amerada Hess'') filed a Request to Reopen and Vacate Order (''Request'') in this matter.[1] Amerada Hess requests that the Commission set aside the 1978 consent order in this matter, pursuant to Rule 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, and the Commission's July 22, 1994, Statement of Policy with Respect to Duration of Competition Orders and Statement of Intention to Solicit Public Comment with Respect to Duration of Consumer Protection Orders (''Sunset Policy Statement'').[2]

Leon Hess, also a respondent in this matter, joined in Amerada Hess's Request, by letter dated September 21, 1994. Southland Oil Company, successor to respondent VGS Corporation, filed a Statement in Support of Request to Reopen and Vacate Order on October 21, 1994. In addition, on October 20, 1994, Hunt Refining Company, the purchaser of assets from respondent Clarco Pipe Line Company, filed a petition requesting, among other things, that the Commission reopen the proceeding and vacate the order as to Hunt (''Petition''). Amerada Hess's Request, Hunt's Petition and the information supplied by Leon Hess and Southland Oil Company were placed on the public record pursuant to Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51.[3] No comments were received.

The Commission in its July 22, 1994, Sunset Policy Statement said, in relevant part, that ''effective immediately, the Commission will presume, in the context of petitions to reopen and modify existing orders, that the public interest requires setting aside orders in effect for more than twenty years.'' [4]

The Commission's order in Docket No. C–2456 was issued on September 18, 1973, and has been in effect for more than twenty-one years. Consistent with the Commission's July 22, 1994, Sunset Policy Statement, the presumption is that the order should be terminated. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceeding and set aside the order in Docket No. C–2456.

Accordingly, it is ordered that this matter be, and it hereby is, reopened;

It is further ordered that the Commission's order in Docket No. C–2456 be, and it hereby is, set aside, as of the effective date of this order.

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–4861 Filed 2–27–95; 8:45 am]

BILLING CODE 6750–01–M

[1] See Amerada Hess Corp., 83 F.T.C. 487 (1973).

[2] The Sunset Policy Statement is published at 59 FR 45,286 (Sept. 1, 1994).

[3] The fifth respondent named in the order died in 1989.

[4] Sunset Policy Statement, 59 FR at 45,289.

[Dkt. C–3553]

Baby Furniture Plus Association, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, an Alabama-based buying cooperative and trade association from taking any action on behalf of its members, or encouraging them to take any action, that interferes with a juvenile product manufacturer's decision as to how or to whom to distribute its products. The consent order also prohibits the respondent from coercing—by means of actual or threatened refusals to deal—any juvenile products manufacturer to abandon or adopt—or to refrain from abandoning or adopting—any marketing method for its products.

DATES: Complaint and Order issued January 18, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Phoebe Morse, Boston Regional Office, Federal Trade Commission, 101 Merrimac St., Suite 810, Boston, MA. 02114–4719. (617) 424–5960.

SUPPLEMENTARY INFORMATION: On Tuesday, November 1, 1994, there was published in the **Federal Register,** 59 FR 54601, a proposed consent agreement with analysis In the Matter of Baby Furniture Plus Association, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint, the Decision and Order, and Commissioner Azcuenaga's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC. 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 95–4862 Filed 2–27–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3550]

Bee-Sweet, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a North Carolina corporation and its officer from representing that bee pollen products are effective as a cure or in mitigating certain conditions and physical ailments, and from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study. In addition, the consent order requires the respondents to notify all sellers of the products, for the last 12 months, about the settlement with the Commission.

DATES: Complaint and Order issued January 17, 1995.[1]

FOR FURTHER INFORMATION CONTACT:

Ronald Waldman, FTC/New York Regional, 150 William St., Suite 1300, New York, NY 10038. (212) 264–1207.

SUPPLEMENTARY INFORMATION: On Tuesday, November 8, 1994, there was published in the **Federal Register**, 59 FR 55665, a proposed consent agreement with analysis In the Matter of Bee-Sweet, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Ave., NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 95–4863 Filed 2–27–95; 8:45 am]

BILLING CODE 6750–01–M

[Docket No. C–3558]

Charter Medical Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent orders.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, Charter Medical Corporation (Charter), a Georgia-based chain of psychiatric hospitals, to modify its agreement to purchase certain National Medical Enterprises (NME) facilities to rescind Charter's acquisitions of NME psychiatric facilities in four specified localities. In addition, the consent order requires Charter, for ten years, to secure Commission approval before acquiring or divesting psychiatric facilities in those localities.

DATES: Complaint and Order issued February 14, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Robert W. Doyle, Jr. or Ronald B. Rowe, FTC/S–2105, Washington, DC 20580, (202) 326–2819 or 326–2610.

SUPPLEMENTARY INFORMATION: On Monday, November 28, 1994, there was published in the **Federal Register**, 59 FR 60804, a proposed consent agreement with analysis In the Matter of Charter Medical Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 95–4864 Filed 2–27–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932 3286]

Felson Builders, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, three California firms and an officer to comply with the full disclosure requirements of the Truth in Lending Act and Regulation Z, its implementing regulation, in advertising credit terms.

DATES: Comments must be received on or before May 1, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld, San Francisco Regional Office, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, CA 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of: Felson Builders, Inc., a corporation; Diamond Crossing Associates, L.P., a limited partnership, dba D.C. Funding; Elmhurst Partners, L.P., a limited partnership, dba Elmhurst Funding; and Joseph L. Felson, individually and as an officer of Felson Builders, Inc. File No. 932–3286.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Felson Builders, Inc., a corporation; Diamond Crossing Associates, L.P., a limited partnership, dba D.C. Funding; Elmhurst Partners, L.P. a limited partnership, dba Elmhurst Funding; Joseph L. Felson, individually and as an officer of Felson Builders, Inc., and it now appearing that Felson Builders, Inc., a corporation; Diamond Crossing Associates, L.P., a limited partnership, dba D.C. Funding; Elmhurst Partners, L.P., a limited partnership, dba Elmhurst Funding; and Joseph L. Felson, individually and as an officer of Felson Builders, Inc., hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Felson Builders, Inc., by its duly authorized officer; Diamond Crossing Associates, L.P., by its duly authorized officer; Elmhurst Partners, L.P., by its duly authorized officer; and Joseph L. Felson, individually and as an officer of Felson Builders, Inc., and their attorneys, and counsel for the Federal Trade Commission that:

1. (a) Proposed respondent Felson Builders, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California.

(b) Proposed respondent Diamond Crossing Associates, L.P., is a limited partnership organized, existing and doing business under and by virtue of the laws of the State of California.

(c) Proposed respondent Elmhurst Partners, L.P., is a limited partnership organized, existing and doing business under and by virtue of the laws of the State of California,.

(d) Each of the above proposed respondents has its principal place of business at 1290 B Street, Suite 210, Hayward, California 94541.

(e) Proposed respondent Joseph L. Felson is an officer of proposed respondents Felson Builders, Inc. He formulates, directs and controls the acts and practices of said proposed respondent, and his principal place of business is the same as that of said proposed respondent.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) all claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of the complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. Proposed respondents understand that once the order has been issued they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondents Felson Builders, Inc., a corporation, its successors and assigns, and its officers; Diamond Crossing Associates, L.P., a limited partnership, dba D.C. Funding, its successors and assigns, and its offices; Elmhurst Partners, L.P., a limited partnership, dba Elmhurst Funding, its successors and assigns, and its officers; and Joseph L. Felson, individually and as an officer of Felson Builders, Inc.; and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division , or other device, in connection with any extension of consumer credit, or in connection with any advertisement to aid, promote, or assist, directly or indirectly, any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR part 226) to the Truth in Lending Act ("TILA") (15 U.S.C. 1601–1667e, as amended) do forthwith cease and desist from:

1. Failing to furnish consumers with the disclosures, as required by Section 128 of the TILA, 15 U.S.C. 1638, and by §§ 226.17(a) and 226.18 of Regulation Z, 12 CFR 226.17(a) and 226.18.

2. Failing to furnish consumers prior to the consummation of a consumer credit transaction with the disclosures, as required by Section 128 of the TILA, 15 U.S.C. 1638, and by §§ 226.17(b) and 226.18 of Regulation Z, 12 CFR 226.17(b) and 226.18.

3. Stating the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without stating, clearly and conspicuously, all of the terms required by Regulation Z, as follows:

(1) The amount or percentage of the downpayment,

(2) The terms of repayment, including the amount of any balloon payment, and

(3) The "annual percentage rate," using that term or the abbreviation "APR." If the annual percentage rate

may be increased after consummation of the credit transaction, that fact must also be disclosed.

(Section 144 of the TILA, 15 U.S.C. 1664, and § 236.24(c) of Regulation Z, 12 CFR 226.24(c))

4. Stating a rate of finance charge without stating the rate as an ''annual percentage rate,'' using that term or the abbreviation ''APR,'' as required by Regulation Z. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. The advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with , but not more conspicuously than, the annual percentage rate.

(Sec. 144 of the TILA, 15 U.S.C. 1664, and § 226.24(b) of Regulation Z, 12 CFR 226.24(b))

5. Failing to comply in any other respect with the Truth in Lending Act, 15 U.S.C. 1601–1667e, as amended, or its implementing regulation, Regulation Z, 12 CFR part 226, as amended.

II

It is further ordered that respondents distribute a copy of this order to all their operating divisions, if any, and to all present or future personnel, agents or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this order, and that respondents secure from each such person a signed statement acknowledging receipt of said order.

III

It is further ordered that respondents notify the Commission at least thirty (30) days prior to any proposed change in any respondent which is a corporation or limited partnership, such as dissolution, assignment or sale resulting in the emergence of a successor corporation or limited partnership, the creation or dissolution of subsidiaries, or any other change in the corporation or limited partnership which may affect compliance obligations arising out of the order.

IV

It is further ordered that, for a period of five (5) years following service upon him of this order, the individual respondent named herein shall notify the Commission of the discontinuance of his present business or employment and of his affiliation with any new business or employment involved in the advertising and/or extension of ''consumer credit,'' as that term is defined in the Truth in Lending Act and its implementing Regulation Z, no later than thirty (30) days after such discontinuance and affiliation has occurred. Such notice shall include the respondent's current business address and telephone number and a statement as to the nature of the business or employment in which he is engaged, as well as a description of his duties and responsibilities and financial interest in the business.

V

It is further ordered that for five (5) years after the date of service of this order respondents, their successors and assigns shall maintain and upon request make available all records that will demonstrate compliance with the requirements of this order.

VI

It is further ordered that the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Felson Builders, Inc., a California corporation; Diamond Crossing Associates, L.P., a limited partnership, dba D.C. Funding; Elmhurst Partners, L.P., a limited partnership, dba Elmhurst Funding; and Joseph L. Felson, individually and as an officer of the corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The complaint alleges that respondents Diamond Crossing Associates, L.P., and Elmhurst Partners, L.P. have failed to furnish consumers the disclosures required by Regulation Z, the implementing regulation of the Truth in Lending Act, in violation of §§ 226.17(a) and 226.18 of Regulation Z, and that respondents' practice constitutes an unfair and deceptive act or practice in violation of section 5 of the Federal Trade Commission Act.

The complaint also alleges that respondents Felson Builders, Inc., Diamond Crossing Associates, L.P., Elmhurst Partners, L.P., and Joseph L. Felson, individually and as an officer of Felson Builders, Inc., have disseminated or caused to be disseminated advertisements that state the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, but fail to state all of the terms required by Regulation Z, as follows: The amount or percentage of the downpayment, the terms of repayment, including the amount of any balloon payment, and the annual percentage rate, using that term or the abbreviation ''APR.'' The complaint alleges this practice to be in violation of §§ 226.24(c) of Regulation Z, and that it constitutes an unfair and deceptive act or practice in violation of section 5 of the Federal Trade Commission Act.

Finally, the complaint alleges that respondents Felson Builders, Inc., Diamond Crossing Associates, L.P., Elmhurst Partners, L.P., and Joseph L. Felson, individually and as an officer of Felson Builders, Inc., have disseminated or caused to be disseminated advertisements that failed to state the rate of a finance charge as an ''annual percentage rate,'' using that term or the abbreviation ''APR,'' as required by Regulation Z, in violation of § 226.24(b) of Regulation Z.

The proposed order requires respondents to furnish consumers with the disclosures required by Regulation Z, in connection with respondents' extension of consumer credit.

The proposed order also requires respondents to furnish consumers, prior to the consummation of a consumer credit transaction, with the disclosures required by Regulation Z, in connection with respondents' extension of consumer credit.

Finally, the proposed order requires respondents in any advertisements to promote any extension of consumer credit, whenever the amount or percentage of the downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge is stated, to state clearly and conspicuously, all of the terms required by Regulation Z, as follows: the amount or percentage of the downpayment, the terms of repayment, including the amount of any balloon payment, and the ''annual percentage rate,'' using that term or the abbreviation ''APR.''

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–4865 Filed 2–27–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3554]

Medical Staff of Good Samaritan Regional Medical Center; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the members of the medical staff from agreeing, or attempting to enter into an agreement, to prevent or restrict the services offered by Good Samaritan, the clinic, or any other health care provider by refusing to deal with others offering health care services, or by withholding patient referrals.

DATES: Complaint and Order issued February 1, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Mark Horoschak, FTC/S–3115, Washington, DC 20580. (202) 326–2756.

SUPPLEMENTARY INFORMATION: On Friday, September 23, 1994, there was published in the **Federal Register,** 59 FR 48889, a proposed consent agreement with analysis In the Matter of Medical Staff of Good Samaritan Regional Medical Center, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint, the Decision and Order, and Commissioner Starek's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC. 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 95–4866 Filed 2–27–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3552]

New England Juvenile Retailers Association, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Massachusetts association of retailers from combining, agreeing or conspiring to: fix or maintain prices or the terms of sale for juvenile products; engage in or threaten boycotts in order to influence a manufacturer's decision as to how or to whom it distributes its products; or use coercion by means of actual or threatened refusals to deal in order to compel a juvenile products manufacturer to adopt or refrain from adopting any marketing method for its products. The consent order also requires the dissolution of the association within sixty days and requires the association to send a letter, acknowledging the consent order with the Commission and outlining its terms, to the manufacturers it allegedly threatened to boycott.

DATES: Complaint and Order issued January 18, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Phoebe Morse, Boston Regional Office, Federal Trade Commission, 101 Merrimac St., Suite 810, Boston, MA 02114–4719. (617) 424–5960.

SUPPLEMENTARY INFORMATION: On Tuesday, November 1, 1994, there was published in the **Federal Register**, 59 FR 54604, a proposed consent agreement with analysis In the Matter of New England Juvenile Retailers Association, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

[1] Copies of the Complaint, the Decision and Order, and Commissioner Azcuenaga's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 95–4867 Filed 2–27–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3555]

Oerlikon-Buhrle Holding AG; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order permits, among other things, a Switzerland-based corporation to acquire Leybold AG, a German firm, but requires the respondent to divest both the Leybold compact disc metallizer business and the Balzers-Pfeiffer turbomolecular pump business, within 12 months, to Commission approved entities. If the divestitures are not completed within 12 months, the Commission is permitted to appoint trustees to complete them. In addition, the respondent is required, for ten years, to obtain Commission approval before acquiring any interest in any entity engaged in either of the two markets at issue.

DATES: Complaint and Order issued February 1, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Ann Malester or Michael Moiseyev, FTC/S–2224, Washington, DC 20580. (202) 326–2682.

SUPPLEMENTARY INFORMATION: On Friday, November 18, 1994, there was published in the **Federal Register,** 59 FR 59780, a proposed consent agreement with analysis In the Matter of Oerlikon-Buhrle Holding AG, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings, and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 95–4868 Filed 2–27–95; 8:45 am]

BILLING CODE 6750–01–M

[Docket No. C–3556]

Olsen Laboratories, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, two Kansas-based firms and an official from making false claims for Eez-Away, an arthritis pain treatment, or similar products. The consent order requires the respondents to possess competent and reliable scientific evidence before making any health or medical benefit claim for any personal or household product or service they market in the future; requires them to clearly identify any future infomerical they disseminate as paid advertising; and prohibits them from misusing endorsements.

DATES: Complaint and Order issued February 6, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Lesley Fair, FTC/S–4002, Washington, DC, 20580. (202) 326–3081.

SUPPLEMENTARY INFORMATION: On Thursday, December 1, 1994, there was published in the **Federal Register**, 59 FR 61622, a proposed consent agreement with analysis In the Matter of Olsen Laboratories, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 95–4869 Filed 2–27–95; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC. 20580.

GOVERNMENT PRINTING OFFICE

The Federal Register Online Via GPO Access; Public Meeting for Federal, State and Local Agencies, and Others Interested in a Demonstration of GPO Access, the Online Service Providing the Federal Register and Other Federal Databases

The Superintendent of Documents will hold two public meetings for Federal, State and local government agencies, and others interested in an overview and demonstration of the Government Printing Office's online service GPO Access, provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Pub. L. 103–40).

Two sessions are available on Tuesday, March 14, 1995, from 9 a.m. to 10:30 a.m. and from 11 a.m. to 12:30 p.m. Both sessions will be held at the U.S. Government Printing Office, Carl Hayden Room (eighth floor), 732 North Capitol Street NW., Washington, DC 20401.

The online **Federal Register** service offers access to the daily issues of the **Federal Register** by 6 a.m. on the day of publication. All notices, rules and proposed rules, Presidential documents, executive orders, separate parts, and reader aids are included in the database as ASCII text files, with graphics provided in TIFF format. The online **Federal Register** is available via the Internet or as a dial-in service. Historical data is available from January 1994 forward.

Other databases currently available online through GPO Access include the Congressional Record; Congressional Record Index, including the History of Bills; Congressional Bills, Public Laws; and U.S. Code.

Individuals interested in attending either session should contact the GPO's Office of Electronic Information Dissemination Services, John Berger, Product Manager, on 202–512–1525; (FAX) 202–512–1262; or by Internet e-mail at help@eids05.eids.gpo.gov.

Seating reservations will be accepted through Friday, March 10, 1995.

Michael F. DiMario,

Public Printer.

[FR Doc. 95–4835 Filed 2–27–95; 8:45 am]

BILLING CODE 1505–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970 and 56 FR 29484, June 27, 1991, as amended most recently in pertinent parts at 51 FR 8032, March 7, 1986) is amended to reflect the following reorganization in the Food and Drug Administration (FDA).

FDA is revising the substructure of the Office of Public Affairs within the Office of External Affairs. The purpose of the revisions is to establish a new Broadcast Media Staff to manage broadcast media activities. The broadcast media functions will be transferred to the new staff from the Press Relations Staff, which will continue to have print media functions.

Under Section HF–B, Organization

1. Delete subparagraph (e–1) Press Relations Staff (HFAJA) in its entirety and insert new subparagraphs (e–1) Press Relations Staff (HFAJA) and (e–6) Broadcast Media Staff (HFAJG) under paragraph Office of Public Affairs (HFAJ) under Office of External Affairs (HFAQ) reading as follows:

Press Relations Staff (HFAJA)

Advises and assists top level Agency officials on print press matters involving mass media communications.

Plans, develops, and implements Agencywide print media strategies for disseminating regulatory and educational materials to the public through the mass media.

Serves as the Agency focal point for preparing, clearing, and disseminating press releases and other print media statements representing Agency policy and responding to print media inquiries; maintains liaison with news media and pertinent publications.

Establishes policy for and coordinates all print media information activities, including news interviews and responses to inquiries; prepares position and policy statements for use by Agency employees in responding to print media questions; tracks issues of potential interest to the media.

Coordinates the research and drafting of major public statements by the Commissioner, including transmittal documents and supportive statements for use in transactions with the Department, other agencies, and the White House; provides editorial consultation and review for manuscripts, articles, and speeches written by the staff offices serving the Commissioner to ensure consistency of information and policy interpretation and maintains mailing lists for these documents.

Compiles, publishes, and distributes the weekly FDA Enforcement Report and the FDA Public Calendar; maintains the FDA Daily Clipping Service and FDA's electronic bulletin board; and coordinates the Daily Media Report.

Broadcast Media Staff (HFAJG)

Advises and assists top level Agency officials on electronic media matters involving mass media communications.

Plans, develops, and implements Agencywide broadcast media strategies for disseminating regulatory and educational materials to the public through the mass media.

Serves as the Agency focal point for preparing, clearing, and disseminating electronic media requests representing Agency policy and responding to electronic media inquiries; maintains liaison with broadcast media contacts.

Establishes policy for and coordinates all braodcast media information activities, including on-camera interviews and responses to media inquiries; prepares position and policy statements for use by Agency employees in responding to broadcast media questions; tracks issues of potential interest to the media.

Plans and coordinates all broadcast media training for the Agency.

Under Section HF–D, Delegation of Authority

Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to officers or employees of the Office of Public Affairs in effect prior to this date shall continue in effect in them or their successors.

Dated: February 10, 1995.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 95–4796 Filed 2–27–95; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Consensus Development Conference on Cochlear Implants in Adults and Children

Notice is hereby given of the NIH Consensus Development Conference on ''Cochlear Implants in Adults and Children,'' which will be held May 15–17, 1995, in the Natcher Conference Center of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The conference begins at 8:30 a.m. on May 15, at 8 a.m. on May 16, and at 9 a.m. on May 17.

Cochlear implants are effective options in habilitation and rehabilitation of individuals with profound hearing impairment. The vast majority of adults who are deaf and have cochlear implants derive substantial benefit from them when they are used in conjunction with speechreading, and a considerable number of implanted individuals can understand speech without visual clues. Benefits have also been observed in children including those who lost their hearing prelingually.

The NIH sponsored a Consensus Development Conference on Cochlear Implants in 1988. Since then, implant technology has been continually improved. Questions unanswered at this time have now been resolved. However, new issues have emerged that must be addressed. For example, the performance of some severely to profoundly hearing-impaired adults using hearing aids is poorer than that of even more severely hearing-impaired individuals using cochlear implants with advanced speech processing strategies. Therefore, the criteria for implantation should be re-examined. Prediction of implant efficacy in a specific individual remains a problem, and agreement does not exist on the definition of a successful implant user. Surgical and other risks and possible long-term effects of cochlear implants require evaluation.

Implantation of individuals with multiple disabilities, the elderly, and children, particularly children who are prelingually deaf, engender special questions. What educational setting is best for the development of speech and language in children who are deaf and have a cochlear implant? Are cochlear implants efficacious in children who are prelingually deaf?

This conference will bring together specialists in auditory anatomy and physiology, otolaryngology, audiology, aural rehabilitation, education, speech and language pathology and other related disciplines as well as representatives from the public.

After 1½ days of presentations and audience discussion, an independent, non-Federal consensus panel will weigh the scientific evidence and write a draft statement that it will present to the audience on the third day. The consensus statement will address the following key questions:

* What factors affect the auditory performance of cochlear implant recipients?
* What are the benefits and limitations of cochlear implantation?
* What are the technical and safety considerations of cochlear implantation?
* Who is a candidate for cochlear implantation?
* What are the directions for future research on cochlear implantation?

The primary sponsors for this conference are the National Institute on Deafness and Other Communication Disorders and the NIH Office of Medical Applications of Research. The conference is cosponsored by the National Institute on Aging, the National Institute of Child Health and Human Development, and the National Institute of Neurological Disorders and Stroke. This is the 100th Consensus Development Conference held by NIH since the establishment of the Consensus Development Program in 1977.

On the second day of the conference, time has been allocated for 5-minute formal oral presentations by concerned individuals or organizations. Those individuals or groups wishing to send a representative to contribute during this session must contact Ms. Elsa Bray by 5 p.m. eastern time, May 1, 1995 at: Office of Medical Applications of Research, National Institutes of Health, Federal Building, Room 618, 7550 Wisconsin Avenue MSC9120, Bethesda, Maryland 20892–9120, phone (301) 496–1144. If the number of requests exceeds the slots available, presenters will be chosen by lot, and those selected will be notified by May 5, 1995.

Advance information on the conference program and conference registration materials may be obtained from: Ann Besignano, Technical Resources International, Inc., 3202 Tower Oaks Blvd., Suite 200, Rockville, Maryland 20852, (301) 770–3153.

The consensus statement will be submitted for publication in professional journals and other publications. In addition, the consensus statement will be available beginning May 17, 1995 from the NIH Consensus Program Information Service, P.O. Box 2577, Kensington, Maryland 20891, phone 1–800–NIH–OMAR (1–800–644–6627).

Dated: February 9, 1995.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 95–4823 Filed 2–27–95; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Grant to the Farm Resource Center

AGENCY: Center for Mental Health Services (CMHS), Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Planned single-source award to support mental health outreach to coal miners, farmers, and their families.

SUMMARY: This notice is to provide information to the public concerning a planned single-source award by the CMHS/SAMHSA to the Farm Resource Center (FRC) of Cairo, Illinois, to fund the ''MH Outreach to Coal Miners, Farmers, and Families'' project. Upon receipt of a satisfactory grant application that is recommended for approval by an Initial Review Group and the CMHS National Advisory Council, approximately $600,000 in Federal funds will be made available to the FRC to carry out a 1-year project.

This is not a formal request for applications. Grant funds will be provided only to the FRC.

Authority/Justification: This grant will be made under the authority of Section 520A of the Public Health Service Act (42 USC 290bb-32).

An award is being made on a single-source basis in response to House and Senate Appropriation Subcommittees language contained in H.R. Report 103–553 and S. Report 103–318 instructing the agency to provide funding for two pilot projects to provide outreach counseling services to families of coal miners. A grant is the appropriate mechanism to fund this activity since support will be provided for a public purpose and agency involvement in the actual conduct of the activity is not required.

The FRC has provided mental health and substance abuse outreach services in rural Illinois since 1986. FRC has provided counseling to farmers, coal miners and their families, established a statewide hotline, and utilized outreach counselors to work with rural families in their homes to address problems such as depression, financial stress, alcoholism, and domestic violence.

The FRC is uniquely qualified to carry out the aims of this project in that it has the distinction of being the only organization with extensive experience in linking coal miners, farmers, and their families with mental health services. Further, because of their years of experience and organizational readiness, the project can be implemented with a minimal start-up time. The FRC has in place mechanisms to recruit, train, and dispatch volunteers to provide outreach and counseling to the target population. Moreover, FRC's trained staff have a long history of working closely with State or regional associations of the United Mine Workers of America, Association of Public Health Administrators, the Easter Seal Society, and the Association of Community Mental Health Agencies.

Background: A significant portion of the adult population in the United States reports experiencing personal or emotional problems in the course of a year. Half of these people say they are unable to solve their problems, and approximately one-third report they are unable to do anything to make their problems more bearable. Yet relatively few seek help. Thus, outreach services are important to engage more persons into appropriate services. Outreach, when carried out aggressively, can engage and empower coal miners, farmers, and their families by giving them access to needed mental health services.

The effects of economic stress are pervasive in rural areas, and coal miners, farmers, and their families have been particularly hard hit. Unemployment and underemployment have resulted in a high incidence of problems including alcohol/drug abuse, family violence, depression, suicides, and other stress-related symptoms.

This grant is intended to address the mental health needs of a wide range of rural population groups including the poor, the elderly, the disabled, women (particularly those of child bearing age), and minority populations in Illinois and West Virginia. It will enhance effective service utilization in five areas by:

(1) Expanding the mental health service capacity in communities to serve persons in the target population;

(2) Increasing access to existing mental health and related support services;

(3) Increasing utilization of existing mental health and related support services;

(4) Developing effective public education efforts to address mental health and substance abuse issues; and

(5) Providing family-centered outreach in the cultural context that is most appropriate for the client and family involved.

The proposed project will serve as a national demonstration site on the development and implementation of outreach to rural families who are experiencing mental illnesses or are at-risk of developing mental illnesses.

Dated: February 21, 1995.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 95–4845 Filed 2–27–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–030–05–1430–01; IDI–31091]

Intent To Prepare a Plan Amendment to the Medicine Lodge Resource Management Plan (RMP); Proposed Sale of Public Land in Jefferson County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare a Plan Amendment to the Medicine Lodge Resource Management Plan (RMP); Proposed Sale of Public Land in Jefferson County, Idaho.

SUMMARY: Pursuant to 43 CFR part 1600, the Idaho Falls office of the Bureau of Land Management proposes to amend the Medicine Lodge RMP to identify a portion of the following described public land as suitable for disposal. The land, located in Jefferson County, Idaho, will be examined for possible disposal by direct sale to the City of Mud Lake.

Boise Meridian, Idaho

T. 6 N., R. 34 E., BM
Sec. 18, lot 10, NE¼.

The land being considered for sale is approximately 40 to 50 acres. A Cadastral survey would be required to determine the exact acreage and legal description.

DATES: Comments concerning the plan amendment must be received no later March 30, 1995.

ADDRESSES: Written comments concerning the plan amendment may be sent to the BLM Associate District Manager, 940 Lincoln Road, Idaho Falls, ID 83401.

FOR FURTHER INFORMATION CONTACT: Additional information may be obtained by contacting Bruce Bash, Realty Specialist, at the above address, or by calling 208–524–7521.

SUPPLEMENTARY INFORMATION: The amendment would change the land designation, of about 40–50 acres, from retention status to transfer status. The following resources would be considered in preparation of the amendment: lands, wildlife, range, minerals, cultural resources, watershed/soils, threatened/endangered species, and hazardous materials. Staff members representing each resource will be consulted during preparation of the environmental document.

The primary issue to be addressed is the change in land designation from retention to transfer status. The amendment is not expected to be controversial as the City of Mud Lake currently holds an airport lease on the same land. No public meetings are scheduled; however, written comments may be submitted after each of two public notices.

Prepared documents will be available at the BLM Idaho Falls office. Office hours are 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays.

Dated: February 16, 1995.

Gary L. Bliss,

Associate District Manager.

[FR Doc. 95–4801 Filed 2–27–95; 8:45 am]

BILLING CODE 4310–GG–M

Fish and Wildlife Service

Marine Mammals; Polar Bear Habitat Conservation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Availability of a draft Habitat Conservation Strategy for Polar Bears in Alaska; request for comments.

SUMMARY: Final Fish and Wildlife Service (Service) regulations published in the **Federal Register** on November 16, 1993, authorized and governed the incidental, unintentional take of small numbers of polar bear and walrus during oil and gas industry operations year-round in the Beaufort Sea and adjacent northern coast of Alaska. Those regulations contained provisions requiring the Service by June 15, 1995, to develop and being implementing a strategy for the identification and protection of important polar bear habitats. The Service has developed a draft Habitat Conservation Strategy for Polar Bears in Alaska (Strategy), announces its availability, and solicits public comments.

DATES: Comments on the draft Strategy must be received by May 1, 1995.

ADDRESSES: Copies of the draft Strategy are available by contacting the Office of Marine Mammals Management, Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503; Telephone: 907/786–3800; FAX: 907/786–3816.

Written comments should be submitted either by mail or FAX to David McGillivary, Supervisor, Office of Marine Mammals Management at the above identified address, telephone, or FAX numbers.

FOR FURTHER INFORMATION CONTACT: David McGillivary in Anchorage, Alaska, at 907/786–3800.

SUPPLEMENTARY INFORMATION: The Marine Mammal Protection Act of 1972 (Act) vested authority for management and conservation of polar bears in the United States (i.e., Alaska) with the Service. Provisions in section 101(a)(5) of the Act authorize the incidental, unintentional take by U.S. citizens of small numbers of marine mammals (e.g., polar bear) in specified activities other than commercial fishing. As defined in section 3 of the Act, the term ''take'' means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

While the Act authorizes these incidental takes, section 2(6) of the Act states that:

> Marine mammals * * * should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and that the primary objective of their management should be to maintain the health and stability of the marine ecosystem.

In this regard, section 112(a) of the Act authorizes the Secretary of the Interior to prescribe regulations that are necessary and appropriate to carry out the purposes of the Act.

In addition to its responsibilities under the Act, the Service has further responsibilities under the 1973 International Agreement on the Conservation of Polar Bears (International Agreement). Article II of this International Agreement states that:

> Each Contracting Party [i.e., Canada, Denmark, Norway, Russia, and the U.S.] shall take appropriate action to protect the ecosystems of which polar bears are a part, with special attention to habitat components such as denning and feeding sites and migration patterns * * *

On December 17, 1991, BP Exploration (Alaska), Inc., for itself and on behalf of 14 other oil and gas related companies operating in Alaska, petitioned the Service to promulgate regulations pursuant to section 101(a)(5) of the Act to allow for the incidental, unintentional take of small numbers of polar bears and walrus during year-round oil and gas activities (i.e., exploration, development, and production) in the Beaufort Sea and adjacent northern coast of Alaska. Culminating a two-year process, the Service ultimately published a final rule in the **Federal Register** on November 16, 1993 (58 FR 60402), with final regulations initially effective beginning on December 16, 1993, for an 18-month period through June 16, 1995.

Consistent with the intent of the International Agreement, the final rule contains provisions that require the Service to develop and begin implementing a strategy, as part of our management plan process pursuant to section 115 of the Act, for the identification and protection of important polar bear habitats. Development of a strategy, as well as the initiation of steps to implement it, is necessary for the Beaufort Sea final regulations to be extended beyond their initial 18 month effective period (now set to expire on June 16, 1995) for a total 5-year period (through December 15, 1998) as authorized by the Act.

Initiating efforts to develop this draft Strategy, the Service on December 28, 1993, published a ''Notice of intent to prepare a polar bear habitat protection strategy, conduct public meetings, and request [for] information,'' in the **Federal Register** (58 FR 68659). Public meetings were held in Anchorage and Barrow, Alaska, on January 20 and 25, 1994, respectively, in order to provide background information and our proposed plan for development of a Strategy, and to solicit input from those in attendance. The formal public comment period associated with the Notice closed on February 11, 1994. Additional meetings subsequently were held in coastal Alaska communities and discussions have been conducted with Alaskan Native hunters to collect knowledge on polar bear habitat use. The Service has also consulted with the Marine Mammal Commission, signatories to the International Agreement, the Department of State, the State of Alaska, the oil and gas industry, conservation organizations, and academia. Information obtained during these various efforts has been incorporated into the draft Strategy.

The objective of this Strategy is to identify and enhance protection of important polar bear habitats in Alaska. This will enable the United States to address the ecosystem protection provisions of the Act and the Agreement, and to ensure oil and gas activities are conducted in a manner that minimizes adverse impacts on polar bears, their habitat, and on their availability for subsistence uses. Its goal is to maintain the integrity of the ecosystem upon which polar bears depend and to maintain polar bear populations at optimum sustainable population levels. The Service hereby announces the availability of its draft Strategy. Public review and comment is solicited.

The Service has prepared a draft Environmental Assessment (EA) in conjunction with the draft Strategy. A copy of the draft EA may be obtained from the Service's Office of Marine Mammal Management identified above in the **ADDRESSES** section.

Dated: February 17, 1995.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 95–4903 Filed 2–27–95; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting of Sub-committee on Design Competition Package.

SUMMARY: This notice announces an upcoming meeting of the Indian Memorial Advisory Sub-Committee producing the Design Competition Package. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE AND TIME: Thursday, March 2, 1995, 1:30—5:00 pm.; and Friday, March 3, 1995, 8:00—12:00 a.m., and 1:30—5:00 p.m.

ADDRESSES: American Institute of Architects (AIA), Denver Chapter Office, 1526 15th Street, Denver, Colorado 80202: (303) 446–2266.

THE AGENDA OF THIS MEETING WILL BE: Continue work begun by the Indian Memorial Advisory Committee and the National Park Service Support Team to produce a package that establishes the structure, rules, processes that will guide an upcoming national design competition for the creation of a memorial to the Indian participants in the 1876 conflict at Little Bighorn Battlefield National Monument, located at Crow Agency, Montana. This meeting will incorporate help from a select group of four architects under the sponsorship of the AIA. The architects will provide professional insight into formulating and managing design competitions and will help steer the final decisions of the sub-committee. The components of the meeting will consist of a review of project progress to date and discussion/decisions about; competition staging; advertising and promotional strategies; applicant registration, rules, and fees; design competition language; design criteria; base data needs and format; evaluation criteria; jury composition and scoring/selection alternatives; stipends for finalists; awards and commendations (amounts and categories); competition and design development schedule; and transforming the final design into a finished product.

SUPPLEMENTARY INFORMATION: The Advisory Committee was established under Title II of the Act of December 10, 1991, for the purpose of advising the Secretary on the site selection for a memorial in honor and recognition of the Indians who fought to preserve their land and culture at the Battle of Little Bighorn, on the conduct of a national design competition for the memorial, and ''* * * to ensure that the memorial designed and constructed as provided in section 203 shall be appropriate to the monument, its resources and landscape, sensitive to the history being portrayed and artistically commendable.''

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Booher, Indian Affairs Coordinator and Indian Advisory Committee Liaison, National Park Service, Rocky Mountain Regional Office, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225–0287 (303) 969–2511.

Dated: February 9, 1995.

Gerard Baker,

Superintendent, Little Bighorn Battlefield National Monument, Designated Federal Official, National Park Service.

[FR Doc. 95–4805 Filed 2–27–95; 8:45 am]

BILLING CODE 4310–70–M

Pea Ridge National Military Park Advisory Team; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Pea Ridge National Military Park Advisory Team will be held at 6:00 p.m., on Thursday, March 16, 1995, in the park visitor center auditorium, 15930 Highway 62, Garfield, Arkansas.

The Pea Ridge National Military Park Advisory Team was established under authority of section 3 of Public Law 91–383 (16 U.S.C. 1a–2(c)) to provide a forum for dialogue between community representatives and the Pea Ridge National Military Park on management issues affecting the park and the community.

The matter to be discussed at this meeting includes:

—Boundary Study

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first served basis. Any member of the public may file a written statement concerning the matters to be discussed with the superintendent, Pea Ridge National Military Park.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Steve Adams, Superintendent, Pea Ridge National Military Park, P.O. Box 700, Pea Ridge, AR 72751–0700, Telephone 501/451–8122.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Pea Ridge National Military Park.

Dated: February 21, 1995.

Jerry Rogers,

Regional Director, Southwest Region.

[FR Doc. 95–4803 Filed 2–27–95; 8:45 am]

BILLING CODE 4310–70–M

Trail of Tears National Historic Trail Advisory Council; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Trail of Tears National Historic Trail Advisory Council will be held March 30–31, 1995, at 8:30 a.m., at the Comfort Hotel River Plaza, 407 Chestnut Street, Chattanooga, Tennessee.

The Trail of Tears National Historic Trail Advisory Council was established pursuant to Public Law 100–192 establishing the Trail of Tears National Historic Trail to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, as well as administrative matters.

The matters to be discussed include:

—Plan Implementation Status
—Trail Association Status
—Cooperative Agreements Negotiation
—Fundraising

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with David Gaines, Superintendent.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact David Gaines, Superintendent, Long Distance Trails Group Office-Santa Fe, National Park Service, Southwest Region, P.O. Box 728, Santa Fe, New Mexico 87504–0728, telephone 505/988–6888. Minutes of the meeting will be available for public inspection at the office of the Superintendent, located in Room 358, Pinon Building, 1220 South St. Francis Drive, Santa Fe, New Mexico.

Dated: February 21, 1995.

Jerry Rogers,

Regional Director, Southwest Region.

[FR Doc. 95–4802 Filed 2–27–95; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 18, 1995. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by March 15, 1995.

Carol D. Shull,

Chief of Registration, National Register.

FLORIDA

Manatee County

Cortez Historic District, Bounded by Cortez Rd., 119th St. W. Sarasota Bay and 124th St. Ct. W. Tallahassee, 95000250

Monroe County

Florida Keys Memorial, US 1 at Mile Marker 81.5, Islamorada, 95000238

MONTANA

Missoula County

Christie, Thomas J., House, 401 McLeod Ave., Missoula, 95000251

OKLAHOMA

Caddo County

Caddo County Medicine Creek Archaeological District, Address Restricted, Binger vicinity, 95000235

Stevens Rock Shelter, Address Restricted, Gracemont vicinity, 95000237

Greer County

Manqum Community Building, 201 W. Lincoln, Mangum, 95000236

VIRGINIA

Amherst County

Sweet Briar College Historic District, Sweet Briar Dr., 5 mi. W of US 29, Amherst vicinity, 95000240

Chesterfield County

Falling Creek Ironworks Archaeological Site, Address Restricted, Richmond vicinity, 95000242

Clarke County

Glendale Farm, Jct. of VA 761 and VA 632, N side, Berryville vicinity, 95000244

Wickliffe Church, VA 608, E side, .5 mi. S of VA–WV line, Berryville vicinity, 95000241

King and Queen County

Farmington, 1.5 mi. SE of jct. of VA 14 and US 360, S side, St. Stephens Church vicinity, 95000243

Northumberland County

Anchorage, The, 1 mi. W of jct. of VA 605 and VA 669, N side, Kilmarnock vicinity, 95000245

Coan Baptist Church, VA 638, E of jct. with VA 612, Heathsville vicinity, 95000239

Richmond Independent City

Belle Isle, James R. at US1/301, Richmond (Independent City), 95000246

WASHINGTON

Asotin County

Grande Ronde River Bridge (Bridges of Washington State MPS), WA 129 over the Grande Ronde R., Asotin vicinity, 95000262

Cowlitz County

Jim Creek Bridge (Bridges of Washington State MPS), WA 503 over Jim Cr., Woodland vicinity, 95000258

Ferry County

Barstow Bridge (Bridges of Washington State MPS), US 395 and Co. Rd. 4061 over the Kettle R., Kettle Falls vicinity, 95000263

Columbia River Bridge at Kettle Falls (Bridges of Washington State MPS), US 395 over the Columbia R., Kettle Falls vicinity, 95000260

Lincoln County

Spokane River Bridge at Fort Spokane (Bridges of Washington State MPS), WA 25 over the Spokane R., Hunters vicinity, 95000261

Pierce County

Winnifred Street Bridge (Bridges of Washington State MPS), Winnifred St. over the Burlington Northern RR tracks, Ruston vicinity, 95000259

WEST VIRGINIA

Braxton County

Burnsville Bridge, Old Bridge St. over the Little Kanawha R., Burnsville, 95000254

Fayette County

Oak Hill Railroad Depot, Jct. of Virginia Ave. and Central Ave., Oak Hill, 95000255

Hancock County

People's Bank, 3383 Main St., Weirton, 95000253

Marshall County

Moundsville Commercial Historic District, Roughly, Jefferson Ave. from Second to Seventh Sts., Seventh from Jefferson to Lafayette Ave. and Lafayette S of Seventh, Moundsville, 95000252

WISCONSIN

Columbia County

Portage Industrial Waterfront Historic District, Jct. of E. Mullet and Dodge Sts., Portage, 95000257

Sheboygan County

Blackstock, Thomas M. and Bridget, House, 507 Washington Ct., Sheboygan, 95000256

Waukesha County

Merten, Charles, House, 929 Rosemary St., Waukesha, 95000248

Northwestern Hotel, 322 Williams St., Waukesha, 95000249

Winnebago County

First Methodist Church, 502 N. Main St., Oshkosh, 95000247

[FR Doc. 95–4804 Filed 2–27–95; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32607]

WFEC Railroad Company—Construction and Operation Exemption—Choctaw and McCurtain Counties, OK

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction and operation by the WFEC Railroad Company of a 14-mile line of railroad in Choctaw and McCurtain Counties, OK, subject to the results of our environmental review and further decision. The line will extend north from the Western Farmers Electric Cooperative's Hugo Generating Station loop track, cross a line of the Kiamichi Railroad Company, and then extend east to connect with a line of the Texas, Oklahoma & Eastern Railroad Company near Valliant, OK.

DATES: The exemption cannot become effective until after the environmental process has been completed. At that time, the Commission will issue a further decision addressing the environmental matters and establishing an exemption effective date, if appropriate. Petitions to reopen must be filed by March 20, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32607 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue NW., Washington, DC 20423; and (2) Petitioner's representative: John H. LeSeur, Slover & Loftus, 1224 Seventeenth St., NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, NW., Washington, DC 20423. Telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: February 10, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–4914 Filed 2–27–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–167 (Sub-No. 1144X)]

Consolidated Rail Corporation—Abandonment Exemption—in Cumberland and Dauphin Counties, PA

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1-mile line of railroad (the Cumberland Valley Railroad Bridge) spanning the Susquehanna River, between Harrisburg and Lemoyne, PA, located on a portion of track known as the Shippensburg Secondary, between milepost 0.5 and milepost 1.5, in Cumberland and Dauphin Counties, PA.

Conrail has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; (2) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (3) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 30, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by March 10, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 20, 1995,[4] with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: John J. Paylor, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 3, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 16, 1995.

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[4] Conrail indicates that, subject to the abandonment, they have contracted to sell the bridge to Capital Area Transit for the purpose of preserving it as a historical structure and for possible future public use.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–4874 Filed 2–27–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Association of Retail Travel Agents: Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States publishes below the comments received on the proposed Final Judgment in *United States* v. *Association of Retail Travel Agents,* Civil Action No. 94–2305 (PF), United States District Court for the District of Columbia, together with the response of the United States to the comments.

Copies of the response and the public comments are available on request for inspection and copying in room 3233 of the Antitrust Division, U.S. Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, DC. 20530, and for inspection at the Office of the Clerk of the United States District Court for the District of Columbia, United States Courthouse, Third Street and Constitution Avenue, NW., Washington, DC 20001.

Constance K. Robinson,

Director of Operations, Antitrust Division.

United States' Response to Public Comments

Introduction

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. Association of Retail Travel Agents, Defendant. [Civil No: 94–2305 (PF).]

Pursuant to section 2(d) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(d), the United States responds to public comments on the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

This action began on October 25, 1994, when the United States filed a Complaint alleging that the Association of Retail Travel Agents (hereinafter ''ARTA'') had entered into a contract, combination or conspiracy in restraint of trade in violation of section 1 of the Sherman Act (15 U.S.C. 1). The Complaint alleges that ARTA, a trade association, all of whose members are travel agents, and its members agreed on commission levels and other terms of trade on which to transact business with providers of travel services, and encouraged and participated in a group boycott with the intent to induce certain providers of travel services to agree to certain commission levels and practices. The Complaint seeks an order enjoining ARTA from inviting or encouraging such concerted action by travel agents.

Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment, a Competitive Impact Statement (''CIS'') and a Stipulation signed by ARTA for entry of the proposed Final Judgment. The proposed Final Judgment resolves the antitrust violation alleged in the Complaint by enjoining ARTA from inviting or encouraging travel agents to deal with travel providers only on agreed terms. This prohibition includes any agreements on Specified commission levels. The proposed Final Judgment also prohibits ARTA from adopting or disseminating any rules, policies, or statements that have the purpose or effect of advocating or encouraging such a concerted refusal to deal. Finally, the proposed Final Judgment requires ARTA periodically to inform its members, officers and board members on the requirements of the proposed Final Judgments and the antitrust laws.

As required by the APPA, on December 8, 1994, ARTA filed with this Court a description of written and oral communications on its behalf within the reporting requirements of section 15(g) of the APPA. A summary of the terms of the proposed Final Judgment and CIS, and directions for the submission of written comments relating to the proposal were published in the Washington Post for seven consecutive days beginning November 13, 1994. The proposed Final Judgment and CIS were published in the **Federal Register** on November 17, 1994. 59 FR 59422 (1994).

The 60-day period for public comments commenced on November 18, 1994 and expired on January 16, 1995. The United States has received one comment on the proposed Final Judgment, from the Independent Travel Agencies of America Association, Inc. (''ITAA''). That comment is being filed with the Court along with this response.

I. Legal Standards Governing the Court's Public Interest Determination

The procedural requirement of the Tunney Act are intended to eliminate secrecy from the consent decree process, to ensure that the Justice Department has access to information from the widest spectrum of persons with knowledge of the issues bearing on the consent decree, and to create a public record of the reasoning behind the government's consent to the decree. *Hearings on H.R. 9703, H.R. 9947, and S. 782, Consumer Decree Bills Before the Subcomm. on Monopolies and Commercial Law of the House Judiciary Committee*, 93rd Cong. 1st Sess. 40 (1977) (hereinafter ''Hearings'') (Statement of Senator Tunney.) *See also United States* v. *Western Electric Co.*, 993 F.2d 1572 (D.C. (Cir.), cert. denied, 114 S. Ct. 487 (1993); *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 148 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983).

The issue in a Tunney Act proceeding is whether the relief provided by the decree adequately protects the public interest. Although the Tunney Act requires the Court to make an independent determination that a decree is in the public interest, the Court's role is limited. Congress intended to preserve the viability of the consent decree process by avoiding lengthy and protracted judicial proceedings, and therefore, ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.'' *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981).

The Court's public interest inquiry must be conducted in light of the ''violations set forth in the complaint.'' 15 U.S.C. 16(b). The enforcement agency's decision about what charges to bring in its complaint is a matter generally ''committed to the agency's absolute discretion.'' *Heckler* v. *Chaney*, 470 U.S. 821, 831 (1985).

II. Public Comments

ITAA states that the proposed Final Judgment should be modified to require ARTA to agree (a) not to lobby or ''foster legislation'' that would discriminate against travel agencies that are not members of ARTA, and (b) not to use the press to discriminate, or to cause travel suppliers to discriminate, against non-ARTA travel agencies. ITAA's comment does not discuss how such remedies are related to, or would cure, the violations alleged in the Complaint, nor explain why the proposed remedies would otherwise be appropriate.

Upon careful consideration, the government does not believe there is any reason to modify the proposed Final Judgment. As noted, the Complaint in this case alleges a boycott by ARTA to induce travel suppliers to agree to commission rates and other terms. It does not allege any activity directed toward or utilizing legislation or the press. Nor does it allege any activity involving or directed toward travel agents activity involving or directed toward travel agents that are not ARTA members. Moreover, it does not appear that the relief proposed by ITAA would prevent or mollify the violations that are alleged in the complaint. The lack of a connection between ITAA's proposed relief and any alleged antitrust violation is particularly apparent here because attempts to petition a legislature, standing alone, are normally not subject to the antitrust laws. *See Eastern Railroads Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961).

III. Conclusion

The decree provides relief entirely adequate to redress the harm caused by defendant's conduct. Entry of the decree is in the public interest. ITAA's comment and this response will be published in the **Federal Register**.

Dated: February 14, 1995.

Anne K. Bingaman,

Assistant Attorney General.

Robert E. Litan,

Deputy Assistant Attorney General.

Respectfully submitted,

Roger W. Fones,

Donna N. Kooperstein,

Robert D. Young,

Nina B. Hale,

Attorneys, Transportation, Energy, and Agriculture Section, Antitrust Division, Department of Justice.

Certificate of Service

I hereby certify that I have caused a copy of the foregoing UNITED STATES RESPONSE TO PUBLIC COMMENTS to be served upon Alexander Anolik, 693 Sutter St., 6th Floor, San Francisco, CA 94102 by first class mail, postage prepaid.

Dated: February 14, 1995.

Robert D. Young,

Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice.

November 1,1994.

Mr. Roger Fones,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Judiciary Center Building, 555 4th Street, NW, Rm 9104, Washington, DC 20001

Re: United States of America v. Association of Retail Travel Agents Case Number 1:94CVO2305

Dear Mr. Fones: I am General Counsel of the Independent Travel Agencies of America Association. We represent in excess of 5000 independent travel agencies across the country. We at ITAA and many of our members have read with great interest your release of Tuesday October 25, 1994, ''Travel Agent Trade Association Agrees To End Anticompetitive Practices'' as well as the ''Complaint'' the ''Stipulation'' the proposed ''Final Judgment'' and the ''Competitive Impact Statement''.

In accordance with the Section V of the Competitive Impact Statement on behalf of this association and our members we would like to register our comments as the Final Judgment when implemented will have a great effect upon many, if not all, of our members.

The Final judgment should be modified as follows:

1. ARTA should agree not to lobby or foster legislation in any state that would discriminate in any way against non-ARTA travel agencies.

2. ARTA should agree not to use the press to discriminate against non-ARTA travel agencies.

3. ARTA should agree not to use the press to cause suppliers of travel not to want to work with non-ARTA travel agencies.

Thank you for your time and trouble and if you have any questions with regard to these proposed modifications please contact me directly.

Sincerely,

Alan A. Benjamin

[FR Doc. 95–4800 Filed 2–27–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities that have submitted attestations (Form ETA 9029 and explanatory statements) to one of four Regional Offices of DOL (Boston, Chicago, Dallas and Seattle) for the purpose of employing nonimmigrant alien nurses. A decision has been made on these organizations' attestations and they are on file with DOL.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, Department of Labor. The addresses of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process

Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–219–5263 (this is not a toll-free number).

Regarding the Complaint Process

Questions regarding the complaint process for the H–1A nurse attestation program will be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–219–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR parts 655, subpart D, and 29 CFR part 504 (January 6, 1994). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing and those which have been rejected.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staff. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities chief executive officer also are listed to aid public inquiries. In addition, attestations and explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under the attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 14th day of February 1995.

John M. Robinson,

Deputy Assistant Secretary, Employment and Training Administration.

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS

[FORM ETA–9029]

CEO-Name/Facility name/Address	State	Action date
ETA REGION 1 01/02/95 TO 01/08/95		
Maria Lapid, Abbott Manor Convalescent Center, 810 Central Ave., Plainfield, NJ 07060, 201–757–0696	NJ	01/05/95
ETA CONTROL NUMBER—1/216641 ACTION—ACCEPTED		
Martha R. Zeltner, Cranford Hall Nursing Home, 600 Lincoln Park East, Cranford, NJ 07016, 908–276–7100	NJ	01/06/95
ETA CONTROL NUMBER—1/216771 ACTION—ACCEPTED		
Maria Lapid, Green Acres Manor, 1931 Lakewood Road (Route 9), Toms River, NJ 08755, 201–286–2323	NJ	01/06/95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued
[FORM ETA–9029]

CEO-Name/Facility name/Address	State	Action date
ETA CONTROL NUMBER—1/216639 ACTION—ACCEPTED		
Thomas Bejgrowicz, Harbor View Health Care Center, 178–198 Ogden Avenue, Jersey City, NJ 07307, 201–963–1800.	NJ	01/05/95
ETA CONTROL NUMBER—1/216596 ACTION—ACCEPTED		
Karen Lentine, Maple Glen/Fair Lawn Nursing Ctr., 105 Saddle River Road, Fair Lawn, NJ 07410, 201–797–9522	NJ	01/05/95
ETA CONTROL NUMBER—1/216598 ACTION—ACCEPTED		
Isaac Schwartz, B&H Staffing, Inc., 239 Havemeyer Street, Brooklyn, NY 11211, 718–599–2227	NY	01/05/95
ETA CONTROL NUMBER—1/216612 ACTION—ACCEPTED		
Gilbert Preira, Daughters of Jacob Geriatric Ctr., 1160 Teller Avenue, Bronx, NY 10456, 718–293–1500	NY	01/05/95
ETA CONTROL NUMBER—1/216637 ACTION—ACCEPTED		
ETA REGION 1 **01/16/95 TO 01/22/95**		
Marnya P. Borgstrom, Yale New Haven Hospital, Inc., Human Res., Recruitment & Staffing, 20 York Street, New Haven, CT 06504, 203–785–2291.	CT	01/19/95
ETA CONTROL NUMBER—1/217030 ACTION—ACCEPTED		
Lee Hoffman, All Care Visiting Nurses of Lynn, 16 City Hall Square, Lynn, MA 01901, 598–2454	MA	01/19/95
ETA CONTROL NUMBER—1/216837 ACTION—ACCEPTED		
Trifonia Floro, HPN Staffing Services, Inc., 95–20 63rd Road, Suite 12, Rego Park, NY 11374, 718–997–1080	NY	01/19/95
ETA CONTROL NUMBER—1/216920 ACTION—ACCEPTED		
Rhetta Felton, Kings Highway Surgi-Center, 3131 Kings Highway, Brooklyn, NY 11234, 718–258–8777	NY	01/19/95
ETA CONTROL NUMBER—1/217031 ACTION—ACCEPTED		
Krishin Bhatia, Victory Memorial Hospital, 699 92nd Street, Brooklyn, NY 11228–3625, 718–567–1286	NY	01/19/95
ETA CONTROL NUMBER—1/216852 ACTION—ACCEPTED		
ETA REGION 10 **01/02/95 TO 01/08/95**		
Marietta F. Subbert, Nurses 'R' Special, 3400 W. 6th Street Suite 302, Los Angeles, CA 90020, 213–383–7384	CA	01/06/95
ETA CONTROL NUMBER—10/206032 ACTION—ACCEPTED		
Robert E. Murray, Robert E. Murray, 13962 Holt Avenue, Santa Ana, CA 82705, 714–567–7140	CA	01/05/95
ETA CONTROL NUMBER—10/206112 ACTION—ACCEPTED		
ETA REGION 5 **01/09/95 TO 01/15/95**		
Herman Katz, Heritage Nursing Center, Inc., P.O. Box 6179 1315 Curt Drive, Champaign, IL 61826–6179, 217–352–5707.	IL	01/13/95
ETA CONTROL NUMBER—5/235713 ACTION—ACCEPTED		
Mary Niederhauser, Westside Community Hospital, Inc., d/b/a Sacred Heart Hospital 3240, West Franklin Boulevard, Chicago, IL 60624, 312–722–3020.	IL	01/13/95
ETA CONTROL NUMBER—5/235717 ACTION—ACCEPTED		
ETA REGION 5 **01/16/95 TO 01/22/95**		
Patricia H. Decker, Medical Express, Inc. 1650 38th Street, Boulder, CO 80301, 303–449–7470	CO	01/17/95
ETA CONTROL NUMBER—5/235737 ACTION—ACCEPTED		
Joseph Liberman, Westwood Manor, Inc., 2444 W. Touhy, Chicago, IL 60645, 312–274–7705	IL	01/17/95
ETA CONTROL NUMBER—5/235733 ACTION—ACCEPTED		
ETA REGION 5 **01/23/95 TO 01/29/95**		
Sheila Bogen, Amboy Rehabilitation & Nursing Ctr., 15 Wasson Road, Amboy, IL 61310, 815–857–2550	IL	01/25/95
ETA CONTROL NUMBER—5/236440 ACTION—ACCEPTED		
Lois Rubon, Brentwood North Nursing & Rehab., ATTN: Sheldon Novoselsky 3705, Deerfield Road, Riverwoods, IL 60015, 708–459–1200.	IL	01/23/95
ETA CONTROL NUMBER—5/236421 ACTION—ACCEPTED		
Sheila Bogen, Carrington Care Center, LTD., 759 Kane Street, South Elgin, IL 60177, 708–697–3310	IL	01/25/95
ETA CONTROL NUMBER—5/236442 ACTION—ACCEPTED		
Judy Pitzele, Glenview Terrace Nursing Center, ATTN: Mark Hollander 1511, Greenwood Road, Glenview, IL 60025, 708–729–9090.	IL	01/23/95
ETA CONTROL NUMBER—5/236403 ACTION—ACCEPTED		
R. Bryan Livings, Lake Park Center, 919 Washington Park, Waukegan, IL 60085, 708–623–9100	IL	01/23/95
ETA CONTROL NUMBER—5/236417 ACTION—ACCEPTED		
James Samatas, Lexington Hlth Care of Lake Zurich, 900 S. Rand Road, Lake Zurich, IL 60047, 708–726–1200	IL	01/23/95
ETA CONTROL NUMBER—5/236420 ACTION—ACCEPTED		
Susan Simonsen, Lydia Healthcare Center, 13901 South Lydia, Robbins, IL 60472, 708–385–8700	IL	01/23/95
ETA CONTROL NUMBER—5/236405 ACTION—ACCEPTED		
James Samatas, Merit Home Health Care, Inc., d/b/a Merit Private Care Services, 1300 S. Main Street, Lombard, IL 60148, 708–620–2644.	IL	01/25/95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued
[FORM ETA–9029]

CEO-Name/Facility name/Address	State	Action date
ETA CONTROL NUMBER—5/236444 ACTION—ACCEPTED		
James Samatas, Merit Home Health Care, Inc., d/b/a Merit Private Care Services, 1300 S. Main Street, Lombard, IL 60148, 708–620–2644.	IL	01/25/95
ETA CONTROL NUMBER—5/236446 ACTION—ACCEPTED		
Sheila Bogen, Ottawa Pavilion Ltd., 800 E. Center Street, Ottawa, IL 61350, 815–434–7144	IL	01/25/95
ETA CONTROL NUMBER—5/236441 ACTION—ACCEPTED		
Tamara Abell, Plum Grove of Palatine, Limited, 24 South Plum Grove Road, Palatine, IL 60067, 708–358–0311	IL	01/23/95
ETA CONTROL NUMBER—5/236404 ACTION—ACCEPTED		
Mrs. Samuel Brandman, Village Nursing Home, 9000 S. Lavergne Avenue, Skokie, IL 60077, 708–679–2322	IL	01/23/95
ETA CONTROL NUMBER—5/236406 ACTION—ACCEPTED		
Carmen Colandrea, Bryant Woods Inn, Inc., 10461 Waterfowl Terrace, Columbia, MD 21044–2463, 410–995–1100	MD	01/25/95
ETA CONTROL NUMBER—5/236448 ACTION—ACCEPTED		
Carrie Maurer, Presbyterian Village Redford, 17383 Garfield, Redford, MI 48240, 313–531–6874	MI	01/23/95
ETA CONTROL NUMBER—5/236419 ACTION—ACCEPTED		
John Quirk, General Healthcare Resouces, Inc., 525 Plymouth Road Suite 308, Plymouth Meeting, PA 19462, 610–834–1122.	PA	01/25/95
ETA CONTROL NUMBER—5/236447 ACTION—ACCEPTED		
ETA REGION 6 01/02/95 TO 01/08/95		
Ms. Ross Hooper, Crittenden Memorial Hospital, 200 Tyler St. P.O. Box 2248, West Memphis, AR 72301, 501–732–7740.	AR	01/04/95
ETA CONTROL NUMBER—6/223878 ACTION—ACCEPTED		
Ms. Debra Turiciano, National Medical Care, Inc., 641 Harkle Road, Santa Fe, NM 87501, 505–982–9427	NM	01/04/95
ETA CONTROL NUMBER—6/223893 ACTION—ACCEPTED		
Mr. Joseph Oddis, Spartanburg Reg. Medical Center, 101 East Wood Street, Spartanburg, SC 29303, 803–560–6937.	SC	01/05/95
ETA CONTROL NUMBER—6/224032 ACTION—ACCEPTED		
Arel Malixi, Bellaire Physical Therapy Center, 8282 Bellaire, Ste. 124, Houston, TX 77036, 713–981–5200	TX	01/04/95
ETA CONTROL NUMBER—6/224001 ACTION—ACCEPTED		
Mr. J. Lindsey Bradley, Sr., Mother Frances Hospital, 800 East Dawson, Tyler, TX 75701, 903–531–4476	TX	01/05/95
ETA CONTROL NUMBER—6/224004 ACTION—ACCEPTED		
W. Taft Martin, Reitement Care Center of Hempstead, 1111 San Antonio Street, Hempstead, TX 77445, 409–826–3382.	TX	01/04/95
ETA CONTROL NUMBER—6/223894 ACTION—ACCEPTED		
Mr. David W. Cottey, Silsbee Doctors Hospital, P.O. Box 1208 Hwy 418, Silsbee, TX 77656, 409–385–1531	TX	01/05/95
ETA CONTROL NUMBER—6/224118 ACTION—ACCEPTED		
Ms. Judi H. Guthrie, Warm Springs Rehab Hosp., P. O. Box 58, Gonzales, TX 78629, 210–672–6592	TX	01/05/95
ETA CONTROL NUMBER—6/224150 ACTION—ACCEPTED		
ETA REGION 6 01/09/95 TO 01/15/95		
Mr. Jeff Mukamal, Brookshire Nursing Center, 300 Meadow Land Drive, Hillsborough, NC 27278, 919–644–6714	NC	01/10/95
ETA CONTROL NUMBER—6/224242 ACTION—ACCEPTED		
Ms. Magdeline Ulrich Allen, Always Caring Home Care, 1302 Montana, Suite A, El Paso, TX 79902, 915–545–4663	TX	01/10/95
ETA CONTROL NUMBER—6/224247 ACTION—ACCEPTED		
Mr. Gary L. Whatley, Memorial Medical Ctr of East TX, P.O. Box 1447 1201 Frank, Lufkin, TX 75902–1447, 409–639–7789.	TX	01/10/95
ETA CONTROL NUMBER—6/224243 ACTION—ACCEPTED		
ETA REGION 6 01/16/95 TO 01/22/95		
Dr. Marion G.L. Faldas, AVHFHE Biomedical Research, 400 NE 100 St, Miami Shores, FL 33137, 305–751–1811	FL	01/19/95
ETA CONTROL NUMBER—6/224378 ACTION—ACCEPTED		
Mr. John Hymans, Eagle Crest, 2802 Parental Home Road, Jacksonville, FL 32216, 904–721–0088	FL	01/19/95
ETA CONTROL NUMBER—6/224377 ACTION—ACCEPTED		
Ms. Alice Dessasau, The Ambrosia Home, 1709 Taliaferro Avenue, Tampa, FL 33602, 813–223–4623	FL	01/19/95
ETA CONTROL NUMBER—6/224423 ACTION—ACCEPTED		
H.J. Blessitt, South Sunflower County Hospital, 121 East Baker Street, Indianola, MS 38751, 601–887–5235	MS	01/19/95
ETA CONTROL NUMBER—6/224564 ACTION—ACCEPTED		
Mr. Robert B. Evans, East Texas Medical Center, 1000 S. Beckham, Tyler, TX 75701, 903–531–8016	TX	01/20/95
ETA CONTROL NUMBER—6/224565 ACTION—ACCEPTED		
Mr. Alan D. Holmes, Frio Hospital, 320 Berry Ranch Road, Pearsall, TX 78061, 210–334–3617	TX	01/20/95
ETA CONTROL NUMBER—6/225017 ACTION—ACCEPTED		
Mr. Stephen Cutshaw, MeadowGreen Restorative Care Cntr., 8383 Meadow Road, Dallas, TX 75231, 214–369–7811.	TX	01/20/95

DIVISION OF FOREIGN LABOR CERTIFICATIONS, HEALTH CARE FACILITY ATTESTATIONS—Continued
[FORM ETA–9029]

CEO-Name/Facility name/Address	State	Action date
ETA CONTROL NUMBER—6/224424 ACTION—ACCEPTED		
ETA REGION 6 01/23/95 TO 01/29/95		
Ms. Nori-Ann de la Cruz, Argus Home Health Care, Inc., P.O. Box 280213, Tampa, FL 33682–0213, 813–971–9416 ETA CONTROL NUMBER—6/224686 ACTION—ACCEPTED	FL	01/26/95
Ms. Margaret Brock, Calhoun Liberty Hospital Assoc., 424 Burns Avenue, Blountstown, FL 32424, 904–674–5411 ETA CONTROL NUMBER—6/224785 ACTION—ACCEPTED	FL	01/26/95
Ms. Barbara Dotson, De Bary Manor, 60 North Highway 1792 P.O. Box 248, De Bary, FL 32713, 407–668–4426 ETA CONTROL NUMBER—6/224683 ACTION—ACCEPTED	FL	01/26/95
Mr. Patrick T. DeBellis, DeBellis Associates, Inc., 400 S. Federal Highway Suite 411, Boynton Beach, FL 33435, 407–735–3706. ETA CONTROL NUMBER—6/224584 ACTION—ACCEPTED	FL	01/25/95
Ms. Samira K. Beckwith, Hope Hospice, 8290 College Pky., Fort Myers, FL 33919, 813–482–4673 ETA CONTROL NUMBER—6/224728 ACTION—ACCEPTED	FL	01/26/95
Ms. Rosemary Wedderspoon, IHS at Greenbriar, 9820 N. Kendall Drive, Miami, FL 33176, 305–271–6311 ETA CONTROL NUMBER—6/224682 ACTION—ACCEPTED	FL	01/26/95
Mr. Victor J. Maya, Kendall Regional Medical Center, 11750 Bird Road, Miami, FL 33175, 305–233–3000 ETA CONTROL NUMBER—6/224681 ACTION—ACCEPTED	FL	01/26/95
Jackie Dykes, Landmark Health Care, Inc., 1510 Crozier Street, Blountstown, FL 32424, 904–674–5464 ETA CONTROL NUMBER—6/224729 ACTION—ACCEPTED	FL	01/26/95
Ms. Lynette Goux, Pontchartrain Health Care, 1401 Highway 190 P.O. Box 338, Mandeville, LA 70470–0338, 504–626–8581. ETA CONTROL NUMBER—6/224656 ACTION—ACCEPTED	LA	01/26/95
Corazon Aquino, Clover Health Resources, Inc., 601 North Oak Avenue, Ruleville, MS 38771, 601–756–2748 ETA CONTROL NUMBER—6/224653 ACTION—ACCEPTED	MS	01/26/95
Mr. Robert Greer, Heritage House Nursing Center, 3103 Wisconsin Ave., Vicksburg, MS 39180, 601–638–1514 ETA CONTROL NUMBER—6/224684 ACTION—ACCEPTED	MS	01/26/95
Ms. Marsha W. Kaufman, Aston Park Health Care Center, Inc., 163 Stratford Court HSI: Attn: Bea, Harford, Winston-Salem, NC 27103, 704–253–4437. ETA CONTROL NUMBER—6/224652 ACTION—ACCEPTED	NC	01/26/95
Mr. Nedro G. Parker, Allied Health Network, Inc., 4506 La Branch, Houston, TX 77004–4925, 713–522–6661 ETA CONTROL NUMBER—6/224621 ACTION—ACCEPTED	TX	01/25/95
Sister Electa, Bethania Regional Health Care Ctr., 1600 11th Street, Wichita Falls, TX 76301, 817–720–0268 ETA CONTROL NUMBER—6/224563 ACTION—ACCEPTED	TX	01/25/95
Mr. Tim Schnider, Denton Good Samaritan Village, 2500 Hinkle Drive, Denton, TX 75201, 817–383–2651 ETA CONTROL NUMBER—6/224655 ACTION—ACCEPTED	TX	01/26/95
Ms. Connie Biffle, Gracy Woods Nursing Center, 12021 Metric Blvd., Austin, TX 78758, 512–339–7587 ETA CONTROL NUMBER—6/224786 ACTION—ACCEPTED	TX	01/26/95
Mr. Gary Light, JF Medical, 1401 9th Street, Lubbock, TX 79401, 806–747–7445 ETA CONTROL NUMBER—6/224620 ACTION—ACCEPTED	TX	01/25/95
Mr. Steve Rush, The Traymore Nursing Center, 7500 Lemmon Ave., Dallas, TX 75209, 214–358–3131 ETA CONTROL NUMBER—6/224787 ACTION—ACCEPTED	TX	01/26/95
Ms. Emeline C. Gonzales, US 59 PT Specialist, Inc., 6776 SW Freeway, Ste. 557, Houston, TX 77074, 713–783–8484. ETA CONTROL NUMBER—6/224590 ACTION—ACCEPTED	TX	01/25/95
ETA REGION 6 01/30/95 TO 02/05/95		
Ms. Lottie Tennant, Healthy Lifestyles, Inc., 1304 N. 18th Street, Monroe, LA 71201, 318–387–4878 ETA CONTROL NUMBER—6/224949 ACTION—ACCEPTED	LA	02/01/95
Ms. Julia George, Starmount Villa, 109 South Holden Road, Greensboro, NC 27407, 910–292–5390 ETA CONTROL NUMBER—6/224788 ACTION—ACCEPTED	NC	02/01/95
Mr. Ray White, P.H.E.O. Medical Center, Inc., 1400 18th Avenue South, Nashville, TN 37212–2893, 615–383–4715 ETA CONTROL NUMBER—6/224843 ACTION—ACCEPTED	TN	02/01/95
Kendall Turton, St. Joseph Hospital, 2801 Franciscan Drive, Bryan, TX 77802, 409–776–2515 ETA CONTROL NUMBER—6/224879 ACTION—ACCEPTED	TX	02/01/95

[FR Doc. 95–4887 Filed 2–27–95; 8:45 am]
BILLING CODE 4510–30–P

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 95–14; Exemption Application No. D–09743, et al.]

Grant of Individual Exemptions; Sammons Enterprises, Inc. Employee Stock Ownership Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Sammons Enterprises, Inc., Employee Stock Ownership Trust (the Trust), Located in Dallas, TX; [Prohibited Transaction Exemption 95–14; Exemption Application No. D–09743]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) by certain accounts (the Prior Plan Accounts) in the Trust of certain limited partnership interests (the Limited Partnership Interests) and an undivided interest in certain real property (the Property Interest; collectively, the Interests) to Otter, Inc., a party in interest with respect to the Trust.

This exemption is conditioned upon the following requirements: (1) All terms and conditions of the Sale are at least as favorable to the Prior Plan Accounts as those obtainable in an arm's length transaction; (2) the Sale is a one-time cash transaction; (3) the Prior Plan Accounts are not required to pay any commissions, costs or other expenses in connection with the Sale; (4) the Prior Plan Accounts receive a sales price equal to the greater of: (a) the fair market value of the Interests as determined by qualified, independent appraisers; or (b) the Prior Plan Accounts' aggregate costs of acquiring and holding the Interests; (5) Churchill Management Corporation (Churchill) determines that the Sale is appropriate for the Prior Plan Accounts and is in the best interests of the Prior Plan Accounts and their participants and beneficiaries; (6) the Prior Plan Accounts, prior to the Sale, obtain the written consent of the general partner of each of the limited partnerships involved with respect to the sale of the Limited Partnership Interests; and (7) the other partners of such limited partnerships, as per the limited partnership agreements, are given the right of first refusal with respect to the Limited Partnership Interests.

Written Comments: In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments on the proposed exemption within forty-five days from the date of publication of the Notice in the **Federal Register**. All written comments were to have been received by the Department by January 12, 1995. The Department received two written comments and no requests for a hearing.

The first comment was submitted on behalf of Texas Commerce Bank, N.A., the trustee of the Trust (the Trustee). The Trustee states that Churchill is the investment manager with respect to the assets of the Prior Plan Accounts. As such, the Trustee does not have the sole investment discretion with respect to the assets of the Prior Plan Accounts. As a result, the following changes must be made to the Notice:

(1) The references to ''the trustee of the Trust'' or ''Trustee'' found in Condition #5 of the Notice, the entire second paragraph of Representation #3 and subsection (e) of Representation #7 of the Summary of Facts and Representations (the Summary) should be replaced with ''Churchill.''

(2) The third sentence of Representation #2 of the Summary is stricken and replaced with ''Churchill, as investment manager, has discretion with respect to the assets of the Prior Plan Accounts. The Trustee has investment discretion with respect to all remaining assets of the Trust.''

The Department concurs with the proposed modifications and, accordingly, amends the language of the Notice.

The second comment was submitted on behalf of the applicants. The issues addressed in the comment and the Department's responses are summarized as follows:

(1) The first sentence of Representation #1 of the Summary names the sponsored plan as the ''Sammons Employee Stock Ownership Plan.'' The correct name of such plan is the ''Sammons Enterprises, Inc. Employee Stock Ownership Plan.''

(2) The third sentence of the first paragraph of Representation #3 of the Summary states that, effective 1991, the TMIS Plan merged into the Plan. The correct year of such merger is 1989.

(3) The first sentence of the first paragraph of Representation #4 of the Summary states that the Plan has a 14.5 percent Class B interest in Sunbelt City, Ltd. The correct name of such partnership is ''Sunbelt Oklahoma City, Ltd.''

(4) The first sentence of the third paragraph of Representation #4 should be revised as follows: ''Annual valuations of interests in both partnerships are furnished to investors by Churchill Management Corporation (Churchill), the investment adviser to the Prior Plan Accounts and for most of

the other limited partners of the Limited Partnerships.''

(5) The last sentence in the fourth paragraph of Representation #5 states that the Liabilities increased by $350,000 to $842,000. The correct amount of the increase in the Liabilities was $225,000 to $842,000.

The changes described above are hereby incorporated into the exemption as granted. After consideration of the entire record, including the comments, the Department has determined to grant the exemption. In this regard, the comments have been included as part of the public record for the exemption application. The complete application file is made available for public inspection in the Public Documents Room of the Pensions and Welfare Benefits Administration, room N–5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 28, 1994 at 59 FR 60839.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

American Express Incentive Savings Plan (the Plan) Located in New York, NY; [Prohibited Transaction Exemption 95–15; Exemption Application No. D–09813]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the extensions of credit (the Loans) to the Plan by American Express Company (the Employer), the sponsor of the Plan, with respect to two guaranteed investment contracts (the GICs) issued by Confederation Life Insurance Company (Confederation); (2) the Plan's potential repayment of the Loans; and (3) the potential purchase of the GICs from the Plan by the Employer for cash; provided the following conditions are satisfied:

(A) All terms and conditions of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with unrelated parties;

(B) No interest and/or expenses are paid by the Plan in connection with the transactions;

(C) The proceeds of the Loans are used solely in lieu of payments due from Confederation with respect to the GICs;

(D) Repayment of the Loans will be restricted to the GIC Proceeds, defined as the cash proceeds obtained by the Plan from or on behalf of Confederation with respect to the GICs;

(E) Repayment of the Loans will be waived to the extent that the Loans exceed the GIC Proceeds; and

(F) In any sale of he GICs to the Employer, the Plan will receive a purchase price which is no less than the fair market value of the GICs as of the sale date, and no less than the GICs' accumulated book value, defined as the total principal deposits plus accrued interest at the rates guaranteed by the GICs, less previous withdrawals and any Loans made pursuant to this exemption, as of the sale date.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 19, 1994 at 59 FR 65397.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Bermo, Inc. Profit Sharing Plan and Trust (the Plan), Located in Circle Pines, MN; [Prohibited Transaction Exemption 95–16; Application No. D–09826]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the series of loans (the Loans), originated within a five year period, by the Plan to Bermo, Inc. (the Employer), a party in interest with respect to the Plan, provided that the following conditions are met:

(a) The total amount of outstanding Loans shall not exceed 25 percent of the Plan's total assets at any time during the transaction;

(b) All terms and conditions of the Loans are at least as favorable to the Plan as those which the Plan could obtain in an arm's length transaction with an unrelated third party;

(c) Each loan will be: (1) For a maximum term of forty-eight months fully amortized and payable in equal monthly installments of principal and interest, (2) the Loan proceeds shall be used exclusively by the Employer to purchase new equipment (the Equipment) used by the Employer in the course of its business, (3) collateralized by the Equipment and other assets owned by the Employer such that at all times each Loan will be collateralized in an amount equal to at least 200% of the outstanding balance of such Loan, (4) equal to no more than 80% of the purchase price of the Equipment financed, and (5) guaranteed personally by Fred Berdass, the principal shareholder of the Employer.

(d) The value of the collateral offered by the Employer will be determined by a qualified independent appraiser;

(e) Prior to the granting of each Loan, an independent qualified fiduciary determines, on behalf of the Plan, that each Loan is feasible and in the best interests of the Plan and protective of the Plan and its participants and beneficiaries;

(f) The independent fiduciary will conduct a review of the terms and conditions of the exemption and the Loans, including the applicable interest rate, the sufficiency of the collateral, the financial condition of the Employer and compliance with the 25 percent of the Plan asset maximum total Loan amount prior to approving each disbursement under the Loan agreement;

(g) The independent fiduciary will monitor the terms and conditions of the exemption and the Loans; and

(h) The independent fiduciary is authorized to take whatever action is appropriate to protect the Plan's rights throughout the duration of the exemption and throughout the duration of any Loan granted pursuant to this exemption.

Temporary Nature of Exemption

The exemption is temporary and will expire five years from February 28, 1995. Subsequent to the expiration of this exemption, the Plan may hold any Loans originated during this five year period until the Loans are repaid or otherwise terminated.

For a more complete statement of the facts and representation supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 19, 1994 at 59 FR 65398.

FOR FURTHER INFORMATION CONTACT: Allison K. Padams of the Department, telephone (202) 219–8971.

Jerome Companies Profit Sharing Plan and Trust (the Plan), Located in Barron, WI [Prohibited Transaction Exemption 95–17; Exemption Application No. D–09829]

Exemption

The restrictions on sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) of the

Guaranteed Investment Contract #62043 (the GIC) issued by Confederation Life Insurance Company (Confederation), a Canadian insurance corporation, by the Plan to Jerome Food, Inc. (the Employer), a Wisconsin corporation, the sponsoring employer and a party in interest with respect to the Plan: provided that (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expense from the Sale; and (3) the Plan receives as consideration from the Sale the greater of either the fair market value of the GIC as determined on the date of the Sale, or the principal amount of $500,000 plus simple interest accrued at the rate of 9.03 percent per annum on the principal amount of the GIC for the period from January 25, 1994, to the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 4, 1995, at 60 FR 487.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Employee Profit Sharing-Savings Plan and Trust Agreement of Modern Globe, Inc. (the Plan), Located in Wyomissing, PA [Prohibited Transaction Exemption 95–18; Exemption Application No. D–09893]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall apply to the cash sale (the Sale) of the Guaranteed Investment Company Contract No. 62580 (the GIC), issued by Confederation Life Insurance of Atlanta, Georgia (Confederation), by the Plan to VF Corporation, a Pennsylvania corporation (the Employer), the sponsoring employer and a party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expense from the Sale; and (3) the Plan receives as consideration from the Sale the greater of either the fair market value of the GIC as determined on the date of the Sale, or an amount that is equal to the total amount expended by the Plan when acquiring the GIC, plus all interest accruing under the terms of the GIC until date of Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 4, 1995, at 60 FR 491.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Employees' Savings Plan of Bassett-Walker, Inc., Located in Martinsville, VA [Prohibited Transaction Exemption 95–19; Exemption Application No. D–09894]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) of the Guaranteed Investment Contract No. 62012 (the GIC), issued by Confederation Life Insurance Company of Atlanta, Georgia (Confederation), by the plan to VF Corporation, a Pennsylvania corporation, a party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan experiences no loss nor incurs any expense from the Sale; and (3) the Plan receives as consideration from the Sale the greater of either the fair market value of the GIC as determined on the date of the Sale, or $1.5 million, the principal amount of the GIC, plus simple interest accrued at the rate of 8.7 percent per annum on the principal amount of the GIC for the period from April 4, 1994, to the date of the Sale.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 4, 1995, at 60 FR 489.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately described all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 23rd day of February, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 95–4888 Filed 2–27–95; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Preservation; Meeting

Notice is hereby given that the National Archives Advisory Committee on Preservation will meet Friday, March 31, 1995. The meeting will be held from 9:00 a.m. to 3:00 p.m. on Friday, March 31, 1995, in Room 105 of the National Archives Building, 7th and Pennsylvania Avenue NW., Washington, DC 20408.

The agenda for the meeting will be:

1. Charters of Freedom monitoring program
2. Review of Charters' encasement system
3. Condition of encasement glass
4. Risk analysis and options

This meeting is open to the public. For further information, contact Alan Calmes on (301) 713–7403.

Dated: February 15, 1995.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 95–4799 Filed 2–27–95; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guides and Standard Review Plan Sections; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment drafts of five guides planned for its Regulatory Guide Series along with drafts of three sections of NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants.'' The Regulatory Guide Series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

These draft guides and draft standard review plans are in support of proposed amendments to 10 CFR parts 50, 52, and 100 (59 FR 52255) that were proposed to update the criteria used in decisions regarding power reactor siting, including geologic, seismic, and earthquake engineering considerations for future nuclear power plants. The draft guides are intended for Division 1, ''Power Reactors,'' and Division 4, ''Environmental and Siting.''

DG–1932, ''Identification and Characterization of Seismic Sources and Determination of Safe Shutdown Earthquake Ground Motion,'' is being developed to provide general guidance on procedures acceptable to the NRC staff on conducting geological, geophysical, seismological, and geotechnical investigations; identifying and characterizing seismic sources; conducting probabilistic seismic hazard analyses; and determining the safe shutdown earthquake ground motion for a nuclear power plant.

DG–1033, the Third Proposed Revision 2 to Regulatory Guide 1.12, ''Nuclear Power Plant Instrumentation for Earthquakes,'' is being developed to describe seismic instrumention type, location, operability, and characteristics that is acceptable to the NRC staff for satisfying the requirements of the Commission's regulations.

DG–1034, ''Pre-Earthquake Planning and Immediate Nuclear Power Plant Operator Postearthquake Actions,'' is being developed to provide guidance acceptable to the NRC staff for a timely evaluation after an earthquake of the recorded seismic instrumentation data and to determine whether plant shutdown is required.

DG–1035, ''Restart of Nuclear Power Plant Shut Down by a Seismic Event,'' is being developed to provide guidance acceptable to the NRC staff for performing inspections and tests of nuclear power plant equipment and structures prior to restart of a plant that has been shut down by a seismic event.

DG–4004, the Second Proposed Revision 2 to Regulatory Guide 4.7, ''General Site Suitability Criteria for Nuclear Power Stations,'' is being developed to provide guidance on the major site characteristics related to the public health and safety and environmental issues that the NRC staff considers in determining the suitability of sites for nuclear power stations.

Proposed Revision 3 of Draft Standard Review Plan Section 2.5.1, ''Basic Geologic and Seismic Information,'' is being developed to describe the kinds of basic geological, seismological, and geophysical information and review procedures necessary to evaluate a nuclear power station site.

The Second Proposed Revision 3 of Draft Standard Review Plan Section 2.5.2, ''Vibratory Ground Motion,'' is being developed to describe procedures to assess the ground motion potential of seismic sources at the site and to assess the safe shutdown earthquake.

The Proposed Revision 3 of Draft Standard Review Plan Section 2.5.3, ''Surface Faulting,'' is being developed to describe the geosciences information and review procedures needed to assess the significance of faults to the suitability of the site.

These drafts are being issued to involve the public in the early stages of the development of regulatory positions in these areas. These drafts have not received complete staff review and do not represent official NRC staff positions.

Public comments are being solicited on these drafts. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules and Review and Directives Branch, Division of Freedom of Information and Publication Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC. Comments will be most helpful if received by May 12, 1995.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the rulemaking are also available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communications software parameters should be set as follows: Parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC NUREGs and RegGuides for Comment subsystems can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' For further information about options available for NRC at FedWorld, consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and databases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS: 703–321–8020; Telnet via Internet: fedworld.gov (192.239.93.3); File Transfer Protocol (FTP) via Internet: ftp.fedworld.gov (192.239.92.205); and World Wide Web using: http://www.fedworld.gov (this is the Uniform Resource Locator (URL)).

If using a method other than the toll free number to contact Fedworld, the NRC subsystem will be addressed from the main Fedworld menu by selecting the ''F—Regulatory, Government Administration and State Systems,'' then selecting ''A—Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ''A—U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. You can also go directly to the NRC Online area by typing ''/go nrc'' at a FedWorld Command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Main Menu. However, if you access NRC at Fedworld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system. For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with items for inclusion in guides or standard review plan sections or improvements in all published documents are encouraged at any time.

Regulatory guides and the Standard Review Plan are available for inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC. Requests for single copies of draft documents (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific division should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides and standard review plans are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 13 day of February 1995.

For the Nuclear Regulatory Commission.

Themis P. Speis,

Deputy Director, Office of Nuclear Regulatory Research.

[FR Doc. 95–4873 Filed 2–27–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–416]

Energy Operations, Inc. et al.; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 120 to Facility Operating License No. NPF–29 issued to Energy Operations, Inc. (the licensee), which revised the Technical Specifications for operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi. The amendment is effective as of the date of issuance.

The amendment modified the technical specifications by replacing the existing technical specifications in their entirety with a new set of technical specifications based on NUREG–1434, ''Improved BWR–6 Technical Specifications,'' dated September 1992. This amendment was based on the licensees submittal of October 15, 1993, as supplemented by letters dated April 15, and November 10, 1994, and February 10 and 14, 1995.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 12, 1994, (59 FR 17404) and April 21, 1994, (59 FR 19031). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (60 FR 8739, dated February 15, 1995).

For further details with respect to the action see (1) the application for amendment dated October 15, 1993, and supplemented by letters dated April 15, and November 10, 1994, and February 10 and 14, 1995, (2) Amendment No. 120 to License No. NPF–29, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the Judge George W. Armstrong Library, P.O. Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Dated at Rockville, Maryland, this 21st day of February 1995.

For the Nuclear Regulatory Commission.

William D. Beckner,

Director, Project Directorate IV–1, Division of Reactor Projects III/V, Office of Nuclear Reactor Regulation.

[FR Doc. 95–4871 Filed 2–27–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Opportunity To Apply For Nomination to the World Trade Organization Dispute Settlement Rosters of Panel Candidates

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of opportunity to apply for nomination by the United States to indicative lists of non-governmental panelist candidates provided for in Article 8 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and in the Decision on Certain Dispute Settlement Procedures for the General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO).

SUMMARY: The DSU provides a mechanism for the settlement of disputes among members of the WTO. A three-person panel conducts each dispute settlement proceeding and issues a report for consideration by the Dispute Settlement Body (DSB) in which representatives of all WTO members participate.

Section 123(b) of the Uruguay Round Agreements Act (URAA), Public Law 103–405, provides that the Trade Representative shall seek to ensure that persons appointed to the WTO roster are well-qualified and that the roster includes persons with expertise in all of the subject matters covered by the Uruguay Round Agreements. USTR invites citizens of the United States with appropriate qualifications to apply for consideration as a nominee to the roster.

DATES: Eligible citizens are encouraged to apply by April 10, 1995 to be considered for nomination to the roster in 1995.

FOR FURTHER INFORMATION CONTACT: For information concerning the form of the application, contact Sybia Harrison, Legal Assistant, Office of the General Counsel, (202) 395–3432. For information concerning WTO procedures or the duties involved, contact Catherine Field, Associate General Counsel, (202) 395–3432, or Mark Linscott, Office of GATT/WTO Affairs, (202) 395–3063. For information relating to the GATS, contact Vanessa Sciarra, Assistant General Counsel, (202) 395–7305 or Richard Self, Deputy Assistant USTR for Services, (202) 395–4510.

SUPPLEMENTARY INFORMATION: Pursuant to Article 8 of the DSU, the WTO Secretariat is to maintain an indicative list of well-qualifed governmental and non-governmental individuals, including persons who have served on or presented a case to a panel, taught or published on international trade law or policy, or served as a senior trade policy official of a WTO member country. The indicative list will be used to assist in the selection of panelists for dispute settlement proceedings. Panel members are to be selected with a view to ensuring a sufficiently diverse background and a wide spectrum of experience.

USTR currently seeks nominations related to the list of non-governmental individuals. The existing roster of non-governmental individuals needs to be expanded to encompass new subject areas covered by the WTO, such as intellectual property and services, and to prepare for a potential increase in the number of dispute settlement panels established under the DSU. Members of the WTO may periodically nominate persons to be included on the roster, subject to DSB approval. Inclusion of a name on the roster, however, does not necessarily mean that the individual will be selected for service on a panel. U.S. citizens, for example, are not permitted to serve on panels in which the United States is a party unless the other party to the dispute agrees.

The Decision on Certain Dispute Settlement Procedures for the GATS requires that panels for GATS disputes include specific expertise on individual sectors. GATS disputes could involve the following eleven sectors: (1) Professional and related technical services, including, for example, legal, accounting, auditing and bookkeeping, taxation, medical, dental and veterinary services, engineering, architectural, urban planning services, computer and related services, research and development services, real estate services, rental and leasing services, advertising and management services; (2) communication services; (3) construction and related engineering services; (4) distribution services; (5) educational services; (6) environmental services; (7) financial services, including insurance and insurance-related services, banking and securities services; (8) health-related and social services; (9) tourism and travel-related services; (10) recreational, cultural and sporting services (other than audiovisual services); and (11) transport services.

Panels for GATS disputes are to be composed of well-qualified governmental and non-governmental individuals who have experience in issues related to GATS and/or trade in services, including associated regulatory matters. Dispute settlement panels concerning sectoral matters under the GATS must have expertise relevant to the specific service sector to which the dispute relates.

WTO dispute settlement panels consist of three persons, unless the parties agree to have five panelists, whose function is to make an objective assessment of the matter under dispute, including an objective assessment of the facts of the case, the applicability of the relevant WTO agreements and the conformity of the measure under consideration with the obligations of those agreements. In addition, panels are to make such other findings as will assist the DSB in making the recommendations provided for in the WTO agreements.

Panelists must act in strict conformity with the provisions of the WTO agreements, including application of the appropriate standard of review. Panels are responsible for providing a report to the DSB, including recommendations if necessary, on the conformity of the matter under dispute with WTO obligations. Panelists must also comply with rules relating to conflicts of interest and conduct as a panelist.

Procedures for Application

Non-governmental U.S. citizens (i.e., individuals not currently employed full-time by the U.S. Federal government or a state or local government) possessing expertise in international trade, services, intellectual property rights or other matters covered by the WTO agreements are invited to file an application for nomination to the roster.

Applications must be typewritten and submitted along with five copies to Sybia Harrison, Room 223, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506. Applicants are to provide the following information to the extent applicable:

1. Name of the applicant
2. Business address, telephone number and, if available, fax number
3. Citizenship(s)
4. Current employment, including title, description of responsibilities, and name and address of employer
5. Relevant education and professional training, including particular service-sector expertise, if any
6. Post-education employment history, including the dates and address of each prior position and a summary of responsibilities
7. Relevant professional affiliations and certifications
8. List of publications and speeches, including a copy of speeches and publications relevant to the subject matter of the WTO agreements or service sector
9. List of international trade proceedings or domestic proceedings relating to international trade (WTO) matters in which the person has provided advice or otherwise participated, including judicial or administrative proceedings over which that person has presided
10. A short statement of qualifications, including information relevant to the applicant's familiarity with international trade, services or other issues covered by the WTO agreements, and availability for service
11. Names, addresses, telephone and, if available, fax numbers of three individuals authorized to provide information to USTR concerning the applicant's qualifications for service, including the applicant's familiarity with international trade laws and other areas of expertise, character, reliability and judgment.

Information provided by applicants will be used by USTR for the purpose of selecting candidates for nomination to the WTO roster. Further information concerning potential conflicts may be requested from individuals and the possibility of significant conflicts will be taken into consideration in evaluating applicants.

USTR will contact applicants that qualify for further consideration as nominees regarding any additional information that may be required.

Frederick L. Montgomery,
Chairman, Trade Policy Staff Committee.

[FR Doc. 95–4897 Filed 2–27–95; 8:45 am]
BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35404; File No. SR–BSE–95–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Boston Stock Exchange, Inc. Requesting Permanent Approval of Its Competing Specialist Initiative

February 22, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 6, 1995, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE seeks permanent approval of its Competing Specialist Initiative. Specifically, the rules proposed for adoption are: Additions are *italicized* and deletions are [bracketed].

Chapter XV—Specialists

*   *   *   *   *

Sec. 17.

* * * * *

Procedures for Competing Specialists

Sec. 18. Any specialist can apply to the Exchange to function as a competing specialist pursuant to these procedures:

1. Applications to compete must be directed to the Market Performance Committee in writing and must list in order of preference the stock(s) in which the applicant intends to compete. The Market Performance Committee will use the following guidelines in reviewing an application:

- *overall performance evaluation results of the applicant*
- *financial capability*
- *adequacy of manpower on the floor*
- *objection by the regular specialist in a stock, with or without cause*

2. Any objection [1] *by the regular specialist to permit competition in one or more of such specialist's stocks must be in writing and filed with the Exchange within 48 hours* [2] *of notice* [3] *of the competing specialist's application. The objection will be considered by the Market Performance Committee in reviewing the application, and its decision may be appealed to the Executive Committee.*

3. All applicants must be registered with the Exchange as specialists and must meet the current minimum requirements for specialists set forth in Chapter XV, the minimum capital and equity requirements as set forth in Chapters VIII and XXII of the Rules of the Exchange, and conform to all other performance requirements and standards set forth in the Rules of the Exchange. A competing specialist will be subject to all of the rules and policies applicable to a regular specialist.

4. All applicant organizations, existing or newly created, must satisfy the Market Performance Committee that they have sufficient manpower to fulfill the functions of a specialist as set forth in Chapter XV in all of the stocks in which the applicant will be registered either as a regular or a competing specialist.

5. The regular specialist will receive all orderflow not specifically directed to a competitor.

6. The receiving specialist is responsible for all orders directed to him/her.

7. In any competitive situation, if either the regular specialist to whom a stock was originally assigned or the specialist organization which subsequently received approval to compete with the regular specialist desires to terminate the competition by requesting that it be relieved of the stock that is the subject of competition, it should so notify the Market Performance Committee at least 3 business days prior to the desired effective date of such withdrawal. When the regular specialist requests to be relieved of a stock, the stock shall be posted for reallocation by the Stock Allocation Committee. In the interim, if the Market Performance Committee is satisfied that the competing specialist can continue to maintain a fair and orderly market in such stock, the competing specialist shall serve as the regular specialist until the stock has been reallocated. [4] *Where there is more than one competing specialist in the stock, Exchange staff shall place the stock with a caretaker until reallocation.*

8. Any competing specialist who withdraws his/her registration in a stock will be barred from applying to compete in that same stock for a period of ninety (90) days following the effective date of withdrawal.

9. Notwithstanding the existence of competing specialist situations, there is only one Exchange market in a security subject to competition. Due to the ease of communications on the Floor via the Stentofon System, it will not be necessary to locate competing specialists adjacent to each other. However, the regular specialist will be responsible for updating quotations; thus all competitors must communicate their markets to the regular specialist and be responsible for their portion of the published bid and/or offer. Also, competitors must cooperate with the regular specialist regarding openings and reopenings to ensure that they are unitary.

10. Limit orders entrusted to each competing specialist are to be represented and executed strictly according to time priority as to receipt of the order in the BEACON System.

11. Competing specialists must keep each other informed and communicate to inquiring Floor brokers the full size of any executable ''all-or-none'' orders in their possession since all-or-none orders cannot be represented in the published quote. The competing specialists are expected to represent such orders on a ''best efforts'' basis to ensure the execution of the entire order at a single price or prices, or not at all.

12. The registration of any competing specialist may be suspended or terminated by the Market Performance Committee upon a determination of any substantial or continued failure by such competing specialist to engage in dealings in accordance with the Constitution and Rules of the Exchange.

13. Competing Specialists shall be allowed to execute their customer orderflow which is related to index arbitrage only on plus or zero plus ticks when the Dow Jones Industrial Average (''DJIA'') declines by fifty points or more from the previous day's closing value. Such requirement shall remain in effect for the remainder of the trading day once it has been activated, except that the requirement shall no longer apply where the DJIA moves back to a value which is twenty-five points or less from the previous day's closing value. ''Index arbitrage'' is defined as an arbitrage trading strategy involving the purchase or sale of a group of stocks in conjunction with the purchase or sale, or intended purchase or sale, of one or more cash-settled options or futures contracts on index stock groups or options on any such futures contracts, in an attempt to profit from the price difference between the group of stocks and the derivative index products.

The Specialist's Book

Sec. 6. The Specialist's book is the book, file or record in which all orders entrusted to the Specialist in a particular issue must be kept. It shall be closed at all times and the information therein contained shall not be divulged or permitted to come to the knowledge of anyone except the Specialist or relief Specialist for that book, or to the Board of Governors, a committee of the Exchange, or the Chairman or Officer designated by him, except that a Specialist may disclose information contained in his/*her* book [;]:

(i) for the purpose of demonstrating the methods of trading to visitors to the Floor; [or]

(ii) to other market centers in order to facilitate the operation of ITS or any other Application of the System provided, in either case, that at the same time he makes the information disclosed available to all members [.]*; or*

(iii) to competing specialists in his/her stocks on a summary basis as provided for in the ''Procedures for Competing Specialists''.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

[1] *Only the regular specialist can object to competition in his/her stocks.*

[2] *Unless the regular specialist is unavailable, in which case within 48 hours of becoming available.*

[3] *Once an application is received by the Exchange, a written notification will be issued to the regular specialist(s) in whose stocks competition is being sought.*

[4] *Once the stock has been reallocated to a regular specialist, that specialist shall not be permitted to object to competition in such stock.*

statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to seek permanent approval of the Exchange's Competing Specialist Initiative (''CSI'') pilot program which is scheduled to expire on May 18, 1995. CSI permits competing specialists on the floor of the Exchange in the form of one regular specialist and one or more competing specialists. Orders are directed to either specialist based on each customer's independent decision, but all orders in a stock are executed in accordance with strict time priority. Once all limit orders at a price level are depleted, each specialist is responsible for the market orders directed to them.

The regular specialist is responsible for updating quotations and coordinating openings and reopenings to ensure they are unitary. All ITS activity must be cleared through the regular specialist. To all other markets in the National Market System, there is only one Boston market. Trading halts are coordinated through the regular specialist and apply to all competitors in a stock.

In addition, all competitors will be evaluated on competing stocks in the Exchange's Specialist Performance Evaluation Program.

2. Statutory Basis

The BSE believes that the statutory basis for this proposal is Section 6(b)(5) of the Act in that it furthers the objectives to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–95–02 and should be submitted by March 21, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4857 Filed 2–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35403; File No. SR–CBOE–94–39]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Obligations to Furnish Information

February 22, 1995.

On November 7, 1994, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] and Rule 19b–4 thereunder,[2] a proposal to amend CBOE Rule 15.9, ''Regulatory Cooperation,''[3] to delineate the obligation of CBOE members and persons associated with CBOE members to furnish information in connection with inquiries arising from regulatory agreements that the Exchange has entered into with other regulatory and market institutions even in cases where the Exchange has not otherwise initiated an investigation.

In addition, the CBOE proposes to amend CBOE Rule 17.2, ''Complaint and Investigation,'' to expand the set of circumstances under which members or persons associated with members are obligated, upon request by the Exchange, to appear and testify, respond in writing to interrogatories and furnish documentary materials and other information.

The proposal was published for comment in the **Federal Register** on December 8, 1994.[4] No comments were received on the proposed rule change.[5]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] CBOE Rule 15.9(a) allows the Exchange to ''enter into agreements with domestic and foreign self-regulatory organizations, associations and contract markets and the regulators of such markets which provide for the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement and other regulatory purposes.''

[4] See Securities Exchange Act Release No. 35035 (December 1, 1994), 59 FR 63397 (December 8, 1994).

[5] On February 15, 1995, the CBOE amended its proposal to clarify that when the Exchange requests information from a member pursuant to CBOE Rule 15.9(b), the member has the same rights and

The CBOE proposes to amend CBOE Rule 15.9 to provide that as long as a CBOE member or person associated with a CBOE member is subject to the CBOE's jurisdiction, the CBOE member or person associated with a CBOE member is obligated to furnish testimony, documentary evidence or other information to the full extent provided in CBOE Rule 17.2(b), ''Conduct of Investigation,'' whether or not the Exchange has initiated the investigation, if the information is requested by the Exchange in connection with any inquiry resulting from an agreement entered into by the Exchange with a domestic or foreign self-regulatory organization or regulator pursuant to CBOE Rule 15.9. A CBOE member or person associated with a CBOE member from whom such information is requested possesses the same procedural protections which would apply to a request made pursuant to an investigation initiated by the CBOE.[6]

According to the Exchange, the amendments to CBOE Rule 15.9 are designed to clarify the CBOE's existing rules, which do not clearly delineate the obligation of CBOE members or persons associated with CBOE members to furnish information when the provision of information is required in connection with regulatory agreements where the CBOE has not itself initiated an investigation.

In addition, the CBOE proposes to amend CBOE Rule 17.2 to state clearly that each CBOE member and person associated with a CBOE member is obligated, upon the Exchange's request, to testify, respond in writing to interrogatories, and furnish documentary materials and other information requested by the Exchange in connection with an investigation initiated pursuant to CBOE Rule 17.2(a), a hearing or appeal conducted pursuant to CBOE Chapter 17 or an inquiry resulting from an agreement entered into by the Exchange pursuant to CBOE 15.9.

The CBOE also proposes to amend CBOE Rule 17.2, Interpretation and Policy .01 to provide that the failure to furnish testimony, documentary evidence, or other information requested by the CBOE in the course of an Exchange inquiry within the time period specified by the Exchange shall be deemed to be a violation of CBOE Rule 17.2.

The Exchange states that the amendments to CBOE Rule 17.2 delineate clearly the obligation of CBOE members and persons associated with CBOE members to furnish information in connection with an investigation initiated by the CBOE itself, including information requested in connection with a hearing or appeal or the Exchange's preparation for a hearing or appeal. The amendments to CBOE Rule 17.2 are designed to set forth the CBOE's longstanding interpretation of existing CBOE rules.

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5)[7] in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. Specifically, the Commission believes that the proposed amendment to CBOE Rule 15.9 will strengthen CBOE Rule 15.9 and enhance the CBOE's disciplinary system by indicating clearly that the Exchange may require CBOE members and persons associated with CBOE members to furnish testimony, documentary evidence or other information pursuant to regulatory agreements entered into pursuant to CBOE Rule 15.9(a). At the same time, the Commission believes that the proposal maintains procedural safeguards for CBOE members by providing that members from whom such information is requested possess the same procedural protections that would apply to a request made pursuant to an investigation initiated by the CBOE.[8]

By clarifying the obligation of CBOE members to furnish testimony and other information in connection with such investigations, the Commission believes that the proposal will facilitate investigations commenced pursuant to CBOE Rule 15.9, thereby furthering the protection of investors and the public interest by helping to ensure the prompt investigation of possible trading violations and other regulatory improprieties. In addition, the Commission believes that the proposal will help the Exchange to coordinate with domestic and foreign self-regulatory organizations in implementing a surveillance system appropriate to today's increasingly linked and globalized markets.[9] In addition, the Commission believes that the proposed amendments to CBOE Rule 17.2(b) will clarify the obligation of members to appear and testify, respond in writing to interrogatories and furnish information requested by the Exchange in connection with an investigation initiated pursuant to CBOE Rule 17.2(a), a hearing or appeal conducted pursuant to CBOE Chapter 17, or an inquiry resulting from an agreement entered into by the Exchange pursuant to CBOE Rule 15.9. The Commission believes that the amendments to CBOE Rule 17.2(b) and Interpretation and Policy .01 should protect investors and the public interest by facilitating the prompt resolution of disciplinary matters.

Specifically, by clearly stating members' obligation to testify and to provide information requested by the Exchange, and by making noncompliance with such requests a violation of CBOE Rule 17.2, the Commission believes that the proposal will encourage CBOE members to comply fully with CBOE requests for information and will enhance the Exchange's ability to conduct investigations in a timely manner, without burdening the members being investigated. The Commission believes that the CBOE must have the ability to obtain such information so that the Exchange will have access to all relevant facts necessary for the Exchange to act on a fully informed basis when making decisions concerning the disciplining of members.

At the same time, the Commission believes that the proposal is consistent with the CBOE's maintenance of a fair disciplinary process for its members. In this regard, the Commission notes that all existing due process safeguards relating to CBOE disciplinary proceedings remain in place.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** because Amendment No. 1 clarifies the proposal and helps to safeguard the procedural

procedural protections in responding to the request as the member would have in the case of any other request for information initiated by the CBOE pursuant to CBOE Rule 17.2(b). In addition, the CBOE notes that the proposal authorizes the CBOE to request information and compel testimony from its members or associated persons whenever the CBOE deems such a request to be appropriate and consistent with its agreements to cooperate with other regulatory organizations. The CBOE notes, further, that when the CBOE requests any such information or testimony on behalf of another regulatory body, the CBOE continues to be the requesting regulatory body in relation to the CBOE member and all such requests are subject to the CBOE's rules. *See* Letter from James R. McDaniel, Schiff Hardin & Waite, to Michael Walinskas, Branch Chief, Options Regulation, Division of Market Regulation, Commission, dated February 15, 1995 (''Amendment No. 1'').

[6] *Id.*

[7] 15 U.S.C. 78f(b)(5) (1988).

[8] See Amendment No. 1, *supra* note 5.

[9] See Securities Exchange Act Release No. 28498 (October 1, 1990), 55 FR 41286 (October 10, 1990) (order approving File No. SR–CBOE–90–23).

rights of members from whom the Exchange requests information pursuant to CBOE Rule 15.9(b). Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–94–39) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4858 Filed 2–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35401; File No. SR–NASD–95–04]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Amendments to the Examination Specifications and Content Outline for the General Securities Registered Representative (Series 7) Examination

February 22, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 13, 1995,[2] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing amendments to the examination specifications and study outline for the General Securities Registered Representative (''Series 7'') qualification examination. The amendments revise materials pertaining to recently enacted federal and self-regulatory organization (''SRO'') rules and regulations, new products and changes in industry practices. The number of questions per examination and the examination time are unaffected by the amendments.

The amendments described above do not result in any textual changes to the NASD By-Laws, Schedules to the By-Laws, Rules, practices or procedures.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Series 7 examination was created in 1974 as an industry-wide qualification examination for persons seeking registration as general securities representatives. The Series 7 examination is required under rules of the SROs for persons who are engaged in the solicitation, purchase and/or sale of securities for the accounts of customers. The purpose of the Series 7 examination is to ensure that registered representatives have the basic knowledge necessary to perform their functions and responsibilities. The Series 7 exam specifications detail the ares covered by the examination and break down the number of examination questions drawn from each area. The Series 7 content outline details the subject coverage and question allocation of the examination.

Revision of the Series 7 examination, specifications and content outline was initiated in April 1993 by an industry committee of self-regulatory organizations and broker-dealer representatives in order to update the examination in view of changes in the securities industry including changes in relevant rules and regulations, the development of new securities products and changes in the job of the registered representative as firms offer an increasingly wide range of financial services. The specifications and content outline for the Series 7 examination have not been revised since 1986.

The industry committee updated the existing statements of the critical functions of registered representatives to ensure current relevance and appropriateness, drafted statements of tasks expected to be performed by entry-level registered representatives, and conformed the existing content outline to the task statements. The content outline reflects the revised content of the examination. The total number of questions in the Series 7 examination will remain 250. The revised examination will cover all financial product areas covered on the present Series 7 examination as well as several new products, including collateralized mortgage obligations (''CMOs''), long term equity participation securities (''LEAPS'') and CAPS,[3] with reduced emphasis on direct participation programs.

The Commission recently approved two parallel filings of the New York Stock Exchange (''NYSE'').[4] No comments were received on either filing.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(g)(3) of the Act in that the proposed changes to the examination are to ensure persons seeking registration in the securities industry have attained the requisite levels of knowledge and competence.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments of the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the

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[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. Section 78s(b)(1).

[2] The proposed rule change was originally filed on January 26, 1995. In the amendment, filed on February 13, 1995, the NASD provided both the amended examination specifications and content outline for the Series 7 exam. The examination specifications were filed pursuant to a request by the NASD for confidential treatment.

[3] OEX CAPS and SPX CAPS are new securities based on the S&P 100 (OEX) and the S&P 500 (SPX) that give investors the right to participate to a predetermined level in upward or downward movements in either index.

[4] *See* Securities Exchange Act Release No. 34853 (October 18, 1994), 59 FR 53694 (October 25, 1994) (File Nos. SR–NYSE–94–26 (revised exam and exam specifications for Series 7 exam), and SR–NYSE–94–27 (revised content outline for Series 7 exam)).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–95–04 and should be submitted by March 21, 1995.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, with the requirements of Sections 15(b)(7), 15A(b)(6), and 15A(g)(3) of the Act.[5] Section 15(b)(7) states that a registered broker or dealer may not effect any transaction in, or induce the purchase or sale of, any security unless such broker or dealer meets such standards of operational capability and all those associated with such broker or dealer meet certain standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. Section 15A(b)(6) requires, in relevant part, that the rules of a registered securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. Section 15A(g)(3) provides that a registered securities association may deny membership to, or condition the membership of, a registered broker or dealer if such broker or dealer does not meet the requisite levels of knowledge and competence.

The Commission believes that revising the Series 7 exam, specifications, and content outline should help to ensure that only those securities representatives with a comprehensive knowledge of current NASD rules, as well as an understanding of the Act, will be able to solicit, purchase or sell securities for the accounts of customers. The Commission believes that the revised topics covered by the Series 7 examination, specifications and content outline are appropriate and include a sufficiently broad range of subject matter to ensure an appropriate level of expertise by general securities registered representatives. The revised examination focuses on relevant subject matter in view of changes in applicable laws, rules, regulations, products, and industry practices. By ensuring this requisite level of knowledge, the Commission anticipates that general securities registered representatives will demonstrate an acceptable level of securities knowledge to carry out their responsibilities.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval is appropriate given the recent approval of two parallel and substantively identical filings by the NYSE,[6] and the importance of industry-wide implementation of the revised content outline and Series 7 examination as soon as practicable.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change SR–NASD–95–04 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4798 Filed 2–27–95; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. Sections 78*o*(b)(7), 78*o*–3(b)(6), 78*o*–3(g)(3).

[6] *See* note 4, *supra.*

[7] 15 U.S.C. Section 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[Release No. 34–35400; SR–PHLX–95–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Listing and Trading of DIVS, ZIPS and SPECS

February 21, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 5, 1995, the Philadelphia Stock Exchange Inc. (''PHLX''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to Rule 19b–4 of the Act, hereby proposes to list for trading ''DIVS'' (Dividend Value of Stock), ''ZIPS'' (Zero Income Principal of Stock) and ''SPECS'' (Speculative Equity Component Stock) (collectively hereinafter referred to as the ''Products''), which are new hybrid options developed by Americus Stock Process Corp. (''ASPC'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX proposes to list a new product developed by and licensed to the PHLX by ASPC that allows the purchase or sale of any of three economic interests inherent in a share of common stock. Each of these new instruments, called DIVS, ZIPS and SPECS, will be traded separately on the PHLX's equity options floor. The Exchange believes that the Products, combined, will have all the characteristics of a share of the underlying common stock, including voting rights, and that the ability to trade the Products as separate component instruments will provide new hedge, arbitrage, speculation and investment opportunities.

The Products will be regulated, except as described herein, by the rules governing standardized options. Position limits of 1 million DIVS, ZIPS and SPECS respectively shall be established respecting any particular stock. *See* Rule 1001C. The sales practice rules applicable to options (Rules 1024 through 1029) will also be applicable to sales of DIVS, ZIPS and SPECS. (*See* Rule 1000C(a)). The

Options Clearing Corp. (''OCC'') will be the exclusive issuer of the Products which the Exchange proposes to issue in accordance with the disclosure scheme provided for under Rule 9b–1 of the Act (''Rule 9b–1''). The Products will be issued in separate series with each series having its own distinct CUSIP number and trading symbol. The Products will be issued in book-entry form. DIVS, ZIPS and SPECS will be created when opening buy and sell orders are executed, and the additional execution of such orders will increase the open interest. Quotations and transaction reporting will occur through the facilities of the Options Price Reporting Authority.

The criteria for underlying common stocks upon which the Products will be based are the same criteria as utilized for standardized equity options listed on the PHLX under PHLX Rule 1009. Additionally, only the top 250 capitalized stocks traded on a national securities exchange or the NASDAQ national market will be considered for listing (*See* Rule 1009C). DIVS, ZIPS and SPECS of a particular series will all be issued for the same length of time, currently proposed to be up to 60 months, and therefore all components of the same series will possess the same termination date (''Termination Date''), as defined in PHLX Rule 1000C(b)(5). The Products will have a European-style [1] settlement similar to standardized options.

ZIPS and SPECS of the same series also will have a coordinate termination claim (''Termination Claim''), as defined in PHLX Rule 1000C(b)(4). The Termination Claim is a preset price established at the time of the issuance of a new series of SPECS and ZIPS and is used to determine these instruments' payout on their Termination Date. In accordance with the PHLX Rule 1004C, Termination Claims will be set at the underlying stock price reflecting the most recent business day's consolidated closing value rounded up to the nearest $2.50 increment for stocks priced at or below $25.00 or to the nearest $5.00 increment for stocks priced above $25.00. The PHLX may list new series of DIVS, ZIPS and SPECS annually, or at more frequent intervals, depending on market conditions. No new series will be opened nor opening transactions be permitted if open interest in DIVS, ZIPS and SPECS represent more than 10 percent of the outstanding shares of any related underlying stock. *See* Rule 1012C.

[1] A European-style option may only be exercised during a limited period of time before the option expires.

The PHLX anticipates that the sum of the market prices of DIVS, ZIPS and SPECS on the same underlying security with the same Termination Date and Termination Claim will approximate the actual market price for the related underlying security. Because DIVS, ZIPS and SPECS are each economic interests in a single underlying share, if the combined price of a DIVS, ZIPS and SPECS diverges from that of the underlying security, the Exchange believes that arbitrage opportunities would tend to remove the pricing disparity.

As discussed below, the Products confer voting rights to their purchasers. The voting rights are allocated among the three components, as discussed below. In this regard, sellers of the Products are obligated to deliver the voting rights to the purchasers.

For customer margin purposes, DIVS, ZIPS and SPECS are contemplated to be margined as equity securities pursuant to Regulation T for initial margin and PHLX Rule 722 for maintenance margin.[2]

Characteristics of Individual Components DIVS

The basic characteristic of DIVS will be the right to receive substitute payments in the same amount (and at the same time) as regular dividends declared and paid on the underlying shares of common stock for all record dates that precede the Termination Date of the particular series of DIVS.

On each ex-dividend date, OCC will notify clearing members of debits they have incurred on OCC's books for any net short DIVS positions. These debits will be charged to such clearing members' accounts at OCC on payment date. Ex dates and payment dates will coincide with that of the underlying common stock. Hence, DIVS sellers assume the obligation to fund the substitute dividend payments with respect to DIVS as they arise. On the Termination Date for a particular series of DIVS, DIVS holders' rights will cease except as to rights to unpaid dividends declared as of a record date occurring prior to the Termination Date.

ZIPS

Each ZIPS will confer the right to receive on the Termination Date that number of underlying common shares to which the ZIPS relate having an aggregate value (determined soley by reference to the market price) equal to the lesser of (i) the Termination Claim for that class of ZIPS or (ii) the market price of the common shares on the Termination Date.[3]

[2] The PHLX and counsel for ASPC are currently seeking agreement and confirmation of this treatment from the staff of the Board of Governors of the Federal Reserve System.

For example, if the Termination Claim for a class of ZIPS is $50, and on the Termination Date of the ZIPS the market price of the related underlying common stock is $80, a holder of 100 ZIPS would be entitled to receive that number of common shares with an aggregate market value of $100\times\$50=\$5,000$. $5,000/$80 equals 62.5 shares, so that an owner would be entitled to 62 whole shares and a payment of cash in lieu of the fractional share of $40.[4] Brokers holding short component positions for clients would make delivery of the shares and cash for any fractional shares. Brokers holding long component positions for their clients would receive the shares and cash for any fractional shares, which they will forward to their clients.

SPECS

SPECS will reflect the appreciation in value above the Termination Claim for that series of SPECS. Specifically, SPECS will constitute the right to receive on the Termination Date that number of related common shares having a market value equal to the amount, if any, by which the market price of the related common shares exceeds the Termination Claim.

From the example given in the discussion above of ZIPS, an owner of 100 SPECS with respect to the same series of ZIPS would be entitled to receive the following number of common shares: $100\times(\$80-\$50)=\$3,000$. $3,000/$80 equals 37.5 common shares, so the owner of the 100 SPECS would be entitled to 37 whole shares and a cash payment in lieu of the fractional share of $40.[5]

On the Termination Date for a class of ZIPS or SPECS, OCC will instruct delivery, based on information provided by the brokers. Shares of the underlying stock will be delivered from the accounts of investors short the ZIPS or SPECS to satisfy the entitlements of those investors long the ZIPS and SPECS.

[3] All references to market price are to the last sale price on the relevant day as set forth on the appropriate consolidated tape, or if there is no such last sale price, the mean of the closing bid and ask price or as otherwise approved by the Commission prior to the commencement of trading in a series.

[4] If the market price of a share of the related common stock on the Termination Date had been $50 or less, the owner of the 100 ZIPS would have received 100 shares of the underlying common stock. Exercise procedures in accordance with OCC guidelines would be followed on Termination Date.

[5] If the market price of a common share had been less than $50 (the Termination Claim), the SPECS would expire worthless.

Voting Rights

The vote to which the underlying common share is entitled will be allocated among the three components of the same series with the same Termination Date and Termination Claim in proposition to their relative market prices as of the record date for the meeting, consent or authorization.

For example, if there are outstanding DIVS, ZIPS and SPECS with the following market values, each would have the indicated vote percentage:

Security	Market price	Percent-age vote
DIVS term 12/31/99 ..	$20.25	18.75
ZIPS term 12/31/99 ..	78.75	72.92
SPECS term 12/31/99	9.00	8.33
Combined Value	108.00	100.00

If a DIVS, ZIPS or SPECS is sold uncovered, the underlying stock must be bought or borrowed by record date in order to enable the original naked seller to deliver the appropriate percentage of the vote to the DIVS, ZIPS or SPECS purchaser.

Holders will receive proxy materials and be able to tender proxies for their respective shares of the vote to any broker or bank carrying their account, and that such broker or bank representing the sellers or shorts will surrender its proxy for the appropriate number of votes representing the components that were sold. Proxy materials will be provided through the mechanisms that banks, brokerage firms and clearing agencies have developed to comply with the requirements of Rules 14a–13, 14b–1 and 14b–2 under the Act. Costs for delivering the proxy materials will probably be borne by DIVS, ZIPS & SPECS holders.

SPECS

Adjustments for Stock Splits or Stock Dividends

With respect to stock splits or stock dividends declared on the related underlying shares, DIVS, ZIPS, and SPECS will be adjusted proportionally, and, in the case of ZIPS and SPECS, the Termination Claim will also be adjusted proportionally on the record date for such event. For example, if a company has a two for one stock split, an owner of 100 DIVS would become the owner of 200 DIVS with the same Termination Date; an owner of 100 ZIPS would become the owner of 200 ZIPS with the same Termination Date and one-half the Termination Claim; and an owner of 100 SPECS would become the owner of 200 SPECS with the same Termination Date and one-half the Termination Claim on such record date.

If the related underlying company declares a stock dividend, the Products will be adjusted proportionally. For example, in the case of a declared 5% stock dividend, DIVS and ZIPS and SPECS with a Termination Claim of $50 would be adjusted as follows: an owner of 100 DIVS would become the owner of 105 DIVS; an owner of 100 ZIPS would become the owner of 105 ZIPS with a Termination Claim of $47.62; and an owner of 100 SPECS would become the owner of 105 SPECS with a Termination Claim of $47.62.

Liquidating, Special or Partial Liquidating Dividends

With regard to full liquidating dividends to shareholders, payments would be allocated among owners of DIVS, ZIPS and SPECS of the same class as follows:

—DIVS would receive the discounted present value at the date of distribution of the liquidating dividend of an imputed dividend stream. It would be assumed that the most recent four quarterly dividends (unless the issuer of the related common stock has announced a change in its dividend policy, in which case assumed dividends complying with the policy would be used) of the issuer would continue through the latest record date preceding the Termination Date. That cash stream would be discounted to present value assuming payment on the usual dividend payment dates, using as the discount rate the interest rate on U.S. Treasury Notes having the closest maturity to the Termination Date.

—The remaining amount would be allocated between ZIPS and SPECS of the same series, based upon an adjusted Termination Claim. The Termination Claim would be adjusted by discounting the Termination Claim to its present value at the date of distribution of the liquidating dividend. The discount rate used would be the interest rate on U.S. Treasury Notes having the closest maturity to the Termination Date. ZIPS will receive the amount of the distribution up to the adjusted Termination Claim (less the amount allocated to DIVS), with any excess going to the SPECS.

Any adjustments made to the terms of the contract, as a result of any of these ''triggering'' events, would be handled for these instruments in the same manner as standardized options and would be in accordance with any applicable OCC rules.

Transmission of money to beneficial owners would be accomplished through OCC and its participants in the same manner in which the substitute dividends would be transmitted from short DIVS to long DIVS.

For purposes of allocating distributions among DIVS, ZIPS and SPECS, special dividends are those dividends which are declared as such by the issuer of the common shares, if that issuer does not also declare that it is changing its dividend policy by reducing or increasing the amount of its regular dividends. Special dividends would be allocated among DIVS, ZIPS and SPECS as follows:

—DIVS would be allocated and receive that portion of the special dividend equal to the quotient of (a) the annual dividend divided by (b) the last sale price[6] of the stock on the day prior to the ex-distribution date reduced by the amount of the special dividend which quotient is multiplied by (c) the amount of the special dividend.

—If the remaining portion of the special dividend were less than the present value of the Termination Claim, the Termination Claim for ZIPS and SPECS would be reduced, but not below zero, by the future value at the Termination Date of the remaining portion of the special dividend. All determinations of present value and future value are computed using the maximum potential internal rate of return (''IRR'') for ZIPS. The maximum potential IRR for ZIPS is computed assuming purchase on the ex-distribution date at a price equal to the average closing price for the 10-day trading period preceding the announcement of the special dividend and receipt of the Termination Claim on the Termination Date (such discount rate being hereinafter the ''maximum potential IRR for ZIPS'').

—The remaining portion would be allocated and paid to the ZIPS.

—If the remaining portion of the special dividend equals or exceeds the present value of the Termination Claim, ZIPS would receive that portion of the special dividend equal in amount to such present value; the Termination Claim would be adjusted to zero and any additional amount of the special dividend would be allocated and paid to the SPECS. Any further liquidating, special or partial liquidating dividends would be allocated between DIVS and SPECS; the ZIPS having received in full an adjusted Termination Claim.

For purposes of allocating distributions made by the issuer of the related common shares among DIVS, ZIPS and SPECS, partial liquidating dividends are all dividends other than regular dividends, liquidating dividends and special dividends. It is assumed that partial liquidating dividends would be accompanied by an announcement of a reduction in the regular dividends paid by the issuer.

Partial liquidating dividends would be split among the three components as follows:

—DIVS would be allocated and receive that portion of the partial liquidating dividend equal to the discounted present value of

[6] If there is no last sale price, the mean of the closing bid and ask prices will be used.

the amount of the reduction in the quarterly dividend as stated in the newly announced policy of the issuer. This computation would be made assuming payment on the usual dividend payment dates, using as the discount rate the interest rate on U.S. Treasury Notes having the closest maturity to the Termination Date.

—If the remaining portion of the partial liquidating dividend were less than the present value of the Termination Claim, the Termination Claim for ZIPS and SPECS would be reduced, but not below zero, by the future value at the Termination Date of the remaining portion of the partial liquidating dividend. The determination of present value and future value for ZIPS will be computed using the maximum potential IRR for ZIPS. In this case, the maximum potential IRR for ZIPS is computed assuming purchase on the ex-distribution date at a price equal to the average closing price for the 10-day trading period preceding the announcement of the partial liquidating dividend and receipt of the Termination Claim on the Termination Date.

—That remaining portion would be allocated and paid to the ZIPS.

—If the remaining portion of the partial liquidating dividend equals or exceeds the present value of the Termination Claim, ZIPS would receive that portion of the liquidating dividend equal in amount to such present value; the Termination Claim would be adjusted to zero and any additional amount of the partial liquidating dividend would be allocated and paid to the SPECS. Any further liquidating or partial liquidating dividends would be allocated between DIVS and SPECS; the ZIPS having received in full an adjusted Termination Claim.

Spin-offs and Split-ups

In the case of spin-off or split-up transactions, each DIVS, ZIPS and SPECS holder would become the owner of two issues of DIVS, ZIPS and SPECS—one for each company and each having the same number of such securities with the same Termination Date. The Termination Claim would be allocated between the two issues of ZIPS and the two issues of SPECS based upon the ratio of the prices of the two issues (*i.e.*, the underlying common shares and the spun-off company) at the opening of trading on the effective date of the spin-off or split-up transactions.

Mergers

If the company that issued the common shares from which the DIVS, ZIPS and SPECS were created were to be the surviving company, there would be no adjustment to the terms of the DIVS, ZIPS and SPECS unless, as part of such transaction, there was a stock split, stock dividend, partial liquidating dividend or other corporate transaction that would require adjustment. If the issuer were not the surviving entity, each owner of DIVS, ZIPS and SPECS would vote his interest in accordance with his voting rights, and, if the merger was approved, he would receive his share of the compensation given for each common share as if a liquidating dividend was paid or an exchange offer was made, as appropriate.

Rights Offerings

If the issuer of stock from which DIVS, ZIPS and SPECS were created were to make a rights offering, the rights would be allocated to the ZIPS and the Termination Claim would be reduced by the future value of the rights calculated to the Termination Date. The future value would be computed using as the interest rate, the maximum potential IRR for ZIPS and using the average closing sale price for the first 10 days of trading in the rights.

Exchange or Tender Offers

If there were an exchange or tender offer for the common shares to which DIVS, ZIPS and SPECS related, OCC's existing option procedures and practices would apply.

These particularized procedures for adjusting the contract specifications of any open interest in any particular DIVS, ZIPS and SPECS series will be well documented in the eventual disclosure document to be published by the issuer, OCC.

The PHLX believes the proposed rule change is consistent with Section 6(b)(5) of the Act which provides in part that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either received or requested.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PHLX consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. all submissions should refer to the file number in the caption above and should be submitted by March 21, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4859 Filed 2–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20910; 811–4376]

State Street Fund for Foundations and Endowments; Notice of Application

February 22, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: State Street Fund for Foundations and Endowments.

RELEVANT ACT SECTION: Order requested under section 8(f).

[7] 17 CFR 200.30–3(a)(12) (1994).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATES: The application was filed on November 21, 1994 and amended on January 11, 1995 and February 15, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 20, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, One Financial Center, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a registered, open-end, diversified, management investment company under the Act and is organized as a business trust under the laws of the Commonwealth of Massachusetts. On August 8, 1985, applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act and a registration statement on Form N–1A under section 8(b) of the Act and under the Securities Act of 1933. The registration statement became effective on April 17, 1986, and applicant's initial public offering commenced on or about that date.

2. Applicant consists of one series: the Fixed Income Portfolio (the ''Portfolio''). Share of beneficial interest were offered, without sales charge, only to tax-exempt charitable foundations and endowment funds.

3. Applicant's declaration of trust provides that applicant may be terminated by this shareholders upon the redemption of all of their shares at a price equal to the net asset value per share of the Portfolio. On June 23, 1994, applicant has two shareholders: Metropolitan Life Insurance Company, the ultimate parent of State Street Research & Management Company, applicant's investment adviser (the ''Adviser''), and the Felician Sisters, O.S.F. of Livonia. On that date, the shareholders redeemed all of their shares in order to reinvest the proceeds in another similar fund recently organized. The redemptions were coordinated to assure equal treatment of both shareholders. A total of 62,565.298 shares having an aggregate and per share net asset value of $6,186,252.28 and $98.88, respectively, were redeemed.

4. On August 3, 1994, applicant's Board of Trustees (the ''Trustees'') determined that it was advisable that applicant terminate because applicant's shareholders had redeemed all of their shares. The Trustees were not required to seek shareholder approval because applicant has had no shareholders or operations since June 23, 1994.

5. All expenses incurred in connection with applicant's liquidation were borne by the adviser. Such expenses, totalling approximately $3,500, were for legal fees.

6. As of the date of the application, applicant had no assets, debts, liabilities, or shareholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding-up of its affairs.

7. Applicant intends to file its notification of termination as a business trust under Massachusetts law.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–4860 Filed 2–27–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Minneapolis/St. Paul Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Minneapolis/St. Paul District Advisory Council will hold a public meeting on Thursday, March 23, 1995 at 12:00 noon, at the Decathlon Athletic Club, 1700 East 79th Street, Bloomington, Minnesota, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present. (The meeting scheduled for March 31, 1995 has been canceled).

For further information, write or call Mr. Edward A. Daum, Director, U.S. Small Business Administration, 610-Butler Square, 100 North Sixth street, Minneapolis, Minnesota 55403, (612) 370–2306.

Dated: February 21, 1995.

Dorothy A. Overal,

Director, Office of Advisory Council.

[FR Doc. 95–4821 Filed 2–27–95; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 99000161]

United Partners, Inc.; Notice of Filing of an Application for a License to Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) by UBS Partners, Inc. at 299 Park Avenue, New York, NY 10171, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et. seq.), and the Rules and Regulations promulgated thereunder. Its area of operation will be throughout the United States.

UBS Partners, Inc. is a wholly owned subsidiary of UBS, Inc. UBS Partners, Inc. has three officers: Justin S. Maccarone, President; Jeffrey Keenan, Vice-President and Secretary; and, Michael Greene, Vice-President and Treasurer. The Officers, who will be employed by the parent and other affiliates, have extensive banking and senior management experience, advanced academic training in business management, and multiple investment experiences in varied companies and industries.

The applicant will begin operations with Regulatory Capital of $2.6 million and will be a source of equity and subordinated debt for companies with annual sales of $5 million, as well as, startup small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: February 22, 1995.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 95–4822 Filed 2–27–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended February 17, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 50132
Date filed: February 16, 1995
Parties: Members of the International Air Transport Association
Subject: PAC/Reso/387 dated February 15, 1995, Expedited Resos, r-1—810 r-2—810c r-3—810g r-4—824c
Proposed Effective Date: May 1, 1995

Docket Number: 50133
Date filed: February 16, 1995
Parties: Members of the International Air Transport Association
Subject: Comp Telex Mail Vote 728, Reso 010f—Passenger Currency Adjustment
Proposed Effective Date: April 1, 1995

Myrna F. Adams,

Acting Chief, Documentary Services Division.

[FR Doc. 95–4838 Filed 2–27–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended February 17, 1995

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: 50126
Date filed: February 13, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 13, 1995
Description: Application of Aerovias de Honduras, S.A. de C.V., pursuant to 49 U.S.C. Section 41302 of the Act and Subpart Q of the Regulations, applies for a foreign air carrier permit to engage in scheduled air transportation of persons, property and mail between points in Honduras, on the one hand, and points in the United States, on the other hand, via intermediate points in Belize and beyond.

Docket Number: 50131
Date filed: February 16, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 23, 1995
Description: Application of Arrow Air, Inc., pursuant to 49 U.S.C., Part 302 and Subpart Q of the Regulations, requests a certificate of public convenience and necessity to permit it to engage in foreign air transportation of property and mail between Miami, FL, on the one hand, and Lima, Peru, on the other hand. Arrow requests that either its Certificate for Route 343F be amended or a separate Certificate be issued. Arrow also requests the allocation of three weekly round trip scheduled frequencies.

Docket Number: 50135
Date filed: February 16, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 23, 1995
Description: Application of United Air Lines, Inc., pursuant to 49 U.S.C. Section 41101, and Subpart Q of the Regulations, requests a Certificate of Public Convenience and Necessity for authority to offer scheduled foreign air transportation of persons, property and mail between Miami, Florida, and Lima, Peru. United also requests the allocation of 4.5 weekly narrow-body frequencies consistent with the U.S./Peru bilateral Exchange of Notes, dated January 13, 1995.

Docket Number: 50136
Date filed: February 16, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 23, 1995
Description: Application of Carnival Air Lines, Inc., pursuant to 49 U.S.C. 41102, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity to authorize Carnival to provide scheduled foreign air transportation of persons, property and mail between Miami, Florida and Lima, Peru.

Docket Number: 50137
Date filed: February 16, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 23, 1995
Description: Application of Fine Airlines, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity to engage in scheduled foreign air transportation of property and mail between Miami, Florida, and Lima, Peru and for the allocation to it of the three new, weekly, all-cargo frequencies available to U.S. carriers under the 1986 U.S.-Peru Air Transport Agreement and a January 13, 1995 Exchange of Notes.

Docket Number: 50139
Date filed: February 16, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 23, 1995
Description: Application of Challenge Air Cargo, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations for amendment of its certificate of public convenience and necessity for Route 353 to permit it to operate scheduled all-cargo service between the United States and Peru.

Docket Number: 50140
Date filed: February 17, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 23, 1995
Description: Application of Millon Air, Inc., pursuant to 49 U.S.C. Section 41101 and Subpart Q of the Regulations requests amendment of its certificate of public convenience and necessity, authorizing Millon Air to perform scheduled all-cargo service between Miami, Florida on the one hand, and Iquitos and Lima, Peru on the other hand. Millon Air also requests designation by the United States pursuant to the bilateral air transport services agreement between the U.S. and Peru for operation of three weekly scheduled round trip all-cargo frequencies along the routing Miami-Iquitos/Lima.

Docket Number: 50141
Date filed: February 17, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 17, 1995
Description: Application of Liberty Airlines Limited, pursuant to 49

U.S.C. Section 41301, and Subpart Q of the Regulations, applies for a foreign air carrier permit to operate scheduled, non-scheduled and charter air services, carrying passengers cargo and mail, between points in Dominica, West Indies and other states within the Organization of Eastern Caribbean States and points in the United States.

Myrna F. Adams,

Acting Chief, Documentary Services Division.

[FR Doc. 95–4839 Filed 2–27–95; 8:45 am]

BILLING CODE 4910–62–P

Research and Special Programs Administration

[Docket No. P–94–1W; Notice 1]

Columbia Gulf Transmission Company; Petition for Waiver

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of petition for waiver.

SUMMARY: Columbia Gulf Transmission Company (Columbia Gulf) has petitioned the Research and Special Programs Administration for a waiver from compliance with 49 CFR 192.612(b)(3), which requires that gas pipeline facilities in the Gulf of Mexico found to be exposed on the seabed or constituting a hazard to navigation be reburied so that the top of the pipe is 36 inches below the seabed for normal excavation or 18 inches for rock excavation.

DATES: Comments must be received on or before March 30, 1995.

ADDRESSES: Comments may be mailed to the Dockets Branch, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590. All comments and docket material may be reviewed in the Dockets Branch, room 8426, between the hours of 8:30 a.m. to 5:00 p.m. Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick, 202–366–5523 regarding the subject matter of this notice of proposed rulemaking, or the Dockets Unit, 202–366–5046, regarding copies of this notice or other material that is referenced herein.

SUPPLEMENTARY INFORMATION: During a DOT required survey Columbia Gulf discovered a 260 foot portion of 36-inch Bluewater Mainline 200 did not meet the 12-inch depth of cover requirements of 49 CFR 192.612. At the point where coverage is not sufficient, Columbia Gulf's pipeline crosses over a Trunkline Gas Company 16-inch pipeline and an Amoco Production Company abandoned 4-inch pipeline. Therefore, Columbia Gulf cannot comply with the lowering requirement without first lowering or crossing below the Trunkline and Amoco pipelines. This coincidental lowering would present the potential for damage to these lines which could cause environmental pollution.

A waiver would allow Columbia Gulf to cover 813 feet along the subject pipeline segment with a concrete mesh blanket alternative to the 36-inch depth of cover requirement. The waiver would also extend the time limitation required for compliance with section 192.612.

A ''concrete mesh blanket'' unit is an 8′ × 20′ section constructed from 160 individually cast 17″ × 17″ × 9″ beveled concrete briquettes inter-connected with ¾″ polypropelene UV stabilized line. A total of 41 (8′ × 20′ × 9″) units of ''concrete mesh blanket'' will be required to cover the 813' of affected pipeline. Each of the 41 units will be hydrojetted flush with the seabed and permanently anchored with six screw anchors.

The top of the 12 inch pipeline the mesh blanket is intended to cover is presently buried 6 inches below unconsolidated bottom in the Gulf of Mexico from Lat. 29°30′21.46″, Long. 92°22′54.08″ to Lat. 29°30′13.4″, Long. 92°22′53.98; Block 15, Vermillion area, approximately 8 miles South of Pecan Island, LA. The pipeline is coated with concrete.

The application of the proposed blanket would effectively cover the pipeline to 15 inches (9″ mattress + 6″ cover). The required reburial is to 36 inches below the bottom or 18 inches below a rock bottom.

RSPA proposes to grant the waiver with the provision that Columbia Gulf also install a rock shield over the pipeline before installation of the blanket. The rock shield must be of at least ⅜ inches of thickness constructed of an appropriate material, such as ''Tuff N Nuff'' manufactured by Submar. With the addition of the rock shield RSPA believes there is no reason to anticipate a lesser level of safety than would be achieved by a 36″ pipeline burial. In view of these reasons and those stated in the foregoing discussion, it appears that a waiver of compliance with § 192.612(c)(3) would not be inconsistent with pipeline safety, and as a consequence, RSPA proposes to grant the waiver.

Interested parties are invited to comment on the proposed waiver by submitting in duplicate such data, views, or arguments as they may desire. RSPA specifically requests comments on the adequacy of the proposed concrete mat to reduce the hazard to navigation posed by the exposed pipeline and on any impact the mat may have on fishing vessel operations. Comments should identify the Docket and Notice numbers, and be submitted to the Dockets Unit, Room 8417, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, D.C. 20590.

All comments received before April 14, 1995 will be considered before final action is taken. Late filed comments will be considered so far as practicable. All comments and other docketed material will be available for inspection and copying in Room 8419 between the hours of 8:30 A.M. and 5:00 P.M. Monday through Friday, except federal holidays before and after the closing date. No public hearing is contemplated, but one may be held at a time and place set in a Notice in the **Federal Register** if requested by an interested person desiring to comment at a public hearing and raising a genuine issue.

Richard D. Huriax,

Director, Regulatory Programs, Office of Pipeline Safety.

[FR Doc. 95–4907 Filed 2–27–95; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Public Information Collection Requirements Submitted to OMB for Review

February 20, 1995.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Number: 1550–030.

Form Number: OTS Forms 1344 and 1561.

Type of Review: Revision.

Title: Application for Issuance of Subordinated Debt Securities.

Description: The information provided to OTS is used to determine if the proposed issuance of subordinated debt or preferred stock will benefit the thrift institution or create an unreasonable risk to the Savings Association Insurance Fund.

Respondents: Savings and Loan Associations and Savings Banks.
Estimated Number of Respondents: 5.
Estimated Burden Hours Per Respondent: 49 Hrs. Avg.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 246 Hrs.
Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Cora Prifold Beebe,

Director of Administration.

[FR Doc. 95–4828 Filed 2–27–95; 8:45 am]

BILLING CODE 6720–01–P

Public Information Collection Requirements Submitted to OMB for Review

February 20,1995.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–11. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Number: 1550–023.
Form Number: OTS Forms 1313 and 1568.
Type of Review: Revision.
Title: Thrift Financial Report.
Description: OTS collects financial data from insured institutions and their subsidiaries in order to assure their safety and soundness as depositories of personal savings of the general public. The OTS monitors the financial positions and interest-rate risk so that adverse conditions can be remedied promptly.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 1546.
Estimated Burden Hours Per Response: 13.25 Hrs.
Frequency of Response: Monthly
Estimated Total Reporting Burden: 245,842 Hrs.
Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Cora Prifold Beebe,

Director of Administration.

[FR Doc. 95–4829 Filed 2–27–95; 8:45 am]

BILLING CODE 6720–01–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Art and Empire: Treasures from Assyria in the British Museum'' (See list [1]) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at The Metropolitan Museum of Art, New York City from on or about April 24, 1995 through August 13, 1995 is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: February 22, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–4898 Filed 2–27–95; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mrs. Carol B. Epstein, Assistant General Counsel, at 619–6981, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, S.W., Washington, D.C. 20547.

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Application for Authority to Close Loans on an Automatic Basis—Nonsupervised Lenders, VA Form 26–8736

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 30, 1995.

Dated: February 21, 1995.

By direction of the Secretary.

Ronald C. Taylor,

Management Analyst.

Reinstatement

1. Application for Authority to Close Loans on an Automatic Basis—Nonsupervised Lenders, VA Form 26–8736.
2. This form is used by nonsupervised lenders to request approval to close loans on an automatic basis. The information is used to determine whether applicants meet standards of acceptability.
3. Business or other for-profit.
4. 42 hours.
5. 25 minutes.
6. On occasion.
7. 100 respondents.

[FR Doc. 95–4784 Filed 2–27–95; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Request for Verification of Deposit, VA Form 26–8497a

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) the title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 820 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 30, 1995.

Dated: February 21, 1995.

By direction of the Secretary.

Ronald C. Taylor,

Management Analyst.

Extension

1. Request for Verification of Deposit, VA Form 26–8497a
2. The information collected is used by VA to determine whether the veteran qualifies as a prospective mortgagor for mortgage insurance or guaranty or as a borrower for a rehabilitation loan under VA programs.
3. Business or other for-profit.
4. 26,000 hours.
5. 5 minutes.
6. On occasion.
7. 312,000 respondents.

[FR Doc. 95–4782 Filed 2–27–95; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Application for Reinstatement, VA Form 29–352

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 30, 1995.

Dated: February 21, 1995.

By direction of the Secretary.

Ronald C. Taylor,

Management Analyst.

Reinstatement

1. Application for Reinstatement, VA Form 29–352
2. This form is used by veterans applying for reinstatement of their Government Life Insurance or Total Disability Income Provision which has lapsed for more than six months. The information is used by VA to determine eligibility for reinstatement.
3. Individuals or households.
4. 500 hours.
5. 20 minutes.
6. On occasion.
7. 1,500 respondents.

[FR Doc. 95–4781 Filed 2–27–95; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Statement of Holder or Servicer of Veteran's Loan, VA Form Letter 26–559

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 30, 1995.

Dated: February 21, 1995.

By direction of the Secretary.

Ronald C. Taylor,

Management Analyst.

Extension

1. Statement of Holder or Servicer of Veteran's Loan, VA Form Letter 26–559
2. This form letter is completed by holders or servicers of guaranteed or insured home loans from which obligors may be released from liability and/or substitution entitlement. Information collected is used to determine that the loan is current.
3. Business or other for profit.
4. 2,500 hours.
5. 10 minutes.
6. On occasion.
7. 15,000 respondents.

[FR Doc. 95–4785 Filed 2–27–95; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Status of Loan Account—Foreclosure or Other Liquidation, VA Form 26–567

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C.

Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 30, 1995.

Dated: February 21, 1995.

By direction of the Secretary.

Ronald C. Taylor,

Management Analyst.

Extension

1. Status of Loan Account—Foreclosure or Other Liquidation, VA Form Letter 26–567.
2. This form letter is used by VA to obtain information from holders concerning the status of a loan account at the time of foreclosure or other liquidation action.
3. Businesses or other for-profit.
4. 12,664 hours.
5. 30 minutes.
6. On occasion.
7. 25,328 respondents.

[FR Doc. 95–4783 Filed 2–27–95; 8:45 am]

BILLING CODE 8320–01–M

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Matching Program.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring matching program. This will match personnel records of the Department of Defense with VA records of benefit receipts under the Montgomery GI Bill.

The goal of these matches is to identify the eligibility status of veterans, service members and reservists who have applied for or who are receiving education benefit payments under the Montgomery GI Bill. The purpose of the match is to enable VA to verify that individuals meet the conditions of military service and eligibility criteria for payment of benefits determined by VA under the Montgomery GI Bill—Active Duty and the Montgomery GI Bill—Selected Reserve.

DATES: This match will commence on March 30, 1995. The departments may renew the agreement for another 12 months at that time.

FOR FURTHER INFORMATION CONTACT: John L. Fox (224), Assistant Director for Procedures and Systems, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 273–7182.

SUPPLEMENTARY INFORMATION: Further information regarding the matching program is provided below. This information is required by paragraph 6c of the Guidelines on the Conduct of Matching Programs issued by the Office of Management and Budget (OMB) (54 FR 25818), as amended by OMB Circular A–130, 59 FR 37906 (1994). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget. The matching program is subject to their review.

a. *Names of participating agencies:* Department of Veterans Affairs and Department of Defense.

b. *Purpose of the match:* The purpose of the match is to enable VA to determine whether an applicant is eligible for payment of benefits under the Montgomery GI Bill—Active Duty or the Montgomery GI Bill—Selected Reserve, and to verify continued compliance with the requirements of both programs.

c. *Authority:* The authority to conduct this match is found in 38 U.S.C. 3684A(a)(1).

d. *Categories of records and individuals covered:* The records covered include eligibility records extracted from the Department of Defense personnel files and benefit records which VA establishes for all individuals who have applied for and/or are receiving, or have received education benefit payments under the Montgomery GI Bill. These benefit records are contained in a VA system of records identified as 58VA21/22 entitled: Compensation, Pension, Education and Rehabilitation Records—VA, last published in the **Federal Register** at 55 FR 28508.

e. *Date of the matching program:* The match will begin on March 30, 1995.

f. *Address for receipt of public inquiries or comments:* Members of the public who wish to submit written comments or inquiries may write to: R. J. Vogel, Under Secretary for Benefits (22), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Approved: February 9, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 95–4786 Filed 2–27–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 39

Tuesday, February 28, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 3, 1995.

PLACE: 2033 K. St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission

[FR Doc. 95–5069 Filed 2–24–95; 3:28 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Monday, March 6, 1995.

PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission

[FR Doc. 95–5070 Filed 2–24–95; 3:28 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 10, 1995.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–5071 Filed 2–24–95; 3:28 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:00 a.m., Friday, March 17, 1995.

PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–5072 Filed 2–24–95; 3:28 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:00 a.m., Friday, March 24, 1995.

PLACE: 2033K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–5073 Filed 2–24–95; 3:28 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:00 a.m., Friday, March 31, 1995.

PLACE: 2033K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–5073 Filed 2–24–95; 3:28 pm]

BILLING CODE 6351–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND PLACE: 9:30 a.m., Tuesday, March 7, 1995.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: The first item is open to the public. The last item is closed under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

6527—Aviation Accident Report: Controlled Collision with Terrain, Transportes Aereos Ejectivos, S.A. (TAESA), Learjet 25D, XA-BBA, Dulles International Airport, Chantilly, Virginia, June 18, 1994.

6354A—Opinion and Order: Administrator v. Bielecki, et al, Dockets SE–9244–9249; disposition of respondents' appeals.

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: February 24, 1995.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 95–4966 Filed 2–24–95; 10:39 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 27, March 6, 13, and 20, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 27

Tuesday, February 28

10:00 a.m.
Briefing by OIG on Special Evaluation (Public Meeting)
(Contact: Robert Shideler, 301–415–5972)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
*(Please Note: This item will be affirmed immediately following the conclusion of the preceding meeting.)
a. Curators of the University of Missouri—Appeal of LBP–91–31 and LBP–91–34 (Tentative)
(Contact: Roland Frye, 301–415–3505)

2:00 p.m.
Discussion of Management Issues (Closed—Ex 2 and 6)

Week of March 6—Tentative

Thursday, March 9

2:00 p.m.
Briefing on Performance Indicators in Materials Performance Evaluation Program (Public Meeting)
(Contact: George Pangburn, 301–415–7266)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 13—Tentative

Tuesday, March 14

10:00 a.m.
Briefing on Investigative Matters (Closed—Ex. 5 and 7)

Wednesday, March 15

2:00 p.m.
Briefing on Proposed Changes to NRC Fee Rule (Public Meeting)
(Contact: Jesse Funches, 301–415/7322)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 20—Tenative

Wednesday, March 22

10:00 a.m.
Briefing on Status of Action Plan for Fuel Cycle Facilities (Public Meeting)
(Contact: John Hickey, 301–415–7192)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: William Hill—(301) 415–1661.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system will also become available in the near future. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

* * * * *

Dated: February 24, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–5051 Filed 2–24–95; 3:01 pm]

BILLING CODE 7590–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: March 3, 1995 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–684–685 (Final) (Fresh Cut Roses from Colombia and Ecuador)—briefing and vote.
5. Inv. No. 731–TA–718 (Final) (Glycine from China)—briefing and vote.
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: February 24, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–5077 Filed 2–24–95; 4:01 pm]

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Tuesday
February 28, 1995

Part II

Department of Commerce

International Trade Administration

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Notices

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–588–804, A–559–801, A–401–801, A–549–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders.

SUMMARY: On February 28, 1994, the Department of Commerce (the Department) published the preliminary results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Japan, Singapore, Sweden, Thailand and the United Kingdom. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof, as described in more detail below. The reviews cover 29 manufacturers/exporters. The review period is May 1, 1992, through April 30, 1993.

Based on our analysis of the comments received, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms for each class or kind of merchandise are listed below in the section entitled ''Final Results of Review.''

The Department also is revoking the antidumping duty orders with respect to the following companies and merchandise:

Spherical plain bearings from France—SKF
Spherical plain bearings from Japan—Honda
Ball bearings from Japan—Honda
Cylindrical roller bearings from Japan—Honda

EFFECTIVE DATE: February 28, 1995.

FOR FURTHER INFORMATION CONTACT: The appropriate case analyst, for the various respondent firms listed below, at the Office of Antidumping Compliance, International Trade Administration, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

France

Jacqueline Arrowsmith (SKF, SNR), Kris Campbell (SNFA), Matthew Rosenbaum (Franke & Heydrich, Hoesch Rothe Erde, Rollix Defontaine), or Michael Rill.

Germany

Jacqueline Arrowsmith (SKF), Kris Campbell (FAG), Carlo Cavagna (NTN Kugellagerfabrik), Davina Friedmann (INA), Charles Riggle (Fichtel & Sachs, GMN), Matthew Rosenbaum (Franke & Heydrich, Hoesch Rothe Erde, Rollix Defontaine), or Michael Rill.

Japan

Carlo Cavagna (Honda, Nachi, NTN), William Czajkowski (Takeshita), J. David Dirstine (NSK, Koyo), Joseph Fargo (Nankai Seiko), Michael Panfeld (IKS, NPBS), or Richard Rimlinger.

Singapore

William Czajkowski (NMB/Pelmec), or Richard Rimlinger.

Sweden

Matthew Rosenbaum (SKF), or Michael Rill.

Thailand

William Czajkowski (NMB/Pelmec), or Richard Rimlinger.

United Kingdom

Jacqueline Arrowsmith (RHP/NSK), Kris Campbell (Barden/FAG), or Michael Rill.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1994, the Department published in the **Federal Register** the preliminary results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Japan, Singapore, Sweden, Thailand and the United Kingdom (59 FR 9463). We gave interested parties an opportunity to comment on our preliminary results.

At the request of certain interested parties, we held a public hearing on general issues pertaining to all countries on March 28, 1994, and hearings on case-specific issues as follows: Germany on March 29, 1994; and Japan on March 30, 1994.

We are terminating the administrative reviews initiated for General Bearing Corp., SST Bearing Corp., and Peer International (Peer) with respect to subject merchandise from Japan. General Bearing Corp. and SST Bearing Corp. informed us that they neither produced AFBs in Japan nor exported Japanese-produced bearings to the United States. Peer informed us that although it is a reseller of Japanese-made bearings, all of its suppliers had knowledge at the time of sale that the merchandise was destined for the United States. Consequently, Peer is not a reseller as defined in 19 CFR 353.2(s) because its sales cannot be used to calculate U.S. price (USP).

Revocations In Part

In accordance with § 353.25(a)(2) of the Department's regulations (19 CFR 353.25(a)(2)), the Department is revoking the antidumping duty orders covering the following companies and merchandise:

Spherical plain bearings from France—SKF
Spherical plain bearings from Japan—Honda
Ball bearings from Japan—Honda
Cylindrical roller bearings from Japan—Honda

All of the above firms have submitted, in accordance with 19 CFR 353.25(b), requests for revocation of the orders with respect to their sales of the merchandise in question. They have also demonstrated three consecutive years of sales at not less than foreign market value (FMV) and have submitted the required certifications. All of these firms have agreed in writing to their immediate reinstatement in the order, as long as any producer or reseller is subject to the order, if the Department concludes under 19 CFR 353.22(f) that the firm, subsequent to the revocation, sold the merchandise at less than FMV. Furthermore, it is not likely that they will sell the subject merchandise at less than FMV in the future. Therefore, the Department is revoking the orders with respect to the indicated companies.

Scope of Reviews

The products covered by these reviews are AFBs, and constitute the following ''classes or kinds'' of merchandise: Ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). For a detailed description of the products covered under these classes or kinds of merchandise, including a compilation of all pertinent scope determinations, see the ''Scope Appendix'' which is appended to this notice of final results.

Best Information Available

In accordance with section 776(c) of the Tariff Act of 1930, as amended (the Act), we have determined that the use of the best information available (BIA) is appropriate for a number of firms. For certain firms, total BIA was necessary, while for other firms, only partial BIA was applied. For a discussion of our application of BIA, see the ''Best Information Available'' section of the Issues Appendix.

Sales Below Cost in the Home Market

The Department disregarded sales below cost for the following firms and classes or kinds of merchandise:

Country	Company	Class or kind of merchandise
France	SKF	BBs, SPBs.
	SNR	BBs, CRBs.
Germany	FAG	BBs, CRBs.
	INA	BBs, CRBs.
	SKF	BBs, CRBs, SPBs.
Japan	Koyo	BBs, CRBs.
	Nachi	BBs, CRBs.
	NPBS	BBs.
	NSK	BBs, CRBs.
	NTN	BBs, CRBs, SPBs.
Singapore	NMB/Pelmec.	BBs.
Sweden	SKF	BBs, CRBs.
Thailand	NMB/Pelmec.	BBs.
United Kingdom	RHP	BBs, CRBs.
	Barden/FAG.	BBs.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made the following changes in these final results.

• Where applicable, certain programming and clerical errors in our preliminary results have been corrected. Any alleged programming or clerical errors with which we do not agree are discussed in the relevant sections of the Issues Appendix.

• Pursuant to the decision of the United States Court of Appeals for the Federal Circuit in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States,* 13 F.3d 398 (CAFC 1994) (*Ad Hoc Comm.*), we have allowed a deduction for pre-sale inland freight in the calculation of foreign market value only as an indirect selling expense under 19 CFR 353.56(b), except where such expenses have been shown to be directly related to sales.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these 15 concurrent administrative reviews of AFBs are addressed in the ''Issues Appendix'' which is appended to this notice of final results.

Final Results of Reviews

We determine the following percentage weighted-average margins to exist for the period May 1, 1992, through April 30, 1993:

Company	BBs	CRBs	SPBs
France			
Franke & Heydrich	66.42	(2)	(2)
Hoesch Rothe Erde	(1)	(2)	(2)
Rollix Defontaine	(1)	(2)	(2)
SKF	3.45	(1)	0.00
SNFA	66.42	18.37	(2)
SNR	1.91	2.58	(2)
Germany			
FAG	11.80	19.64	18.79
Fichtel & Sachs	14.83	(2)	(2)
Franke & Heydrich	132.25	(2)	(2)
GMN	35.43	(2)	(2)
Hoesch Rothe Erde	(1)	(2)	(2)
INA	29.80	10.88	(2)
NTN	8.41	(1)	(1)
Rollix Defontaine	(1)	(2)	(2)
SKF	15.53	11.16	22.44
Japan			
Honda	0.37	0.01	0.01
IKS	8.72	(2)	(2)
Koyo	39.56	3.55	(1)
Nachi	12.46	1.03	(2)
Nankai Seiko	1.08	(2)	(2)
NPBS	18.00	(2)	(2)
NSK	10.47	9.10	(1)
NTN	13.90	13.71	4.97
Takeshita	14.58	(2)	(2)
Singapore			
NMB/Pelmec	4.84		
Sweden			
SKF	16.41	13.02	
Thialand			
NMB/Pelmec	0.01		
United Kingdom			
Barden/FAG	4.86	8.22	
RHP/NSK	14.57	19.71	

[1] No U.S. sales during the review period.
[2] No review requested.

Cash Deposit Requirements

To calculate the cash deposit rate for each exporter, we divided the total dumping margins for each exporter by the total net USP value for that exporter's sales for each relevant class or kind during the review period under each order.

In order to derive a single deposit rate for each class or kind of merchandise for each respondent (*i.e.*, each exporter or manufacturer included in these reviews), we weight-averaged the purchase price (PP) and exporter's sales price (ESP) deposit rates (using the USP of PP sales and ESP sales, respectively, as the weighting factors). To accomplish this where we sampled ESP sales, we first calculated the total dumping margins for all ESP sales during the review period by multiplying the sample ESP margins by the ratio of total weeks in the review period to sample weeks. We then calculated a total net USP value for all ESP sales during the review period by multiplying the sample ESP total net value by the same ratio. We then divided the combined total dumping margins for both PP and ESP sales by the combined total USP value for both PP and ESP sales to obtain the deposit rate.

We will direct Customs to collect the resulting percentage deposit rate against the entered Customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Entries of parts incorporated into finished bearings before sales to an unrelated customer in the United States will receive the exporter's deposit rate for the appropriate class or kind of merchandise.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of AFBs entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above, except that for firms whose weighted-average margins are less than 0.50 percent, and therefore *de minimis,* the Department shall not require a deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''All Others'' rate for the relevant class or kind and country made effective by the final results of review published on July 26, 1993 (see *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729, July 26, 1993). These rates are the ''All Others'' rates from the relevant LTFV investigations.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and other simplification methods prevent entry-by-entry assessments, we will calculate wherever possible an exporter/importer-specific assessment rate for each class or kind of antifriction bearings.

1. Purchase Price Sales

With respect to PP sales for these final results, we divided the total dumping margins (calculated as the difference between FMV and USP) for each importer by the total number of units sold to that importer. We will direct Customs to assess the resulting unit dollar amount against each unit of merchandise in each of that importer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer under each order for the review period will be almost exactly equal to the total dumping margins.

2. Exporter's Sales Price Sales

For ESP sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. While the Department is aware that the entered value of sales during the period of review (POR) is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR.

In the case of companies which did not report entered value of sales, we calculated a proxy for entered value of sales, based on the price information available and appropriate adjustments (*e.g.*, insurance, freight, U.S. brokerage and handling, U.S. profit, and any other items, as appropriate, on a company-specific basis).

For calculation of the ESP assessment rate, entries for which liquidation was suspended, but which ultimately fell outside the scope of the orders through operation of the ''Roller Chain'' rule, are included in the assessment rate denominator to avoid over-collecting. (The ''Roller Chain'' rule excludes from the collection of antidumping duties bearings which were imported by a related party and further processed, and which comprise less than one percent of the finished product sold to the first unrelated customer in the United States. See the section on Further Manufacturing and the ''Roller Chain'' Rule in the Issues Appendix.)

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 31, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

Scope Appendix Contents

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Scope Appendix

A. Description of the Merchandise

The products covered by these orders, antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof (AFBs), constitute the following classes or kinds of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all AFBs that employ balls as the roller element. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Imports of these products are classified under the following Harmonized Tariff Schedule (HTS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.10, 8482.99.35, 8482.99.6590, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050,

8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90.

2. *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof*: These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: Antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.40.00, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.35, 8482.99.6530, 8482.99.6560, 8482.99.6590, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.93.5000, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90.

3. *Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all spherical plain bearings that employ a spherically shaped sliding element, and include spherical plain rod ends.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90.

The HTS item numbers are provided for convenience and Customs purposes. They are not determinative of the products subject to the orders. The written description remains dispositive.

Size or precision grade of a bearing does not influence whether the bearing is covered by the orders. These orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of these orders. For unfinished parts, such parts are included if (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by these orders are those that will be subject to heat treatment after importation.

The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scope of these orders.

B. Scope Determinations

The Department has issued numerous clarifications of the scope of the orders. The following is a compilation of the scope rulings and determinations the Department has made.

Scope determinations made in the *Final Determinations of Sales at Less than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany (AFBs Investigation of SLTFV),* 54 FR 19006, 19019 (May 3, 1989):

Products covered:

- Rod end bearings and parts thereof
- AFBs used in aviation applications
- Aerospace engine bearings
- Split cylindrical roller bearings
- Wheel hub units
- Slewing rings and slewing bearings (slewing rings and slewing bearings were subsequently excluded by the International Trade Commission's negative injury determination. See *International Trade Commission: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom,* 54 FR 21488 (May 18, 1989).
- Wave generator bearings
- Bearings (including mounted or housed units, and flanged or enhanced bearings) ultimately utilized in textile machinery

Products excluded:

- Plain bearings other than spherical plain bearings
- Airframe components unrelated to the reduction of friction
- Linear motion devices
- Split pillow block housings
- Nuts, bolts, and sleeves that are not integral parts of a bearing or attached to a bearing under review
- Thermoplastic bearings
- Stainless steel hollow balls
- Textile machinery components that are substantially advanced in function(s) or value
- Wheel hub units imported as part of front and rear axle assemblies; wheel hub units that include tapered roller bearings; and clutch release bearings that are already assembled as parts of transmissions

Scope rulings completed between April 1, 1990, and June 30, 1990. See *Scope Rulings,* 55 FR 42750 (October 23, 1990):

Products excluded:

- Antifriction bearings, including integral shaft ball bearings, used in textile machinery and imported with attachments and augmentations sufficient to advance their function beyond load-bearing/friction-reducing capability

Scope rulings completed between July 1, 1990, and September 30, 1990. See *Scope Rulings,* 55 FR 43020 (October 25, 1990):

Products covered:

- Rod ends
- Clutch release bearings
- Ball bearings used in the manufacture of helicopters
- Ball bearings used in the manufacture of disk drives

Scope rulings completed between April 1, 1991, and June 30, 1991. See *Notice of Scope Rulings,* 56 FR 36774 (August 1, 1991):

Products excluded:

- Textile machinery components including false twist spindles, belt guide rollers, separator rollers, damping units, rotor units, and tension pulleys

Scope rulings published in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; Final Results of Antidumping Administrative Review (AFBs I),* 56 FR 31692, 31696 (July 11, 1991):

Products covered:

- Load rollers and thrust rollers, also called mast guide bearings
- Conveyor system trolley wheels and chain wheels

Scope rulings completed between July 1, 1991, and September 30, 1991. See *Scope Rulings,* 56 FR 57320 (November 8, 1991):

Products covered:

- Snap rings and wire races
- Bearings imported as spare parts
- Custom-made specialty bearings

Products excluded:

- Certain rotor assembly textile machinery components
- Linear motion bearings

Scope rulings completed between October 1, 1991, and December 31, 1991. See *Notice of Scope Rulings,* 57 FR 4597 (February 6, 1992):

Products covered:

- Chain sheaves (forklift truck mast components)
- Loose boss rollers used in textile drafting machinery, also called top rollers

- Certain engine main shaft pilot bearings and engine crank shaft bearings

Scope rulings completed between January 1, 1992, and March 31, 1992. See *Scope Rulings,* 57 FR 19602 (May 7, 1992):

Products covered:

- Ceramic bearings
- Roller turn rollers
- Clutch release systems that contain rolling elements

Products excluded:

- Clutch release systems that do not contain rolling elements
- Chrome steel balls for use as check valves in hydraulic valve systems

Scope rulings completed between April 1, 1992, and June 30, 1992. See *Scope Rulings,* 57 FR 32973 (July 24, 1992):

Products excluded:

- Finished, semiground stainless steel balls
- Stainless steel balls for non-bearing use (in an optical polishing process)

Scope rulings completed between July 1, 1992, and September 30, 1992. See *Scope Rulings,* 57 FR 57420 (December 4, 1992).

Products covered:

- Certain flexible roller bearings whose component rollers have a length-to-diameter ratio of less than 4:1
- Model 15BM2110 bearings

Products excluded:

- Certain textile machinery components

Scope rulings completed between October 1, 1992, and December 31, 1992. See *Scope Rulings,* 58 FR 11209 (February 24, 1993).

Products covered:

- Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1

Products excluded:

- Certain cartridge assemblies comprised of a machine shaft, a machined housing and two standard bearings

Scope rulings completed between January 1, 1993, and March 31, 1993. See *Scope Rulings,* 58 FR 27542 (May 10, 1993).

Products covered:

- Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1

Scope rulings completed between April 1, 1993, and June 30, 1993. See *Scope Rulings,* 58 FR 47124 (September 7, 1993).

Products covered:

- Certain series of INA bearings

Products excluded:

- SAR series of ball bearings
- Certain eccentric locking collars that are part of housed bearing units

Scope rulings completed between October 1, 1993, and December 31, 1993. See *Scope Rulings,* 59 FR 8910 (February 24, 1994).

Products excluded:

- Certain textile machinery components

Scope rulings completed after March 31, 1994.

Products excluded:

- Certain textile machinery components

Issues Appendix

Company Abbreviations

Barden—The Barden Corporation (U.K.) Ltd.; The Barden Corporation
FAG-Germany—FAG Kugelfischer Georg Schaefer KGaA
FAG–UK—FAG (UK) Ltd.
Federal-Mogul—Federal-Mogul Corporation
Fichtel & Sachs—Fichtel & Sachs AG; Sachs Automotive Products Co.
GMN—Georg Muller Nurnberg AG; Georg Muller of America
Hoesch—Hoesch Rothe Erde AG
Honda—Honda Motor Co., Ltd.; American Honda Motor Co., Inc.
INA—INA Walzlager Schaeffler KG; INA Bearing Company, Inc.
IKS—Izumoto Seiko Co., Ltd.
Koyo—Koyo Seiko Co. Ltd.
Nachi—Nachi-Fujikoshi Corp.; Nachi America, Inc.; Nachi Technology Inc.
Nankai—Nankai Seiko Co., Ltd.
NMB/Pelmec—NMB Singapore Ltd.; Pelmec Industries (Pte.) Ltd.; NMB Thai, Ltd.; Pelmec Thai, Ltd.
NPBS—Nippon Pillow Block Manufacturing Co., Ltd.; Nippon Pillow Block Sales Co., Ltd.; FYH Bearing Units USA, Inc.
NSK—Nippon Seiko K.K.; NSK Corporation
NSK-Europe—NSK Bearings Europe, Ltd.
NTN-Germany—NTN Kugellagerfabrik (Deutschland) GmbH
NTN—NTN Corporation; NTN Bearing Corporation of America; American NTN Bearing Manufacturing Corporation
Peer Int'l—Peer International, Ltd.
RHP—RHP Bearings; RHP Bearings, Inc.
Rollix—Rollix Defontaine, S.A.
SKF-France—SKF Compagnie d'Applications Mecaniques, S.A. (Clamart); ADR; SARMA
SKF-Germany—SKF GmbH; SKF Service GmbH; Steyr Walzlager
SKF-Sweden—AB SKF; SKF Mekanprodukter AB; SKF Sverige
SKF–UK—SKF (UK) Limited; SKF Industries; AMPEP Inc.
SKF Group—SKF-France; SKF-Germany; SKF-Sweden; SKF-UK; SKF USA, Inc.
SNFA—SNFA Bearings, Ltd.
SNR—SNR Roulements; SNR Bearings USA, Inc.
Takeshita—Takeshita Seiko Company
Torrington—The Torrington Company

Other Abbreviations

COP—Cost of Production
COM—Cost of Manufacturing
CV—Constructed Value
ESP—Exporter's Sales Price
FMV—Foreign Market Value
HM—Home Market
HMP—Home Market Price
OEM—Original Equipment Manufacturer
POR—Period of Review
PP—Purchase Price
USP—United States Price
DOC—Department of Commerce
AFBs LTFV Investigation—Final Determinations of Sales at Less than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 19006, 19019 (May 3, 1989)
AFBs I—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 FR 31692 (July 11, 1991)
AFBs II—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360 (June 24, 1992)
AFBs III—Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39729 (July 26, 1993)

1. Annual POR Averaging

Comment 1: NSK contends that, when comparing annual average FMVs with PP transactions, the Department should include in such FMVs only those HM models that match to PP sales, rather than HM models that match to both PP and ESP sales. That is, the Department should calculate two separate annual average FMVs, one based only on HM models that match to PP sales, and one based only on HM models that match to ESP sales. This would involve conducting a separate price stability test on HM models that match to PP transactions. NSK notes that the Department treats PP transactions differently than ESP transactions, that FMVs are computed separately for ESP and PP sales, and that different COS adjustments are made depending on whether FMV is matched to PP or ESP transactions. NSK requests that, if the Department is unwilling to conduct a separate price stability test on all HM models matched to PP transactions, the Department should use the monthly, rather than annual, weighted-average FMVs for PP matches.

Department's Position: We disagree. The HM price stability test, which allows for limited price fluctuations on a model-by-model basis, measures the overall stability of HM prices for the class or kind of merchandise under consideration over the POR (see *AFBs III* at 39734). The test is designed for determining whether HM sales prices during the POR are stable enough to allow the use of annual average, rather than monthly average, HM prices as the basis of FMV. There is no reason to take into consideration whether particular HM models are matched to PP or ESP transactions as the type of U.S. sale is not relevant to the question of whether HM prices are stable. Furthermore, the fact that PP sales are distinguishable from ESP sales, that ESP sales may be sampled while PP sales are not, and that different COS adjustments are made when comparing to PP and ESP sales are not relevant to whether the HM prices underlying FMVs are stable. In deciding whether to calculate POR weighted-averaged FMVs we performed the tests outlined in our preliminary results on HM sales databases to determine whether: (1) There was a minimal variance between monthly and POR weighted-average prices; and (2) there was any significant correlation between fluctuations in price and time. Thus, we conclude that our price stability test, performed on a class or kind basis, does not need to be modified to distinguish between HM models matched to PP sales and those matched to ESP sales.

2. Assessment and Duty Deposits

Comment 1: The FAG Group (Barden, FAG-Germany, and FAG–UK) and NSK contend that the Department's assessment rate methodology is flawed, and state that the Department acted contrary to law in basing assessment rates on the Customs entered values of those sales reviewed by the Department for the POR, because the sales actually reviewed by the Department for the POR may have involved merchandise entered before the POR. Instead, respondents claim that the Department should base assessment rates on the Customs entered values of merchandise actually entered during the POR, as submitted by respondents. Respondents maintain that the Department should determine assessment rates by dividing total antidumping duties due (calculated as the difference between statutory FMV and statutory USP for the sales reported for the POR) by the entered values of the merchandise actually entered during the POR (not by the entered values of the merchandise actually sold during the POR). Respondents argue that the Department's current methodology can lead to a substantial overcollection of dumping duties.

Both Torrington and Federal-Mogul argue that the Department's methodology is valid. Torrington notes that the Department concluded that the current methodology is reasonable and that it constitutes an appropriate use of the Department's discretion to implement sampling and averaging techniques as provided for in section 777A of the Tariff Act. See *AFBs I* at 31694. Torrington states that since the U.S. sales used to calculate the dumping margins are only a sample of the total U.S. sales during the POR, application of FAG's proposed methodology would lead to substantial undercollection of antidumping duties, unless the Department adjusts that methodology to take into account all U.S. sales during the POR.

Torrington also states that both the Department's current methodology and FAG's proposed methodology are deficient in that neither method ''ties entries to sales.'' Torrington proposes two methods for dealing with the problem of reviewed sales that do not match to particular entries during the POR. First, Torrington suggests that the Department review entries rather than sales. Torrington points out that this method is not ideal because it could place the Department in the position of reviewing entries made during the POR that contained merchandise that was sold after the POR. Second, Torrington proposes that the Department require respondents to submit adequate information to trace each entry directly to the sale in the United States. Torrington observes that at present this method would be impossible because the administrative record in this review does not permit tracing each sale to the entry.

Federal-Mogul states that the Department's methodology is logical because it establishes a link between the values calculated on the basis of the sales analyzed and the actual assessment values over time and, therefore, avoids the distortions that FAG's alternative would engender.

Department's Position: We disagree with the FAG Group and NSK. As stated in *AFBs III* (at 39737), section 751 of the Tariff Act requires that the Department calculate the amount by which the FMV exceeds the USP and assess antidumping duties on the basis of that amount. However, there is nothing in the statute that dictates how the actual assessment rate is to be determined from that amount.

In accordance with section 751, we calculated the difference between FMV and USP (the dumping margin) for all reported U.S. sales. For PP sales we have calculated assessment rates based on the total of these differences for each importer divided by the total number of units sold to that importer. Therefore, each importer is only liable for the duties related to its entries. In ESP cases, we generally cannot tie sales to specific entries. In addition, the calculation of specific antidumping duties for every entry made during the POR is impossible where dumping margins have been based on sampling, even if all sales could be tied to specific entries. Hence, for ESP sales, in order to obtain an accurate assessment of antidumping duties on all entries during the POR, we have expressed the difference between FMV and USP as a percentage of the entered value of the examined sales for each exporter/importer (ad valorem rates). We will direct the U.S. Customs Service to assess antidumping duties by applying that percentage to the entered value of each of that importer's entries of subject merchandise under the relevant order during the POR.

This approach is equivalent to dividing the aggregate dumping margins, *i.e.*, the difference between statutory FMV and statutory USP for all sales reviewed, by the aggregate USP value of those sales and adjusting the result by the average difference between USP and entered value for those sales. While we are aware that the entered value of sales during the POR is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties that would have been determined if we had reviewed those sales of merchandise actually entered during the POR.

Comment 2: Federal-Mogul and Torrington object to the Department's policy of calculating the cash deposit rate as a percentage of statutory USP. They claim that this practice results in a systematic undercollection of duty deposits. Federal-Mogul and Torrington propose that the Department base its deposit rate methodology on Customs entered values because duty deposit rates are applied to entered value. Torrington states that the legislative history requires that the estimated antidumping duty deposit rate be as accurate and as close to actual duties as possible, given the information available. Hence, if the Department has the entered value data available for calculating the assessment rates, it should use this data.

Torrington contends that it is important to focus on the difference between the entered value used by Customs to collect duties and the ESP calculated by Commerce. Entered value is different from ESP because ESP includes expenses, such as the value added tax, that are excluded from entered value.

RHP, Koyo, FAG, NTN, NSK, and SKF disagree with Torrington and Federal-Mogul. Respondents argue that it has been the Department's consistent practice to use USP as the denominator in calculating the cash deposit rate and to apply this rate to the entered value of future imports of the subject merchandise. In support of this argument, NTN notes that the Court has repeatedly upheld the Department's methodology as reasonable and in accordance with the antidumping statute. NTN cites *Federal-Mogul Corp.* v. *United States,* 813 F. Supp. 856, 866–67 (CIT 1993) (*Federal-Mogul*) , in which the Court ruled that the antidumping statute does not specify that the same method should be used for calculating both assessment rates and cash deposit rates, and that the Department's methodology is ''reasonable and in accordance with the law.'' Thus, NSK states that the Department should adhere to its established practice and calculate separate assessment and deposit rates.

Respondents contend that Torrington's and Federal-Mogul's arguments fail to adequately take into account that, under any method of calculating cash deposit rates, cash deposits are unlikely to equal the amount by which FMV exceeds USP. Furthermore, if any difference between the deposit rate and the ultimate antidumping liability results, the Department will instruct the Customs Service to collect or to refund the difference with interest.

Respondents assert that Torrington has failed to demonstrate that its methodology would result in a more accurate estimation of the duty. Torrington's claim is premised on the assumption that the information on the record will remain constant from review to review. Respondents hold that this is incorrect because even the record for a single POR reveals fluctuations in pricing and expenses and, therefore, in margin calculations. For example, indirect selling expense factors during the POR can and have changed significantly from the first part of the period to the second part. SKF claims the CIT recognized this situation in upholding the Department's methodology in *Federal-Mogul; Zenith Electronics Corp.* v. *United States,* 770 F. Supp. 648 (CIT 1991) and *Daewoo Electronics Co.* v. *United States,* 712 F. Supp. 931 (CIT 1989).

SKF argues that Torrington's illustration that ESP will always be greater than entered value is speculative. SKF points out that while ESP includes additions for elements which are not included in entered value, certain expenses are subtracted from ESP which are included in entered value.

Department's Position: We disagree with Torrington and Federal-Mogul. First, as we stated in the final results of *AFBs I* and *AFBs III,* we do not accept the argument that the deposit rate must be calculated in exactly the same manner as the assessment rate. Section 751 of the Tariff Act merely requires that both the deposit rate and the assessment rate be derived from the same FMV/USP differential. Furthermore, under any method of calculating cash deposit rates, there would be no certainty that the cash deposit rate would cause an amount to be collected that is equal to the amount by which FMV exceeds USP. Duty deposits are merely estimates of future dumping liability. If the amount of the deposit is less than the amount ultimately assessed, the Department will instruct the U.S. Customs Service to collect the difference with interest, as provided for under sections 737 and 778 of the Tariff Act and 19 CFR 353.24.

Comment 3: Torrington and Federal-Mogul contend that the Department should deduct from ESP any antidumping duties ''effectively'' reimbursed by foreign producers to their U.S. affiliates. Torrington argues that in past administrative reviews it has identified and reviewed evidence of reimbursement of antidumping duties. Torrington argues that the Department's decision not to deduct antidumping duties from ESP in the previous review was contrary to the regulations and the law. Torrington finds justification for removing antidumping duties from ESP under 19 CFR 353.26, the Department's reimbursement regulation, stating that by its own terms, it applies generally ''[i]n calculating the United States price.'' Torrington maintains that if the reimbursement regulation is not applicable in ESP situations, a foreign producer can reimburse its related U.S. subsidiary for duties and continue dumping in the United States.

Torrington and Federal-Mogul also argue that the amount of antidumping duties assessed on imports of subject merchandise constitutes ''additional costs, charges, and expenses, * * * incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States,'' as provided in section 772(d)(2)(A) of the Tariff Act. Furthermore, Torrington and Federal-Mogul contend, the Department's regulations recognize that such duties, when reimbursed by a foreign producer or exporter, constitute a selling expense that must be deducted from USP.

NTN, RHP, SKF, and the FAG Group contend that Torrington and Federal-Mogul have not provided credible arguments as to why the Department should alter its position on this issue. The FAG Group states that the reimbursement regulation cannot apply to ESP sales because in an ESP situation the importer is the exporter. Hence, one cannot reimburse oneself. The FAG Group also states that Torrington's and Federal-Mogul's arguments are premature at best because respondents have not yet been assessed with actual antidumping duties—liquidation of all entries from November 1988 to date has remained suspended, and the only payments made so far have been of estimated antidumping duties. Thus, none of the reported ESP sales made by FAG (or any other principal respondent) could have included in the resale price amounts for assessed antidumping duties.

Koyo, NTN, and the FAG Group argue that there is no legal basis for Torrington's and Federal-Mogul's argument that the Department should treat antidumping duties as selling expenses to be deducted from USP. Furthermore, respondents state that a deduction of antidumping duties paid would violate Department and judicial precedent. FAG notes that, in *Federal-Mogul* v. *United States,* Slip Op. 93–17 at 40 (CIT 1993), the Court held that deposits of antidumping duties should not be deducted from USP because such deposits are not analogous to deposits of ''normal import duties.''

FAG and NSK contend that it is clear that, in accordance with 19 USC 1673, which states that the purpose of antidumping law is to measure the amount by which FMV exceeds USP, antidumping duties should not be deducted from USP. Respondents claim that making an additional deduction from USP for the same antidumping duties that correct discrimination between the price of comparable goods in the U.S. and the foreign markets would result in double-counting.

FAG argues that, if the Department agrees with Torrington's position, it should, to preserve comparability, add to USP the amount of any antidumping duties, plus interest, that are refunded to respondents.

Department's Position: We disagree with Torrington and Federal-Mogul that the Department should deduct from ESP antidumping duties allegedly reimbursed by foreign producers to their U.S. affiliates. In this administrative review neither party has identified record evidence that there was reimbursement of antidumping duties. Evidence of reimbursement is necessary before we can make an adjustment to USP. This has been our consistent interpretation of 19 CFR 353.26, the reimbursement regulation, and was upheld by the Court in *Otokumpu Copper Rolled Products AB* v. *United States,* 829 F.Supp. 1371 (CIT 1993).

As stated in *AFBs II* (at 28371) and *AFBs III* (at 39736), the antidumping statute and regulations make no distinction in the calculation of USP between costs incurred by a foreign parent company and those incurred by its U.S. subsidiary. Therefore, the Department does not make adjustments to USP based upon intracompany transfers of any kind.

We also disagree with Torrington and Federal-Mogul that the amount of antidumping duties assessed on imports of subject merchandise constitutes a selling expense and, therefore, should be deducted from ESP. Our position was upheld in *Federal-Mogul* v. *United States,* Slip Op. 93–17 at 40 (CIT 1993).

We agree with respondents that making an additional deduction from USP for the same antidumping duties that correct for price discrimination between comparable goods in the U.S. and foreign markets would result in double-counting. Thus, we have not deducted antidumping duties or antidumping duty-related expenses from ESP in this case.

3. Best Information Available

Section 776(c) of the Tariff Act requires the Department to use BIA "whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation." In deciding what to use as BIA, the Department regulations provide that the Department may take into account whether a party refuses to provide requested information. See 19 CFR 353.37(b). Thus, the Department may determine, on a case-by-case basis, what is the BIA.

For the purposes of these final results of review, in cases where we have determined to use total BIA we applied two tiers of BIA depending on whether the companies attempted to or refused to cooperate in these reviews. When a company refused to provide the information requested in the form required, or otherwise significantly impeded the Department's proceedings, we assigned that company first-tier BIA, which is the higher of: (1) The highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the LTFV investigation or a prior administrative review; or (2) the highest calculated rate found in this review for any firm for the same class or kind of merchandise in the same country of origin.

When a company has substantially cooperated with our requests for information including, in some cases, verification, but failed to provide complete or accurate information, we assigned that company second-tier BIA, which is the higher of: (1) The highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review or, if the firm has never before been investigated or reviewed, the all others rate from the LTFV investigation; or (2) the highest calculated rate in this review for the class or kind of merchandise for any firm from the same country of origin. See *Allied-Signal Aerospace Co.* v. *United States,* Slip Op. 93–1049 (June 22, 1993 CAFC). We applied this methodology to the companies discussed below for certain classes or kinds of merchandise.

Results Based on Total BIA

(1) Franke & Heydrich (Ball Bearings from France and Germany): We used first-tier BIA because Franke & Heydrich failed to respond to the Department's questionnaire. In this case, the rate used was the highest rate in the LTFV investigation, which was the highest rate ever found for each relevant class or kind of merchandise in the country of origin.

(2) SNFA: We used first-tier BIA because SNFA failed to respond to the Department's questionnaire. The rate used was the highest rate in the LTFV investigation which was the highest rate ever found for each relevant class or kind or merchandise in the country of origin.

(3) GMN: Because GMN had substantially cooperated with our requests for information, but was unable to complete verification, we used second-tier BIA. The rate used was GMN's highest previous rate, which in this case was the rate from the LTFV investigation.

Partial BIA

In certain situations, we found it necessary to use partial BIA. Partial BIA was applied in cases where we were unable to use some portion of a response in calculating a dumping margin. The following is a general description of the Department's methodology for certain situations.

In cases where the overall integrity of the questionnaire response warrants a calculated rate, but a firm failed to provide certain FMV information (*i.e.,* corresponding HM sales within the contemporaneous window or CV data for a few U.S. sales), we applied the second-tier BIA rate (see above) and limited its application to the particular transactions involved. See *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.,* 58 FR 39729, 39739 (July 26, 1993).

Where any deductions to HM prices or CV, such as freight or differences in merchandise, were not reported or were reported incorrectly, we have assigned a value of zero. For comparisons of similar merchandise, if adjustment information for differences in merchandise was missing from the U.S. sales listing, we used the second-tier BIA rate to determine the margins for these particular transactions. If other U.S. adjustment information such as freight charges was missing, we used other transactional information in the response for these expenses (*i.e.,* freight charges for other sales transactions). Where respondents did not establish that expenses were either indirect in the U.S. market or direct in the HM, we generally treated them as direct in the U.S. market and indirect in the HM. See *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.,* 58 FR 39729, 39739 (July 26, 1993).

We received the following comments concerning BIA issues:

Comment 1: GMN asserts that use of "second-tier" BIA for GMN is not supported by substantial evidence and is contrary to law.

GMN states that it promptly filed its questionnaire responses, thoroughly answered all supplemental questions, and passed the HM sales verification because no discrepancies were found in any of the items verified. GMN asserts that only a small number of items were not verified, mainly due to GMN's manpower shortage and the absences of certain key personnel during portions of the verification. It claims that because it could not complete the sales verification, the Department cancelled the cost verification. GMN believes it is being penalized for the Department's decision not to conduct a cost verification. GMN argues that as a worst case analysis, the Department should calculate a margin by applying partial BIA only to those items which were not verified.

Department's Position: We disagree with GMN. GMN did substantially cooperate with our requests for information. However, we were not able to complete sales and cost verifications of GMN's response successfully. As stated by GMN, ''the company made every attempt to complete this review and has * * * now found that its resources are so diminished * * * that it is unable to proceed further in the sales verification or to prepare for and conduct the cost verification.'' See GMN letter dated January 13, 1994: *Withdrawal of Request for Review.* Consequently, we were unable to satisfactorily verify GMN's response, and therefore we have used second-tier BIA. The second-tier BIA rate was GMN's highest previous rate, which was from the LTFV investigation.

Comment 2: Torrington asserts that NPBS failed verification, and as such, the Department should apply a first-tier BIA rate to the entire NPBS response. Specifically, Torrington cites the NPBS Sales Verification Report dated March 1, 1994, and claims that, taken as a whole, the following seven deficiencies represent failure of verification: (1) Failure to report certain HM sales, which the Department has referred to as ''zero-priced sales'' (*NPBS Sales Verification Report*), (2) failure to report HM billing adjustments, (3) a slight overstatement of domestic inland freight expenses, (4) a discrepancy between its reported interest rate and its verified discount rate, (5) an overstatement of indirect advertising and sales promotion expenses, (6) an overstatement of export selling expenses for U.S. sales, and (7) an overstatement of other indirect selling expenses. Additionally, Torrington asserts that NPBS's actions in this review are egregious, given that they failed to report all HM sales in the second administrative review.

NPBS argues that deficiencies three through seven are of the types of discrepancies which typically arise at verification. As for the unreported billing adjustments and unreporting of certain HM sales, NPBS asserts that their effect is insignificant and that the Department disregarded these in the previous review. Furthermore, NPBS asserts that its omission of HM sales (which caused a failure of verification) in the second administrative review is under appeal and is not relevant to the facts in this case.

Furthermore, NPBS asserts that the Department should consider the unreported billing adjustments to be insignificant under 19 CFR 353.59 and to disregard these. At the least, NPBS argues, the Department should disregard those unreported billing adjustments for which the *ad valorem* effect is less than 0.33 percent. As for the unreported sales, NPBS contends that, had the sales been reported, the net effect would have been to lower FMV for all but two of the models. Therefore, the Department should disregard these sales.

In response to NPBS, Torrington argues that since the billing adjustments were never reported, there is no basis for determining their insignificance. Furthermore, the *ad valorem* effect is above 0.33% for a significant number of models. As for the omission of ''zero-priced'' sales (*i.e.,* certain HM sales), Torrington contends that the Department cannot allow NPBS to customize its HM database by not reporting sales and then manually changing the price.

Federal-Mogul states that the Department correctly and reasonably applied a second-tier BIA to those affected transactions in light of the seriousness of the omissions.

Department's Position: We disagree with Torrington that we should reject NPBS' response and use BIA for all U.S. sales. Although we did find a number of deficiencies at verification, as a whole, those deficiencies do not warrant the application of total BIA. Instead, for deficiencies three through seven, we have adjusted the data accordingly. For those U.S. sales whose matching FMV was based on transactions affected by either the unreported billing adjustments or the unreported ''zero-priced'' sales, we applied a second-tier BIA rate of 45.83%. The full extent of the ''zero-price'' sales, which does not significantly impact the overall integrity of the response, is documented on the record. As for the unreported billing adjustments, we agree with Torrington in that these should not be considered separately in terms of their *ad valorem* effect, but rather their effect taken as a whole. NPBS cooperated fully with all aspects of the verification. Although NPBS neglected to report the billing and quantity adjustments due to the labor intensive task of matching them to a sale, its response was otherwise useable.

Comment 3: NSK claims that because it fully cooperated with the Department's requests for information, the Department should not apply a punitive BIA to a few unmatched transactions that were incorrectly reported.

Torrington contends that the Department reasonably invoked an adverse presumption that the margins on these few unmatched sales would have been higher than the margin on remaining sales or the prior margin, and should continue to apply the current BIA margin for the final results.

Department's Position: We agree with Torrington. Since NSK did not provide the correct information to match the U.S. and the HM transactions, we have applied a second-tier BIA rate to those few unmatched sales in calculating the final dumping margin. We have made the adverse assumption that the margins on unmatched sales would have been higher than the margin on the remaining sales and have therefore applied a partial BIA to these unmatched transactions.

4. Circumstance-of-Sale Adjustments

4A. Advertising and Promotional Expenses

Comment 1: Torrington states that NMB/Pelmec failed to demonstrate that its reported U.S. advertising and sales promotion expenses were indirect in nature. Torrington believes that the Department should reclassify certain of the reported expenses as direct selling expenses. In rebuttal, NMB/Pelmec argues that at verification it provided the Department with sample advertisements demonstrating that they were indirect in nature.

Department's Position: We agree with NMB/Pelmec. At the U.S. verification, NMB/Pelmec provided samples of its U.S. advertisements and sales promotions and demonstrated that they were not product specific or directed at a specific customer.

Comment 2: Torrington alleges that Koyo failed to demonstrate that all of its reported U.S. advertising and promotion expenses were indirect in nature. Torrington cites *Timken Company* v. *United States,* 673 F. Supp. 495, 512–13 (CIT 1987), to argue that the burden is on respondents to demonstrate that U.S. expenses were indirect and to support Torrington's position that the Department should treat Koyo's U.S. advertising expenses as direct selling expenses.

In rebuttal, Koyo argues that the Department explicitly verified Koyo's advertising expenses, and the verifier considered not only the amount of the expenses incurred, but also their indirect nature.

Department's Position: At verification, we examined examples of Koyo's advertising and sales promotions, and conclude that these expenses were institutional in nature and correctly classified as indirect.

Comment 3: Torrington argues that the Department should reclassify Nachi's U.S. advertising expenses as direct expenses because Nachi has not demonstrated that its U.S. advertising was indirect in nature. Torrington states that, according to a Court decision (See *Timken,* 673 F. Supp., at 513), if respondents do not explain the exact nature of U.S. advertising expenses, the Department must treat them as direct.

Nachi argues that it submitted sample advertisements that satisfy the definition of indirect advertising in that they were general advertisements aimed at promoting the Nachi brand name as opposed to specific bearing products.

Department's Position: We agree with Nachi. The sample advertisements submitted by Nachi promote the Nachi brand name in trade publications and not specific bearing products. See Nachi Section B response, at attachment 20 (September 21, 1993). Therefore, we have treated Nachi's U.S. advertising expenses as indirect selling expenses.

Comment 4: Torrington maintains that the Department should reclassify NPBS' U.S. indirect advertising expenses as direct selling expenses. NPBS argues that it has documented its indirect selling expenses and that it has complied fully with all reporting requirements. NPBS argues that the Department should continue treating these expenses as indirect.

Department's Position: We agree with NPBS. NPBS has fully complied with all reporting requirements and has separated its direct and indirect advertising and promotional expenses. Furthermore, at verification we specifically examined NPBS' export selling expenses and verified their indirect nature. See *Nippon Pillow Block Verification Report,* at 10 (March 1, 1994).

Comment 5: Torrington argues that NTN-Germany improperly failed to report direct advertising expenses in the United States. According to Torrington, NTN-Germany's statement that most of its U.S. advertising expenses were indirect expenses implies that some of these expenses are directly related to the sales subject to this review. Therefore, Torrington concludes that the Department should draw an adverse inference and reclassify all of NTN-Germany's U.S. advertising expenses as direct selling expenses for the final results.

NTN-Germany refutes Torrington's arguments on the grounds that it provided evidence demonstrating that NTN-Germany's U.S. advertising expenses are indirect selling expenses. According to NTN-Germany, the sample advertisements that it submitted promote the company in general, rather than specific products. NTN-Germany further argues that under identical factual circumstances, the Department refuted Torrington's arguments in the final results of *AFBs III.* Accordingly, NTN-Germany concludes that the Department should treat NTN-Germany's U.S. advertising expenses as indirect selling expenses for the final results of this review.

Department's Position: We agree with Torrington. In stating that most of its U.S. advertising expenses were indirect in nature, NTN-Germany tacitly acknowledged that it incurred direct advertising expenses in the United States. Nonetheless, NTN-Germany chose not to provide data on its direct advertising expenses. Because NTN-Germany elected not to provide information that it possessed regarding direct advertising expenses, we have drawn the appropriate adverse inference and treated all NTN-Germany's reported U.S. advertising expenses as direct selling expenses for these final results.

Comment 6: Torrington argues that Koyo's HM advertising expenses must have been incurred on behalf of purchasers of the merchandise to be permitted as an adjustment for differences in COS, citing 19 CFR 353.56(a)(2). Torrington contends that Koyo should segregate such expenses between sales to OEMs and sales to the aftermarket. Torrington argues that it is implausible that a purchaser of an automobile or an appliance would be the target of an advertisement of Koyo's bearings and that only properly substantiated advertising expenses incurred with respect to aftermarket sales should be permitted as a COS adjustment.

In rebuttal, Koyo argues that the regulation cited by Torrington to support its argument governs direct expenses under the COS provision. Because the HM advertising expenses reported by Koyo are indirect, the Department properly deducts these expenses under the ESP offset provision, 19 CFR 353.56(b)(2), which contains no requirement that the expenses be incurred on behalf of the purchaser.

Department's Position: We agree with Koyo that the advertising expenses in question were indirect in nature because the sample advertisements submitted by Koyo appeared in trade publications and were designed to promote the Koyo name. Therefore, because these expenses were used only to offset indirect selling expenses deducted from ESP transactions, there is no requirement that they be incurred on behalf of a customer.

Comment 7: Torrington states that the Department should not accept NMB/Pelmec Singapore's reported indirect sales promotion expenses because they were incurred in order to promote future sales. Torrington argues that expenses associated with future sales are not expenses incurred with respect to sales of subject merchandise during the POR and should not be accepted as an adjustment to FMV.

NMB/Pelmec Singapore argues that the expenses in question were incurred in bringing certain OEM clients from Singapore to Thailand on a tour of Minebea's facilities. NMB/Pelmec argues that these clients could have made additional purchases during the POR. Therefore, NMB/Pelmec concludes that its sales promotions did not relate exclusively to future sales.

Department's Position: We agree with NMB/Pelmec. Advertising and promotional expenses which are incurred during the POR are, by Department practice, associated with POR sales because they cannot be directly linked to particular sales. Also, as NMB/Pelmec explains, the expenses were incurred in promoting local sales and did relate to sales of subject merchandise during the POR. As a result, we have not changed our preliminary determination to make an adjustment to FMV for NMB/Pelmec Singapore's reported indirect sales promotion expenses.

Comment 8: Torrington argues that the Department failed to deduct from USP advertising expenses that INA incurred in Germany for export sales. Torrington notes that, in addition to U.S. advertising expenses, INA also identified certain indirect advertising expenses, incurred in Germany, that related to both domestic and export sales. Torrington states that the Department should allocate to U.S. sales a portion of the advertising expenses that INA incurred in Germany and deduct them from USP for the final results.

INA responds that deducting the advertising expenses at issue from ESP would result in an overstatement of INA's advertising expenses. INA contends that it incurs the HM advertising expenses at issue for selling merchandise to customers for whom it has direct selling responsibility. Furthermore, INA asserts that its U.S. subsidiary incurs similar advertising expenses in selling to unrelated customers for whom it has direct selling responsibility. Because both INA and its U.S. subsidiary incur advertising expenses in making sales to their unrelated customers, INA argues that the HM advertising expenses at issue are not related to U.S. sales made by its subsidiary. Accordingly, INA concludes that the Department should not deduct these expenses from ESP for these final results.

Department's Position: We agree with INA. During our verification at INA's U.S. subsidiary, we confirmed that the subsidiary incurred advertising expenses for U.S. sales. Conversely, we found no evidence during our verification of advertising expenses at INA's headquarters in Germany that INA incurred any expenses for advertising directed toward customers in the United States. Therefore, we have not deducted these expenses from INA's USP for these final results.

4B. Technical Services and Warranty Expenses

Comment 9: Torrington argues that Koyo should reallocate U.S. technical service expenses over only non-aftermarket sales because service expenses are normally not incurred in the after-market. Torrington claims that Koyo allocated service expenses over total American Koyo Corporation sales, which would include both OEM and aftermarket sales. Furthermore, Torrington contends that, because Koyo failed to segregate service expenses into direct and indirect components, the Department should continue its preliminary treatment of considering all such expenses as direct expenses.

In rebuttal, Koyo argues that it allocated its service expenses over all of its sales, including sales to both aftermarket and OEM customers, because the services it provides to its aftermarket customers are essentially the same as those it provides to its OEM customers.

Department's Position: As set forth in *AFBs II* (at 28408) and AFBs III (at 39743), we have accepted Koyo's allocation methodology because Koyo provided the same technical services to all customers that requested them, including aftermarket customers. Also, based on our review of Koyo's response, we are satisfied that Koyo properly separated its direct and indirect expenses.

Comment 10: Torrington argues that the Department should not accept Koyo's reported HM direct warranties, guarantees, and servicing expenses because Koyo calculated its expense factor by dividing total warranty claims expenses by total bearing sales instead of quantifying expenses on the basis of class or kind of merchandise or by customer.

Koyo responds that the Department has verified and accepted its warranty expense methodology in previous reviews of both AFBs and TRBs and that the Department should continue to treat Koyo's direct warranty expenses as it did in the preliminary results and in all prior AFB reviews.

Department's Position: Although Koyo calculated a warranty expense factor based on the ratio of total warranty claims to total bearing sales, there is no evidence on the record that the calculated warranty expense factor would vary by class or kind of bearing or by customer. Therefore, as in *AFBs III* (at 39743), where Koyo used the same allocation methodology, we find that Koyo reasonably allocated direct warranty expenses, and we have accepted them for the final results.

Comment 11: RHP argues that the Department should not have treated RHP's U.S. technical service expenses as direct expenses, because they were reported as indirect expenses in both the U.S. and home markets. RHP states that the Department treats technical service expenses as direct selling expenses only when such expenses are directly related to sales under review.

RHP claims that it does not maintain records that tie the expenses of its technical service engineers located in the United Kingdom directly to particular products, customers or markets. Therefore, RHP allocated the expenses over its total sales volume. RHP argues that while the Department requested a breakdown of fixed and variable costs, RHP could not have provided such information, and that the Federal Circuit has disallowed the Department's use of BIA when the respondent could not have provided the information requested under any circumstances.

Torrington argues that some of RHP's reported technical service expenses, such as expenses for vehicle leasing and travel, are clearly direct and should have been reported as such. Torrington claims that the Department requires respondents to separate technical services into direct and indirect portions. Torrington claims that when respondents fail to separate these expenses, the Department treats the entire expense as direct in the case of U.S. sales and indirect in the case of HM sales. Similar to Torrington, Federal-Mogul agrees that the Department's treatment of RHP's technical service expenses is correct and should not be changed for the final results.

Department's Position: We agree with Torrington and Federal-Mogul. Our questionnaire specifically requests respondents to separate fixed and variable portions of technical service expenses because we treat fixed servicing costs as indirect expenses and variable servicing costs as direct expenses. Based on RHP's questionnaire response, we determine that RHP reasonably could have separated direct and indirect technical service expenses. As RHP stated in its questionnaire, "[t]he costs in question include such items as salaries, travel expenses, vehicle leasing, etc." See RHP's Section B Response at 56 (September 21, 1993). Generally, we consider salaries fixed expenses because they are costs that would have been incurred whether or not sales were made. By contrast we generally consider travel expenses to be directly related to sales, because technicians are visiting customers to help them with specific problems. See *Roller Chain, Other Than Bicycle, From Japan; Final Results of Administrative Review and Partial Termination,* 57 FR 6810 (February 28, 1992) (*Roller Chain*).

Because RHP described both direct and indirect technical servicing costs in its questionnaire response, RHP should have reported each type of expense separately. The statute and the Department have a preference for respondents to provide actual expense information as opposed to allocated expense information. Because RHP did not distinguish between the direct and indirect portions of its technical service expenses in either market, we made an adverse inference and considered the entire U.S. technical service expense as direct and the entire HM technical service expense as indirect. Allocated expenses in the U.S. market are treated as direct expenses because direct expenses will be deducted from all USP transactions and will, therefore, reduce USP and potentially increase dumping margins. If these expenses were treated as indirect expenses, they would only be deducted from USP in ESP situations and would, therefore, reduce USP and potentially increase dumping margins only in ESP situations. Treatment of these expenses as indirect expenses would remove any incentive a respondent has to provide the Department with actual expense information. See *The Torrington Company* v. *United States,* 832 F. Supp. 365, 376 (CIT 1993); and *Timken* v. *United States,* 673 F. Supp. 495, 512–13 (CIT 1987). The fact that RHP chooses to keep its financial records in such a way as to not tie its technical service expenses to specific sales does not relieve it of its responsibility to provide the Department with actual expenses information. See also *AFBs II* (at 28408) and *AFBs III* (at 39742).

Comment 12: Federal-Mogul argues that the Department incorrectly treated SNR's reported U.S. warranty costs as an indirect expense because SNR did not support its claim that warranty costs were fixed, and thus should be treated as an indirect expense. As respondents have an incentive to report U.S. expenses as indirect in nature, Federal-Mogul argues that they bear the burden of proving that U.S. expenses are indirect. Federal-Mogul concludes that because SNR has failed to show that its warranty expenses were indirect in nature, the Department should deduct the expenses directly from USP.

SNR responds that it reported its total U.S. warranty costs as indirect in nature because the cost ''relates to in-house service, rather than outside contractors.'' SNR further stated that the expense was clearly indirect because it could not be tied to specific sales.

Department's Position: We agree with Federal-Mogul that SNR failed to demonstrate the indirect nature of all its U.S. warranty costs. The fact that SNR's warranty services were performed in-house does not preclude direct expenses from being incurred. SNR did not separate its warranty costs into fixed and variable portions, as required by the questionnaire. Therefore, for these final results, we have reclassified SNR's U.S. warranty costs as a direct expense, and we have deducted them directly from USP. See also *Department's Position* to *Comment 11,* above.

Comment 13: Torrington contends that because SKF-France did not separate SARMA's U.S. technical service expenses into direct and indirect portions, the Department acted improperly by classifying the expenses as indirect. Torrington notes that it is the Department's policy to classify as direct any U.S. expenses that the respondent has not separated into direct and indirect portions. Torrington notes that in prior reviews SKF reported SARMA's technical service expenses in the same manner and the Department responded by substituting SARMA's reported technical service expenses with SKF-USA's direct technical service expenses as BIA. Torrington contends that the Department's response should remain consistent with prior reviews.

SKF-France notes that its U.S. sales response explained that SARMA provides the U.S. market with only general design and quality control advice for future bearing development. SKF-France contends that since such expenses do not constitute direct technical assistance, the Department properly treated the expenses as indirect.

Department's Position: We agree with Torrington that when respondents fail to report technical service expenses in direct and indirect portions, it is our practice to treat the expenses as direct in the United States. See *Department's Position* to *Comment 11,* above, and *AFBs III* (at 39742). However, for this particular company the issue is moot because the technical service expenses SARMA reported as indirect export selling expenses have been reclassified as research and development expenses. In its response SARMA classified all technical service expenses as indirect selling expenses and allocated these expenses across HM and export sales. However, verification of SKF-France's COP response revealed that SARMA's technical service expenses should have been classified as research and development expenses. For the preliminary results we included all technical service expenses reported by SARMA in the calculation of general and administrative expenses for the purposes of calculating COP and CV. However, we only removed from SARMA's reported selling expenses those technical service expenses SARMA classified as HM indirect selling expenses. We inadvertently failed to remove those technical service expenses incurred on behalf of U.S. sales that SARMA classified as indirect export selling expenses. Therefore, in order to avoid double counting expenses, we have removed technical service expenses from the indirect export selling expense adjustment because they are included in the calculation of COP for these final results.

Comment 14: SKF-Germany asserts that the Department made a programming error in its analysis. SKF contends that the Department treated U.S. technical service expenses as indirect selling expenses in the analysis memorandum, but treated them as direct selling expenses in the computer programming. Federal-Mogul and Torrington state that SKF's reported technical expenses are properly treated as direct selling expenses.

Department's Position: We agree with Torrington and Federal-Mogul. The computer program correctly deducted these expenses from USP as direct selling expenses. However, there was a discrepancy between the preliminary analysis memorandum and the computer program due to a clerical error: The analysis memorandum incorrectly indicated that the expenses in question were indirect.

Comment 15: Torrington contends that INA improperly reported its indirect warranty, guarantee, and servicing expenses in the home market. According to Torrington, the amount reported by INA includes both actual expenses paid and accrued expenses. Because accrued expenses will also be reflected among actual expenses paid, Torrington asserts that INA's claim is overstated. Accordingly, Torrington requests that for the final results, the Department limit INA's claimed indirect warranty, guarantee, and servicing expenses to amounts actually paid.

According to INA, the amounts that it reported for these expenses were the total amounts recorded in the relevant expense accounts. These amounts represent neither cash payments of warranty claims nor accruals of contingent liability. Because INA reported the amounts that it recorded as expenses during the review period, INA rejects Torrington's claim that it double-counted its indirect warranty expenses.

Department's Position: We agree with INA. The record contains no evidence that INA failed to report accurately and completely the data recorded in its warranty expense accounts. We verified that INA reported its indirect warranty expenses and found no evidence of double-counting. Accordingly, we have treated INA's reported indirect warranty, guarantee, and servicing expenses as indirect selling expenses for the final results.

4C. Inventory Carrying Costs

Comment 16: Torrington argues that the Department should abandon the practice of calculating inventory carrying costs (ICCs) and instead impute credit costs on ESP transactions starting from the point of shipment. Torrington contends that prices should be compared on an ''f.o.b. origin'' basis and neither HM or PP sales require a deduction of pre-sale ICCs to arrive at f.o.b. origin prices. In ESP sales, so-called ICCs should be viewed as a financing cost assumed by the exporter on behalf of the related importer, which must be deducted, while no comparable expense exists in the HM.

Torrington contends that adjustment to FMV for ICCs misconstrues the statutory scheme and the nature of price comparisons in ESP calculations. According to Torrington, the Department has misinterpreted the purpose for deducting financing charges from ESP and makes an offsetting deduction from FMV that is not permitted by the statute. Also, the fact that the foreign manufacturer and U.S.

importer are related is irrelevant to the requirement under 19 USC 1677(e)(2) that expenses incurred for the account of the importer by the manufacturer must be identified and deducted from ESP.

Finally, even if a comparable HM ICCs expense is incurred, Torrington argues no adjustment should be made to FMV. In contrast to its treatment of ESP, the statute provides no parallel adjustment in calculating FMV. Where the statutory scheme is clear, the Department may not create adjustments in misguided attempts to make ''apples-to-apples'' comparisons. Torrington claims that, just as in *The Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement v. United States,* No. 93–1239, Slip Op. (Fed. Cir. Jan 5, 1994) (*Ad Hoc Committee*), in which the CAFC reversed the Department's allowance of a deduction of pre-sale inland freight expenses in calculating FMV, the statute does not provide a basis for making an ICC adjustment to FMV.

Respondents argue that the Department should again reject Torrington's argument that ICCs should not be calculated in the HM and that imputed credit costs on ESP transactions should start from the point of shipment. NSK argues that the most obvious reason for calculating ICCs from the date of production, rather than the date of shipment, is that ICCs are incurred from the date of production forward. See *Certain Internal Combustion Forklift Trucks from Japan,* 53 FR 12552 (April 15, 1988). Moreover, because ICCs represent the ''opportunity cost of holding inventory,'' NSK holds that it is appropriate to calculate such costs from the time a product is placed in inventory—the date of production. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al.; Final Results of Antidumping Duty Administrative Review,* 57 FR 28369, 28410 (June 24, 1992). In addition, respondents argue that the Department's adjustment of FMV for ICCs is reasonable and supported by the antidumping statute. RHP argues that the *Ad Hoc Committee* case referenced by Torrington is not on point and that Torrington has not provided a new reason for the Department to stop recognizing ICCs in the HM. Nachi argues that the Department has consistently applied this practice in all of the administrative reviews of the antidumping duty orders against AFBs in order to make fair ''apples-to-apples'' price comparisons. This practice also has been upheld by the CIT. See *The Torrington Company v. United States,* 818 F. Supp. 1563, 1577 (CIT 1993) (*Torrington I*).

Department's Position: We disagree with Torrington. We calculate ICCs from the date of production because the date of production, not the date of shipment, is when the item becomes a part of the company's inventory. Merchandise destined for the United States and merchandise destined for the HM are not necessarily held in inventory from the date of production to the date of shipment for equal lengths of time. Therefore, in general, an accurate accounting of ICCs in each market requires beginning at the date on which production is completed. See AFBs III. The Department's practice in this regard has been upheld by the CIT: ''Given its new point of reference for measuring ICCs, the Department was correct to include home market ICCs incurred after the time of production of the merchandise as part of the pool of indirect selling expenses for which adjustment to FMV can be made subject to 19 CFR 353.56(b)(2) in those situations where AFBs produced for the home market were held in inventory.'' See Torrington I, 818 F. Supp. at 1577.

Furthermore, with respect to adjustments to FMV for imputed ICCs, the CIT has supported the Department's methodology in calculating ICCs in both the United States and the HM. In *Torrington I,* the CIT found that ''the Department's adjustment to FMV for imputed ICCs pursuant to 19 CFR 353.56(b)(2) was a reasonable exercise of the Department's discretion in implementing the antidumping duty statute and is affirmed.'' *Id.* As stated in the original investigation and the first three reviews of this proceeding, in order for comparisons to be fair, it is necessary to make ICC adjustments to both FMV and USP. See *AFB LTFV Investigation,* 54 FR 19050 (May 3, 1989); *AFBs I* and *AFBs II.* That the foreign seller chooses to sell from inventory in the HM is no different from the seller's decision to undertake ESP transactions in the United States. The Department imputes ICCs because the actual financial cost of holding inventory after production is not recorded in the financial records of the company.

Moreover, the Department's treatment of ICCs complies with *Ad Hoc Committee.* There, the CAFC held that an adjustment may not be made to FMV if the statute explicitly provides for such an adjustment to USP, but not to FMV. Because the statute explicitly provides for an adjustment to USP for pre-sale movement expenses but not for an adjustment to FMV, the CAFC held that the Department cannot adjust FMV for the pre-sale movement expenses without any other authority. *Id.* Unlike the situation with movement expenses, however, the statute does not contain a specific provision for deducting imputed ICCs for either USP or FMV. Rather, the Department's authority to deduct imputed ICCs derives from the Department's authority to deduct indirect selling expenses. This authority stems from the general language contained in section 772(e)(2) of the Tariff Act, which authorizes the Department to deduct selling expenses in ESP transactions, and from the Department's authority to make fair comparisons between USP and FMV, which allows the Department to deduct indirect selling expenses from FMV pursuant to the ESP offset. See *Smith-Corona,* 713 F.2d at 1578–79.

Finally, as recognized by the CIT in *Torrington I,* the intent of the antidumping statute and the Department's practice with respect to ICCs is to remove certain expenses from FMV and ESP in order to derive an FMV and ESP at a comparable point in the stream of commerce to achieve the so-called ''apples-to-apples'' price comparison. The Department properly carried out that intent by adjusting FMV pursuant to the ESP offset in those situations in which AFBs produced for the HM were held in inventory. The nature of the expense incurred for ICCs holds true regardless of whether the expense was incurred in the U.S. market or in the HM. Because the seller incurred the opportunity cost of holding inventory in both markets, the Department properly adjusted for the cost in the U.S. market as well as in the HM.

Comment 17: Federal-Mogul claims that the Department's approach to calculating ICCs is biased in favor of respondents and presents respondents with an opportunity to manipulate and distort these expenses. First, the calculation of the adjustment relies upon transfer pricing. Transfer pricing between related parties is inherently suspect and was the reason that provisions for ESP were written into the antidumping law. Second, there is no relation between the price at which the merchandise is sold and the theoretical cost of holding such merchandise prior to sale. Thus, the only reliable means by which ICCs can be quantified is on the basis of costs, rather than prices. Since not all firms submitted the data necessary to do this, however, the Department should at least ensure that the sales prices used are reliable and consistent for both markets, and prices used should only be derived from sales made to unrelated purchasers. Finally, the Department should eliminate variations in the adjustments due to the interest rates employed, and should recognize that a firm is likely to borrow in the market where it can obtain the lowest interest rate. Because these costs are imputed and speculative, a uniform interest rate should be applied. Federal-Mogul cites *LMI-La Metalli Industriale, S.p.A v. United States*, 912 F.2d 455 (Fed. Cir. 1990) (LMI), in which the Federal Circuit noted that in *LMI-La Metalli* ''the ITA presumed that LMI would borrow in Italy to finance its United States receivables, no matter how unfavorable the rate and whatever the available alternatives. Such a presumption does not withstand scrutiny.''

In response to Federal-Mogul, Nachi argues that transfer price is a reliable price that is reported to and accepted by the United States Customs Service in valuing imports. Nachi claims that the Customs Service would require a different price, or cost, for its valuation purposes if transfer prices were subject to ''unchecked manipulation.'' RHP notes that the Customs Service can investigate transfer prices to determine whether such prices are too low. Furthermore, in response to Federal-Mogul's argument that the Department should use uniform interest rates, Koyo notes that the Department used actual, reported interest rates in calculating ICCs, and argues that it is absurd to suggest that the Department should reject such evidence of actual borrowing expenses (and the associated interest rates) and use instead a fictional rate (the ''most favorable rate available to a respondent in either market'').

Department's Position: ICCs measure the imputed cost incurred by a firm for storing AFBs in inventory. As the Department stated in the third review, the transfer price reflects the cost of the merchandise as it is entered into inventory and therefore is an accurate basis upon which to calculate the cost to the subsidiary of holding inventory prior to the sale to an unrelated U.S. customer. See *AFBs III* (at 39744); see also *Portable Electric Typewriters From Japan: Final Results of Antidumping Duty Administrative Review*, 53 FR 40926, (October 19, 1988). Furthermore, Federal-Mogul has not shown that any prices used in the calculation of ICCs are unreliable and inconsistent, nor that any transfer prices used are distortive.

We cannot calculate actual ICCs because these costs are not found in the books of respondents. Thus, we must impute the financing cost of holding inventory. The cost to a company of holding inventory is best measured by the time it must finance such inventory and its actual short-term borrowing rate. Accordingly, in calculating such an expense, we use the appropriate interest rate actually realized by the entity financing the inventory (*i.e.*, the HM interest rate for the HM entity and the U.S. interest rate for the U.S. affiliate). This means that the same interest rate is used to calculate HM ICCs and U.S. ICCs to the extent that the same company is financing the investment in inventory. When a U.S. affiliate finances the investment in inventory, its actual short-term borrowing rate is used because that reflects the cost to the company. *LMI* is not relevant to the calculation of ICCs in these cases, because only actual short-term borrowing rates have been used. In *LMI*, the respondent had no short-term borrowings and the CAFC found it improper to choose a higher rate over a lower rate. However, when there exist actual borrowings by a company, it would be unreasonable to conclude that a company would borrow at a rate other than its actual rate. Moreover, the actual rate at which a company obtains short-term funds depends on many factors, of which available rates is only one. The conditions of available loans may compel a company to choose a loan at a higher rate than another at a lower rate. Therefore, we impute financing costs based on each company's actual borrowings where possible. If a company did not have actual short-term borrowings, financing costs are imputed using the lowest rate the company demonstrates was available to it during the POR.

Comment 18: NSK claims that because the Department lowered NSK's short-term borrowing rate at verification to take into account short-term commercial paper borrowings, the Department must also reflect this change in the U.S. ICCs.

Torrington agrees with NSK's proposed modification but states that the Department must apply the revised home market rate only to the correct portion of the inventory period.

Department's Position: We agree with Torrington. We have amended the HM ICCs and the HM portion of U.S. ICCs to reflect the short-term interest rate determined at verification.

Comment 19: Torrington argues that if the Department decides to allow an adjustment to NSK's FMVs for ICCs, then a recalculation is necessary, because NSK provided in its section C response an example of one shipment in which the actual time in inventory varied from the reported average time in inventory.

NSK argues that the Department discovered nothing at verification to undermine NSK's claim regarding the average time spent in the HM inventory.

Department's Position: We disagree with Torrington. During verification we found NSK's ICC averages to be reasonable and adequate.

Comment 20: Torrington contends that INA improperly calculated per-unit ICCs incurred in Germany. Torrington alleges that INA allocated ICCs incurred in Germany over a sales amount that included the resale prices of INA's U.S. subsidiary, and then understated the per-unit expense by multiplying the resulting adjustment factor by the reported per-unit Customs value rather than the resale price. For the final results, Torrington requests that the Department revise the calculation of INA's per-unit German ICCs by multiplying the reported adjustment factor by the price to the first unrelated party in the United States.

INA rejects Torrington's argument, arguing that the sales values it used in calculating its allocation factors did not include resales by INA-USA. Rather, the U.S. sales included were INA's sales to its U.S. subsidiary at transfer prices. Therefore, INA concludes that it properly multiplied the adjustment factor for ICCs by the transfer price to calculate per-unit ICCs.

Department's Position: We agree with INA. During verification, we examined the total HM sales values that INA used to allocate various charges and expenses. We were able to desegregate the total HM sales values into their constituent elements and trace these elements to the audited financial statements of the various INA entities subject to this review. During this process, we found a separate account that INA uses to record sales to its U.S. subsidiary. We saw no evidence to suggest that INA recorded anything other than its transfer prices to its U.S. subsidiary in this account. Accordingly, we determine that the total sales value that INA used to allocate its ICCs included only INA's transfer prices to its U.S. subsidiary. As a result, we have accepted INA's use of transfer prices to calculate per-unit ICCs for these final results.

4D. Post-Sale Warehousing

Comment 21: Torrington contends that the Department should treat Nachi's claimed post-sale warehousing expenses as indirect selling expenses. Torrington argues that these warehousing expenses are not direct because they were incurred prior to date of shipment, which Nachi has identified as being the same as date of sale. Torrington states that warehousing expenses are allowed as direct adjustments only when the expenses are incurred after the sale.

Nachi contends that this issue has been considered by the Department in the past three reviews and decided in Nachi's favor. Nachi argues that the circumstances under which it incurs warehousing expenses have not changed and that the expenses are incurred after the sale took place. Nachi contends that the warehousing expenses were direct because they were incurred only on sales to specific customers and would not have been incurred if the sales had not taken place.

Department's Position: We agree with Nachi that the Department has already evaluated this issue in the past three reviews and determined the expenses to be direct expenses. See *AFBs I* (at 31692); *AFBs II* (at 28415); and *AFBs III* (at 39745). Nachi's section C response and the verification report clearly show that the expenses in question were incurred directly on sales to specific customers. See *Nachi Section C Response,* at 35–36 (September 28, 1993) and *Nachi-Fujikoshi Home Market Sales Verification Report*, at 9–10 (February 28, 1994). In particular, the verification report states that ''[o]nce quantity is confirmed, the warehouse delivers the desired quantity immediately to the customer and collects a fee from Nachi for its services.'' See *Verification Report,* at 9. Although the verification report shows that merchandise is shipped and stored in the warehouse before ordered quantities are confirmed, merchandise is sent to the warehouse only after customers have entered into a formal agreement to purchase bearings from Nachi, after they have provided Nachi with estimates of the quantities they will order, and after sales prices are confirmed. The warehouse also delivers the bearings on Nachi's behalf, and thus, the incurred expenses include post-sale movement charges. Because Nachi is charged for the warehouse's services only if, and after, a bearing is sold, Nachi incurs no expenses unless a sale takes place. Therefore, we conclude that the expenses in question varied directly with sales volume to specific customers and would not have been incurred if sales had not taken place. As a result, we have continued to treat the expenses as a direct adjustment to FMV.

4E. Commissions

Comment 22: Torrington asserts that at verification the Department learned that one of NMB/Pelmec's salesmen stopped receiving commissions after August 22, 1992. Therefore, Torrington claims the Department should not accept the reported commission rates and should apply partial BIA.

According to NMB/Pelmec, the Department officials ''verified the accounts payable and the sales commissions paid for this salesman and tied this amount to the G/L (General Ledger).'' NMB/Pelmec concludes that because the Department verified all financial data related to commissions, there is no basis to apply partial BIA.

Department's Position: We agree with NMB/Pelmec. We verified commissions in the United States, including the fact that no commissions were paid to this salesman after August 22, 1992. Since there were no discrepancies in the information we verified, we have no basis for using a BIA rate for NMB/Pelmec's U.S. commissions. See *ESP Verification Report for NMB/Pelmec*, February 10, 1994.

Comment 23: Torrington states that the Department should disallow Koyo's HM adjustment for commissions paid to purchasing agents acting on behalf of Koyo's customers because such payments do not affect the HM price obtained by Koyo. Torrington argues that, although Koyo claims that it enters into contracts with these agents, no contracts were submitted on the record. Torrington also argues that Koyo failed to demonstrate how these commissions differ from rebates paid to unrelated customers. Further, Torrington asserts that, since Koyo has not tied such payments to specific sales of merchandise, the payments should at least be reclassified as indirect selling expenses.

In rebuttal, Koyo states that the purchasing agents of Koyo's customers are not the customers themselves, nor do they act in any capacity other than as the representatives of Koyo's customers. Also, the contracts into which Koyo enters with these agents specify the payment of commissions.

Department's Position: We disagree with Torrington. Consistent with the three previous administrative reviews, we have accepted Koyo's commissions, including commissions paid by Koyo to purchasing agents that act on behalf of its customers, as direct selling expenses. *See AFBs I* (at 31719); *AFBs II* (at 28407); and *AFBs III* (at 39746). As we stated in the third administrative review, since Koyo pays commissions to purchasing agents that act on behalf of its customers, Koyo's HM sales qualify for the commission adjustment submitted. Koyo's commissions are distinct from rebates because they are paid to intermediaries for providing services. We consider rebates to be discounts which are granted to the purchaser after the delivery of merchandise to the customer.

Comment 24: Torrington states that with respect to RHP the Department failed to deduct related-party commissions on the U.S. side in the preliminary results. Torrington claims that the Department has generally treated such commissions as direct expenses, citing *AFBs III*, and concludes that the Department should classify all of RHP's U.S. commissions as direct expenses.

RHP claims that the Department failed to deduct related-party commissions in both the U.S. and home markets, but did not provide an explanation for this treatment. RHP states that the Department adjusts for related-party commissions when they are determined to be directly related to the sales in question and at arm's length. RHP states that its sales data showed that commissions were directly related to the sales on which they were paid. RHP further contends that it submitted additional information, including information on unrelated-party commissions in the United States, to support its claim that related-party commissions in the United States were negotiated at arm's length. RHP argues that the Department should conclude that the commissions it paid to related parties were negotiated at arm's length in both the U.S. and home markets.

RHP contends that, because the situations in both markets are similar, the Department can only justify making an adjustment for related-party commissions in one market if it makes an adjustment for such commissions in the other market. Accordingly, if the Department decides to treat related-party commissions as direct selling expenses in the U.S. market, related-party commissions in the HM should be treated the same way.

Torrington counters that the Department should not deduct commissions paid to NSK Europe by RHP in the HM because the commission payments were made between related parties, and the Department determined that RHP did not demonstrate the arm's-length nature of these transactions. Torrington states that because RHP did not provide a factual basis for the Department to reverse its decision, the Department is justified in disregarding the commissions RHP paid to NSK Europe.

Department's Position: In the home market RHP paid commissions to employees of NSK Europe, an affiliated company which the Department considers part of the same entity as RHP for purposes of these administrative reviews. In the U.S. market RHP paid commissions to its employees and independent sales agents. The commissions RHP paid both to independent agents and to employees were expenses directly tied to sales. Therefore, for these final results, we treated these expenses as direct selling expenses by deducting commissions from both the FMV and the USP. See *Final Results of Antidumping Duty Administrative Review; Porcelain-on-Steel Cookware From Mexico*, 58 FR 43330 (August 16, 1993). See also *Final Determination of Sales at Less Than Fair Value; Industrial Forklift Trucks from Japan*, 53 FR 12552 (April 15, 1988) and *Final Results of Administrative Review of Antidumping Finding; Drycleaning Machinery from West Germany*, 50 FR 32154 (August 8, 1985).

Comment 25: Torrington argues that the Department erred in treating NTN's commissions on HM sales as direct selling expenses. According to Torrington, NTN's method of calculating commission rates by allocating total commissions paid to a commission agent over total sales by that agent provides no indication that the reported commissions are directly related to HM sales of subject merchandise. As a result, Torrington requests that the Department either deny an adjustment to FMV for NTN's HM commissions, or treat them as indirect selling expenses for the final results.

NTN responds that it reported commissions by applying a specific rate for each commissionaire to sales that NTN made through that commissionaire. NTN further argues that the Department confirmed at verification that NTN reported commissions only on sales of subject merchandise. Therefore, NTN argues that the Department should continue to treat NTN's reported HM commissions as direct selling expenses for these final results.

Department's Position: We agree with NTN. At verification, we examined documents that confirmed that NTN paid commissions on sales of subject merchandise and that NTN's method of reporting commissions reflected the commissions that NTN actually paid. Accordingly, we have treated NTN's reported HM commissions as direct selling expenses for the final results of this review.

Comment 26: Torrington and Federal-Mogul argue that certain expenses that NTN classified as related-party U.S. commissions appear to be directly related to PP sales to one U.S. customer. Citing *LMI-La Metalli Industriale S.p.A.* v. *United States*, 912 F.2d 455, 459 (Fed. Cir. 1990), Torrington and Federal-Mogul contend that the Department must examine the circumstances surrounding related-party commissions before determining that they should not be used in the Department's analysis. In this regard, Torrington states that NTN incurred the expenses at issue for activities similar to those made by unrelated commission agents, and that the rates NTN paid to related agents are comparable to the rates that NTN paid to unrelated U.S. commission agents. Accordingly, Torrington and Federal-Mogul conclude that the Department should consider these expenses to be direct selling expenses in the U.S. market. Federal-Mogul further contends that, because NTN failed to report commission rates paid to the related party, the Department should resort to BIA in determining the commission amount to be deducted.

NTN responds that there are no facts that distinguish this review from the three previous reviews of this case in which the Department rejected Torrington's and Federal-Mogul's arguments concerning related-party commissions in the United States. NTN further argues that Torrington overstated the alleged commission rate that NTN paid to a related company in the United States. Accordingly, NTN supports the Department's preliminary determination that the expenses are not direct selling expenses for PP sales.

Department's Position: We disagree with Torrington and Federal-Mogul. NTN stated that it made commission payments to its U.S. subsidiary, NTN Bearing Company of America (NBCA), for expenses that NBCA incurred with respect to sales to a specific PP customer. In its questionnaire responses, NTN provided specific data on the expenses that NBCA incurred with respect to the sales in question. Accordingly, rather than use the commission, which is the transfer payment between NTN and NBCA, we have used the actual expenses incurred by NBCA with respect to these sales. Further, an examination of the specific types of expenses that NBCA incurred with respect to the sales in question shows that the expenses are those that we typically consider to be indirect expenses incurred by sales organizations. Therefore, we have used the actual expenses that NBCA incurred with respect to the sales in question in our analysis, and have treated them as indirect selling expenses.

4F. Credit

Comment 27: Torrington notes that at verification the Department discovered that Nachi did not report actual dates of payment for its HM sales, but had estimated dates of payment based on each customer's terms of payment. Therefore, Torrington asserts that Nachi's calculation of HM credit expenses is not based on actual credit experience. As a result, Torrington argues that Nachi's HM credit expenses claim should be denied.

Nachi responds that although it does not keep invoice-specific records of when it receives payment, its credit expenses were calculated on an average customer-specific credit period derived from actual experience. Therefore, Nachi concludes the Department should continue to deduct HM credit expenses from FMV.

Department's Position: At verification, the Department discovered that Nachi did use estimated dates of payment based on each customer's terms of payment. However, the payment records reviewed suggested that Nachi was understating its HM credit period in most cases, which resulted in a higher FMV. Therefore, the Department accepted the payment dates submitted by Nachi and will continue to do so for the final results, and has deducted HM credit expenses from FMV. See *Nachi-Fujikoshi Home Market Sales Verification Report*, at 10–11 (February 28, 1994).

Comment 28: Torrington argues that the Department should not accept NPBS's credit expense methodology because NPBS reported payment dates based on the maturity date of the promissory notes, not the actual payment date per transaction. Torrington further argues that the Department should reject credit expenses that are not based on actual payment dates or on average customer-specific credit periods, and that NPBS's credit expenses should be rejected because it failed to report its short-term interest rate accurately.

NPBS responds that its credit expenses are properly reported and suggests that sampling error could account for a discrepancy between the reported interest rate and the discounted rate for a few sales. NPBS notes that it inadvertently included two long-term loans in the calculation of short-term interest. These loans were later deleted and short-term interest was recalculated. Finally, NPBS argues that the firm's short-term interest rate provides the best estimate of the discount rate. The exact discount rate is nearly impossible to calculate since each NPBS branch discounts numerous notes each week at varying rates.

Department's Position: The Department agrees with NPBS. The Department verified NPBS' credit methodology and found only minor discrepancies in the application of its payment date formula. We did not find that these minor discrepancies resulted in either a systematic over- or under-reporting of the credit period for PP sales. Furthermore, NPBS' discount rate was lower than the reported interest rate. This minor discrepancy has been corrected by the Department.

Comment 29: Torrington claims that NTN-Germany improperly calculated its U.S. credit expenses. According to Torrington, NTN-Germany determined U.S. credit expenses using interest rates that appear to have been determined on borrowings made outside of the United States. Because NTN-Germany has submitted no evidence that it finances its accounts receivable using funds borrowed outside the United States, Torrington urges the Department to reject NTN-Germany's reported interest rate and use the highest U.S. interest rate reported by a German respondent to calculate NTN-Germany's U.S. credit expenses.

NTN-Germany responds that Torrington's argument appears to be based on the fact that many of the banks from which NTN-Germany borrowed money during the POR have foreign names. NTN-Germany states that it determined the U.S. interest rate that it submitted in its questionnaire response based on its short-term borrowing. As a result, NTN-Germany urges the Department to disregard Torrington's arguments.

Department's Position: We agree with NTN-Germany. The record contains no evidence to suggest that NTN-Germany calculated its U.S. interest rate based on borrowing outside the United States. Therefore, for these final results we have used the U.S. interest rate that NTN-Germany reported in its questionnaire response to calculate credit expenses for U.S. sales.

Comment 30: NTN-Germany states that its reported U.S. credit expense was reasonable because it was based on customer-specific information. Accordingly, NTN-Germany contests the Department's recalculation of the firm's reported U.S. credit expenses. If the Department determines not to use NTN-Germany's reported U.S. credit expenses, however, NTN-Germany asserts that the Department should correctly calculate the credit period. According to NTN-Germany, the Department determined the credit period as the number of days between the sale date and the payment date. NTN-Germany requests that, if the Department continues to calculate sale-specific credit periods, the Department calculate the credit period as the number of days between shipment and payment, as specified in the Department's questionnaire.

Torrington responds that NTN-Germany's concerns are unclear because of the manner in which NTN-Germany determined shipment and sale dates for its U.S. sales. Torrington further argues that NTN-Germany has provided no evidence that the Department's method of calculating the credit period for NTN-Germany's U.S. sales is unreasonable. Accordingly, Torrington concludes that the Department should not amend its calculation of NTN-Germany's U.S. credit expenses for these final results.

Department's Position: We agree in part with NTN-Germany. Based on a comparison of NTN-Germany's reported terms of payment, the actual number of days between shipment and payment for U.S. sales and the credit period reported by NTN-Germany in its questionnaire response, we have determined that NTN-Germany's reported credit period does not accurately reflect the credit that NTN-Germany granted on the U.S. sales subject to this review. Specifically, NTN-Germany's reported credit period does not comport with its stated terms of payment or with the sale-specific credit period calculated using actual shipment and payment dates for each sale. Because NTN-Germany's reporting method is not representative of the actual credit period for its U.S. sales, and because our questionnaire specified the actual, sale-specific credit period as preferential to an aggregate credit period for each customer, we have imputed the actual credit period for NTN-Germany's U.S. sales for these final results. We agree with NTN-Germany, however, that we should calculate the sale-specific credit period according to our longstanding practice of using the shipment date, rather than the sale date, as the beginning of the credit period, and have revised our calculations accordingly for these final results.

Comment 31: Federal-Mogul claims that the Department should not allow SARMA to apply a late payment factor to each customer's terms of payment to establish a payment date for HM sales. Furthermore, Federal-Mogul argues that the Department should disallow any additional credit expenses attributed to late payments made by SARMA (SKF-France) HM customers. Citing *Federal-Mogul Corp.* v. *United States,* 824 F. Supp. 223 (1993), Federal-Mogul argues that, since COS adjustments are only allowed for those factors which affect price or value, additional credit expenses incurred from a purchaser's unexpected failure to pay within the agreed-upon period cannot affect the price which was set specifically in contemplation of payment being made at the end of the agreed-upon credit period.

SKF-France contends that its credit expense calculations, which are based on the actual payment date, are consistent with Departmental policy. SKF-France cites the Department's position in *Final Results of Antidumping Administrative Review; Certain Welded Carbon Steel Pipe and Tube Products from Turkey,* 55 FR 42230, 42231 (1990), and *Final Determination of Sales at Less than Fair Value; Certain Tapered Journal Roller Bearings and Parts Thereof From Italy,* 49 FR 2278, 2279–80 (1984), to support its position. SKF-France states that Federal-Mogul's reference to a recent Department redetermination on remand is inapposite (see *Federal-Mogul Corp.* v. *United States,* 824 F. Supp. 223 (1993)). Additionally, SKF-France contends that it updated SARMA's payment dates and recalculated credit expenses using actual dates of payment.

Department's Position: The Department disagrees with Federal-Mogul. Consistent with Departmental policy, we adjust for credit expenses based on sale-specific reporting of actual shipment and payment dates. See *Final Results of Administrative Review; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Republic of Germany,* 56 FR 31724 (July 11, 1991). This policy recognizes the fact that all customers do not always pay according to the agreed terms of payment and that respondent is aware of this fact when setting its price. Therefore, it would be inappropriate to make a COS adjustment for credit based entirely on the agreed terms of payment, since it would not take into account all of the circumstances surrounding a sale. Furthermore, the Department agrees with SKF-France that SARMA reported its actual payment dates in its supplemental response.

4G. Indirect Selling Expenses

Comment 32: Torrington argues that Koyo incorrectly included among its total indirect selling expenses amounts charged to a reserve account established for doubtful debt. Torrington states that Koyo conceded in its deficiency response that this reserve allowance was not an expense, but a provision for future expenses. As a result, Torrington maintains that the Department should exclude this allowance from Koyo's pool of indirect selling expenses for the final results.

Citing *AOC Int'l.* v. *United States,* 721 F. Supp. 314 (CIT 1989) and *Daewoo Electric Co.* v. *United States,* 712 F. Supp. 931 (CIT 1989), Koyo responds that the Department should allow Koyo's reported allowance for doubtful debt as a HM indirect selling expense. Alternatively, Koyo maintains that if this expense is excluded from Koyo's pool of HM indirect selling expenses, then the Department should exclude it from the calculation of USP as well in order to ensure an apples-to-apples comparison of FMV and USP.

Department's Position: We agree in part with Koyo. As stated in *AFBs II* (at 28412), the Department considers bad debt that is actually written off during the POR to be either a direct or an indirect selling expense depending on the relationship between the bad debt expense and the sale. In *AOC* and *Daewoo,* respondents reported data on bad debts actually written off during the relevant review periods. In contrast, although Koyo claimed as an expense an amount set aside in reserve in the event that its customers fail to pay outstanding charges in the future, Koyo failed to demonstrate that it actually wrote off any bad debts during the review period. In the absence of data on actual bad debt that Koyo wrote off during the review period, we cannot conclude that there is a relationship between Koyo's reported doubtful debt reserve and actual sales. Therefore, for these final results we have disallowed Koyo's reported doubtful debt reserve as a HM indirect selling expense.

Because we do not consider Koyo's doubtful debt reserve to be an actual HM selling expense, we agree in principle with Koyo that doubtful debt reserves should not be treated as U.S. selling expenses either. After examining Koyo's financial statements, however, we found that Koyo did not quantify its doubtful debt reserve for U.S. sales. Accordingly, for these final results we were not able to exclude doubtful debt reserves from Koyo's pool of U.S. indirect selling expenses.

Comment 33: Koyo maintains that the Department's computer program contains an error that sets the value of HM indirect selling expenses to zero whenever the Department resorts to CV as the basis for FMV. Koyo asserts that because it reported indirect selling expenses for CV, the Department should revise its computer program to deduct these expenses from CV for these final results.

Torrington rejects Koyo's argument because deducting indirect selling expenses in certain instances would yield distorted results. Torrington further argues that Koyo has not alleged or demonstrated that the Department committed a clerical error in making adjustments to CV. Therefore, Torrington concludes that the Department should not adopt Koyo's proposed revision to the Department's computer program for these final results.

Department's Position: We agree with Koyo. When we created new cost and expense variables to recalculate COP pursuant to our verification findings, we inadvertently did not include the variable for indirect selling expenses in the margin section of the computer program. Because we verified the data that Koyo provided on indirect selling expenses for CV, we have revised our computer program to deduct these expenses from CV for these final results.

Comment 34: Torrington believes that the Department should disallow Nachi's claim for indirect selling expenses that were incurred by NFC on HM sales made through NBC. Citing AFBs I (at 31720), Torrington states that the Department consistently has rejected claims for selling expenses incurred by parent companies on sales made by subsidiaries. Furthermore, Torrington argues that there is no evidence on the record that shows that the expenses claimed by NFC were incurred exclusively to support NBC sales and asserts that it is reasonable to assume that NFC's selling expense were incurred to support all aspects of sales.

Nachi contends that the Department thoroughly verified the fact that NFC incurred indirect selling expenses to support sales made by NBC and that Torrington has not presented any evidence to contradict the Department's findings. Accordingly, Nachi concludes that the Department should allow Nachi's claimed indirect selling expenses for these final results.

Department's Position: We disagree with Torrington. In *AFBs I,* we denied as HM indirect selling expenses the parent company's selling expenses because it did not incur the expenses in question specifically on sales to its HM subsidiary. In contrast, in this review we verified that NFC incurred the indirect selling expenses in question on behalf of NBC and that these expenses supported NBC's sales to its HM customers. Accordingly, we have allowed NFC's reported selling expenses for its sales to NBC as HM indirect selling expenses for these final results.

Comment 35: Nachi argues that in recalculating Nachi's export selling expenses incurred in Japan on U.S. sales, the Department mistakenly treated all transfer prices as being reported in U.S. dollars despite the fact that Nachi reported certain transfer prices in yen. Therefore, Nachi requests that the Department make the necessary exchange rate conversions for those transfer prices reported in yen.

Torrington responds that before making a correction to Nachi's export selling expense calculation, the Department should confirm that Nachi reported transfer prices in both dollars and yen.

Department's Position: We agree with Nachi. We confirmed that Nachi reported transfer prices in dollars for sales made through certain channels and in yen for sales made through other channels. Accordingly, we have made the appropriate exchange rate conversions to Nachi's yen-denominated transfer prices for these final results.

Comment 36: Torrington argues that the Department failed to deduct from USP all export selling expenses that INA incurred in Germany. Torrington notes that, in addition to export selling expenses that INA incurred specifically for U.S. sales, INA also reported and identified certain expenses related to all export sales, and certain other expenses related to both domestic and export sales. Torrington requests that the Department deduct these additional export selling expenses from USP for the final results.

INA objects to Torrington's request on the grounds that deducting the indirect selling expenses at issue from ESP would result in an overstatement of INA's U.S. indirect selling expenses. INA contends that it incurs the HM indirect selling expenses at issue for selling the merchandise to customers for whom INA has direct selling responsibility. INA further contends that its U.S. subsidiary incurs similar expenses in selling to unrelated customers for whom it has direct selling responsibility. Because both INA and its U.S. subsidiary incur indirect selling expenses in making sales to their unrelated customers, INA asserts that the HM indirect selling expenses at issue are not related to U.S. sales made by its subsidiary. Accordingly, INA concludes that the Department should not deduct these expenses from ESP for these final results.

Department's Position: We agree with INA. During our verification at INA's headquarters in Germany, we found that INA properly reported all expenses that it incurs specifically for export sales to its U.S. subsidiary. Further, we found no evidence that INA incurred the indirect selling expenses at issue to support sales to unrelated customers in the United States; rather, INA incurs these expenses in Germany in making sales to customers outside the United States. Therefore, we conclude that the indirect selling expenses in question are not related to U.S. sales. Accordingly, we have not deducted these expenses from INA's USP for these final results.

Comment 37: NTN and NTN-Germany contest the Department's rejection of NTN's claimed reduction to NTN's reported total U.S. indirect interest expenses for that portion of the total interest expenses attributable to cash deposits of estimated antidumping duties. NTN and NTN-Germany argue that the Department's failure to provide an explanation for its decision to deny their claimed reduction to U.S. interest expenses violated the Department's regulations by prohibiting NTN and NTN-Germany from effectively commenting on the methods that the Department used to calculate NTN's and NTN-Germany's preliminary dumping margins. NTN and NTN-Germany further argue that the Department's denial of this adjustment contravenes the Department's established practice of permitting this adjustment in previous reviews of the antidumping duty orders on both AFBs and tapered roller bearings. Citing *Shikoku Chemicals Corp.* v. *United States,* 795 F. Supp. 417 (CIT 1992), NTN and NTN-Germany assert that it has the right to rely on the Department's established practice in preparing its questionnaire responses. Accordingly, NTN and NTN-Germany conclude that the Department's failure to adhere to its regulations and its violation of judicial precedent in not allowing NTN and NTN-Germany to rely on established calculation methods require the Department to allow NTN's and NTN-Germany's claimed reduction to total U.S. interest expenses.

Torrington and Federal-Mogul support the Department's rejection of NTN and NTN-Germany's claim. Federal-Mogul contends that because the Department considers cash deposits of estimated antidumping duties to be provisional in nature, any interest expenses that NTN and NTN-Germany incurred on money borrowed to make cash deposits of estimated duties are also provisional in nature, and could ultimately be offset by interest received on refunded cash deposits. Torrington adds that interest expenses, including any incurred on financing cash deposits, are related to all NTN and NTN-Germany's U.S. sales and, therefore, should be treated like other types of indirect selling expenses. Torrington further argues that even if NTN and NTN-Germany's claimed offsets were permissible, they failed to demonstrate that they actually incurred interest expenses on borrowing to finance cash deposits of estimated antidumping duties. Finally, Torrington and Federal-Mogul reject NTN and NTN-Germany's procedural arguments. Torrington states that the Department always amends its calculation methods when existing methods are found to be inaccurate, while Federal-Mogul states that the Department has not denied NTN's and NTN-Germany's right to participate in the proceeding because they may still seek judicial review of the Department's final results. Accordingly, Torrington and Federal-Mogul conclude that the Department properly denied NTN's and NTN-Germany's claimed adjustment to U.S. indirect selling expenses for interest paid on borrowing to finance cash deposits of estimated antidumping duties.

Department's Position: We disagree with NTN and NTN-Germany. Cash deposits of estimated antidumping duties are provisional in nature, because they may be refunded, with interest, to respondents at some future date. Because the cash deposits are provisional in nature, so too are any interest expenses that respondents may incur on borrowing to finance cash deposits. To the extent that respondents receive refunds with interest on cash deposits, the interest that respondents receive on the refunded deposits will offset any interest expenses that respondents may have incurred in financing the cash deposits. Therefore, we did not allow NTN's and NTN-Germany's claimed offsets to reported interest expenses in the United States to account for that portion of the interest expenses that respondents estimate to be related to payment of antidumping duties.

Further, we reject NTN's and NTN-Germany's arguments that we cannot deny their claimed adjustment because we deprived them of their right to participate in this proceeding. The Department has the authority to revise the methods that it uses to calculate dumping margins when it determines that existing methods yield inaccurate results. In addition, NTN and NTN-Germany had the opportunity to make affirmative arguments in support of their claimed offsets in the case briefs that they submitted subsequent to our issuance of the preliminary results of these reviews. Therefore, we are not constrained by prior practice to grant NTN's and NTN-Germany's claimed adjustment to U.S. interest expenses for interest incurred to finance cash deposits of antidumping duties, and have rejected the claim for these final results.

Comment 38: Torrington objects to NTN's claimed reductions to U.S. indirect selling expenses. According to Torrington, NTN has provided no evidence that the expenses that it has excluded from its reported U.S. indirect selling expenses are not related to sales of subject merchandise. Accordingly, Torrington requests that the Department deny NTN's claimed reductions to U.S. indirect selling expenses for the final results.

In response to Torrington's arguments, NTN states that the Department has verified NTN's method of reporting these adjustments in previous reviews, and has accepted NTN's claimed adjustments in each of the previous reviews of AFBs. NTN further argues that the record supports its contention that the expenses in question are not related to sales of subject merchandise. Accordingly, NTN concludes that the Department should grant NTN's reported adjustments to U.S. indirect selling expenses for these final results.

Department's Position: We agree with NTN. The record contains no evidence to refute NTN's claims that NTN incurs the expenses in question almost exclusively for sales of non-subject merchandise, and that any such expenses that NTN may incur on sales of subject merchandise are insignificant. Therefore, we have permitted NTN to deduct these expenses from its total pool of U.S. indirect selling expenses for these final results.

Comment 39: NTN and NTN-Germany object to the Department's determination to re-allocate their reported U.S. selling expenses using their resale prices to the first unrelated customer. NTN and NTN-Germany argue that because the Department failed to articulate reasons for its rejection of their allocation method, the Department deprived them of the opportunity to comment on the Department's determination. NTN and NTN-Germany further argue that the Department violated judicial precedent by abandoning the method of allocating U.S. selling expenses that it used in the three previous reviews of AFBs. Moreover, NTN and NTN-Germany claim that there is no evidence that the Department's method of allocating U.S. selling expenses over resale prices is more accurate than NTN's and NTN-Germany's allocation of these expenses over transfer prices. Accordingly, NTN and NTN-Germany request that the Department use in its analysis NTN's and NTN-Germany's U.S. selling expenses as they reported them in their questionnaire responses for these final results.

In response, Torrington and Federal-Mogul state that transfer pricing is suspect because it is completely within the control of respondents and, therefore, subject to manipulation. Torrington further argues that the

Department's reallocation is rational because there is no correlation between the selling expenses in question and NTN's transfer prices. As a result, Torrington and Federal-Mogul support the Department's reallocation of NTN's and NTN-Germany's U.S. selling expenses on the basis of resale prices to the first unrelated customer in the United States.

Department's Position: We agree with Torrington and Federal-Mogul. First, we disagree with NTN's and NTN-Germany's arguments that we denied them the opportunity to comment on our rejection of their allocation method and violated judicial precedent in reallocating the expenses in question. As stated above, NTN and NTN-Germany had the opportunity to make affirmative arguments in support of their allocation methods in the case briefs that they submitted subsequent to our issuance of the preliminary results of these reviews. Further, as stated above, we have the authority to revise our calculation methods when we determine that existing methods yield inaccurate results.

When allocating expenses over sales value, we attempt to use the most accurate measure of that value. Although in certain instances we permit respondents to allocate certain types of expenses using transfer prices, we prefer to allocate expenses using resale prices to unrelated parties because such prices are not completely under respondents' control and, therefore, provide a more reliable measure of value that is not subject to potential manipulation by respondents. Thus, although we have no evidence that NTN systematically manipulated its transfer prices, our allocation of the specific expenses in question using resale prices provides a more reliable measure of per-unit expenses than does an allocation using transfer prices. Further, the allocation of the expenses in question using resale prices to unrelated customers is appropriate in this instance because the U.S. affiliate of NTN and NTN-Germany incurred these expenses in the United States making U.S. sales to unrelated customers. It is not appropriate to allocate these expenses on the basis of the U.S. affiliate's purchase costs; rather, the expenses should be allocated over its sales. Because we prefer to allocate expenses using resale prices, and because the expenses in question are attributable to U.S. sales to unrelated customers, we have allocated the expenses in question over resale prices for these final results.

Comment 40: Torrington asserts that the Department erred in failing to reallocate expenses that NTN and NTN-Germany incurred on U.S. sales prior to importation on the basis of resale prices to the first unrelated U.S. customer. According to Torrington, because respondents control transfer pricing, allocation of expenses based on transfer prices affords respondents the opportunity to manipulate the Department's analysis by shifting expenses away from certain U.S. products. In this context, Torrington states that its own analysis of NTN's and NTN-Germany's transfer prices and production costs suggests that their transfer prices may not be reasonable. Therefore, Torrington requests that the Department reallocate the remainder of NTN's and NTN-Germany's U.S. selling expenses on the basis of resale prices for the final results.

In rebuttal, NTN and NTN-Germany assert that Torrington's analysis fails to demonstrate that their transfer prices are unreasonable. NTN further argues that the pre-sale expenses that it incurred in Japan are attributable to sales by NTN to its U.S. subsidiary. Therefore, NTN and NTN-Germany assert that the Department should accept its allocation of these expenses using transfer prices for these final results.

Department's Position: We agree with NTN and NTN-Germany. Although we prefer to allocate expenses using resale prices to unrelated parties, we may permit respondents to allocate expenses using transfer prices when it is reasonable to do so. In this instance, such an allocation is reasonable because the expenses at issue are movement charges that NTN and NTN-Germany incurred on sales, made at transfer prices, to a related party in the United States. Further, because Torrington's analysis does not focus on the transfer prices and costs of specific products, we find that the analysis fails to demonstrate that NTN's and NTN-Germany's transfer prices are unreasonable or that they systematically manipulated their transfer prices to shift expenses away from certain U.S. sales. Therefore, we have not reallocated the expenses in question for these final results.

Comment 41: Torrington challenges the method that NTN used to allocate to U.S. sales the export selling expenses that NTN incurred in Japan. According to Torrington, NTN's method of allocating these expenses according to salaries of export department personnel appears to understate the amount of export selling expenses attributable to U.S. sales. Specifically, the allocation ratio that NTN developed using salaries is significantly less than the ratio that would be derived by comparing U.S. export sales to total export sales. Because the record contains no evidence explaining or supporting the difference between the allocation ratios, Torrington suggests that the Department consider for the final results allocating the export selling expenses incurred in Japan to U.S. sales using a ratio based on sales.

NTN rejects Torrington's argument, stating that the Department verified the accuracy of NTN's reported export selling expenses, and that the Department has accepted NTN's allocation method in each of the previous AFB reviews. Therefore, NTN concludes that the Department should not reallocate its export selling expenses for these final results.

Department's Position: We agree with NTN. Torrington's analysis is suspect because it appears to be based on sales of only one class or kind of merchandise and on NTN's U.S. resale prices rather than the value of NTN's exports to the United States. Further, Torrington has provided no evidence that its proposed allocation method yields a more accurate measure of the amount of NTN's export selling expenses that are attributable to U.S. sales. Because NTN is able to identify specific employees who are responsible for export sales to NTN's U.S. subsidiary, NTN's allocation method yields a reasonable measure of the export selling expenses attributable to U.S. sales. Therefore, in the absence of evidence that the salary data that NTN used in its allocation are inaccurate, we have accepted NTN's allocation method for these final results.

Comment 42: Federal-Mogul questions NTN's classification of ''warehouse expenses'' and ''miscellaneous expenses'' incurred in the United States as indirect selling expenses. Federal-Mogul argues that, although warehouse and miscellaneous expenses may be indirect selling expenses, NTN failed to provide any evidence to substantiate its claim that these expenses were not directly related to U.S. sales. Accordingly, Federal-Mogul requests that the Department treat these expenses as direct selling expenses for the final results of this review.

NTN responds that it provided detailed explanations of all its expenses in its questionnaire responses, and that the Department has accepted NTN's classification of miscellaneous and warehouse expenses as indirect selling expenses in each of the previous AFB reviews. Therefore, NTN concludes that the Department should continue to treat miscellaneous and warehouse expenses as indirect selling expenses for these final results.

Department's Position: We agree with NTN. The record contains no evidence that these expenses are directly related to specific U.S. sales. Therefore, we have continued to treat them as indirect selling expenses for these final results.

Comment 43: Torrington maintains that NPBS' allocation of export selling expenses based on the number of personnel responsible for export sales is unreliable. Torrington argues that the Department should reallocate these expenses based on the relative value of U.S. sales to total export sales, as it did in the final results of *AFBs III* (at 39749).

NPBS responds that its allocation method is reasonable. According to NPBS, it allocates expenses incurred in Japan to all export sales based on the number of personnel responsible for export sales, and then allocates the export selling expenses to U.S. sales based on the ratio of U.S. sales to total export sales. Therefore, NPBS contends that its allocation method is reasonable and consistent with the Department's position in the final results of *AFBs III.* As a result, NPBS concludes that the Department should not reallocate its export selling expenses for these final results.

Department's Position: We agree with NPBS. To the extent that NPBS is able to identify specific employees who are responsible for export sales, it is acceptable for NPBS to determine that portion of its total pool of indirect selling expenses attributable to export sales based on the ratio of export-related employees to total employees because it provides a reasonable measure of the selling effort that NPBS devotes to export sales. Further, because NPBS used the ratio of U.S. export sales to total export sales to allocate export selling expenses to U.S. sales, we find that NPBS' allocation method is reasonable and consistent with *AFBs III.* Therefore, we have used NPBS' reported export selling expenses in our calculations for these final results.

Comment 44: Federal-Mogul questions NSK's classification of ''warehouse expenses'' incurred in the United States as indirect selling expenses. Citing *Nihon Cement Co., Ltd.* v. *United States,* Slip. Op. 93–80 (May 25, 1993), Federal-Mogul contends that warehouse expenses may be movement expenses under certain circumstances. In this context, Federal-Mogul argues that although warehouse expenses may be indirect selling expenses, NSK failed to provide any evidence to substantiate its claim that these expenses were not movement expenses. Accordingly, Federal-Mogul requests that the Department treat these expenses as movement expenses for the final results of this review.

NSK responds that the Department has no obligation to presume that warehouse expenses are movement expenses. NSK further argues that the Department never challenged NSK's claim that the warehouse expenses at issue were indirect selling expenses. Therefore, NSK concludes that the Department should continue to treat warehouse expenses as indirect selling expenses for these final results.

Department's Position: We agree with NSK. The record contains no evidence that NSK incurred the warehouse expenses in question for storage of merchandise in transit from one location to another, as was the case in *Nihon.* Moreover, Federal-Mogul has provided no evidence that any other circumstances are present that would warrant treating the warehouse expenses in question as movement expenses. As a result, we cannot conclude that these expenses are movement expenses. Accordingly, we have continued to treat them as indirect selling expenses for these final results.

Comment 45: Torrington challenges two aspects of NSK's claimed HM indirect selling expenses. First, Torrington argues that NSK improperly claimed deductions from FMV for indirect selling expenses incurred by NSK's HM subsidiaries as well as by NSK. Citing *AFBs I,* Torrington argues that the Department previously has rejected respondents' attempts to claim deductions from FMV for indirect expenses incurred by both the parent company and its sales subsidiary. Torrington further argues that NSK has not demonstrated that the research and development (R&D) expenses that comprise a significant portion of NSK's HM indirect selling expenses are actually related to NSK's selling functions. Therefore, Torrington concludes that the Department should eliminate R&D expenses from NSK's claimed HM indirect selling expenses or, at a minimum, allow as a HM indirect selling expense only that portion of R&D expenses attributable to HM sales.

NSK responds that because the Department considers NSK and its related distributors to be one entity, the indirect selling expenses of both NSK and its related distributors are properly attributed to the HM sales subject to this review. NSK further argues that the Department has accepted NSK's method of reporting indirect selling expenses in previous AFB reviews, and that the Department verified NSK's reported indirect selling expense data in this review. Moreover, NSK argues that it reported its general R&D expenses in accordance with the statute and the Department's instructions. According to NSK, it incurs general R&D expenses in analyzing domestic customers' intended uses of bearings or in assisting them in identifying the appropriate product for a particular application; because of the need to work directly with customers in providing general R&D services, NSK states that it does not provide such services to export customers. Thus, because NSK incurs general R&D expenses for domestic customers only, and because the expenses are related to NSK's selling function, NSK concludes that the Department should deduct them as indirect selling expenses from FMV for these final results.

Department's Position: We agree with NSK. We consider NSK and its related distributors to be one company for purposes of this review and, therefore, consider all indirect selling expenses incurred by NSK and its related distributors for the distributors' sales to unrelated customers to be related to these sales. Further, we verified that NSK incurs general R&D expenses to support NSK's overall sales and marketing efforts, and that NSK does not incur general R&D expenditures for export customers. Accordingly, we have included all expenses that NSK incurred in making sales to its related sales companies in Japan, and all of NSK's claimed general R&D expenses, among NSK's HM indirect selling expenses for these final results.

Comment 46: Torrington asserts that NSK should not allocate indirect selling expenses and G&A expenses for ESP sales on the basis of resale prices. According to Torrington, NSK's reallocation was not in compliance with the Department's instructions in its supplemental questionnaire to NSK. Torrington further argues that NSK's allocation method distorts the Department's calculations by assigning the highest deductions for such expenses to sales with the highest per-unit resale prices. Therefore, Torrington believes that the Department should use the highest amount deducted for any U.S. sale to make these adjustments for all U.S. sales. Alternatively, Torrington argues that the Department should reallocate indirect selling expenses and G&A over the cost of goods sold, in order to ensure that the expenses in question are allocated to each part number without distortion.

Citing *Nacco Materials Handling Group, Inc.* v. *U.S.,* Slip Op. 94–34 (March 1, 1994), NSK argues that the Department should continue to accept its method of reporting these expenses because, as explained in NSK's supplemental questionnaire response, it is accurate and reliable. NSK further argues that the Department accepted NSK's allocation method in previous AFB reviews, and verified the expenses in question in this review. Therefore, NSK concludes that the Department should not reallocate NSK's indirect selling expenses and G&A for these final results.

Department Position: We agree with NSK. In its response to our supplemental questionnaire, NSK explained in full the sales price-based method that it used to allocate the expenses in question. As in previous reviews, we find that NSK's allocation method is reasonable. Further, there is no evidence that an allocation of indirect selling expenses based on cost of goods sold, as proposed by Torrington, is any more accurate or reasonable than a sales price-based allocation. Therefore, consistent with past AFB reviews, for these final results we have accepted NSK's indirect selling expenses as NSK reported them in its questionnaire responses.

4H. Miscellaneous Charges

Comment 47: RHP contends that the Department erred in using Federal Reserve exchange rates rather than RHP's reported exchange rate in recalculating RHP's claimed currency hedging adjustment. RHP states it provided all the information that the Department requested regarding RHP's hedging adjustment, and that RHP's reported exchange rates accurately reflect the rates that RHP received. RHP further argues that the Department provided no justification for its determination not to use RHP's actual exchange rates. Therefore, RHP asserts that the Department should use the data that RHP submitted concerning its actual corporate exchange rates to calculate its currency hedging adjustment for these final results.

Torrington and Federal-Mogul argue in rebuttal that the Department must apply the exchange rate specified by the Department's regulations. Torrington continues that it is the respondents' burden to demonstrate their entitlement to an adjustment. In this context, Torrington argues that the Department did not verify RHP's corporate exchange rates, and that RHP did not explain how its reported corporate rates would result in a more precise adjustment than those that the Department used in its calculations. Therefore, Torrington and Federal-Mogul conclude that the Department should not modify its calculation of RHP's currency hedging adjustment for these final results.

Department's Position: We agree with Torrington and Federal-Mogul. The Department is required by 19 CFR 353.60 to make currency conversions in accordance with Customs procedures established by section 522 of the Tariff Act. This section states that "(t)he Federal Reserve Bank of New York shall decide the buying rate and certify the rate to the Secretary (of the Treasury)." Therefore, we have used the Federal Reserve Bank's exchange rates as the basis for RHP's currency hedging adjustment for these final results.

5. Cost of Production and Constructed Value

5A. Research and Development

Comment 1: Torrington contends that, although RHP treated all R&D as G&A expenses, these expenses were at least in part product-specific. Torrington references two response exhibits listing product R&D expenses for new products to support its view that the Department should reject RHP's argument that it was unable to report product-specific R&D. Torrington notes that developing new products is clearly a product-specific activity and should have been reported as such. Torrington concludes that the Department should reclassify all R&D expenses and include them in the total for the COM for the final results.

RHP explains that while its R&D facility was responsible for developing new products, no new products were sold during the POR, and thus, there is no basis for adjusting RHP's reported R&D costs.

Department's Position: We disagree with Torrington. The exhibits in RHP's cost section show general areas of R&D directed at the development of new bearings and general improvements to certain aspects of all bearings. The exhibits do not indicate that R&D costs were incurred for any specific bearing.

Comment 2: NMB/Pelmec argues that the R&D expenses that are not related to the subject merchandise should not be added to the COP and CV. In its Section D response to the Department's questionnaire, NMB/Pelmec explained that R&D expenses were reported as part of factory overhead. The only R&D activities noted in the 1992 Minebea Co.'s annual report relate to "Rod-End, Spherical and Journal Bearings." These types of bearings are manufactured at facilities in the United Kingdom, the United States and Japan, and are not manufactured by the same facilities that produce the subject merchandise. Therefore, these expenses should not be included in the COP and CV.

Torrington rebuts NMB/Pelmec's argument by stating that R&D expenses incurred by the parent company in Japan should be allocated to the Thai operations. According to Torrington, there is no merit to NMB/Pelmec's argument that the R&D expenses identified by the Department at verification are not related to the subject merchandise and should not be added to COP and CV. The record does not support NMB/Pelmec's contention that the unreported R&D costs were incurred solely for rod-end, spherical and journal bearings.

Torrington further contends that, even if NMB/Pelmec's unsubstantiated factual contention were correct, it is irrelevant whether or not these types of bearings are presently being manufactured in the Thai facilities. It is recognized that the same basic technology and production processes are utilized for the various types of bearings. For the final results, Torrington argues that the Department should include the allocated portion of the R&D expenses in question.

Department's Position: The Department agrees with Torrington's argument that the respondent failed to demonstrate that the benefits of Minebea Japan's R&D efforts are limited to nonsubject merchandise. NMB/Pelmec's argument that the financial report only discusses R&D that relates to nonsubject products is flawed. The same report discusses how the Minebea Group developed a new washing system for ball bearings that it intends to have installed in all their plants worldwide by the end of March 1993. Furthermore, we find irrelevant NMB/Pelmec's argument that the list of current R&D projects that the Department reviewed did not contain R&D specifically related to bearings. We verified through Minebea Japan's financial statements that it amortizes the cost of its R&D over a 5-year period. Accordingly, the current list of R&D projects does not reflect the capitalized costs of prior year projects currently being expended as an operating cost. Therefore, it is appropriate to allocate R&D costs to NMB/Pelmec and we have included these expenses in the COP and CV.

5B. Profit for Constructed Value

Comment 3: Torrington argues that sales to related parties that are not at arm's length should be excluded for purposes of calculating statutory profits. Torrington cites *Final Determination of Sales at Less Than Fair Value; Certain Stainless Steel Wire Rods from France,* 58 FR 68865 (December 29, 1993), where the Department held that "all home market sales to related parties that fail the arm's-length test" should be excluded from the profit calculation.

Torrington claims that the change in approach was prompted by the fact that related-party sales are excluded when FMV is based on HM sales. Torrington also cites *Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled, Cold-Rolled, Corrosion-Resistant and Cut-to-Length Carbon Steel Flat Products from Korea,* 58 FR 37176 (July 9, 1993), as a recent example of this practice. Finally, Torrington contends that this exclusion is in accordance with 19 U.S.C. 1677b(e)(2).

Respondents assert that sales to related parties which are not at arm's length are in the ordinary course of trade and should be included in the calculation of the profit component of CV. They also contend that the Department has consistently rejected Torrington's argument in prior AFB reviews. FAG argues that, although the Department has reconsidered this issue in *Certain Stainless Steel Wire Rods from France* and declined to include such related-party sales in the profit component of CV, such change in policy is unwarranted given the lack of any statutory mandate to disregard related-party sales that are in the ordinary course of trade. FAG argues that should the Department reject such related-party sales, the Department should then perform the equivalent of a ''10–90–10 test,'' as it does in disregarding below-cost sales where FMV is based on price.

Department's Position: We agree in part with Torrington. Contrary to Torrington's contention, there is no basis for *automatically* excluding, for the purposes of calculating profit for CV, sales to related parties that fail the arm's-length test.

Section 773(e)(2) of the Tariff Act provides that a transaction between related parties may be ''disregarded if, in the case of an element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales in the market under consideration.'' The arm's-length test, which is conducted on a class or kind basis, determines whether sales prices to related parties are equal to or higher than sales prices to unrelated parties in the same market. This test, therefore, is not dispositive of whether *the element of profit* on related party sales is somehow not reflective of the amount usually reflected in sales of the merchandise under consideration. However, related-party sales that fail the arm's-length test do give rise to the possibility that certain elements of value, such as profit, may not fairly reflect an amount usually reflected in sales of the merchandise. We considered whether the amount for *profit* on sales to related parties was reflective of an amount for profit usually reflected on sales of the merchandise. To do so, we compared profit on sales to related parties that failed the arm's-length test to profit on sales to unrelated parties. If the profit on sales to related parties varied significantly from the profit on sales to unrelated parties, we disregarded related-party sales for the purposes of calculating profit for CV.

We first calculated profit on sales to unrelated parties on a class or kind basis. If the profit on these sales was less than the statutory minimum of eight percent, we used the eight percent statutory minimum in the calculation of CV. If the profit on these sales was equal to or greater than the eight percent statutory minimum, we calculated profit on the sales to related parties that failed the arm's-length test and compared it to the profit on sales to unrelated parties as described above. Based on this methodology, we found only one instance in which the profit on sales to unrelated parties was greater than eight percent—specifically, sales of CRBs by INA.

Profit on INA's sales of CRBs to unrelated parties varied significantly in comparison to profit on its sales of CRBs to related parties. Therefore, we conclude that the profit on INA's sales to related parties did not fairly reflect the amount usually reflected on HM sales of this merchandise. Accordingly, we used INA's profit on sales to unrelated parties in the calculation of profit in determining CV for CRBs.

With regard to FAG's contention that the Department should apply a 10–90–10 test in this situation, we note that the 10–90–10 test is a practice we established to implement the statutory requirement, as provided in section 773(b) of the Tariff Act, that HM sales at less than COP be disregarded if, among other things, they have been made in substantial quantities. The 10–90–10 test is not germane to the issue of whether the element of profit fairly reflects the amount usually reflected in sales in the market under consideration, which is provided for under section 773(e) of the Tariff Act. Furthermore, we have not based our determination to disregard related-party sales that fail the arm's-length test for the purposes of calculating CV on whether such sales are in the ordinary course of trade. Rather, as discussed above, our decision to disregard such sales is based on whether, pursuant to section 773(e)(2) of the Tariff Act, the amount for profit on such sales was reflective of an amount for profit usually reflected on sales of the merchandise.

Comment 4: Torrington contends that below-cost sales should be excluded for purposes of calculating statutory profits. Torrington argues that the same rationale for the decision in *Certain Stainless Steel Wire Rods from France* applies equally to below-cost sales that are disregarded under 19 U.S.C. 1677b(b) and contends that if sales below cost are excluded for price-to-price comparisons, these sales cannot be included for determining profit for the calculation of CV.

Torrington also argues that below-cost sales excluded under 19 U.S.C. 1677b(b) are not in the ordinary course of trade. The petitioner contends that the definition of CV specifies that statutory profits should be calculated on the basis of sales in the ordinary course of trade. 19 U.S.C. 1677b(e)(1)(B). Thus, below-cost sales, when made in substantial quantities over an extended period of time, must be disregarded in calculating CV profit.

Torrington further points out that the United States has taken the position that disregarded below-cost sales are not to be considered sales in the normal course of trade as referred to in Article VI of the General Agreement on Tariffs and Trade (GATT) and the Antidumping Code. Finally, Torrington maintains that its view of ordinary course of trade conforms to international practice and is supported by the Final Act of the Uruguay Round, dated December 15, 1993, in which parties to the negotiation agreed to the principle that CV should incorporate actual profits earned on sales in the ordinary course of trade.

Respondents maintain that it would be incorrect for the Department to disregard below-cost sales in the calculation of CV because such action is not supported by a proper reading of the statute. Furthermore, respondents maintain that the international agreement cited by Torrington is not relevant to the administration of current U.S. antidumping law. Respondents claim that the statute and Departmental practice implicitly recognize that sales below cost are in the ordinary course of trade and should be included in calculating profit for CV.

Department's Position: We disagree with Torrington's contention that the calculation of profit should be based only on sales that are priced above the COP. Section 773(e)(1)(B) of the Tariff Act specifically imposes a variety of requirements on the calculation of profit in determining CV. Namely, the profit should be equal to that usually reflected in sales: (1) Of the same general class or kind of merchandise; (2) made by producers in the country of exportation; (3) in the usual commercial quantities;

and (4) in the ordinary course of trade. Thus, the statute does not explicitly provide that below-cost sales be disregarded in the calculation of profit. The detailed nature of this sub-section suggests that any requirement concerning the exclusion of below-cost sales in the calculation of profit for CV would be explicitly included in this provision. Accordingly, it would be inappropriate for the Department to read such a requirement into the statute. See *AFBs III* (at 39752).

Furthermore, contrary to Torrington's assertions, under current law, as expressed in section 771(15) of the Tariff Act, the definition of ''ordinary course of trade'' does not exclude or even mention sales below-cost. Until the changes resulting from the GATT 1994 agreements are implemented by the United States, we must follow the above section of the Tariff Act.

Consequently, we have used the greater of the rate of profit provided in the response or the statutory minimum of eight percent unless we applied a different profit rate resulting from calculations in those situations where HM related-party sales were found not to be at arm's length. See *Comment 3*.

Comment 5: Torrington argues that since the Department requested profit data for total sales made during the POR and for the sample sales, it should compute respondents' profits on the basis of the sample sales reported or the average profit on all sales, whichever is greater. Torrington states that given that the Department has relieved respondents of reporting all sales for the period through the use of sampling, it is appropriate to use the higher of the two available rates. However, Torrington argues that if a single rate is adopted, it should be the sample sales profit rate since this rate is a representative profit tailored to the U.S. sample weeks.

Torrington further contends that for respondents that withheld data, the Department should apply the highest profit rate earned by any other respondent during the POR. For respondents that did not provide data, Torrington believes the Department should apply 19 U.S.C. 1677e(c) to supply the missing information. Alternatively, Torrington argues that for all sales that would otherwise be compared with CV, the Department should apply the dumping margin calculated in the original LTFV investigation as BIA.

Respondents maintain that profit on any sample of sales, including sales of such or similar merchandise, is not representative of profit on a general class or kind of merchandise and, therefore, should not be used as profit for CV.

Department's Position: With the exception of those firms which had related-party sales at prices which were less than arm's-length prices, we disagree with Torrington's contention that profit should be computed on the basis of the sample sales reported or the average profit rate of all sales, whichever is greater. We requested information only on sales of such or similar merchandise. Because the profit on the sales of such or similar merchandise may not be representative of the profit for the general class or kind of merchandise, we requested profit information based on the class or kind of merchandise.

In the case of firms which needed profit adjustments to eliminate sales made to related parties which were not at arm's length, we found it necessary to make the adjustment based on the reported HM sales, which was the only information available.

With respect to Torrington's proposed BIA applications for firms that withheld profit data in this review, we found no cases where respondents withheld such data.

5C. Related-Party Inputs

Comment 6: NSK and Koyo claim that the Department violated the antidumping law by never establishing the grounds for collecting cost data from related-party suppliers. NSK argues that the Department must have a specific and objective basis for suspecting that the transfer price paid to a particular related supplier for a major input is below that supplier's costs before the Department can collect cost data from that party. Citing 19 USC 1677b(e)(3), NSK claims that the Department violated the antidumping law by not establishing ''reasonable grounds to believe or suspect'' that the transfer price paid to related-party suppliers was below cost. NSK claims that the quoted language of this provision matches 19 USC 1677b(b), which grants the Department the authority to conduct cost investigations. On this premise NSK argues that the ''same threshold standard must be applicable to both provisions.'' Koyo argues that not only did the Department not have any statutory authority to request COP information for inputs that it purchased from related suppliers, but also that there have been no allegations by petitioners in this review, or in any prior AFBs proceeding, that such parts were purchased at less than COP. NSK and Koyo claim that since the Department has violated the antidumping law, all cost data for parts purchased from related suppliers must be removed from the administrative record. NSK further requests that counsel for Torrington and for Federal-Mogul return this information to counsel for NSK.

Torrington and Federal-Mogul argue that the Department properly applied 19 U.S.C. 1677b(e)(3) by collecting cost data from related-party suppliers. Torrington and Federal-Mogul maintain that because respondents engaged in below-cost sales, the Department had reasonable grounds upon which to collect cost data from related suppliers. Torrington argues that given that the foreign producers do sell below cost, it is reasonable to infer that their losses are passed back to related-party suppliers, who are forced to transfer materials and components at a loss. Torrington argues that 19 U.S.C. 1677b(b), which provides the standard for analyzing below-cost sales, does not imply that any particular party has to submit the evidence of below-cost transfer prices of inputs and, therefore, does not suggest that the burden of proof should be placed upon the petitioner, as suggested by NSK. Federal-Mogul and Torrington claim that the best evidence concerning related-party production cost is not accessible to domestic parties and that the burden to submit the evidence should be placed upon the respondents. Torrington and Federal-Mogul maintain that NSK's position would essentially nullify 19 U.S.C. 1677b(e)(3).

Department's Position: We disagree with NSK and Koyo that the Department violated the antidumping law by requesting cost data from related suppliers. In calculating CV, the Department does not necessarily accept the transfer prices paid by the respondent to related suppliers as the appropriate value of inputs. Related parties for this purpose are defined in section 773(e)(4) of the Tariff Act. In accordance with section 773(e)(2) of the Tariff Act, we generally do not use transfer prices between such related parties unless those prices reflect the market value of the inputs purchased. To show that the transfer prices for its inputs reflect market value, a respondent may compare the transfer prices to prices in transactions between unrelated parties. A respondent may provide prices for similar purchases from an unrelated supplier or similar sales by its related supplier to unrelated purchasers. If no comparable market price for similar transactions between related parties is available, we may use the actual COP incurred by the related supplier as an indication of market value. If the transfer price is less than the market value of the input, we may value the input using the best evidence available, which may be the COP.

NSK provided no information regarding prices between unrelated parties for inputs it purchased from related suppliers. Therefore, in accordance with section 773(e)(2) of the Tariff Act, we required the actual COP of those inputs to determine whether the transfer prices between NSK and its related suppliers reflected the market value of the inputs. Where the transfer prices were less than the COP (*i.e.*, market value), we used the COP as the best evidence available for valuing the input. Similarly, Koyo did not provide information regarding prices between unrelated parties for some inputs it purchased from related suppliers. In those instances we also required the actual COP of those inputs to determine whether the transfer prices reflected the market value of the inputs. Where the transfer prices were less than the COP, we used the COP as the best evidence available for valuing the input.

Under section 773(e)(3) of the Tariff Act, if the Department has reason to believe or suspect that the price paid to a related party for a major input is below the COP of that input, we may investigate whether the transfer price is in fact lower than the supplier's actual COP of that input even if the transfer price reflects the market value of the input. If the transfer price is below the related supplier's COP for that input, we may use the actual COP as the value for that input.

We found in the previous review that both companies had purchased major inputs from related parties at prices below COP. Therefore, in accordance with normal practice, we determined that we had reasonable grounds to believe or suspect that both NSK and Koyo purchased major inputs from related suppliers at prices below the COP of those inputs during this review period. See *AFBs III* (at 39754).

Comment 7: NSK argues that the Department should use NSK's purchase price for parts purchased by NSK from each related supplier. NSK claims that, according to section 773(e)(2) of the Tariff Act, the Department should reject prices for parts purchased from related suppliers only when it appears that these prices have been manipulated and that ''* * * the amount representing that element does not fairly reflect the amount usually reflected in sales in the home market under consideration.'' Given the discretionary language of section 773(e)(2), NSK contends that the Department should not reject every transaction that simply falls below an unrelated supplier's price, but instead should accept all transactions between related parties when the business pattern demonstrates a competitive relationship.

Alternatively, if the Department concludes that it may determine the market value at which parts should be purchased from related suppliers simply on price-to-price comparisons, then NSK argues that it cannot be penalized to the extent that its related supplier costs exceed an unrelated supplier's price. Under section 773(e)(2) of the Tariff Act, the Department cannot require that a related supplier's price be above its COP if the fair market value established by an unrelated supplier's price is below the related supplier's COP. Therefore, under those circumstances in which both the related and unrelated suppliers' prices fall below the related supplier's costs, the Department should adjust the related party's price only to the extent it falls below fair market value measured by the unrelated supplier's price.

NSK further argues that if the Department determines market value at which parts should be purchased from related suppliers on a price-to-cost comparison when price-to-price comparisons do not exist, then the Department should adjust NSK's costs for only those parts purchased at prices below the COP. In these instances, NSK claims that the Department's current adjustment is too broad and that the Department should use the related supplier's actual COP submitted to the Department. Finally, NSK contends that if the Department continues to disregard the related supplier's cost data, the Department should amend its adjustment to exclude finished bearings purchased from other suppliers from the adjustment equation.

Department's Position: Under section 773(e)(2) of the Tariff Act, the Department is directed to disregard a transaction between related parties ''if the amount representing an element of value, required to be considered in the calculation of CV, does not fairly reflect the amount usually reflected in sales in the market under consideration.'' Given this requirement, we disagree with NSK that we should not reject every transaction in which the prices from the related supplier do not reflect the amounts usually reflected in sales between unrelated parties. Although competitive factors may temporarily force related suppliers to sell below market value, this does not relieve us of our responsibility to capture the full market value usually reflected in sales of the input. Lacking information as to what the market value is, we rely on the related supplier's cost as a measure of the commercial value of that input. In the case of major inputs, section 773(e)(3) of the Tariff Act requires the Department to use the COP of that input if such cost is greater than the amount that would be determined for such input under section 773(e)(2).

We agree with NSK that, under section 773(e)(2) of the Tariff Act, the Department should only adjust related suppliers' prices in situations in which there were no arm's-length prices available and the price-to-cost comparisons (in lieu of price-to-price comparisons) reveal that the suppliers' costs exceed its prices. NSK did not provide any comparable arm's-length prices. Therefore, for these final results, we have compared the reported transfer price of complete bearings and components purchased from related suppliers with the actual COP and used the higher of the two for CV.

Comment 8: Torrington alleges that NMB/Pelmec Singapore has not demonstrated that arm's-length prices were paid to Minebea Japan for the equipment used by NMB/Pelmec Singapore. Therefore, the Department should not use the prices reported by NMB/Pelmec for the final results.

NMB/Pelmec Singapore states that it reported in the supplemental Section D response that machinery manufactured by Minebea Japan is purchased at market value, and gave an example of how the price for one of the machines was determined. NMB/Pelmec Singapore claims that there is no reason to reject the prices paid by NMB/Pelmec Singapore for the machinery from Minebea Japan.

Department's Position: NMB/Pelmec Singapore was unable to provide prices between related parties for sales of identical equipment. As an alternative, it submitted with its response to the Department's Section D supplemental questionnaire copies of documents illustrating the COP and sales information on the transfer of five inner-ring raceway grinding machines to Pelmec Singapore. The information submitted indicates that the machines were transferred from Minebea Japan to NMB/Pelmec Singapore at a mark-up in addition to COP. Therefore, the Department has concluded that NMB/Pelmec Singapore's related-party equipment purchases can be considered arm's-length transactions.

Comment 9: NMB/Pelmec Thailand states that the Department's conclusion that transfer prices for bearings components are below cost is based on numerous errors. The Department stated in its analysis memorandum for the preliminary results dated February 28, 1994, that, based on a sample of four bearing components, it determined that related-party transfer prices ''may not be reflective of fair value.'' As such, the Department increased NMB/Pelmec's COP and CV data by the amount by which it determined that the bearings component transfer prices were below cost. NMB/Pelmec Thailand argues that before comparing transfer prices to costs, the Department increased the reported costs for four items: interest, R&D, headquarters expense, and Karuizawa's G&A expenses.

NMB/Pelmec Thailand argues that its Karuizawa plant's G&A costs and its Minebea headquarters expenses should not be added to the component costs because these expenses have already been taken into account. Since the Department adds the headquarters expenses when calculating CV value, a downward adjustment needs to be made at this stage to account for the fact that some of the component costs have already been increased by this amount. Similarly, NMB/Pelmec Thailand argues that if the Karuizawa plant's G&A expenses are added to component costs, then the markup should be deducted from the reported costs. NMB/Pelmec further argues that since the Department increased the reported costs for bearing components by the amount of Minebea Japan's consolidated interest costs, the Department has double-counted this expense because these costs were already included in the reported CV figures. Finally, NMB/Pelmec states that R&D has also been double-counted since these costs were included in CV.

Torrington states that the Department properly concluded that transfer prices for NMB/Pelmec's bearing components are below cost. Torrington states that there is no merit to NMB/Pelmec's contention that the Department committed numerous errors. The verification team determined that as Kuruizawa is involved with these purchases, its G&A costs must be included in the COP along with the additional general expenses incurred by Minebea. According to Torrington, the respondents failed to provide calculations to illustrate that the Department's methodology results in double-counting and that adding R&D expenses was unjustified.

Department's Position: We found at verification that related parties supply the majority of materials used by NMB/Pelmec Thailand in its production of the subject merchandise. It was also shown at verification that a sample of related-party transfers either did not match the price from an unrelated party or were below the COP. Additionally, Minebea Japan purchases NMB/Pelmec Thailand's finished bearings for sale to the United States. As a consequence of the Minebea Group's practice of purchasing and reselling materials and bearings for the benefit of NMB/Pelmec Thailand, Minebea's reported sales and cost of sales account for the cost of these related-party material purchases twice. When Minebea Japan sells component parts to NMB/Pelmec Thailand, it records a sale and cost of sale in its financial statements. Then, correspondingly, when Minebea Japan repurchases and sells the finished bearings which include the previously transferred components, it records a sale and cost of sale in its financial statement. This sequence of events constitutes double-counting in Minebea Japan's own financial statements, *i.e.*, sales of components and finished bearings. Such double-counting occurs because Minebea Japan does not consolidate its financial statements with those of NMB/Pelmec Thailand. Therefore, the Department has adopted a similar methodology in applying its adjustments to rectify the transfer price deficiencies it found during verification.

Comment 10: Torrington argues that certain related-party transfer prices that NTN reported in its CV questionnaire response do not constitute a permissible basis for calculating CV. For the final results, Torrington urges the Department to calculate ''arm's-length'' prices for certain inputs using information that NTN provided or, if the Department is unable to do so, to reject NTN's CV data in favor of BIA.

NTN responds that it provided all the information that the Department requested regarding related-party inputs, and that it indicated the products that contained inputs purchased from parties related to NTN. Therefore, NTN concludes that the Department should not use BIA to determine the dumping margins for any U.S. sales that are matched to CV for these final results.

Department's Position: We agree with NTN. NTN provided the data that we requested for related-party inputs and the information necessary to make any adjustments to related-party prices. Further, we find that adjustments to NTN's related-party prices are unnecessary. Although certain purchases that NTN made from related-parties were not at arm's-length prices, these inputs represent a small fraction of NTN's total inputs and, therefore, have an insignificant effect on the submitted CV data. As a result, we have used NTN's related-party prices in our CV calculations for these final results.

5D. Inventory Write-Off

Comment 11: Torrington states that RHP had write-offs and write-downs during the POR, and that the company charged these costs to all RHP stock instead of to the particular models involved. Torrington suggests that write-offs and write-downs of ball bearing models may have been charged to non-scope merchandise. Torrington notes that write-downs and write-offs are by nature model-specific and should be charged to specific models. Torrington argues that the Department should reallocate these costs by charging all costs to the bearing model with the highest sales revenue in the United States during the POR for which CV serves as FMV.

RHP agrees with Torrington that inventory write-offs and write-downs occurred during the POR. RHP states, however, that it acceptably charged these write-offs and write-downs against a reserve on its financial reports.

Department's Position: We agree with RHP. RHP accounted for the write-downs and write-offs in accordance with GAAP in the United Kingdom. GAAP does not require that companies write down or write off inventory on a model-specific basis. RHP appropriately off-set the reserve rather than recognize an additional expense. In addition, RHP realized a miscellaneous gain due to an overaccrual for write-downs and write-offs in previous periods.

5E. Interest Expense Offset

Comment 12: Federal-Mogul argues that SNR's claim for an interest income offset to financing expenses in the CV and COP calculations should be disallowed because SNR failed to distinguish between interest income from bearing manufacturing and interest income from investments. In this respect, Federal-Mogul argues that SNR's interest earned from ''late payment for goods'' is properly classified as ''interest revenue'' and should thus be used to adjust sales price upwards or to offset credit expenses. Further, Federal-Mogul asserts that SNR's claim for interest on advance payments to suppliers is not interest earned from bearing manufacturing operations.

SNR responds that its reported interest income was all derived from operations, specifically short-term deposits, interest on late payment for bearings, and interest on advance payments to suppliers. SNR states that it did not derive any of its interest income from non-operational activities such as the sale of land or negotiable securities. Accordingly, SNR claims there is no basis to deny its reported offset.

Department's Position: We agree with SNR. The interest earned on short-term deposits, on advance payments to suppliers and on late payments is derived from manufacturing and sales operations. The Department's practice is to accept a reduction of total interest expense by such short-term interest income because such income is earned from working capital, which by definition is related to manufacturing and sales operations. Therefore, we accepted the interest offset as reported by SNR.

Comment 13: Federal-Mogul claims SKF's interest income offset should be disallowed because the source of this offset was not provided. Federal-Mogul asserts that the interest income qualifying as an offset to interest expense must be derived from bearing manufacturing operations.

SKF argues that total interest expense was reduced by interest income earned solely on short-term investments (cash and marketable securities). In addition, SKF argues that it illustrated its interest calculation and the details were verified by the Department. SKF asserts the Department's practice is to require a respondent to show that interest income used to offset interest expense in the calculation of COP relates to a firm's general operations, and that this practice was affirmed by the CIT in *The Timken Co.* v. *United States,* Slip Op. 94–1 at 12–20 (January 3, 1994).

Department's Position: We agree with SKF. The Department verified that the interest income offset was attributed to short-term investments of its working capital. Therefore, interest expense was appropriately reduced by this amount.

Comment 14: Torrington observes that NPBS reported interest expenses for COP net of interest income. Torrington claims, however, that NPBS failed to demonstrate that the interest income in question was derived from short-term investments directly related to production of merchandise. Accordingly, Torrington asserts that the Department should recalculate NPBS' interest-expense factor without including interest income.

NPBS responds that its interest income offset includes income derived from short-term investments related to the production of subject merchandise and income from investments of working capital. Accordingly, NPBS argues that its offset is properly supported.

Department's Position: We agree with NPBS. NPBS reported that it has investments in several types of securities and real estate, but has not reported any interest income from these activities. Therefore, we are satisfied that the interest income is related to production activities and the investment of working capital.

5F. Other Issues

Comment 15: NMB/Pelmec Thailand argues that the Department improperly recalculated the G&A expenses portion of the reported COP and CV data to include additional Minebea Japan headquarters expenses. According to NMB/Pelmec, some of these expenses were unrelated to the production of the subject merchandise. Accordingly, these expenses should not be included in the COP and CV calculations.

Torrington rebuts NMB/Pelmec's argument by stating that the Department found at verification that Minebea Japan's G&A expenses incurred were not fully allocated to the Thai operations. Torrington asserts that the evidence on the record does not support NMB/Pelmec's contention and that the Department has improperly allocated G&A expenses to the Thai operations.

Department's Position: It is appropriate to allocate a portion of the total headquarters expenses to NMB/Pelmec Thailand. NMB/Pelmec lists headquarters expense as a general expense, which are period costs that relate to the operation as a whole. We agree with Torrington that the record evidence does not support the respondent's contention that some of the accounts that make up headquarters expense should not be allocated to the Thai operations.

Comment 16: NMB/Pelmec Thailand argues that the Department incorrectly adjusted G&A expenses for certain extraordinary expenses which were unrelated to the ordinary operations and should not be included in the COP and CV calculations. According to NMB/Pelmec, these extraordinary expenses consisted primarily of expenses related to the company's 10th anniversary celebrations in Thailand and should not have been added.

Torrington asserts that NMB/Pelmec's argument that the firm's 10th anniversary celebration was an extraordinary loss is incorrect since by the nature of the expense, it will recur in the future. In addition, such events are typically an occasion to promote products and develop customer relationships. Thus, this expense does not constitute an extraordinary item and, at the very least, should be deemed a selling cost.

Department's Position: We agree with Torrington that these expenses are not extraordinary expenses. We find no merit to NMB/Pelmec's arguments that these expenses do not relate to the ordinary operations of the company. Since such activities and related expenses at a minimum promote NMB/Pelmec's name, we have revised NMB/Pelmec's calculation of G&A expenses to include these costs.

Comment 17: Torrington argues that the Department found at verification that certain expenses, *i.e.,* bonus for directors, bonus for auditors, exchange loss and miscellaneous expenses, were not included in the costs submitted by Koyo. Torrington contends that the Department should make the appropriate adjustments to COP and CV for the final results.

Koyo argues that the Department improperly reclassified its non-operating expenses and payments out of retained earnings as production expenses. Specifically, the Department incorrectly reclassified bonus payments to auditors and directors paid out of retained earnings, exchange losses, and all expenses booked as ''miscellaneous non-operating.'' The reclassification of bonuses for directors and auditors contradicts prior Department treatment of these expenses. Koyo states that the Department in four previous tapered roller bearing (TRB) reviews found that bonuses for directors and statutory auditors' fees were similar to a dividend payment and, accordingly, not a production cost. Koyo also argues that the Department erroneously reclassified the exchange losses included in Koyo's non-operating expense account as production costs. Koyo contends that its exchange losses are related to international sales operations, not domestic production. Since all production expenses are incurred and paid in yen, there can be no production-related exchange losses.

Department's Position: During verification, Koyo's management provided explanations of the costs that were included as certain non-operating expenses on the financial statements. Based on the discussions, we found that certain general expenses were not included in the submission. These costs included miscellaneous expenses and bonuses for the board of directors and auditors which are normal costs incurred by companies. With respect to foreign exchange losses, these costs were also considered to be a general expense because they did not relate to sales.

Comment 18: Torrington argues that the Department noted at verification that Koyo under-reported certain other expenses when it individually adjusted factory overhead expenses allocated through its cost centers based on an efficiency variance. Torrington contends that the Department's verification team observed that the efficiency variance had a direct effect on the specific product costs that are processed through Koyo's cost centers and that application of this favorable variance resulted in lower factory overhead expenses allocated to the subject merchandise. Torrington argues that the Department should make the appropriate adjustments to COP and CV in the final results.

Koyo argues that the Department erred in inflating Koyo's COP because of the existence of efficiency variances in Koyo's basic labor cost. Koyo contends that the Department's decision to adjust its reported costs is the result of a misunderstanding of the manner in which Koyo's basic cost is calculated and the role of the efficiency variance in those calculations. Koyo explains that its basic cost system employs a two-step process to determine as accurately as possible the actual labor hours used to produce a given product in a given period. First, Koyo's production engineers determine the amount of time, *i.e.*, the ''basic hours'' theoretically required to perform each process at each cost center on the basis of time and motion studies. Second, at the end of a given period, Koyo's cost accountants compare the number of hours theoretically necessary to operate a particular cost center, based on that period's ''basic hours,'' to the number of hours actually required to operate that cost center during that period. The ratio of actual to basic hours is the so-called ''efficiency variance,'' which is used to calculate the labor cost element of the model-specific basic costs for the next period. Koyo explains that dividing the previous period's basic hours by the efficiency variance simply derives the number of actual hours incurred in the previous period, which is then used to calculate the labor cost for the next period. Koyo maintains that its method of updating its models' basic cost has been repeatedly verified by the Department without any suggestion that its method of capturing and updating the costs at its cost centers fails to identify accurately the actual costs incurred at those cost centers. Accordingly, there is no justification for modifying this calculation in the review.

Koyo further argues that the Department's position that the efficiency variances adjust a model-specific standard by an overall rate which may or may not accurately state the individual model's standard cost is wrong. The efficiency variances are not an ''overall rate''—to the contrary, they are specific rates for groups of cost centers that are used to calculate the basic cost of individual models produced at those cost centers.

Koyo further contends that because the manufacturing variance is used to adjust for the difference between the basic costs of the models produced at a given plant and the actual costs incurred there, if the Department decides to reject one element in the calculation of the basic costs (in this case, the adjustment to reflect the difference between standard and actual labor hours), then that element must be included instead in the calculation of the manufacturing variance. In summary, Koyo argues that the fact that a variance calculated on a plant-wide basis was used to adjust expenses for individual models does not support rejection of the manufacturing variance and that the Department should eliminate its revision of Koyo's reported costs of production.

Department's Position: We agree with Koyo. As this efficiency adjustment attempts to determine more accurately the amount of labor costs associated with individual cost centers based on actual experience, we find that Koyo's adjustment was reasonable. Accordingly, the Department accepted Koyo's submitted data with respect to the labor efficiency adjustment.

Comment 19: Federal-Mogul claims that F&S failed to respond adequately to requests for HM cost data. When the Department requested COP data following Federal-Mogul's allegation of below-cost sales, F&S did not provide adequate COP data for all sales. Federal-Mogul states that, as partial BIA, the Department treats sales with missing COP data as sales below cost. However, Federal-Mogul contends that F&S' failure to provide adequate COP data at the Department's request warrants application of total BIA.

F&S argues that, with regard to HM cost data, it provided COP and CV information for all models sold in the U.S. market. F&S claims that it has been responsive to all requests by the Department for information.

Department's Position: We disagree with Federal-Mogul. F&S has provided sufficient and complete COP data. There were identical HM model matches for all U.S. sales. Because F&S provided COP data for all HM models used for comparison purposes, and we had no need for COP data for other models sold in the HM which were not used for comparison, we accepted F&S' response.

Comment 20: Torrington contends that the Department found at verification that expenses for training personnel in the use of certain testing machinery should have been included in technical service expenses, but that Koyo included this expense in SG&A expenses. Torrington argues that the Department should reclassify this expense as a technical service expense.

Department's Position: We disagree with Torrington. Since the training of personnel cannot be tied directly to sales, it was appropriately included as part of SG&A.

Comment 21: Torrington argues that the questionnaire requires respondents to report a weighted-average manufacturing cost when the subject merchandise is produced at more than one facility. Torrington contends that since Koyo deviated from the questionnaire instructions, the Department should apply the highest prior margin to all sales of those part numbers manufactured by more than one supplier.

Koyo claims that it reported the weighted-average COM for all of the models in its responses. Koyo also states that all of the information requested by the Department has been provided and that there is no basis upon which to apply BIA.

Department's Position: We agree with Koyo that it reported its weighted-average COM for all of the models in its supplemental response.

Comment 22: Torrington argues that the Department should reject FAG-Germany's cost data because FAG only provided costs for completed bearings and not for the individual material elements as required by the questionnaire. Torrington further argues that FAG/Barden did not provide cost data for all models sold in the HM. Torrington argues that while CV data were provided for Barden-made models sold in the United States, COP data for Barden's HM sales were not provided. Torrington argues that since the Department initiated a COP investigation regarding FAG, it should have included its affiliate Barden.

FAG argues that its cost responses were accurate and acceptable as reported because its model-specific COPs and CVs were correctly reported in accordance with Departmental precedent. Also, FAG argues that no below-cost allegation has been made against Barden, and the Department did not request COP data from Barden.

Department's Position: We agree with respondents. We have accepted FAG's cost data in the format provided for this review, because we were reasonably able to use the data for our analytical purposes in this review. Also, petitioner has provided no other basis for the Department to reject FAG's cost responses.

With respect to Torrington's argument concerning a below-cost test for products produced by Barden, the Department did not formally request the COP data from Barden. The original below-cost allegation was made before the companies were collapsed for the purposes of these reviews, and only involved products produced by an unrelated company and sold by FAG U.K. The Barden HM sales are distinct in that they are sales of self-produced merchandise, not resales of purchased products. Furthermore, none of the products purchased by FAG is similar to those produced by Barden. Accordingly, if sales by FAG U.K. were disregarded because they were sold below cost, there is no possibility that HM sales of Barden-made products will be matched to a U.S. sale in place of the product purchased and resold by FAG.

Comment 23: NTN objects to the Department's preliminary decision to increase NTN's reported COM. NTN argues that the Department's analysis memorandum contains certain factual errors and misinterprets certain information in the record. Specifically, NTN contends that: (1) The Department's findings are based on information that does not pertain to the COM data subject to this review; (2) the Department relied on general information when more specific information was available; (3) the Department applied findings based on data from one factory to all of NTN's other factories; (4) the Department's conclusions regarding standard costs for subject and non-subject merchandise are not supported by record evidence; and (5) the non-subject merchandise that the Department examined at verification does not represent a significant portion of NTN's costs. For these reasons, NTN asserts that the Department should not make any adjustments to its reported COM.

NTN further argues that in the event that the Department determines to adjust NTN's reported COM, it should revise the methodology that it used in the preliminary results. NTN contends that the Department's revision artificially increases the adjustment to NTN's reported COM because the Department reallocated certain costs as a percentage of non-subject merchandise only, rather than as a percentage of all products. NTN further contends that the evidence in the record does not warrant the Department's adjusting NTN's total reported COM, because the Department's verification report and exhibits demonstrate the accuracy of certain portions of NTN's reported COM. As a result, NTN requests that the Department revise its adjustment to NTN's COM by reallocating certain costs to all products, and by adjusting only certain portions of NTN's reported COM.

Torrington responds that NTN is improperly attempting to revise the Department's verification report and to raise issues that the Department did not examine at verification. Torrington further argues that the Department's verification report identifies significant flaws in NTN's reporting methods, and concludes that these methods do not accurately capture cost differences across NTN's product lines. Finally, Torrington argues that the Department would be justified in rejecting NTN's COP and CV responses if they contained the factual errors that the Department found at verification. Given the Department's verification findings, Torrington rejects NTN's arguments and supports the Department's revisions to NTN's reported COP and CV.

Department's Position: We disagree with NTN. First, the COM information that NTN challenges does pertain to cost information which is subject to this review. NTN argues that the information used to support the adjustment to COM was from outside the POR. The information referred to by NTN supports the standard costs used during the POR and is the underlying data for certain aspects of the submitted costs. Therefore it is relevant to this review. NTN relied on pre-POR costs as the basis for revisions to its standard costs. NTN revised certain elements of its standard costs for certain product types during the POR, but not for all product types. The majority of standard costs that remained unchanged were for non-subject merchandise. Since standard cost revisions are based on pre-POR costs, we tested selected non-subject costs versus actual costs for the pre-POR period. We found that the non-subject standard costs were overstated when compared to actual costs. NTN applied a non-product-specific plant-wide variance to all products. The application of a plant-wide variance shifts costs between products. We adjusted the submitted costs for subject merchandise to account for the inaccurate standard costs of non-subject merchandise.

Second, NTN's allegation that we ignored specific information in favor of more general information is unfounded. We found at verification that NTN routinely calculates actual costs in a more specific manner than that used to calculate costs in its questionnaire responses. Because we prefer to use the most specific information possible to determine a respondent's costs, our use of NTN's own method of calculating actual costs, as examined at verification, to calculate COP and CV for these final results is appropriate and supported by substantial evidence.

Third, our limited resources prohibit verification of all the data submitted by respondents. Verification is intended to provide an examination of representative data rather than a complete review of all submitted data. Therefore, it is our longstanding practice to verify selected information and draw general conclusions regarding all respondents' data based on our verification findings. We followed this longstanding practice in conducting our COP and CV verification at one of NTN's factories. Moreover, NTN has failed to provide any evidence to suggest that the data obtained from this factory is not representative of manufacturing costs at NTN's other plants. In the absence of such evidence, we conclude that our verification findings from the selected NTN factory provide a reasonable basis for reaching conclusions regarding NTN's COP and CV data.

Fourth, NTN misrepresents our findings regarding standard rates. Our findings relate to the input factors used in the standards, not the rates applied to the input factors. Although NTN has revised some input factor amounts associated with the production of subject merchandise, we found at verification that NTN has not revised these amounts for the majority of the inputs used for the subject merchandise, while it has revised the input amounts for non-subject merchandise. As demonstrated by our verification findings, the practice of revising input amounts for only certain parts creates distortion when allocating costs. Accordingly, we have adjusted NTN's submitted data to eliminate these distortions.

Fifth, although the non-subject merchandise in question may only represent an insignificant portion of NTN's costs at the selected plant, our verification findings regarding non-subject merchandise are relevant because they reveal two flaws in the methods that NTN used to calculate COP and CV. As described above, our examination of subject and non-subject merchandise revealed that NTN had available cost information that was more accurate and specific than the information that NTN elected to submit to the Department. Our comparison of subject and non-subject merchandise also revealed that NTN's standard costs contain distortions because NTN has updated only portions of the standard input amounts. The relative significance of the costs that NTN incurred for the non-subject merchandise at issue does not obscure the significance of the distortions that we found in NTN's method of reporting costs for subject and non-subject merchandise. Based on these findings, we conclude that an adjustment to NTN's reported COP and CV is warranted for these final results.

Finally, we disagree with NTN's contention that our adjustment to COP and CV is excessive. As described above, we determined that it was appropriate to adjust NTN's reported COP and CV to correct a misallocation of costs between subject and non-subject merchandise. Further, our calculation of the adjustment reflects the methods that we used in conducting our verification and is based on data obtained from NTN during verification. Accordingly, we find no basis for revising our calculation of the adjustment to NTN's reported COP and CV for these final results.

Comment 24: NSK contends that the Department departed from well-established agency practice by revising NSK's reported net financing expense. NSK claims that the allocation methodology used to determine its reported net financing expense conforms to the methodology used to calculate NSK's net financing expense as outlined in a memorandum issued by the Office of Accounting for the final results of the 1990–1991 AFBs administrative review. NSK also cites *Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Administrative Review,* 56 FR 34,180, 34,184 (July 26, 1991) and *Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review,* 58 FR 32,095, 32,100 (June 8, 1993).

Federal-Mogul contends that NSK failed to substantiate its short-term interest income offset claim. Therefore, the Department's decision to revise NSK's net finance expense claim is reasonable and consistent with past Department practice in AFBs reviews. See *AFBs III* (at 39756–57).

Department's Position: The Department has not departed from its well-established practice of determining financing costs. NSK constructed short-term interest income by calculating a ratio based on consolidated short-term investments to total investments and applying the resultant percentage to interest income. This methodology may not reflect actual short-term interest income, because the interest rates earned on short-term investments may differ from those earned on long-term investments. Additionally, NSK did not demonstrate that the reported short-term interest income was derived from business operations. We therefore used total interest expense as a percentage of cost of sales in our calculations.

6. Discounts, Rebates and Price Adjustments

As a general matter, the Department only accepts claims for discounts, rebates, and price adjustments as direct adjustments to price if actual amounts are reported for each transaction. Thus, discounts, rebates, or price adjustments based on allocations are not allowable as direct adjustments to price. Allocated price adjustments have the effect of distorting individual prices by diluting the discounts or rebates received on some sales, inflating them on other sales, and attributing them to still other sales that did not actually receive any at all. Thus, they have the effect of partially averaging prices. Just as we do not normally allow respondents to report average prices, we do not allow average direct additions or subtractions to price. Although we usually average FMVs on a monthly basis, we require individual prices to be reported for each sale.

Therefore, we have made direct adjustments for reported HM discounts, rebates, and price adjustments if (a) they were reported on a transaction-specific basis and were not based on allocations, or (b) they were granted as a fixed and constant percentage of sales on all transactions for which they are reported. If these adjustments were not fixed and constant but were allocated on a customer-specific or a product-specific basis, we treated them as if they were indirect selling expenses. We did not accept as direct deductions discount or rebate amounts based on allocations unless the allocations calculate the actual amounts for each individual sale, as in the case with a fixed percentage rebate program. This is consistent with the policy we established and followed in the second and third reviews. See *AFBs II* (at 28400) and *AFBs III* (at 39759). In addition, the Department does not accept a methodology which allows for the inclusion of discounts, rebates, and price adjustments paid on out-of-scope merchandise in calculating adjustments to FMV. See *Torrington I,* at 1579.

For USP adjustments, we deducted all U.S. discounts, rebates, or price adjustments if actual amounts were reported on a transaction-specific basis. If these expenses were not reported on a transaction-specific basis, we used BIA for the adjustment and treated the adjustment as a direct deduction from USP.

Comment 1: Torrington alleges that NMB/Pelmec Singapore and Thailand did not fully report HM billing adjustments. Adjustments were only reported up until June 1993 due to time constraints. Torrington states that the Department should apply a partial BIA rate, *i.e.*, the Department should not adjust FMV for the reported price ''decreases.''

NMB/Pelmec Singapore and Thailand argue that they reported billing adjustments up until June 1993 since the deadline for Section A of the questionnaire was August 10, 1993, and the response had to be prepared prior to that date. The respondent states that it was unlikely that any significant quantity or billing adjustments relating to sales during the POR after June 1993 occurred. In addition, even if there were such adjustments, they could have served as decreases or increases to the overall margin. In sum, NMB/Pelmec argues that their method for reporting quantity and billing adjustments was reasonable and accurate.

Department's Position: We agree with respondent. The reporting of all HM billing adjustments during the POR was not possible because the billing adjustments had not yet occurred by the deadline for filing the response. We verified NMB/Pelmec Singapore's reported billing adjustments and found them to be reported in accordance with our questionnaire instructions, and therefore have accepted the billing adjustments as reported.

Comment 2: Torrington argues that NMB/Pelmec's quantity and billing adjustments for the United States should not be accepted for purposes of the final results. Torrington states that since sales adjustments were only reported through June 1993, a partial BIA rate should be applied. In addition, at verification, the Department discovered a ''special billing which did not reflect total purchases and was not offset by a billing adjustment credit memo.''

NMB/Pelmec states that for the same reasons BIA is not justified with regard to the calculation of FMV, it is not justified with respect to USP. This special billing involved a relatively small amount, and there is no justification for applying the BIA rate as proposed by Torrington.

Department's Position: We verified quantity and billing adjustments in the United States. We found that quantity and billing adjustments were properly reported, with one exception. At verification, we discovered a discrepancy regarding a relatively small billing adjustment. However, because the discrepancy involved was an isolated incident, we have accepted NMB/Pelmec's quantity and billing adjustments as reported. See *NMB/*

Pelmec ESP Verification Report, February 10, 1994.

Comment 3: Torrington asserts that NMB/Pelmec was unable to trace early payment discounts to particular sales invoices for its ESP sales, because these discounts were unknown at the time of sale (*i.e.*, NMB/Pelmec did not know which customers were going to pay early and thus receive this discount) and were credited to the customer's accounts receivable balance only at the time payment was received. Since early payment discounts should be tied to each specific invoice, Torrington argues that they should not be allowed. Torrington also believes that NMB/Pelmec may have allocated early payment discounts on out-of-scope merchandise. Therefore, the Department should apply a partial BIA rate to all U.S. sales for which an allocated discount was reported.

NMB/Pelmec claims that the record does not support Torrington's statement. The ESP verification report demonstrates that the Department officials examined the early payment discounts and determined that they were properly allocated to scope merchandise.

Department's Position: We agree with NMB/Pelmec. We verified early payment discounts and determined that NMB/Pelmec accurately reported and properly tied the discounts to particular invoices and to in-scope merchandise. See *NMB/Pelmec ESP Verification Report,* February 10, 1994. Therefore, we have adjusted ESP for early payment discounts.

Comment 4: Torrington contends that RHP stated that it sometimes paid ''incentive rebates''—rebates for sales lower than the prearranged targets on HM sales. Referencing the Department's Antidumping Manual, Torrington states that to qualify for an adjustment, rebates ''must be contemplated at the time of sale.'' Torrington argues that RHP did not demonstrate that these rebates met this standard. Torrington suggests that the Department identify these rebates and disallow any adjustment. If the Department is unable to identify these rebates, Torrington suggests that the Department should reject ''all home-market incentive type rebates,'' because it was an error to report the ''uncontemplated amounts'' without distinguishing them from the ''allowable amounts.''

In its rebuttal brief RHP offers a clarification of its rebate program: ''In the U.K. home market, RHP pays 'incentive rebates' to distributors that meet agreed sales targets. These 'incentive rebates' are calculated on an annual basis. On occasion, rebates are paid out for sales lower than prearranged targets if it is considered essential to maintain the customer relationship.''

RHP notes that for the POR, all but one distributor met its sales targets in the United Kingdom. RHP states that this distributor just missed its target, and that RHP decided to pay an ''incentive rebate'' anyway. RHP suggests that the ''radical adjustments'' proposed by Torrington are inappropriate given the fact that the amount RHP paid to this one distributor is a *de minimis* amount of the total ''incentive rebate'' paid.

Department's Position: We agree with RHP. As required, RHP reported transaction-specific rebates. Torrington's allegation that the ''incentive rebate'' that RHP paid for one distributor who just missed its sales target was not ''contemplated at the time of sale'' is not accurate. Our general policy is to allow rebates only when the terms of sale are predetermined. This is to prevent respondents, after they realize that their sales will be subject to administrative review, from granting rebates in order to lower the dumping margins on particular sales. We are satisfied that RHP is not engaged in this practice. First, RHP establishes the terms of the rebates for each distributor that is eligible for this type of rebate before the sales are made. Second, all but one customer met their sales targets, while one customer very nearly met its sales target. Third, as RHP explains, competitive pressure drives the rebate program, which explains why RHP's rebated policy is that ''[r]ebates are paid out for sales lower than the prearranged targets if it is considered essential to maintain the customer relationship.'' See RHP's Supplemental Questionnaire Response to Sections A–C at 10 (December 17, 1993). RHP granted this customer a rebate as part of its normal business practice, because this customer had virtually met the pre-established sales target and because of the competitive pressure of the industry. Thus, we are allowing this adjustment for the final results.

Comment 5: Torrington contends that RHP claimed adjustments to price for certain post-sale price adjustments which the Department should not have allowed as direct adjustments for the preliminary results. Torrington considers these adjustments to be rebates and notes that all rebates in the HM must be contemplated at the time of sale. Torrington contends that RHP did not demonstrate that these post-sale price adjustments were ''contemplated at the time of sale,'' and thus should not be allowed. Torrington further states that post-sale price adjustments must be tied to in-scope merchandise as determined by the CIT. See *Torrington I.* Torrington argues that RHP did not demonstrate these rebates pertained to in-scope merchandise. Torrington concludes that the Department should disallow all downward billing adjustments because the record is not clear.

RHP responds that it reported all billing adjustments as requested by the Department. RHP reiterates its assertion that billing adjustments occur for a variety of reasons, and that billing adjustments are generally corrections of data input errors. RHP also states that they can ''reflect retroactive price adjustments in response to market conditions.'' RHP claims that these price adjustments were compatible with its continuous negotiations with HM customers. RHP concludes that since all of the price adjustments were made in the normal course of trade, and incorporated in RHP's response on a transaction-specific basis, the Department should not question RHP's billing adjustments.

Department's Position: We agree with RHP and have allowed the claimed billing adjustments. First, RHP reported both positive and negative billing adjustments on a transaction-specific basis and on in-scope merchandise only. Second, most of these billing adjustments reflect corrections of data input errors, not post-sale discounts or rebates. Finally, the remaining billing adjustments reflect RHP's normal business practice of conducting ongoing price negotiations with its HM customers.

Comment 6: Torrington states that RHP claimed HM discounts in the OTHDISH field that were actually rebates, because these ''discounts'' were negotiated subsequent to shipment. Torrington notes that the Department did not make a deduction for these alleged ''discounts'' in the preliminary determination. Torrington further states that the Department was correct in denying this adjustment, because HM rebates must be ''contemplated and quantifiable'' at the time of sale, and RHP's alleged HM discounts were not.

RHP states that only zeros appear in OTHDISH field, and therefore, that no adjustment was warranted.

Department's Position: We agree with RHP that no adjustment is warranted because no values were reported in this field.

Comment 7: Torrington argues that since Koyo's HM billing adjustments are directly related to particular invoices and specific models, and Koyo failed to report these adjustments on an invoice-and product-specific basis, and because Koyo's reporting did not permit the Department to determine whether the billing adjustments related solely to subject merchandise, the Department should deny these adjustments entirely instead of allowing them as indirect selling expenses.

Koyo responds that it reported its post-sale price adjustments as indirect selling expenses in accordance with the Department's policy as explained in the final results for the fourth administrative review.

Department's Position: We agree with Torrington and have disallowed Koyo's post-sale price adjustments because Koyo did not demonstrate that the allocated price adjustments pertained to subject merchandise only. See *Torrington I.* Although we verified that Koyo's billing adjustments were reported on a customer-specific basis, Koyo provided no means of identifying and segregating price adjustments paid to those customers on out-of-scope merchandise.

Comment 8: Torrington argues that the Department should disallow several of Nachi's HM rebate claims, classified as rebates 3, 5, 6, and 7, because the Department cannot use rebates paid on out-of-scope merchandise to adjust FMV. Torrington contends that it is not clear from Nachi's responses or from the Department's verification report that these rebates were calculated only on the basis of sales of in-scope merchandise.

Nachi responds that it reported all rebates on a customer-specific basis for eligible products only. Furthermore, Nachi contends that the Department thoroughly verified all Nachi's HM rebate programs and found no discrepancies. Therefore, Nachi concludes that, as in past reviews, the Department should continue to allow Nachi's rebate claims.

Department's Position: We agree with Nachi with respect to rebates 3, 6, and 7. We thoroughly verified each of these rebate programs. Rebate 3 was granted as a fixed percentage of price and reported on a transaction-specific basis. Rebates 6 and 7 were granted as fixed percentages of price. We found no rebates reported on sales that did not incur rebates, and no rebates incurred on sales of out-of-scope merchandise allocated to sales of scope products. See *Nachi-Fujikoshi Home Market Sales Verification Report,* February 28, 1994.

We agree with Torrington with respect to Rebate 5. This rebate was reported on a monthly- and customer-specific basis (rather than a transaction-specific basis) by dividing the total amount of that customer's rebate by the total customer-specific shipments, including shipments of out-of-scope merchandise. Therefore, we have disallowed this rebate. See *Torrington I.*

Comment 9: Torrington argues that if the Department allows Nachi's rebates 3, 6, and 7 as adjustments to FMV, then the Department should at least treat these rebates as indirect expenses. In addition, Torrington asserts that the Department should treat rebate 4 as an indirect expense. Torrington states that the Department only treats rebates as direct adjustments to price if they were calculated on a transaction-specific basis or if they were granted as a fixed percentage of sales on all transactions for which they were reported. Torrington contends that rebates 3, 4, 6, and 7 do not meet the Department's standards for direct adjustments to FMV. Finally, Torrington notes that the Department treated rebates 3, 6, and 7 as indirect expenses in the previous review.

Nachi argues that the Department correctly treated rebates 3, 4, 6, and 7 as direct adjustments to price. With regard to rebate 3, Nachi points out that the Department's verification report described the rebate as ''a fixed percentage of price and * * * reported on a transaction-specific basis.'' See *Nachi Verification Report,* at 7 (February 28, 1994). With regard to rebate 4, Nachi states that the rebate was paid on sales of specific models and allocated over all sales of a specific model to the same customer in a given month. Nachi claims that it had to perform this minor allocation because there was no way to determine which particular sales of a specific model were subject to the rebate. However, the rebate was not allocated across different models, different customers, or different months. Therefore, Nachi argues that, at a minimum, if rebate 4 does not qualify as direct adjustment to price, it should qualify as a direct selling expense because it was directly related to sales.

With regard to rebate 6, Nachi argues that the Department has verified that the rebate was granted as a contractually fixed percentage of sales covered by the agreement. With regard to rebate 7, Nachi also argues that it was granted as a fixed percentage of invoice price. Therefore, Nachi believes that the Department should continue to classify all four rebate programs as direct adjustments to price.

Department's Position: We agree with Nachi that rebates 3, 6, and 7 were reported, as they were granted, either on a transaction-specific basis, or as a fixed percentage of price. We verified that rebate 4 was paid on sales of specific models and allocated over all sales of a specific model to the same customer in a given month. The rebate was not allocated across different models, different customers, or different months. We have accepted this rebate as a direct adjustment to price because the limited allocation Nachi performed has no distortive effect on FMV because HM prices are weight-averaged by month and model.

Comment 10: Torrington argues that the Department should disallow entirely SKF-Germany's reported HM billing adjustment number two, which is ''not associated with a specific transaction.'' While it was proper, according to Torrington, for the Department not to treat the adjustment as direct, Torrington holds that the Department must disregard these billing adjustments entirely because they may not be exclusively associated with subject merchandise. Torrington maintains that SKF has had ample opportunity to demonstrate the sale-specific nature of this claimed adjustment, yet has failed to do so. Alternatively, Torrington asserts that if the Department treats billing adjustment number two as an indirect selling expense, the Department should reduce the pool of the billing adjustments by a factor representing the ratio of in-scope to out-of-scope merchandise during the POR.

SKF-Germany holds that its HM billing adjustment number two should be treated as a direct adjustment to price. If the Department does not agree with this categorization, SKF-Germany argues that HM billing adjustment number two should be treated as an indirect selling expense, as the Department has done in the preliminary results of this review and in the final results of the past two administrative reviews.

SKF specifically argues that Torrington's arguments are contradictory. Having acknowledged that billing adjustment number two captures adjustments concerning multiple invoices, Torrington then complains that SKF-Germany has not reported this adjustment on a sale-specific basis. SKF-Germany, as it has held since the inception of this review, argues that it cannot report this adjustment on a sale-specific basis, and has therefore reported it on a customer-specific basis. SKF-Germany states also that the Department verified this adjustment to its satisfaction and found no discrepancies. SKF-Germany concludes that Torrington's arguments ignore *Koyo Seiko Co.* v. *United States,* 796 F. Supp. 1526 (CIT 1992) (*Koyo Seiko*), in which the CIT specifically affirmed the Department's methodology of including customer-specific adjustments in indirect selling expenses.

Department's Position: We agree with Torrington and have disallowed SKF's billing adjustment number two claim because SKF did not demonstrate that the allocated billing adjustments pertained to subject merchandise only. See *Torrington I.* SKF provided no means of identifying and segregating billing adjustments paid on non-scope merchandise.

SKF's reliance on *Koyo Seiko* is misplaced. In that case the CIT upheld the Department's treatment of certain allocations as indirect selling expenses. The CIT in *Koyo Seiko* was not presented with and did not address the issue of the proper treatment of allocations which may include out-of-scope merchandise. The CIT in *Torrington I* did address this issue and held that the Department could not properly use a methodology which included discounts, rebates, and price adjustments ''on out of scope merchandise in calculating adjustments to FMV and ultimately the dumping margins.''

Comment 11: Torrington argues that the Department should disallow entirely SKF-Germany's reported HM early-payment cash discounts because they were not reported on a transaction-specific basis. Torrington holds that the Department must disregard these billing adjustments entirely because they may not be exclusively associated with subject merchandise.

SKF-Germany maintains that the Department should treat the HM cash discount as a direct adjustment to price. Alternatively, SKF-Germany argues that the Department, in accordance with *Koyo Seiko,* should continue to treat these cash discounts as indirect selling expenses. SKF-Germany states that, as noted in the Department's verification report, HM cash discounts were reported on a customer-specific, not sale-specific, basis.

Department's Position: We agree with Torrington and have disallowed SKF's cash discounts because SKF did not demonstrate that the allocated price adjustments pertained to subject merchandise only. See *Torrington I.* See our discussion of this issue at *Comment 10.*

Comment 12: Torrington argues that the Department should disallow entirely SKF-Germany's reported HM rebate number two because this rebate is neither transaction-specific nor product-specific but customer-specific, and may thus include amounts associated with non-subject merchandise. Alternatively, Torrington argues that the Department should treat this adjustment as an indirect selling expense, rather than a direct selling expense.

SKF-Germany argues that in the preliminary results of this review the Department properly treated SKF's HM rebate number two as a direct adjustment to price, just as in each of the three prior reviews. SKF-Germany contends that no new evidence exists which would cause the Department to depart from its established practice. SKF-Germany maintains that rebate two, which guarantees a specific reseller profit, is paid on the basis of the resale performance of SKF-Germany's customers. Because rebate two, as verified by the Department, is paid as a fixed percentage of all resales by SKF-Germany's customers, SKF-Germany calculated customer-specific factors for each rebate to a customer by allocating actual rebates paid over SKF-Germany's sales to its customer.

Department's Position: We agree with Torrington and have disallowed SKF's billing adjustment two because SKF did not demonstrate that the allocated billing adjustments pertained to subject merchandise only. See *Torrington I.* See our discussion of this issue at *Comment 10.*

Comment 13: Federal-Mogul urges the Department to apply BIA to SKF-France's HM billing adjustments. Federal-Mogul notes that SKF-France considered any billing adjustments which amounted to less than five percent of the gross unit price or 1000 French francs to be insignificant and did not report such adjustments. Federal-Mogul argues that SKF-France cannot take upon itself the authority to determine what constitutes an insignificant adjustment to FMV. Federal-Mogul suggests that a proper BIA would be to increase FMV by 4.99 percent of the HM price.

SKF-France contends that based on the verified record, neither an adjustment to SKF's prices nor use of BIA is warranted. SKF-France argues that according to Departmental regulations insignificant adjustments which have an *ad valorem* effect of less than 0.33 percent may be disregarded (19 CFR 353.59(a)). SKF-France asserts that the Department verified that unreported billing adjustments are insignificant, and in fact *de minimis,* under the Department's regulations. Additionally, SKF-France notes that since all unreported billing adjustments represent credit memos to the customer, the unreported adjustments had a detrimental rather than beneficial effect on SKF-France's margin calculations. Therefore, SKF-France contends that the Department should continue to accept its billing adjustments for these final results.

Department's Position: We agree with Federal-Mogul that SKF-France cannot take upon itself the authority to determine what constitutes an insignificant adjustment to FMV. However, at verification we confirmed that the billing adjustments in question represent decreases to FMV. Therefore, we agree with SKF-France that the omission of these billing adjustments had a detrimental affect rather than beneficial effect on its margin calculations. Thus, we have accepted SKF-France's billing adjustments for these final results.

Comment 14: Torrington argues that the Department's preliminary decision to deny FAG-Germany an adjustment for 1993 HM rebates based on the fact that FAG failed to report either actual or estimated 1993 U.S. corporate rebates is insufficient. Torrington argues that FAG's failure to report 1993 corporate rebates is a fundamental deficiency which calls for the application of a ''second-tier'' BIA to those U.S. transactions in which FAG failed to properly report a corporate rebate. Torrington contends that the Department's preliminary response may reward FAG for its failure to report 1993 U.S. corporate rebates if the HM rebates denied do not apply to the same types of sales as those found in the U.S. market or are not of the same magnitude as the U.S. corporate rebates which went unreported. FAG-Germany granted HM rebates to only a small number of customers and generally at lower rates than the U.S. corporate rebates. Finally, Torrington asserts that when deciding what BIA approach to use for the final results, the Department should also consider the fact the FAG never clearly stated in its responses that it had not reported estimated 1993 corporate rebates.

FAG-Germany asserts that its rebates were accurately reported given the nature of the rebate programs in each market and that the use of BIA is unwarranted. The companies reported estimated 1993 rebates differently for the HM and U.S. market because clear differences exist between their HM and U.S. rebate programs. Therefore, the Department erred in denying rebate adjustments in the HM on 1993 sales in order to remain consistent with FAG-US' methodology of not reporting 1993 rebates.

Department's Position: We agree with Torrington that disallowing an adjustment for FAG-Germany's estimated 1993 HM rebates is not the most appropriate means to account for respondents' failure to report estimated

1993 U.S. rebates. Accordingly, as BIA for these final results we used the highest 1992 U.S. corporate rebate rate to calculate corporate rebates for 1993 U.S. sales to customers that received rebates in 1992. We also made adjustments to FMV for estimated 1993 HM rebates as reported by respondents.

Comment 15: FAG-Germany argues that the Department improperly treated certain HM expenses which FAG had reported on a customer-specific basis—namely third-party payments, early payment discounts and negative billing adjustments—as indirect selling expenses. FAG-Germany maintains that it calculated and reported these expenses in the same manner that it did in previous reviews and the LTFV investigation and that its allocations are reasonable and accurate. The Department has a longstanding policy of allowing a respondent to report expenses using a reasonable allocation methodology when the respondent does not maintain records enabling it to conform with preferred Departmental methodologies and the methods employed are rational. The Department's treatment of billing adjustments is particularly unjust in that only negative billing adjustments were treated as indirect selling expenses while positive billing adjustments were left as direct adjustments to price.

Torrington maintains that the Department acted properly in treating these expenses as indirect selling expenses because FAG reported them on a customer-specific basis only.

Department's Position: We disagree with FAG-Germany. FAG-Germany does not dispute the fact that these expenses were allocated and reported on a customer-specific basis. The rationale for the treatment of customer-specific allocations as indirect adjustments was set forth in *AFBs III* (at 39759), and reiterated in the statement of our policy at the beginning of this section. This rationale applies to third-party payments as well as discounts and billing adjustments.

We note that FAG-Germany originally did not describe its methodology for reporting HM billing adjustments. See *FAG section C response.* When asked about the HM billing adjustment reporting methodology in the supplemental questionnaire, FAG-Germany inaccurately responded that ''[b]illing adjustments were reported on a transaction-specific basis.'' See *FAG section A–C supplemental response* (at 49). The fact that the majority of HM billing adjustments were not reported on a transaction-specific basis but were instead reported using customer-specific allocations was not discovered until verification. See *FAG KGS Germany verification report* (at 7). Since we cannot distinguish which billing adjustments were reported on a transaction-specific basis, we treated all negative billing adjustments as indirect expenses.

With respect to FAG-Germany's additional arguments concerning differences in the treatment of positive and negative billing adjustments, we disagree that both must be treated in the same manner. The treatment of positive billing adjustments as direct adjustments is appropriate, because treating these adjustments as indirect would provide an incentive to report positive billing adjustments on a customer-specific basis in order to minimize their effect on the margin calculations. That is, by treating positive billing adjustments, which would be upward adjustments to FMV, as indirect expenses, there may be no upward adjustment to FMV. Consequently, respondents would have no incentive to report these adjustments as requested (*i.e.,* on a transaction-specific basis).

Comment 16: FAG argues that the Department erroneously excluded 1993 rebates granted in the HM from the margin calculation and that these rebates should be included in total indirect selling expenses.

Federal-Mogul and Torrington assert that the Department was correct in disregarding FAG-Germany's HM rebates because, as FAG-Germany has itself acknowledged, FAG-Germany did not report estimated corporate rebates for 1993 U.S. sales. Torrington and Federal-Mogul assert that the Department should in fact resort to second-tier BIA margins for 1993 transactions.

Department's Position: For these final results, we have made adjustments for FAG's 1993 HM rebates. See response to *Comment 14.*

Comment 17: Torrington maintains that the NPBS case-by-case (CBC) rebate is not directly tied to a sale and, as such, should be reclassified as an indirect expense.

NPBS rebuts that the results of the last review should stand as precedent, and that the Department should continue to classify these rebates as direct expenses.

Department's Position: We agree with Torrington. Although NPBS and its customers agree on an absolute amount for the CBC rebate *before* the sale (which is the numerator in their formula), neither knows the exact amount of sales that will be made that month (the denominator) until after the fact. As such, the rebate is an allocated amount and not directly tied to a particular sale. Although this adjustment was erroneously treated as a direct deduction to FMV in the previous review, we have reclassified NPBS' CBC rebate as a HM indirect selling expense.

Comment 18: Torrington argues that INA calculated improperly several of its adjustments to HM price. According to Torrington, although INA calculated adjustment factors for certain expenses by dividing the total expense by a total sales value that was net of discounts and rebates, INA then multiplied this adjustment factor by a price that was not net of discounts and rebates to calculate per-unit expenses. Because the sales amounts used to calculate expense adjustment factors do reflect discounts and rebates, Torrington concludes that multiplying the adjustment factor by a price which does not reflect discounts and rebates overstates the per-unit adjustments to HM price. Accordingly, Torrington requests that the Department recalculate per-unit amounts for the expenses in question by multiplying the adjustment factors by a price net of all discounts and rebates.

INA responds that Torrington's argument is based on the incorrect assumption that the sales figures that INA records in its accounting system are net of all discounts, rebates, and price adjustments. According to INA, the sales amounts that it records in its accounting system are not net of cash discounts and rebates, which are recorded separately from sales in different accounts. INA states that it used the sales amounts from its accounting system to allocate the expenses at issue. Because these sales amounts are not net of cash discounts and rebates, INA concludes that its calculation of per-unit expenses using net invoice prices, which are not reduced by amounts for cash discounts and rebates, is appropriate.

Department's Position: We agree with INA. At verification, we confirmed that INA records in its accounting system sales values that are not reduced by cash discounts and rebates. Cash discounts and rebates are recorded separately in INA's accounting system. Therefore, we determine that the sales values that INA used in its allocations capture HM prices that are not reduced by discounts and rebates. Accordingly, we determine that INA properly calculated per-unit expenses by multiplying its reported allocation ratios by sales prices that are not reduced by cash discounts and rebates.

Comment 19: Torrington asserts that the Department should revise NTN-Germany's reported HM rebates. Torrington argues that the Department should recalculate NTN-Germany's rebates, based on the Department's finding at verification that NTN-Germany's method of calculating rebates results in rebate percentages that differed from those stipulated in NTN-Germany's rebate agreements. Torrington further argues that the Department should deny NTN-Germany's claimed rebates for 1993, because the Department found at verification that certain customers would not qualify for the reported rebates based on 1993 sales.

NTN-Germany replies that its reported rebates are reasonable, because it calculated rebate percentages based on information available in its accounting records at the time that it prepared its questionnaire response. NTN-Germany further argues that the Department was able to verify the additional data on rebates that NTN-Germany did not have at the time that it prepared its questionnaire responses. As a result, NTN-Germany argues that even if the Department does not accept NTN-Germany's reported HM rebates for these final results, the Department should revise NTN-Germany's calculations rather than reject NTN-Germany's claim in its entirety.

Department's Position: We agree with NTN-Germany. We verified that NTN-Germany's reported data on HM sales and rebates were accurate, complete and contemplated at the time of sale. Further, because NTN-Germany did not have data on calendar year 1993 sales and rebates at the time that it prepared its questionnaire response, we find that the method that it used to report its HM rebates was reasonable. Accordingly, for these final results we have used in our analysis the data that NTN-Germany reported for rebates on HM sales.

Comment 20: Torrington argues that the Department should revise its treatment of NTN-Germany's HM discounts, because NTN-Germany improperly calculated its discounts. According to Torrington, NTN-Germany's calculation of average discounts per-customer is inappropriate, given the Department's finding at verification that NTN-Germany paid discounts on an invoice-specific basis. As a result, Torrington requests that the Department deny entirely NTN-Germany's claim for HM discounts or, at a minimum, treat them as indirect selling expenses for the final results.

Department's Position: Because we verified the accuracy and completeness of the customer-specific data that NTN-Germany used to calculate its reported HM discounts and because the discounts pertain to subject merchandise only, it would be inappropriate to deny the adjustment to NTN-Germany's HM prices for discounts. In the preliminary determination we treated these discounts as indirect selling expenses. In accordance with our discount and rebate policy discussed at the beginning of this section, we have continued to treat NTN-Germany's HM discounts as indirect selling expenses for the final results of these reviews.

Comment 21: NTN asserts that the Department erred in classifying NTN's HM discounts as indirect selling expenses. According to NTN, it did not report its discounts by aggregating discounts granted on specific sales and then allocating them over all sales to a particular customer. Rather, NTN states that it reported its discounts on both a product- and customer-specific basis. As a result, NTN requests that the Department treat its reported discounts as direct adjustments to price for the final results of this review.

Torrington and Federal-Mogul reply that NTN's method of reporting HM discounts does not satisfy the Department's criteria for considering discounts to be direct adjustments to price. Torrington states that the Department's verification report indicates that NTN allocates discounts to AFBs and non-subject merchandise. Similarly, Federal-Mogul asserts that NTN did not report discounts on a transaction-specific basis, and provided no evidence that it granted discounts as a fixed percentage of all HM sales. As a result, Federal-Mogul claims that NTN may have overstated its reported HM discounts for certain sales. Because NTN's method of reporting home market discounts was not sufficiently specific, Torrington and Federal-Mogul conclude that the Department properly treated NTN's HM discounts as indirect selling expenses.

Department's Position: We agree with Torrington and Federal-Mogul. According to the policy stated above and in previous reviews in these cases, we will treat discounts as direct adjustments to price only if they are reported on a sale-specific basis or if they are granted as a fixed and constant percentage of all sales. Because NTN's reported HM discounts are reported on a product- and customer-specific basis, and pertain only to scope merchandise, we have treated them as indirect selling expenses for the final results of these reviews.

Comment 22: NTN argues that the Department made a clerical error in failing to consider billing adjustments when calculating per-unit U.S. and HM selling expenses. According to NTN, the sales amounts over which the Department allocated certain U.S. and HM selling expenses were net of billing adjustments. Accordingly, NTN requests that the Department calculate per-unit U.S. or HM selling expenses by deducting billing adjustments from the sales prices that it uses to calculate per-unit expenses.

Torrington responds that the record does not specifically demonstrate that the U.S. and HM sales amounts used in the Department's allocations are net of billing adjustments. Therefore, Torrington requests that the Department modify its calculations as requested by NTN only if the Department is able to determine that the sales amounts at issue are net of billing adjustments.

Department's Position: We agree with Torrington. There is no evidence in the record of this review that describes the manner in which NTN recorded billing adjustments in its accounting system. In the absence of such information, we cannot confirm that the sales values that NTN used to allocate its expenses were net of billing adjustments. As a result, we have not deducted billing adjustments from the sales prices that we used to calculate per-unit expenses for these final results.

Comment 23: Torrington argues that NTN-Japan failed to report all HM billing adjustments on a transaction-specific basis. Citing *Torrington I* at 1579, Torrington contends that adjustments to FMV must be tied to sales of subject merchandise, rather than merely allocated over all sales. Because NTN-Japan used an aggregate method of reporting some billing adjustments, Torrington concludes that the Department should deny NTN's claims for HM billing adjustments or should, at a minimum, treat billing adjustments as indirect selling expenses.

NTN responds that it complied, to the extent possible, with the Department's instructions for reporting billing adjustments, and that there is no evidence that any deviations from this reporting method had any impact on the Department's calculation of NTN's dumping margins. NTN further argues that it did not report any billing adjustments made for sales of non-subject merchandise. Therefore, NTN concludes that the Department should continue to treat NTN's reported billing adjustments as direct adjustments to price for these final results.

Department's Position: We agree with NTN. During our verification of NTN's HM sales, we found no discrepancies in NTN's reporting of billing adjustments to home market sales. Thus, we have no reason to believe or suspect that NTN failed to report accurately or completely its HM billing adjustments, or that NTN's method of reporting may have included billing adjustments made on sales of non-subject merchandise. Accordingly, we have treated NTN's reported HM billing adjustments as direct adjustments to price for these final results.

Comment 24: NSK claims that certain rebate, discount and commission programs should be treated as direct expenses and not as indirect expenses because they either meet the Department's definition of a direct expense of the sales in question (see *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order,* 58 FR 39729, 39759 (July 26, 1993)) or they meet the ''reasonable relationship'' requirement for a deduction in price in calculating FMV (see *Smith-Corona Group, SCM Corporation* v. *United States,* 713F.2d 1568 (Fed. Cir. 1983)). These adjustments should be accepted as direct adjustments to price for the following reasons: (1) Post-sale price adjustments (PSPAs), reported as REBATEH3, are reported on a part-number and customer-specific basis; (2) lump sum post-sale adjustments (REBATEH4) are reported on a customer-specific basis and adjustment rates have been demonstrated to be the same for scope and non-scope merchandise; (3) early payment discounts (OTHDISE) are reported on a distributor-specific basis, and each customer that receives the discount typically pays within the same number of days each month. Therefore, the discount is equally applicable to both scope and non-scope products throughout the POR. (4) Stock transfer commissions (COMMH2) are reported on a distributor-specific basis and the commission rate is a fixed percentage for all products and all customers.

Torrington contends that: (1) PSPAs reported as REBATEH3 are not reported on a transaction-specific basis and therefore do not qualify as a direct adjustment to price (see *Antifriction Bearings,* 58 Fed. Reg. at 39,759), and that because of certain reporting errors by NSK, the Department should not make any adjustment for REBATEH3; (2) although NSK claims that customers receiving lump-sum PSPA rebates, reported as REBATEH4, purchase virtually the same proportion of scope merchandise to total purchases, NSK has not provided any evidence that lump sum rebates are related to in-scope products. Therefore, the Department should make no adjustment for REBATEH4; (3) the Department has neither the assurance that the amounts claimed for OTHDISH are related to sales of in-scope merchandise or specific invoices that were paid early, nor the basis that the transactions uniformly involved sales of in-scope merchandise; (4) because NSK allocated stock transfer commissions (COMMH2) over all sales, the Department has no assurance that the commissions paid with respect to non-scope merchandise are not allocated to subject sales; therefore, this adjustment should not be treated as a direct expense. Federal-Mogul argues further that the Department should treat NSK's reported return rebates (REBATEH1) and distributor incentive rebates (REBATEH2) not as direct adjustments to FMV, but rather, as indirect selling expenses because they were not reported on a transaction-specific basis.

Department's Position: We agree with Torrington with respect to REBATEH4, COMMH2, and OTHDISH and have disallowed these adjustments because we do not accept adjustments to FMV which include discounts, rebates, or commissions paid on out-of-scope merchandise. See *Torrington I.* See also *Comment 10.* Although NSK supplied information in its December 16, 1993, Supplemental Response, at 7–8, demonstrating that early payment discounts (OTHDISH) granted for four distributors had remained relatively stable during the POR, NSK did not demonstrate that early payment discount percentages were stable for all customers for which an early payment discount was reported. Similarly, with respect to lump-sum rebates (REBATEH4), NSK submitted information in its December 16, 1993, Supplemental Response, at 14–16, indicating that the percentage of scope merchandise sales to total sales for five customers remained stable during the POR and, therefore, lump-sum rebates have been reasonably allocated to scope merchandise. However, an analysis of five customers' sales does not sufficiently demonstrate that all customers for which lump sum rebates were reported had stable purchasing histories with respect to scope and non-scope merchandise.

With respect to Torrington's claim that PSPAs, reported as REBATEH3, should be rejected because of reporting errors, we determined at verification that the value of unreported PSPAs which were unfavorable to NSK (a reduction of FMV) was more than 50 percent greater than unreported price increases. Furthermore, the value of the unreported price increases was an insignificant percentage of total bearings sold in the HM during the POR. Because this error in computer logic used to compile PSPA data affected an insignificant portion of total HM sales, we have accepted NSK's REBATEH3. REBATEH3 has been treated as an indirect selling expense because it was not reported on a transaction-specific basis.

We agree with Federal-Mogul's claim that REBATEH1 and REBATEH2 should not be considered as direct adjustments to HM price. Because REBATEH2 was reported as a customer-specific allocation of all distributor incentive rebates paid on all sales, NSK has not demonstrated that the reported REBATEH2 does not include rebates paid on non-scope merchandise. Therefore, we have disallowed this adjustment. REBATE1H was reported on a product- and customer-specific basis, not on a transaction-specific basis. Therefore, we have treated this rebate as an indirect adjustment to HM price.

Comment 25: Petitioner claims that NSK's method for estimating after-sale rebates for 1993 U.S. sales fails to account for the fact that customers purchase a greater volume of merchandise during the final months of a program year to qualify for a sales-volume rebate. Petitioner contends that NSK should have compared data for the eight months of 1992 to the data for the same eight months of 1993, or alternatively, could have reported full-year 1993 actual rebates. With this in mind, Torrington holds that the Department should assume that all eligible customers qualified for 1993 rebates and should make adjustments to all U.S. sales.

NSK contends it properly reported U.S. rebates. Torrington cites no support for its statement that ''customers often purchase a greater volume of merchandise during the final months of a program year in order to obtain a sales volume rebate.'' NSK claims there is not support on the record for this statement. Additionally, NSK notes the Department has a regulation prohibiting the voluntary submission of new information following verification. See 19 CFR 353.31(ii). NSK Corp., was verified on December 7 through December 9, 1993, and could not submit new information following the preliminary determination.

Department's Position: We agree with NSK. Torrington has provided no evidence on the record that supports its claim that customers purchase a greater volume of merchandise during the final months of a program year. We have accepted NSK's estimation methodology for 1993 rebates as reasonable and accurate.

7. Families, Model Match and Differences in Merchandise

Comment 1: Federal-Mogul states that, after finding that the most similar HM model was sold below cost in more than 90 percent of the HM sales of that model, and over an extended period of time, the Department may not resort to CV without first determining whether there are other similar models to serve as a price-based comparison. This position results from the fact that the statute expresses a preference for price-based comparisons over CV.

Department's Position: We disagree with Federal-Mogul. Although section 773(a) of the Tariff Act expresses a preference for using the price of such or similar merchandise as the FMV before resorting to CV, section 773(b) directs the Department to resort immediately to CV if, after disregarding sales below cost, the remaining sales of a particular model or family are inadequate as the basis of FMV. Contrary to Federal-Mogul's assertions, therefore, the statute does not require the exhaustion of all possible family matches (similar merchandise) before resorting to CV. See *AFBs III* (at 39765).

8. Further Manufacturing and Roller Chain

Comment 1: Torrington contends that the Department should reconsider and discontinue the practice, known as the ''Roller Chain'' rule, whereby antidumping duties are not assessed on U.S. imports of subject merchandise used by a related party as a minor component (less than one percent) in a further manufactured article which is then sold to an unrelated party. See *Roller Chain, Other Than Bicycle, from Japan,* 48 FR 51801 (November 14, 1983). Torrington argues that whether or not a significant percentage of the finished product is accounted for by the subject import, a USP can reasonably be determined from the transfer price or by other means (*e.g.,* the ESP on sales to other customers, or the lowest export price to any U.S. customer). Additionally, Torrington contends that Congress did not intend to limit the antidumping law to imports accounting for a ''significant percentage'' of the value of the completed product.

Torrington argues that the Department has broad authority, under the antidumping statute, to ensure that imports of bearings incorporated into further processed articles in the United States do not escape the imposition of antidumping duties. According to Torrington, the ''Roller Chain'' rule has created a substantial vehicle for circumvention of the antidumping duty order and should be abandoned.

Torrington argues that, assuming the Department continues to apply the ''Roller Chain'' test, it should change the methodology used for applying the one-percent test to avoid illogical and improper comparisons between the entered value of the bearings and related party transfer prices. Torrington contends that, instead, the value of imported bearings should be based upon the ESP or PP of such or similar bearings sold at arm's length. This value would then be compared to the resale price of the finished merchandise, which is not subject to manipulation by related parties. Where the importer does not resell bearings, or resells only a small quantity, the U.S. prices for the model in question should be based on sales by another manufacturer or the manufacturer who produced the model in question.

Koyo argues that the Department should reject Torrington's arguments. Koyo contends that Congress recognized that there would be situations in which the value added in the United States would be so great that it would be inappropriate to apply the further-processing provision of the antidumping law (19 USC 1677a(e)(3)). This exception is clearly authorized by the legislative history of the antidumping statute, and there is no evidence on the record to demonstrate that the Department's application of the ''Roller Chain'' rule in this review is improper.

Koyo also disagrees with Torrington's argument that the Department should not use the entered value of the subject merchandise in applying the ''Roller Chain'' test. The entered value (rather than the resale value of the bearings in the United States, as suggested by Torrington) provides the correct basis for the one-percent test because the purpose of that test is to determine the value of the subject merchandise as imported in relation to the value of the finished product as finally sold to an unrelated party in the United States.

FAG argues that, contrary to Torrington's opinion, imports of subject merchandise do not escape the antidumping duty order. Full antidumping duties are deposited on the full value of the entered (subject) merchandise. This differs significantly from exempting a respondent from reporting sales of such merchandise. FAG contends that the only time a respondent might not pay antidumping duties on imported merchandise further processed in the United States occurs when certain operations are undertaken in an FTZ, which does not apply to FAG.

NSK argues that the Department cannot arbitrarily adopt a numerical standard for evaluating whether an imported component in a further manufactured product is significant. NSK claims the Department must analyze all relevant factors before determining whether an imported part is significant for purposes of 19 USC 1677a(e)(3). NSK states that if the Department wishes to use a rigid quantitative test to determine whether the imported content is significant, then it must publish, for public comment, a proposed rule to that effect. Until such a rule is properly adopted, the Department must analyze, prior to performing a section 772 analysis, all relevant factors to determine whether the imported amount contained in non-scope and in-scope finished products is significant. NSK further argues that where the finished product is merchandise of the type covered by the order, the Department should use the weighted-average margin for the imported finished product as the margin for insignificant imported parts.

NMB/Pelmec argues that Torrington is missing the point of the Department's one-percent test and its use of the entered value and the resale price. NMB argues that the Department established the one-percent test as a ''bright-line'' standard for determining whether the further-manufactured product contains more than an ''insignificant amount'' of the imported in-scope merchandise. NMB contends that using a different value, other than entered value, would not increase the accuracy of the one-percent test. NMB further asserts that if the Department should change the threshold, it should increase it from one percent to a more realistic level.

Department's Position: Section 772 (e)(3) of the Tariff Act requires that, where subject merchandise is imported by a related party and further processed before being sold to an unrelated party in the United States, we reduce ESP by any increased value, including additional material and labor, resulting from a process of manufacture or assembly performed on the imported merchandise after importation but before its sale to an unrelated party. In ESP transactions, therefore, we typically back out any U.S. value added to arrive at a USP for the subject merchandise. See, *e.g., Final Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof from Korea,* 54 FR 53141, 53143 (December 27, 1989).

The legislative history of this provision suggests that the practice of subtracting the value added by the further processing operations in the United States should be employed only where the manufactured or assembled product contains more than an insignificant amount by quantity or value of the imported product. See S. Rep. No. 1298, 93d Cong. 2d Sess. 172–73, 245, *reprinted in* 1974 U.S.C.C.A.N.

7185, 7310. Conversely, when the quantity or value of the imported product is insignificant in comparison to that of the finished product, we are not required to calculate a USP for the imported merchandise. Therefore, we conclude that Congress did not intend that a USP be calculated in these situations and hence that no dumping duties are due. See H. Rep. No. 571, 93d Cong. 1st. Sess. 70 (1973).

Based on section 772(e)(3) of the Tariff Act (19 USC 1677a(e)(3)) and the applicable legislative history, we developed a practice whereby we do not calculate and do not assess antidumping duties on subject merchandise imported by a related party and further processed where the subject merchandise comprises less than one percent of the value of the finished product sold to the first unrelated customer in the United States. See *AFBs III* (at 39732, 39737). See *Roller Chain I* at 51804. In situations such as this one, in which the statute provides general guidance and leaves the application of a particular methodology to the administering authority, we are given significant discretion in determining the precise methodology to be applied in each case. Inasmuch as our statutory interpretation is not an unalterable rule, it does not constitute rule-making without compliance with the Administrative Procedure Act. See *Zenith Elec. Corp.* v. *United States,* 988 F.2d 1573, 1583 (Fed. Cir. 1993). The application of a one-percent threshold, based on a comparison of entered value of the imported product to the sale price of the finished product, constitutes such a use of the Department's discretion.

We disagree with Torrington's assertion that the ''Roller Chain'' rule has created a vehicle for circumvention of the antidumping duty order. The antidumping statute provides for the assessment of antidumping duties only to the extent of the dumping that occurs. If there can be no determination of any dumping margin where the imported merchandise is an insignificant part of the product sold in the United States, then there is no dumping to offset and, therefore, antidumping duties are not appropriate. Furthermore, the ''Roller Chain'' principle acts only to exclude subject merchandise from assessment of antidumping duties during the POR. We continue to require cash deposits of estimated antidumping duties for all future entries, including entries of bearings potentially excludable from assessment under the ''Roller Chain'' principle. This is because we have no way of knowing at the time of entry whether the ''Roller Chain'' principle will operate to exclude any particular entry from assessment of antidumping duties. Any decision to exclude subject merchandise from assessment of antidumping duties based on a ''Roller Chain'' analysis is made on a case-by-case basis during administrative reviews. See *AFBs I* (at 31703).

In order to apply the ''Roller Chain'' principle, we must examine ESP transactions involving subject merchandise during the POR to determine whether the amount of the subject merchandise is an insignificant part of the amount of the finished product sold to the first unrelated customer in the United States. We agree with Koyo that the entered value, rather than the resale value of the bearings as suggested by Torrington, provides a more appropriate basis for the one-percent test. Although resale prices of identical models sold to unrelated parties could be used in some instances in the numerator in place of entered value, such prices are not always available for each model, nor for all companies. In those instances where no resale price is available, we would have to rely on entered values anyway.

Moreover, we formulated the one-percent ''Roller Chain'' threshold based on the ratio of the entered value to the resale price of the further-manufactured item. If we had chosen to use the resale price in calculating this ratio, we might have chose a ratio higher than one-percent. This is because the resale price will normally be higher than the entered value, as it would include the mark-up of the related importer. Regarding Torrington's claim that the transfer price can be manipulated, we note that the U.S. Customs Service must ensure that such price represents a reasonable commercial value. Thus, we conclude that our use of entered value in the ''Roller Chain'' ratio is reasonable.

Comment 2: Torrington argues that NMB/Pelmec-Singapore and NMB/Pelmec-Thailand's (NMB/Pelmec) ''Roller Chain'' sales databases are inaccurate. Torrington states that the U.S. sales verification report indicates that ''the invoice does not always show the correct country of origin.'' See *NMB/Pelmec ESP verification report,* February 10, 1994. Furthermore, Torrington alleges that the Department discovered at verification that a bearing manufactured in Singapore was incorrectly reported in the Thai response. Torrington argues that during the POR, NMB/Pelmec had only one ''Roller Chain'' sale of the subject merchandise. Therefore, the evidence on record, as indicated by the transaction randomly selected at verification, reveals that NMB/Pelmec's ''Roller Chain'' database is inaccurate.

The NMB/Pelmec refutes Torrington's argument by stating that it provided the Department with all the information necessary to perform the appropriate dumping comparison for further-manufactured sales. In addition, the Department did not ''discover that a bearing manufactured in Singapore was incorrectly reported in the Thai response.''

Department's Position: We agree with respondent. Although the invoice did not always show the correct country of origin, the shipping document did. We verified country of origin during the ESP verification and found it to be correctly reported. In addition, contrary to Torrington's allegations, we did *not* discover that a bearing manufactured in Singapore was incorrectly reported in the Thailand response. See *NMB/Pelmec ESP verification report,* February 10, 1994.

Comment 3: Torrington argues that by manipulating transfer prices, NMB/Pelmec could create exclusions from the antidumping duty order based on the ''Roller Chain'' analysis. Torrington contends that it is inappropriate to use entered value as the basis for valuation of subject merchandise. Instead, the value should be derived from the ESP, less any value added. 19 USC 1677a(e)(3). Torrington states that the Department should use the average ESP by part number for purposes of the one-percent ''Roller Chain'' test.

NMB/Pelmec argues that using a value other than the entered value would not make the one-percent ''Roller Chain'' test any more accurate.

Department's Position: We disagree with Torrington. The use of entered value is appropriate because it is the best indication of the imported value of subject merchandise included in the finished product, and the purpose of the ''Roller Chain'' test is to determine the value of the subject merchandise as imported in relation to the value of the finished product as finally sold to an unrelated party in the United States. See *comment 1.* In addition, Torrington's concerns about manipulation of transfer prices are unfounded. The U.S. Customs Service will not accept transfer prices as entered value if these prices do not reflect the commercial value of the merchandise.

Comment 4: Torrington argues that the Department should reject Koyo's request for exclusion under *Roller Chain I* since the company reported estimated resale prices of finished and further processed products without providing supporting documentation. Torrington further contends that Koyo used weighted-average entered values for its ''Roller Chain'' calculations without demonstrating that the use of weighted-average values is reasonable. Also Koyo did not indicate that only in-scope merchandise was included in its calculations.

In rebuttal, Koyo contends that it provided in its submission of November 23, 1993, a detailed explanation of its methodology for determining whether the weighted-average entered values of Koyo's in-scope products that were incorporated into non-scope products by its affiliates exceeded one percent of the sales value of the non-scope merchandise.

Department's Position: We agree with respondent. Koyo provided sufficient information in its letter of November 23, 1993, to demonstrate the applicability of the ''Roller Chain'' rule to certain identified sales. Notably, Koyo submitted examples of all calculations necessary to determine the one-percent threshold. Furthermore, there is no evidence on the record to indicate that the estimated resale prices submitted by Koyo are unreliable. In addition, while the best evidence of the value of the finished product sold to an unrelated party is the actual price, an estimated price is suitable if verified, as was done in this instance. See *AFBs III* (at 39766).

Comment 5: Torrington claims that Koyo reported only those imported in-scope products that were further-processed into merchandise within the scope of the order and that Koyo did not report any sales of products further processed into non-scope merchandise. Torrington contends that the Department should continue to apply a partial BIA rate for any model that exceeds the one-percent ''Roller Chain'' rule, as well as apply the highest margin calculated for Koyo in the LTFV or prior reviews for any sale that has not been reported.

Department's Position: We disagree. There is no evidence on the record to suggest that Koyo has failed to report any sales of in-scope merchandise further-processed into non-scope merchandise.

Comment 6: Torrington objects to the fact that the Department has excluded the vast majority of Honda's imports based on the ''Roller Chain'' rule. Torrington states that, in Honda's case, the dumping law is not ensuring that Japanese-origin AFBs used in U.S. automobile production are sold at fair value. Instead, Torrington contends that the order is merely guaranteeing that Honda's ''aftermarket'' spare parts sales in Japan and the United States are made at comparable prices since spare parts are the only non-''Roller Chain'' sales made by Honda. As a result, Torrington claims that the Department is not effectively administering the antidumping duty order with respect to Honda.

Honda states that Torrington has not offered any specific data to support its contention and that Torrington's arguments have been previously rejected by the Department. Honda argues that an antidumping duty order is clearly not meant to apply to parts imported by a company for use in its own manufacturing operations unless the imported parts constitute a significant amount of the value of the products manufactured in the United States.

Department's Position: We agree with Honda. The majority of Honda's imports constituted less than one percent of the value of the finished product sold to the first unrelated customer in the United States. The ''Roller Chain'' standard is clearly established (see *Comment 1* of this section) and, by this standard, the majority of Honda's imports will not be assessed antidumping duties for entries during the POR. Furthermore, Torrington has provided no specific evidence demonstrating that circumvention is occurring.

Comment 7: NMB/Pelmec-Thailand states that the Department should not use BIA for its further-manufactured sales. NMB/Pelmec sold a small number of bearings to a related company, which were further manufactured. The companies reported CV data for the bearings that were further manufactured and, therefore, the Department should not use BIA.

Torrington argues that respondents did not submit complete and accurate information, and, as such, it is irrelevant whether or not CV was provided for the further-manufactured models. In light of the evidence on record, the Department should not accept the contentions of NMB/Pelmec for purposes of the final results.

Department's Position: We agree with respondent. For our preliminary results, we incorrectly assigned a BIA margin to two further-manufactured sales due to a program error. For the final results, we corrected the margin program. Since NMB/Pelmec properly reported CV data for the bearings that were further manufactured, we did not use BIA for these transactions.

Comment 8: NPBS requests that the Department correct the omission of variable COPFM (home market cost of production) used in allocating profit to further-manufactured bearing units by modifying several lines of the computer program. NPBS states that, due to differing product codes, the margin program failed to recognize this variable in the further-manufactured data file.

Torrington argues that, although NPBS' suggested correction seems reasonable, they have failed to demonstrate that the data are comparable. Instead, Torrington offers an example demonstrating that the CV and COP data are not comparable.

Department's Position: We agree with Torrington. Although Torrington cites an example allegedly showing that the CV data and COP data are not comparable, Torrington fails to realize that the example is based on data from the wrong files and is cited from the wrong submission (October 19, 1993, versus corrected data from December 30, 1993). Notwithstanding these facts, Torrington is correct in asserting that the data are not compatible without modification. See NPBS Final Analysis memo, June 2, 1994.

These modifications, made for the final results, are necessary to account for a difference in interest expenses and the exclusion of packing expenses. The difference in interest expenses can be corrected by multiplying it by a certain ratio. The exclusion of packing expenses cannot be corrected but, since it results in a lower COPFM, it increases the dumping margin. This is to the detriment of NPBS. Therefore, we are satisfied that modifying the CV data in the aforementioned manner will result in an acceptable surrogate for COPFM.

Comment 9: Torrington explains that NSK used a FIFO system to link imported bearing parts to finished bearings. Thus, imported parts could be matched to a finished bearing that was sold even before the parts were imported. This created a situation whereby imported parts were assigned resale prices and an ESP was calculated regardless of whether those parts were actually consumed during the POR.

Torrington notes that the only solution to this problem is to trace parts directly to finished bearings or to take account of the entire inventory of parts from all sources, applying the FIFO method to parts inventory until all of the parts are used up. The prices for finished bearings should be based upon the BIA, which is the lowest USP for each relevant part number.

NSK states it formulated its methodology for reporting Section E data in conjunction with the Department's Office of Accounting. This methodology was fully disclosed in the second, third, and present reviews. NSK notes that the Department has accepted as reasonable and proper NSK's assumptions and methodology in the second and third reviews. See *AFBs III*, 58 FR 39766.

Department's Position: We have concluded that NSK's FIFO methodology used for reporting Section E data is in accordance with the U.S. GAAP, and thus, an appropriate method of valuation. This methodology was reviewed during the further-manufacturing verification of NSK's Section E response and was found to be acceptable.

Comment 10: NSK contends that the Department should have based the dumping margin for imported parts ''further manufactured'' in the United States on the margin for imported finished bearings of the same class or kind. NSK states the imported content contained in the bearings sold in the United States does not justify requiring NSK to respond to Section E of the Department's questionnaire, nor does it support the Department's calculating margins for these imported parts.

NSK asserts that the Department's use of an arbitrary one-percent threshold for analyzing further manufactured products is unlawful rulemaking. The Department may only reduce ESP by the value of further-manufacturing performed in the United States if ''the product ultimately sold to an unrelated purchaser contains a significant amount by quantity or value of the imported product.'' See S. Rep. No. 1298, 93d Cong. 2d Sess. 172–73, *reprinted in* 1974 U.S.C.C.A.N. 7185, 7310. In most cases, the imported content is a very small percentage of the total manufacturing cost, and thus NSK believes the imported portion of its U.S.-produced bearing is insignificant.

NSK maintains the Department has not provided guidance as to the standards that it follows when determining whether the imported content is significant in the context of further manufactured in-scope products. NSK claims that since the Department has not lawfully promulgated a rule codifying the ''Roller Chain'' principle, it must examine each factual situation on a case-by-case basis. NSK further argues that in this review the Department has not addressed any qualitative or quantitative factors to support its decision to compute margins on NSK's further-manufactured product.

NSK states that the Department should not perform a further-manufactured analysis of imported parts that are not subject to a process of further-manufacturing in the United States. Section 772(e)(3) of the Tariff Act (19 USC 1677a(e)(3)) only authorizes a further manufacturing analysis where ''a process of manufacture or assembly is performed on the imported merchandise'' in the United States. Many of the parts imported by NSK are merely ''applied'' or ''attached'' to finished parts and are not subject to a process of further manufacturing in the United States. Therefore, NSK contends that the Department should use the weighted-average margin for complete imported bearings to determine the margin for these parts.

Torrington responds that the Administrative Procedure Act permits agencies to promulgate ''interpretative rules'' without formal rulemaking, citing 5 USC 553(b). Because the ''Roller Chain'' test is clearly an interpretative rule, there is no prohibition against applying the one-percent test on a case-by-case basis in this proceeding.

Department's Position: We disagree with NSK that the Department should not calculate dumping margins for merchandise further manufactured in the United States by NSK. As explained in previous reviews (see *AFBs II* at 28360 and *AFBs III* at 39737), the Department disregards antidumping duties on those parts and bearings that comprise less than one percent of the value of the finished product sold to the first unrelated customer in the United States. However, NSK's data indicate that the subject merchandise sold to its related party in the United States comprises more than one percent of the value of the finished good produced by the related party. Because this imported merchandise is subject to antidumping duties, the Department cannot disregard sales of this merchandise in its analysis or the adjustments to USP provided for in section 772(e)(3) of the Tariff Act. Thus, we reject NSK's claim that NSK's imported parts and bearings should not be subject to further-manufacturing analysis, or any analysis at all. We also disagree with NSK's argument that the one-percent threshold is arbitrary and that it represents unlawful rule-making. See *Comment 1.*

We further disagree with NSK's argument that the imported parts are not subject to a process of assembly or manufacture. Because the addition of a part to an otherwise unfinished bearing constitutes a process of assembly, we have adjusted ESP sales prices by the amount of value added, in accordance with section 772(e)(3) of the Tariff Act (19 USC 1677a(e)(3)).

Comment 11: NSK claims that the Department incorrectly classified its repacking material and labor costs as costs of U.S. manufacturing, a methodology which conflicts with the Department's previous rulings wherein movement and packing expenses have been classified separately from the cost of manufacture in determining the value added to a product in the United States. See, *e.g., Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods From France,* 58 FR 68865 (December 29, 1993). Torrington argues that in the third review, NSK made the same claim, which the Department rejected because of lack of supporting evidence on the record. Torrington suggests that the Department should reject the claim now for the same reason.

Department's Position: Cost of manufacturing includes materials, labor, and overhead associated with producing the product in question. Repacking material and labor costs associated with packing or movement are not considered part of manufacturing costs. Therefore, we have not classified NSK's repacking expenses as a cost of manufacturing for the final results.

Comment 12: Torrington notes that changes to FAG-Germany's packing labor and material expense factors outlined in the analysis memo were not included in the margin program used to calculate the preliminary results. In addition, Torrington contends that the exchange rate factor was applied twice to the adjustment for marine insurance.

FAG-Germany contends that the preliminary computer program does contain the appropriate adjustment factors for FAG's U.S. packing labor and material expenses. Additionally, FAG-Germany notes that the double application of the exchange rate to the adjustment for marine insurance was necessary to correct a conversion error committed by FAG in its computer response.

Department's Position: We agree with FAG-Germany. We included in the margin program the necessary corrections to FAG-Germany's packing expenses. In addition, we intentionally applied the exchange rate to the marine insurance adjustment twice to compensate for an exchange rate error committed in FAG-Germany's submitted data.

9. Level of Trade

Comment 1: NTN and NTN-Germany argue that the Department incorrectly reallocated their reported U.S. selling expenses to all U.S. sales without regard to level of trade. NTN further argues that the Department's reallocation of HM selling expenses without regard to level of trade was erroneous. According to NTN and NTN-Germany, certain expenses that are incurred only for sales to specific customer categories are not applicable to all sales. As a result, NTN and NTN-Germany contend that the Department's reallocation of these expenses across all levels of trade improperly allocates certain expenses to sales for which NTN and NTN-Germany did not incur such expenses. Therefore, NTN and NTN-Germany request that the

Department abandon its reallocation and use instead, in its final analysis, the expenses as reported by NTN and NTN-Germany in their questionnaire responses.

In rebuttal, Torrington and Federal-Mogul respond that NTN and NTN-Germany failed to provide any evidence to justify their method of allocating expenses according to levels of trade. According to Torrington, NTN and NTN-Germany should have justified their method because it differs from the Department's customary practice and appears to shift expenses away from sales at certain levels of trade. This reallocation of U.S. expenses also conflicts with NTN's failure to allocate its HM expenses according to levels of trade. Federal-Mogul argues that the U.S. expenses that NTN allocated were indirect selling expenses that apply equally to all sales. Federal-Mogul further argues that the Department's verification report indicates that NTN's identification of certain HM indirect selling expenses with sales to certain levels of trade may be inaccurate. Accordingly, Torrington and Federal-Mogul support the Department's reallocation of NTN's and NTN-Germany's U.S. selling expenses, and NTN's HM selling expenses, without regard to level of trade.

Department's Position: We agree with Torrington and Federal-Mogul. The methods that NTN and NTN-Germany used to allocate the expenses in question bear no relationship to the manner in which they incur them. Such expenses are fixed period costs that do not vary according to sales value or the number of employees who allegedly sell each type of merchandise. Further, we find NTN's and NTN-Germany's allocations according to levels of trade to be misplaced because the types of expenses that they allocated are indirect selling expenses that typically relate to all sales. In this context, NTN and NTN-Germany failed to demonstrate that they incur any specific types of expenses that are unique to a particular level of trade. Further, as stated in the verification report, certain Japanese indirect selling expenses that NTN claimed apply to sales to a specific level of trade apply to other sales as well. Because we have no evidence that NTN and NTN-Germany incur different selling expenses for different levels of trade, we have not revised our reallocations of their selling expenses for these final results.

Comment 2: NTN argues that the Department should compare U.S. and HM sales at the same level of trade. According to NTN, comparing sales at different levels of trade distorts the calculation of dumping margins because prices differ significantly for each level of trade. NTN further argues that if the Department decides to compare sales across levels of trade for the final results, then the Department should alleviate the distortions caused by such comparisons by making a level-of-trade adjustment based on differences in prices or, alternatively, differences in indirect selling expenses for each level of trade, as set forth by NTN in its questionnaire responses.

In rebuttal, Torrington and Federal-Mogul assert that the CIT has upheld in numerous instances the Department's selection of the most similar merchandise without regard to levels of trade. Torrington and Federal-Mogul further argue that NTN has no basis for its claim for a level-of-trade adjustment. Federal-Mogul contends that NTN has not demonstrated that it is entitled to a level-of-trade adjustment because it has failed to establish that price differentials are due to differences in levels of trade. Federal-Mogul further contends that NTN's methods of quantifying level-of-trade adjustments are inappropriate because NTN cannot determine the amount of price differentials or selling expenses attributable to differences in levels of trade. Torrington adds that the manner in which NTN reported its HM indirect selling expenses nullifies the effect of any level-of-trade adjustment. As a result, Torrington and Federal-Mogul conclude that the Department's comparison of sales across levels of trade and denial of NTN's request for a level-of-trade adjustment are reasonable.

Department's Position: We agree with Torrington and Federal-Mogul. As we stated in *AFBs III* (at 39767), we are required by 19 CFR 353.58 to compare merchandise at different levels of trade if sales at the same commercial level of trade do not permit an adequate comparison. Accordingly, when we were unable to compare NTN's U.S. sales to HM sales at the same level of trade, we attempted to find matches at the next most similar level of trade.

We also reject NTN's request for a level-of-trade adjustment. In order for the Department to make a level-of-trade adjustment, respondents must quantify any price differences that are attributable to differences in levels of trade. NTN has failed to demonstrate what portion, if any, of those price differences is attributable to differences in levels of trade. Further, we reject NTN's claim that we should use differences in indirect selling expenses to make a level-of-trade adjustment. NTN allocated a common pool of expenses to all sales, irrespective of levels of trade, using relative sales values. This demonstrates that such expenses were not unique to, nor disproportionally attributable to, any level of trade. Because NTN failed to adequately quantify its claim for a level-of-trade adjustment, we have not made any such adjustment for these final results.

Comment 3: Torrington objects to NTN's claim that ''aftermarket'' customers constitute a distinct level of trade. First, Torrington argues that NTN's selling expenses do not vary across levels of trade. Torrington further argues that the results of the Department's comparison of weighted-average prices at different levels of trade is insufficient to conclude that NTN makes sales to customers at three distinct levels of trade, and that NTN has failed to provide any evidence demonstrating a correlation between prices and selling expenses. Finally, Torrington argues that because of the limited number of U.S. aftermarket sales, the majority of NTN's HM aftermarket sales are not matched to U.S. sales. As a result, Torrington concludes that the Department should reject NTN's classification of certain sales as aftermarket sales, and should reclassify these sales as either OEM or distributor sales for the final results.

NTN responds that the Department examines the function of the class of customer in reaching conclusions regarding a respondent's identification of levels of trade. According to NTN, Torrington provided no evidence regarding customer function or other factors that would preclude the Department from accepting NTN's classification of certain customers as aftermarket customers. NTN further argues that the number of sales made to customers at a particular level of trade is irrelevant in identifying levels of trade because the Department's regulations mandate comparisons of sales made at the same level of trade.

Department's Position: We agree with NTN. As we stated in the final results of the previous administrative review of this case, we initially base our level-of-trade classifications on the function of the class of customer reported by respondents. See *AFBs III* (at 39767). These classifications may be rebutted by such other factors as differences in prices that discredit a respondent's classifications. NTN submitted information in its questionnaire responses for this review that explained the differences in the function of its OEM, distributor and aftermarket customers. Torrington offered no evidence that NTN's aftermarket customers did not perform functions distinct from those of NTN's other classes of customers, or that NTN's prices to aftermarket customers did not differ from NTN's prices to other classes of customers. Further, because we examine customer function and other factors in determining levels of trade, we agree with NTN that the number of sales to customers at a given level of trade is irrelevant to rendering determinations regarding the existence of distinct levels of trade. Therefore, we conclude that NTN's aftermarket customers constitute a distinct level of trade and have compared aftermarket sales in the United States first to aftermarket sales of such or similar merchandise in Japan.

Comment 4: NSK argues that the Department incorrectly classified customer category 4 sales—sales through distributors to OEMs for OEM use—as sales to the aftermarket level-of-trade. According to NSK, category 4 sales should be matched to OEM level of trade sales under either of the methods of analysis used by the Department: (1) Correlation of price to level of trade; or (2) function of the first unrelated customer. NSK contends that these distributors act as purchasing agents for large OEM corporations and purchase bearings for immediate resale to OEMs, and in some cases NSK ships directly to the OEM. In addition, NSK claims that the price to level of trade comparison submitted in the Section C response confirms that category 4 sales are at the OEM level of trade. Finally, NSK argues that, in the TRB reviews, the Department correctly recognized that category 4 sales were at the OEM level of trade and accordingly matched them to OEM U.S. sales.

Torrington contends that NSK's sales designated as category 4 meet neither of the two tests cited by NSK as relevant. Torrington claims that the Department requested that NSK substantiate its claim that it sells at four different levels of trade and that pricing is reflective of the different levels of trade. According to Torrington, NSK submitted an analysis which collapsed the four levels of trade into two levels, but did not demonstrate that pricing and selling practices differed among four individual levels of trade. Furthermore, Torrington contends that the Department should retain the level-of-trade classifications from the preliminary results because NSK failed to demonstrate the first unrelated customer in category 4 sales is the OEM customer.

Department's Position: We agree with NSK. We initially consider customer function to determine our level-of-trade classification. In its section C response, NSK provided an analysis of quantities and weighted-average prices by customer category and model and by customer category and class (BBs and CRBs). This analysis revealed that the quantities and weighted-average prices for sales to customer category 1 (sales directly between NSK and OEM customers) are similar to sales to customer category 4 (sales to distributors for resale to OEMs) but significantly different from the quantities and weighted-average prices of sales to aftermarket customers and distributors (customer category 2 and 3, respectively). Therefore, based on this data, we have collapsed sales to customer categories 2 and 3, and collapsed categories 1 and 4, to form two levels of trade for HM sales.

10. Packing and Movement Expenses

Comment 1: Torrington and Federal-Mogul argue that FMV should not be adjusted for pre-sale inland freight costs, whether compared to PP sales or to ESP sales. Torrington contends that movement expenses should be deducted from FMV only if they are directly related to home market sales. Torrington claims that the Department has begun to allow home market deductions for all inland freight expenses without distinguishing between pre- and post-sale expenses. Therefore, Torrington concludes that the Department's approach is without statutory basis and has been found unlawful by the U.S. Court of Appeals for the Federal Circuit (CAFC).

Torrington and Federal-Mogul also maintain that there is no basis for treating pre-sale inland freight differently when FMV is compared to ESP than when FMV is compared to PP. They point out that the CAFC has disallowed deduction of pre-sale transportation costs from FMV in PP comparisons, and they argue that the Court's decision also applies to ESP comparisons because the statute does not provide for an adjustment to FMV in ESP comparisons that would distinguish the rationale applied in *Ad Hoc Committee.* Furthermore, Federal-Mogul argues that pre-sale transportation costs cannot be linked to particular sales, and that the Department lacks the authority to adjust FMV for such expenses under the ESP offset provision.

Nachi, Koyo, NSK, SKF, NPBS, and NMB/Pelmec argue that the Department should continue its practice of treating pre-sale inland freight charges as a direct adjustment to FMV in ESP comparisons. They contend that the Federal Circuit's opinion in *Ad Hoc Committee* does not apply when FMV is compared to ESP transactions because the CAFC made only a limited ruling on the Department's authority to adjust for pre-sale inland freight in PP situations. In support, Nachi cites *The Torrington Company* v. *United States,* No. 94–38, Slip Op. at 8 (March 4, 1994), where the CIT held that in *Ad Hoc Committee,* the CAFC ''limited its decision to the calculation of FMV in purchase price situations only.'' In addition, Nachi notes that *Ad Hoc Committee* leaves undisturbed the Department's previous practice of treating pre-sale inland freight charges as indirect selling expenses. Therefore, Nachi states that if the Department incorrectly determines that pre-sale inland freight should not be directly deducted from FMV, the Department should at least treat this expense as an indirect selling expense.

FAG also contends that the Department properly adjusted FMV for pre-sale inland freight. FAG points out that while the CAFC held that the Department improperly rationalized its adjustment to FMV for pre-sale freight on its inherent authority to fill gaps in the statute, the CAFC in *Ad Hoc Committee* did not rule as to whether the Department could have justified its deduction to FMV under some other statutory authority or whether the statute permitted an adjustment to FMV for pre-sale freight where USP was based on ESP. FAG argues that the CIT has also rejected Torrington's contention that pre-sale freight expenses are neither selling expenses nor indirect expenses. In addition, FAG maintains that if the Department decides in Torrington's favor on this issue, then the Department should also exclude pre-sale movement charges as an adjustment to USP. SKF argues that the Department must maintain its practice of deducting HM pre-sale inland freight from FMV when USP is based on ESP, which has similarly been reduced by pre-sale inland freight.

FAG, NTN, and NMB/Pelmec state that the Department's decision to adjust FMV to account for pre-sale inland freight costs is supported by the recent CIT decision in *Federal-Mogul* v. *United States,* 17 CIT ______, Slip Op. 94–40 (March 7, 1994). Given the Department's broad authority to make circumstance of sale (COS) adjustments, FAG, NTN, NSK, and NMB/Pelmec argue that the Department may legitimately make COS adjustments to FMV to account for pre-sale inland freight costs. NSK adds that the Department's regulations do not require that all adjustments to FMV be related to particular sales. See 19 CFR 353.56(a)(1).

Department's Position: We have determined that, in light of the CAFC's decision in *Ad Hoc Committee,* the Department no longer can deduct home market pre-sale movement charges from

FMV pursuant to its inherent authority to apply reasonable interpretations in areas where the antidumping law is silent. Instead we will adjust for those expenses under the COS provision of 19 CFR 353.56 and the ESP offset provision of 19 CFR 353.56(b) (1) and (2), as appropriate, in the manner described below.

When USP is based on PP, we will only adjust for home market movement charges through the COS provision of 19 CFR 353.56. Under this adjustment, we capture only direct selling expenses, which include post-sale movement expenses and, in some circumstances, pre-sale movement expenses. Specifically, we will treat pre-sale movement expenses as direct expenses if those expenses are directly related to the home market sales of the merchandise under consideration. Moreover, in order to determine whether pre-sale movement expenses are direct, the Department will examine each respondent's pre-sale warehousing expenses, because the pre-sale movement charges incurred in positioning the merchandise at the warehouse are, for analytical purposes, inextricably linked to pre-sale warehousing expenses. If the pre-sale warehousing constitutes an indirect expense, the expense involved in moving the merchandise to the warehouse must also be indirect; conversely, a direct pre-sale warehousing expense necessarily implies a direct pre-sale movement expense. We note that although pre-sale warehousing expenses in most cases have been found to be indirect expenses, these expenses may be deducted from FMV as a COS adjustment if the respondent is able to demonstrate that the expenses are directly related to the sales under consideration.

When USP is based on ESP, the Department uses the COS in the same manner as in PP situations. Additionally, under the ESP offset provision set forth in 19 CFR 353.56(b) (1) and (2), we will adjust for any pre-sale movement charges found to be indirect selling expenses.

We have followed the above methodology for these final results. However, in the case of NPBS, pre- and post-sale inland freight expenses were not distinguished. Rather, NPBS reported both expenses as post-sale inland freight. Therefore, for the final results, we have treated all of NPBS' inland freight expenses as pre-sale movement charges.

Comment 2: Torrington asserts that NMB/Pelmec Thailand and NMB/Pelmec Singapore failed to report air and ocean freight expenses on a product- and invoice-specific basis for ESP transactions. In addition, Torrington contends that NMB/Pelmec failed to separate air freight expenses from ocean freight expenses. Therefore, Torrington argues that the Department should resort to BIA by applying the highest U.S. movement expenses reported by respondents.

NMB/Pelmec states that it is not possible to link specific air and ocean shipments to individual U.S. transactions because all merchandise goes into U.S. inventory before it is sold.

Department's Position: We agree with NMB/Pelmec Thailand and Singapore. In the case of ESP transactions made by NMB/Pelmec, there is often no direct link between shipments and resales. Therefore, because we verified NMB/Pelmec's air and ocean freight expenses and found them to have been reasonably allocated, we have accepted NMB/Pelmec's freight expense calculations.

Comment 3: Torrington states that the Department's verification report confirms that NMB/Pelmec Thailand reported movement expenses incurred on bearings shipped to Singapore and re-entered in Thailand (termed ''Route B'' sales in the response). Torrington argues that freight expenses incurred in transporting bearings to Singapore and then back to Thailand should not be allowed as an adjustment to FMV because such transportation expenses are by definition ''pre-sale'' freight costs. Torrington also contends that the ''Route B'' sales should be excluded from the home market database.

NMB/Pelmec Thailand responds that only part of the freight expenses incurred on ''Route B'' sales are pre-sale expenses because freight charges incurred for shipping merchandise back to Thailand are incurred after sales are made. Furthermore, NMB/Pelmec Thailand argues that the *Ad Hoc Committee* decision does not preclude the deduction of pre-sale freight expenses. See *Comment 1* above.

Department's Position: We agree with NMB/Pelmec Thailand. As we found in *AFBs II* (at 39770), ''Route B'' sales (*i.e.*, bearings shipped to Singapore and then back to Thailand) are home market sales made in the normal course of trade. As verified by the Department in this review, ''Route B'' sales incur both pre-sale freight expenses (to ship the merchandise to Singapore) and post-sale freight expenses (to return the merchandise to Thailand). Therefore, we have deducted NMB/Pelmec's post-sale movement expenses from FMV for the final results. For our treatment of pre-sale freight expenses, please see the *Department's Position* to *Comment 1*, above.

Comment 4: Torrington states that RHP reported a single amount for domestic inland insurance, marine insurance, and U.S. inland insurance. Torrington notes that RHP allocated aggregate amounts across RHP's sales on the basis of value and contends that RHP allocated marine insurance and U.S. inland insurance to home market sales. Torrington argues that this allocation decreases home market prices while increasing USP. Torrington recalls that its October 1, 1993 comments noted this deficiency and that RHP failed to correct its error. Torrington asserts that this failure alone justifies the use of BIA. Torrington suggests two possible applications of BIA: the Department could use the amounts reported by another U.K. respondent, or the entire amount could be allocated to U.S. sales. Torrington justifies the second alternative by stating that it would be fair to allocate nothing to home market sales as the home market expenses were overstated because marine insurance was included.

RHP responds that it purchases a single freight insurance policy that covers its shipments world-wide, regardless of destination, and that this insurance covers all production and acquisitions until the time of delivery. RHP notes that while Torrington argues that RHP should not have allocated the fixed insurance expense based on its sales turnover, the Department has verified and accepted RHP's practice in the past three administrative reviews. RHP concludes that there is no reason to modify well-established practice.

Department's Position: We have accepted RHP's reported freight insurance expenses—which cover domestic inland insurance, marine insurance, and U.S. inland insurance—for the final results. Because RHP purchased a single policy that covers all shipments world-wide, RHP allocated the expense over all of its sales activities, based on sales value. We find RHP's allocation methodology to be reasonable.

Comment 5: Torrington argues that the Department incorrectly made adjustments for Koyo's ocean freight and U.S. inland freight from port to warehouse because Koyo reported these expenses on a customer-specific basis rather than tying them to specific transactions.

Department's Position: We accepted Koyo's allocation of these expenses as reasonable. We verified these expenses and found no evidence that Koyo's allocation methodology is unrepresentative of its actual experience. In the case of ESP transactions, there is often no direct link between shipments and resales. See the *Department's Position* to *Comment 2*, above.

Comment 6: Torrington argues that since Koyo allocated air freight expenses over all bearings shipped from Japan rather than reporting them on a per-unit and transaction-specific basis, the Department should apply a partial BIA rate, *i.e.*, the highest movement expenses reported by Japanese respondents.

In rebuttal, Koyo argues that the Department has accepted its allocation of air freight expense in prior reviews. Koyo maintains that the Department accepted these expenses because there was no evidence on the record to suggest that Koyo's allocation methodology was not representative of its actual experience.

Department's Position: We disagree with Torrington. As stated in the *Department's Position* to *Comment 2*, above, there is often no direct link between shipments and resales in the case of ESP transactions. The expenses in question were verified by the Department and were found to have been reasonably allocated.

Comment 7: Torrington argues that the Department should disallow Nachi's home market ''other direct expenses,'' which the Department has treated as indirect expenses for the preliminary results. Torrington claims that Nachi's reported expense, the cost of operating the fleet of vans owned by Nachi's national sales subsidiary, Nachi Bearing Company (NBC), is a part of general overhead that Nachi has not shown relates entirely to customer deliveries. Furthermore, Torrington states that Nachi has not identified which NBC sales were shipped via the van fleet, or even demonstrated that any bearings at all were shipped via the van fleet. Finally, Torrington argues that Nachi has failed to segregate the expenses incurred on shipments of subject merchandise and those incurred on non-subject merchandise.

Federal-Mogul argues that Nachi has double-counted home market inland freight expenses because ''other direct expenses'' (which include the cost of customer deliveries made with NBC's van fleet) and ordinary inland freight charges are both reported for several transactions. Therefore, Federal-Mogul asserts that Nachi's home market freight claims should be denied.

Nachi states that the Department verified that its ''other direct selling expenses'' consist of the cost incurred by NBC in renting vans and purchasing gasoline for deliveries of bearings to certain customers. Therefore, Nachi asserts that the cost in question is clearly a selling expense. Furthermore, Nachi contends that by dividing NBC's total expenses by total NBC sales, only that portion of NBC's expenses attributable to deliveries of subject merchandise was allocated to sales of subject merchandise. With regard to Federal-Mogul's argument, Nachi argues that it has not double-counted NBC's van expenses because they were not reported elsewhere in Nachi's response and because they were pulled out of Nachi's indirect selling expense calculation along with other freight charges.

Department's Position: Although we disagree with Torrington and Federal-Mogul's reasoning, we agree that Nachi's ''other direct selling expenses'' should be disallowed. NBC's van fleet expenses, which Nachi has categorized as ''other direct selling expenses,'' are more accurately described as home market freight expenses. Even though they are in-house freight costs rather than movement services purchased from an independent contractor, they are nonetheless movement expenses. Thus, Nachi has categorized its home market freight expenses as either ''other direct selling expenses'' or domestic inland freight expenses. Both categories of transportation expenses were incurred on NBC sales.

Because NBC is unable to identify which particular sales were transported by van and which were transported by contractors, Nachi has allocated each category of expenses over total NBC sales and applied the resulting factors to each reported NBC sale. Normally, this would be no different from the net effect that would have resulted if Nachi had pooled all NBC movement charges under the same category of expenses. However, Nachi allocated its van fleet expenses over NBC sales by sales value rather than by bearing weights. In the case of movement charges that cannot be traced on a transaction-specific basis, the proper way to allocate the expenses between shipments of subject and of non-subject merchandise is by the weight of the merchandise, unless a respondent can show that the expenses were incurred on a different basis. Because Nachi allocated home market inland freight charges based on bearing weights, we have accepted Nachi's reported home market inland freight charges. However, Nachi's allocation of NBC's van fleet expenses based on sales value distorts the actual amount of expense incurred on each transaction. Therefore, we have not adjusted FMV for Nachi's reported ''other direct selling expenses'' for the final results.

Comment 8: Federal-Mogul claims that the Department erroneously deducted packing from SNR's home market sales. Federal-Mogul asserts that SNR's General Conditions of Sale stated that terms of sale were ex-factory, packing excluded, except by special agreement. Federal-Mogul further states that the Department should not deduct packing costs, material or labor, from SNR's home market prices. Federal-Mogul argues that SNR did not describe any special agreements which would demonstrate that packing was included.

SNR responds that the General Conditions of Sale referenced by Federal-Mogul were only basic terms and conditions, and that SNR has allocated its packing costs only across sales where packing was included, as in previous reviews. Thus the Department's calculation, which deducted home market packing, was correct and the Department should not make any changes for the final results.

Department's Position: We disagree with Federal-Mogul that packing was erroneously deducted from SNR's sales. Although SNR's General Conditions of Sale state that prices were ex-works and that packing was not included, this is not inconsistent with SNR's reported terms of sale. SNR reported two categories of home market terms of sale in both the narrative response and the computer database. For the first category, SNR stated that its customers pay for packing. For the second category, SNR stated that it incurs the packing costs. See SNR's *Section C Response* (September 21, 1993). Because there is no evidence on the record to indicate that SNR's reported terms of sale are not reflective of the actual terms of its sales, we are continuing to deduct HM packing for the final results.

Comment 9: Torrington argues that the Department should resort to BIA because RHP failed to report all relevant packing expenses in its questionnaire response. Torrington notes that the amounts RHP reported in its supplemental questionnaire response were estimates and appear to be standard costs. Torrington contends that standard costs are not acceptable for dumping calculations. Torrington concludes that the Department should apply BIA to RHP's U.S. packing expenses.

RHP responds that contrary to Torrington's allegations, the packing costs reported in its supplemental response were actual costs, and thus, no adjustments to RHP's packing expenses are warranted.

Department's Position: While we agree with Torrington that there were gaps in RHP's original questionnaire response, RHP provided a full explanation and quantification of its packing material and labor costs in the supplemental questionnaire response. See *RHP Section B Response* (September 21, 1993) and *RHP Supplemental Questionnaire Response* (December 16, 1993). We agree with RHP that it reported its actual packing materials and labor costs. Torrington has not provided any support for its allegation that RHP reported standard costs and not actual costs. Therefore, there is no need to apply BIA to RHP's packing expenses.

Comment 10: Torrington and Federal-Mogul argue that INA's method of calculating per-unit ocean freight, U.S. inland freight, and U.S. brokerage and handling charges understates the per-unit amounts incurred for each expense. Specifically, Federal-Mogul contends that INA's calculation of per-unit expenses using a simple average obscures the fact that INA must have incurred significantly higher per-unit expenses for air shipments than for sea shipments. Torrington states that INA's method of calculating average charges is based on shipments that are not representative of all INA's sales, and understates per-unit charges by giving disproportionate weight to high value shipments with low per-unit freight costs. In order to account for this disparity, Federal-Mogul requests that the Department revise INA's calculation of per-unit amounts for these expenses by using a single weighted average derived from the per-unit amounts for air shipments and for sea shipments, respectively. Alternatively, Torrington requests that the Department revise INA's reported per-unit movement charges by calculating a simple average of the per-unit charges for each shipment in INA's sample.

INA responds that the Department has accepted in each previous review the method used in this review to calculate the per-unit movement charges at issue. INA further argues that the Department concluded that INA's reporting method yielded representative results after conducting two separate tests at verification to determine whether INA's methodology was reasonable. Finally, INA contends that Federal-Mogul has not demonstrated that the methodology that it proposes would yield more accurate results than the methodology used by INA, and that Torrington's method of calculating a simple average would result in a per-unit expense that, when multiplied by the weight of the shipments, would yield total charges far in excess of those actually incurred. Therefore, INA concludes that the Department should not modify INA's method of calculating the per-unit movement charges at issue for these final results.

Department's Position: We agree with INA. At verification, we conducted two separate tests of INA's method of reporting per-unit movement charges on U.S. sales, and determined that INA's method yielded representative results. Further, neither Torrington nor Federal-Mogul has demonstrated that its proposed calculation method would yield more accurate results than INA's method. Accordingly, we have used the per-unit charges reported by INA in our calculations for these final results.

Comment 11: Torrington objects to the method used by INA to calculate per-unit amounts for packing material and packing labor expenses incurred in Germany. Torrington states that the record does not clearly indicate whether the sales amount over which these expenses were allocated includes INA's prices to its U.S. subsidiary or the U.S. subsidiary's resale prices. If the sales amount includes the subsidiary's resale prices, then Torrington argues that INA improperly calculated per-unit expenses using its transfer prices to its U.S. subsidiary. If the sales amount includes transfer prices, then Torrington challenges INA's calculations on the grounds that transfer prices are subject to manipulation and, therefore, do not form an appropriate basis for the allocation of expenses. In either case, Torrington requests that the Department revise INA's calculations of per-unit packing materials and labor expenses for the final results.

INA responds that the sales amount used to allocate the packing expenses in question included INA's sales to its U.S. subsidiary at transfer prices. INA further asserts that its allocation of expenses over its total sales value represents a quantifiable and verifiable basis for allocating the expenses in question. As a result, INA concludes that the Department should accept the packing material and packing labor expenses as reported.

Department's Position: We agree with INA. At verification we examined the total home market sales values that were used to allocate various charges and expenses. We were able to disaggregate the total home market sales values into their constituent elements and trace these elements to audited financial statements. During this process, we found a separate account that INA uses to record sales to its U.S. subsidiary. We saw no evidence to suggest that INA recorded anything other than its transfer prices to its U.S. subsidiary in this account. Accordingly, we have determined that the total sales value used to allocate its packing costs included INA's transfer prices to its U.S. subsidiary. Further, Torrington failed to demonstrate that INA's transfer prices were unreasonable or that INA systematically manipulated its transfer prices to shift expenses away from certain U.S. sales. In the absence of such evidence, INA's allocation of packing expenses over transfer prices is reasonable. As a result, we have accepted INA's use of transfer prices to calculate per-unit packing material and labor expenses incurred in Germany.

Comment 12: Federal-Mogul contends that NTN improperly calculated charges for shipping merchandise from Japan to the United States. According to Federal-Mogul, NTN combined ocean freight and air freight expenses that it incurred for shipments to the U.S., and allocated these expenses over all U.S. sales. Federal-Mogul states that because air freight is more expensive than ocean freight, NTN's calculation method understates the shipping charges for certain U.S. sales. Therefore, Federal-Mogul concludes that the Department should separate ocean freight and air freight charges and allocate them to the respective sales to which they apply.

NTN rejects Federal-Mogul's argument on the grounds that it is impossible to trace specific ESP sales to specific air or sea shipments from Japan. As a result, NTN concludes that the Department has no basis for revising NTN's reported air and ocean freight charges for ESP sales for these final results.

Department's Position: We agree with NTN. Because we do not require respondents to tie individual ESP sales to specific shipments, we also do not require respondents to report sale-specific air or ocean freight expenses for individual ESP sales. In the absence of the information required to tie air freight charges to specific U.S. sales, we have accepted for these final results the air and ocean freight charges as reported by NTN.

Comment 13: Torrington argues that NSK repackaging expenses were improperly allocated to all sales because NSK has admitted that repackaging does not occur on all orders. NSK Supplemental Response, at 6 (December 3, 1993). Citing *Timken,* 673 F. Supp. at 512–513, Torrington asserts that the Department should not permit respondents to achieve a reduction of USP if they have withheld data. Therefore, Torrington contends that the Department should allocate repacking expenses over sales at the distributor level for the final results.

NSK maintains it properly allocated repackaging expenses to all U.S. sales.

NSK reported that ''the expenses accumulated * * * included bar code labels, shrinkwrap and other materials generally consumed in NSK's warehouses for both OEM and distributor orders.'' NSK's Supplemental Section B Response, at 6. NSK states all sales receive some sort of repackaging. However, NSK states that if the Department finds that NSK's repackaging expenses were not properly allocated to all sales, NSK would not object to the Department yielding to Torrington's request that such expenses be allocated only to aftermarket sales.

Department's Position: The repackaging expenses reported by NSK include materials consumed in the repackaging of both OEM and aftermarket sales. Therefore, we consider NSK's allocation of such expenses as reasonable and accurate and have accepted them as reported.

Comment 14: NSK claims that the Department incorrectly classified its repacking material and labor costs as costs of U.S. manufacturing, a methodology which conflicts with the Department's previous rulings wherein movement and packing expenses have been classified separately from the cost of manufacture in determining the value added to a product in the United States. See, *e.g., Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods From France,* 58 FR 68865 (December 29, 1993).

Torrington argues that in the third review, NSK made the same claim, which the Department rejected because of lack of supporting evidence on the record. Torrington suggests that the Department should reject the claim now for the same reason.

Department's Position: Cost of manufacturing includes materials, labor, and overhead associated with producing the product in question. Repacking material and labor costs associated with packing or movement are not considered part of manufacturing costs. Therefore, we have not classified NSK's repacking expenses as a cost of manufacturing for the final results.

11. Related Parties

Comment 1: Torrington states that at verification of NMB/Pelmec Thailand the Department determined that there was not a sufficient basis to test whether HM related-party sales were made at arm's length. Therefore, Torrington argues, because the Department must rely on a small portion of reported HM sales, *i.e.,* sales to unrelated parties, as the basis of FMV, the Department should use third-country sales for determining NMB/Pelmec Thailand's FMV.

NMB/Pelmec Thailand does not dispute Torrington's allegations that there was not a sufficient basis to test whether HM related-party sales were at arm's length. However, NMB/Pelmec Thailand rebuts Torrington's argument that the Department should have used third-country sales as the basis for FMV. NMB/Pelmec explains that HM viability was accurately calculated on a weight basis for complete bearings and bearing parts as instructed by the Department's questionnaire.

Department's Position: We agree with Torrington that NMB/Pelmec Thailand's related-party sales in the HM should not be used in the calculation of FMV. However, we do not agree with Torrington that NMB/Pelmec Thailand did not have a viable home market and that we should therefore use third-country sales as the basis for FMV.

NMB/Pelmec Thailand properly reported that its HM was viable using sales to both related and unrelated parties as requested in our questionnaire. See the Department's questionnaire at 104. Although certain HM sales may ultimately be determined to be unusable for comparison purposes, such as when sales made to related parties are not made at arm's-length prices, the arm's-length test is separate from the HM viability test. That we cannot use NMB/Pelmec Thailand's related-party sales does not change the fact that the HM was viable. We establish viability once at the beginning of our analysis, before the arm's-length test for related-party sales, based on the response to Section A of the questionnaire. If we establish that the HM is viable, we instruct respondent to furnish HM sales.

It would be administratively infeasible to reestablish the appropriate market for purposes of calculating FMV each time we determine a group of HM sales to be unsuitable for comparison. If we were to retest for viability after determining that certain related-party sales were unsuitable, we would cause undue delays in the completion of the review. This problem would be exacerbated when we consider other reasons that HM sales may be unsuitable for comparison, such as when there are models sold below cost or when the adjustment for differences in merchandise (difmer) exceeds the 20-percent cap. The determinations of whether models are sold below cost or whether they exceed the 20-percent difmer cap are made at a more advanced stage of our analysis than the HM viability test. Thus, we have no basis to disregard NMB/Pelmec's HM sales, and, accordingly, for these final results we used NMB/Pelmec's HM as the basis for the calculation of FMV.

Comment 2: RHP contends that the Department should not have collapsed RHP and NSK Europe during the POR and that the use of BIA with respect to the U.S. sales of NSK Europe products was not appropriate. RHP argues that the Department has been unwilling to collapse companies in the past except where the relationship is considered so significant that price manipulation may exist. RHP notes that the Department will not generally collapse entities which have separate manufacturing facilities and sales operations. RHP contends that since it became affiliated with NSK Europe in 1990, RHP has maintained the arm's-length relationship that they had before they became affiliated. RHP notes that during the POR, RHP and NSK Europe were ''separately managed and administered, maintained separate facilities and operations and did not share significant pricing information or marketing strategies.'' RHP maintains that both RHP and NSK Europe have remained independent despite common parentage, which is why RHP contends that this situation does not present ''a strong possibility of price manipulation.'' RHP argues that it is a common practice within the bearing industry for manufacturers to purchase products from other manufacturers to expand their product line. RHP contends that its purchases of bearings from NSK Europe is not inconsistent with their separateness, because these dealings were at arm's length.

Torrington states that RHP essentially has restated the same arguments that the Department rejected in prior reviews and has not provided ''new'' information to refute the Department's previous findings. Torrington contends that RHP and NSK Europe should continue to be collapsed for the final results. Torrington further argues that the Department was justified in imposing BIA on RHP's sales of NSK Europe products in the United States, because both RHP and NSK Europe possess information crucial to the analysis of these transactions, and NSK Europe failed to provide section C and D information for this administrative review.

Department's Position: We agree with Torrington. As we have stated in both *AFBs II* and *AFBs III*, our usual practice is ''to collapse related parties if the nature of their relationship allows the possibility of price and cost manipulation.'' See *AFBs III* at 39772. RHP has provided no new information in this review to suggest that the nature of its relationship with NSK Europe has changed. Therefore, we have determined that RHP and NSK Europe have a significant financial relationship, and that the nature of their relationship with their parent company, NSK-Japan, permits the price and cost manipulation that requires that we consider these companies as a consolidated entity. See *AFBs II* (at 28393) and *AFBs III* (at 39772).

Because NSK Europe did not provide the sales and cost information (Sections C and D) necessary for this review, we were unable to properly calculate the FMVs for particular RHP U.S. sales. Because we know that RHP reported the entire universe of U.S. sales, we applied BIA to those U.S. sales for which the FMVs were potentially affected by the lack of information concerning NSK Europe's HM sales and cost. See *AFBs III* (at 39773). As the BIA rate we applied RHP's highest rate for each class or kind: 48.14 percent for BBs, which was RHP's BB margin from the third administrative review, and 48.29 for CRBs, which was RHP's CRB margin from the second administrative review.

Comment 3: SKF-Sweden argues that the Department eliminated a number of HM transactions based on the erroneous conclusion that such transactions reflected preferential prices to related parties. SKF asserts that there is no direct or indirect ownership or control between the companies, and that the relationship between the parties noted by the Department at verification has no influence on price. SKF also states that the Department's comparison of average prices is insufficient to test the arm's-length nature of the transactions because the Department included companies with no common ownership interests and companies with ownership interests of less than 20 percent, did not individually analyze the companies involved, and did not consider the relative quantities involved.

Torrington maintains that the Department will use sales to related parties as a basis for FMV only if it is satisfied that the price is comparable to the price at which the producer or reseller sold such or similar merchandise to unrelated parties, and that the only valid criterion in this determination is price. Torrington argues that there is a regulatory presumption that related-party sales should be excluded in a calculation of FMV. Federal-Mogul and Torrington state that the burden is on the respondent, not the Department, to overcome this presumption by demonstrating affirmatively that related-party transaction prices are comparable to prices to unrelated parties.

Torrington also asserts that SKF has failed to submit any data demonstrating that its prices to related and unrelated parties are comparable and thus has not met its burden. Torrington and Federal-Mogul further point out that SKF has provided no evidence on the record regarding any particular related-party sales or the price comparability of its related-party sales.

Department's Position: We disagree with SKF. 19 CFR 353.45 provides that the Department ordinarily will include related-party sales in the calculation of FMV only if it is satisfied that the sales were made at arm's-length prices, *i.e.*, that the prices of such sales are comparable to the prices at which the seller sold such or similar merchandise to unrelated parties. For purposes of applying this provision, § 353.45 also refers to section 771(13) of the Tariff Act for the definition of related parties. We preliminarily determined that SKF-Sweden made HM sales to customers related to it as described in section 771(13)(D) of the Tariff Act. Accordingly, we conducted an analysis to determine whether these sales were made at arm's-length prices. Because we determined that these sales were not made at arm's-length prices, we excluded them from our calculations of FMV. (We note that SKF-Germany also made HM sales to related parties, but that we determined these sales were made at arm's-length prices. Therefore, we did not exclude them from our calculation of FMV for SKF-Germany.)

On reexamination of the evidence on the record, however, we determined that one of these HM customers in fact did not meet the definition of a related party as specified in section 771(13) of the Tariff Act. Therefore, for these final results we retained sales to this customer by SKF-Sweden in calculating FMVs and did not include these sales in our arm's-length analysis for related-party sales.

In determining whether prices to related parties are in fact arm's-length prices, we rely on a comparison of average unrelated-party prices for each model to average related-party prices for the same models. When average prices to unrelated parties are predominantly higher than average prices to related parties for the class or kind of merchandise, we disregard sales to related parties for that class or kind. Because SKF has provided no evidence to refute our findings that the average prices of certain models sold to related parties are not comparable to the average prices of these models sold to unrelated parties, other than reference to statements by company personnel at verification that these companies were not related, we have continued to exclude these sales for the final results. See *SKF Sverige AB Verification Report,* February 23, 1994, and *Rhone Poulenc Inc.* v. *United States* 899 F. 2d 1185 (Fed Cir. 1990).

Comment 4: NTN challenges the Department's decision to exclude from its analysis certain HM sales to related parties. According to NTN, the Department excluded related-party sales from its analysis without having first articulated any standard for determining whether sales prices to related parties were comparable to sales prices to unrelated parties. NTN also objects to the Department's use of weighted-averages in its comparison of sales prices to related and unrelated parties because weighted-average prices to related and unrelated parties can differ even if the per-unit invoice prices are identical. Finally, NTN argues that the Department failed to account for the impact of different payment terms and differences in sales quantities on sales prices to related and unrelated parties. As a result, NTN concludes that the Department should revise its test for determining whether related party prices are comparable to unrelated party prices for the final results.

Torrington and Federal-Mogul claim that NTN has failed to meet its burden of proving that sales prices to related parties are comparable to those to unrelated parties. Torrington further argues that the Department's method of comparing weighted-average prices to related and unrelated parties is a reasonable and efficient method of comparing prices given the large number of respondents and HM sales transactions. Moreover, Torrington asserts that NTN failed to demonstrate that payment and quantity terms would have any effect on the Department's analysis, while Federal-Mogul argues that the Department's arm's-length test accounts for the additional factors cited by NTN. As a result, Torrington and Federal-Mogul request that the Department continue to exclude HM sales of BBs and CRBs to related parties from its analysis for these final results.

Department's Position: We agree with Torrington and Federal-Mogul. Because we deduct credit and conduct our analysis by level of trade, our arm's-length test accounts for differences in payment terms and, to the extent that they are reflected in sales to different levels of trade, differences in quantities of sale. Further, our use of weighted averages in our comparisons of sales prices to related and unrelated parties is warranted because it provides the most accurate means of measuring, for each model, NTN's preponderant pricing practices for related and unrelated customers. The failure to weight our test by quantity would give disproportionate weight to sales of small quantities, which would result in distortions. Therefore, we have not revised our arm's-length test for these final results.

Finally, we reject NTN's arguments that we have not established any standard for assessing the comparability of sales prices to related and unrelated parties. As discussed in *Comment 3* above, our longstanding practice has been to exclude related-party sales from our analysis if the sales prices to related parties are lower than those to unrelated parties. See *AFBs III.* Because NTN's sales prices to related parties for BBs and CRBs were lower than sales prices to unrelated parties, we have excluded sales of these products to related parties from our calculation of FMV for these final results.

12. Samples, Prototypes, and Ordinary Courses of Trade

Comment 1: NTN argues that the Department should not use sample sales or sporadic, small quantity sales of certain products in its calculation of FMV. NTN states that these sales are not in the ordinary course of trade. NTN further states that the Department verified NTN's recording of sample sales in its accounting system, and the sales data that NTN used to classify certain other sales as being outside the ordinary course of trade. Because the Department excluded sample sales and sporadic, small-quantity sales from its analysis in *Final Results of Antidumping Duty Administrative Review; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan,* 57 FR 4960 (February 11, 1992), NTN urges the Department to exclude such sales from its analysis in the final results of this review.

Torrington and Federal-Mogul reject NTN's argument regarding sample sales because NTN has provided no evidence regarding the circumstances surrounding the sample sales in question. In the absence of such evidence, Torrington and Federal-Mogul assert that NTN has failed to meet its burden of proof in demonstrating that such sales fall outside the ordinary course of trade. Similarly, Torrington and Federal-Mogul assert that a pattern of infrequent sales of small quantities of specific products is insufficient to establish that such sales fall outside the ordinary course of trade. In this context, Torrington and Federal-Mogul note that the Department's verification of NTN's claims focused solely on the method that NTN used to prepare its response rather than NTN's sales practices. Accordingly, Torrington and Federal-Mogul support the Department's exclusion from its calculation of FMV of NTN's sample sales and sporadic, small-quantity sales.

Department's Position: We agree with Torrington and Federal-Mogul. As we stated in the final results of the previous review, the fact that NTN identified sales as sample sales does not necessarily render them outside the ordinary course of trade. Thus, our verification of the designation of certain sales as samples merely demonstrates that NTN recorded such sales as samples in its own records. This designation, however, does not indicate that NTN made such sales outside the ordinary course of trade. We also reject NTN's claim that small quantity sales of products with sporadic sales histories fall outside the ordinary course of trade. Infrequent sales of small quantities of certain models is insufficient evidence to establish that NTN made these sales outside its ordinary course of trade because such sales histories are typical of certain types of products. Therefore, because NTN failed to demonstrate that samples and sporadic, small-quantity sales fall outside the ordinary course of trade, we have included them in our analysis for these final results.

Comment 2: FAG-Germany and FAG-UK contend that the Department improperly used zero-priced U.S. sample and prototype sales in the calculation of USP because such sales are not made in the ordinary course of trade and are therefore similar to the type of sales the statute permits the Department to exclude in the HM. Additionally, FAG claims the Department is not required to review each and every U.S. sale.

Alternatively, FAG argues that if the Department compares the U.S. zero-price sample sales to HM sales in which value was received, the Department should make a COS adjustment to account for the different circumstances under which the sales were made. FAG argues that the Department should adjust FMV in the amount of the expenses directly associated with the U.S. sample sale and suggests reducing FMV by the amount of the COP of the U.S. sample sale.

Federal-Mogul and Torrington contend that, in order to assure the validity of the Department's sample, the Department must not drop these U.S. sample and prototype sales from its analysis. Federal-Mogul and Torrington further maintain that the arguments regarding the ordinary course of trade are completely irrelevant because the ordinary course of trade provision applies only to the calculation of FMV, not USP. Section 751(a)(2)(A) of the Tariff Act (19 USC 1675(a)(2)(A)) requires the Department to calculate the amount of duty payable on ''each entry of merchandise'' into the United States. Torrington states that this provision should be compared with section 773(a)(1)(A) of the Tariff Act (19 USC 1677b(a)(1)(A)), which requires FMV to be calculated on the basis of sales in the ''ordinary course of trade.''

Federal-Mogul also rejects the idea of a COS adjustment, arguing that the cost to produce the merchandise cannot reasonably be used to quantify any difference between a sample sale and a sale with a price because the cost to produce the merchandise remains the same whether the producer sells it at a profit, sells it at a dumped price, or gives it away.

Department's Position: The Department agrees with Federal-Mogul and Torrington. As set forth in *AFBs II* (at 28395), other than for sampling, there is neither a statutory nor a regulatory basis for excluding any U.S. sales from review. The Department must examine all U.S. sales within the POR. See *Final Results of Antidumping Administrative Review; Color Television Receivers From the Republic of Korea,* 56 FR 12701, 12709 (March 27, 1991).

Although we have made COS adjustments as required by section 773 of the Tariff Act and 19 CFR 353.56, we disagree with FAG's argument that a further COS adjustment should be made if the U.S. sample sales are not excluded from the analysis. This adjustment is not warranted under sections 772 and 773 of the Tariff Act. FAG's argument that a COS adjustment should be made when a zero-price U.S. sale is compared either to HM sales in which value was received or to CV, which includes profit, suggests that a COS adjustment should be made because of the marked difference in the prices of the U.S. sale ($0) and the comparable HM sale. However, differences in prices do not constitute a *bona fide* difference in the circumstances of sale. Furthermore, it would clearly be contrary to the purpose of the dumping law to make a COS adjustment in order to compensate for price discrimination. Moreover, we do not deduct expenses directly related to U.S. sales from FMV either in PP or ESP comparisons. In making COS adjustments in PP comparisons, U.S. selling expenses are *added to* FMV, while in ESP comparisons U.S. selling expenses are neither added to nor deducted from FMV; they are deducted from USP. Finally, regarding FAG's argument that we should use the COP of U.S. merchandise (SAMPCOPE) as the basis for such an adjustment, the difmer methodology accounts for appropriate differences in merchandise.

Comment 3: NSK asserts that zero-price samples and prototype sales should be excluded from the U.S. sales database because the record demonstrates that the provision of these samples are not sales but rather promotional expenses. NSK contends that the ''ordinary course of trade'' analysis has been applied by the Department to exclude certain U.S. sales from its analysis, citing *Ipsco, Inc.* v. *United States,* 714 F. Supp. 1211, 1217 (CIT 1989). NSK contends that if the Department does not exclude zero-price samples from the U.S. sales database, then the Department should deduct the cost of these samples from NSK's indirect selling and G&A expenses.

Torrington argues that the statute requires analysis of each U.S. entry in the context of administrative reviews. Section 1675(a)(2)(A) of the Tariff Act (19 USC 1675(a)(2)(A)) and the *IPSCO* decision, which NSK cites to support its claim, did not exclude all sales from USP which are made outside the ordinary course of trade. Federal-Mogul argues that the Department should continue to reject exclusion of NSK's zero-value U.S. transactions as it has done in the last two AFBs administrative reviews. Torrington also contends that the Department should not deduct the cost of these samples from NSK's indirect selling and G&A expenses because NSK has not provided support on the record for the amounts that it claims should be deducted.

Department's Position: As set forth in *AFBs II* (at 28395) and *AFBs III* (58 FR at 39744), other than for sampling, there is neither a statutory nor a regulatory basis for excluding any U.S. sales from review. The statute requires the Department to analyze all U.S. sales within the POR. See 19 USC 1675(a)(2)(A). See also *Final Results of Antidumping Administrative Review; Color Television Receivers From the Republic of Korea,* 56 FR 12701, 12709 (March 27, 1991). The Department agrees with Torrington that *Ipsco* is inapplicable to this case because that case concerns a LTFV investigation in which the Department has the discretion to eliminate unusual U.S. sales, as opposed to an administrative review in which section 751(a)(2)(A) of the Tariff Act (19 USC 1675(a)(2)(A)) requires analysis of ''each U.S. entry'' except in cases where the agency utilizes ''averages or generally recognized sampling techniques'' pursuant to section 777A of the Tariff Act (19 USC 1677f–l). As a result, we have not excluded any of NSK's U.S. sales. However, the Department also agrees with NSK that the costs of these samples should not be included as part of NSK's indirect selling expenses because we are considering these transactions as sales and are comparing them to FMV. Therefore, we have deducted the costs of samples from NSK's indirect selling expenses.

13. Taxes, Duties and Drawback

Comment 1: Federal-Mogul maintains that the Department's new tax methodology is still legally flawed in that it fails to ''cap'' the amount of tax added to USP at the amount of tax added to or included in the price of the foreign market comparison model. Federal-Mogul cites 19 USC 1677 (d)(1)(C), which requires that forgiven taxes be added to USP ''but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation,'' and claims that this provision explicitly requires such a cap. Federal-Mogul further argues that if the addition to USP is not capped by the amount of tax paid on HM sales, a situation could arise where the tax added to USP exceeds the actual taxes paid on HM sales.

FAG, SKF, and RHP contend that if the Department were to add the actual amount of taxes paid on HM sales to the net U.S. invoice price, a ''cap'' would not be necessary. SKF further argues that under the Department's current method of accounting for taxes, the tax added to USP exceeds that added to FMV only when USP itself is higher than FMV. Therefore, SKF concludes that capping is unnecessary because the Department's method does not reduce dumping margins. Finally, Koyo argues that if the Department accepts Federal-Mogul's argument that the tax added to USP should be capped, the Department also should cap the amount of tax attributed to the adjustments to USP.

Department's Position: We disagree with Federal-Mogul. The Department's methodology consists of applying the home market tax rate to the U.S. price at the same point in the chain of distribution at which the home market tax base is determined and then reducing the tax in each market by that portion of the tax attributable to expenses which are deducted from each price. For example, because we deduct ocean freight from U.S. price, ocean freight is also eliminated from the U.S. tax base. This is consistent with the decision of the CIT in *Federal-Mogul* v. *United States,* 834 F. Supp. 1391 (CIT 1993). The effect of these adjustments is the same as initially calculating the tax in each market on the basis of adjusted prices.

The ''cap'' was devised at a time when the Department was not effectively calculating the tax in each market on the basis of adjusted prices. It was intended to keep differences in expenses which were eliminated through adjustments to the price in each market from continuing to affect the dumping margin by remaining in the basis upon which the tax in each market was determined. The Department's current practice of effectively using adjusted prices in each market as the tax base automatically achieves this purpose. The imputed U.S. tax will exceed the tax on the home market sales to which they are compared only where the adjusted U.S. price is higher than the adjusted home market price—that is, for non-dumped sales. A tax cap is irrelevant for such sales, because no duties are assessed upon them. Consequently, the absolute margins obtained under the Department's current approach are identical to those which would be obtained after imposing a tax cap.

Although applying a tax cap may affect weighted-average margins, and hence deposit rates, we decline to re-apply the tax cap solely to achieve this additional purpose. The Department includes U.S. prices that exceed foreign market prices in the denominator of the deposit rate equation. It would be inconsistent to include that portion of the U.S. price that exceeds the home market price in that denominator, but to remove the tax on this amount. Just as we treat the tax on ocean freight consistently with ocean freight itself, where we include the full adjusted U.S. price in the denominator of the deposit rate equation, we must also leave the tax on that full U.S. price in that denominator.

Comment 2: FAG, SNR, SKF, RHP, NSK, and Koyo contend that the method that the Department used to account for VAT in the preliminary results of this review is improper.

FAG argues that the Department's methodology violates statutory and judicial requirements because the VAT rate is not applied to USP and FMV where the HM tax authorities apply the VAT to home market sales. FAG claims that all laws governing the assessment of the VAT require that the tax be applied to the net invoice price of goods sold in the HM. Therefore, FAG contends that the Department should apply the VAT amount collected in the foreign market to a net U.S. invoice price instead of applying VAT to an ex-factory price in both the U.S. and home markets. U.S. invoice price is at the same point in the stream of commerce as the price to which VAT is applied in the HM.

SKF, RHP, SNR, Koyo, and FAG claim that the current methodology is flawed because it results in the so-called ''multiplier effect'' through which absolute dumping margins are increased solely because USP is adjusted by the rate of the VAT tax instead of the amount. Thus, respondents propose that the Department adjust USP by the amount of the VAT applicable to the relevant HM sales and then add this amount to both FMV and USP, as instructed by the CIT in *Hyster Co., a.k.a. Nacco Handling Group Inc., et. al.* v. *United States, 848 F. Supp. 178 (CIT 1994) (Hyster*).

NSK contends that the Department should add taxes to USP whenever such taxes are assessed in the HM, but that it should not add taxes to FMV or otherwise calculate FMV so as to include taxes whether FMV is based on HM price, third-country sales, or CV. NSK argues that the ''plain language'' of the statute does not define FMV to include taxes imposed in the home market. Furthermore, NSK states that if Congress had meant to include taxes in every calculation of FMV, the statute at a minimum would have defined third-country prices and CV to include such taxes.

Federal-Mogul and Torrington contend that the Department's current method of accounting for VAT is lawful. Federal-Mogul maintains that respondents have not provided any basis for the Department to change its position on this issue. According to Federal-Mogul, the CIT ruled unequivocally in *Federal-Mogul Corp.* v. *United States,* 834 F. Supp. 1391 (CIT 1993), *appeals docketed,* Nos. 94–1497, 1104 (Fed. Cir. 1994), that the Department may not make the statutory tax adjustment by adding the foreign market tax amount to USP. Federal-Mogul further argues that the CIT found that any suggestion to the contrary in footnote 4 of *Zenith Electronics Corp.* v. *United States,* 988 F.2d 1573 (CIT 1993) (*Zenith*) ''was *dicta* and was at odds with both the body of the appellate court's opinion and with the statute.''

Torrington states the Department should not adjust for VAT by adding the amount of the foreign market VAT to USP. Torrington contends that the Department has correctly applied the VAT that would have been applied to a HM sale, by determining what tax rate would be applied to an f.o.b origin, ex-factory price. Torrington maintains that the Department's methodology is consistent with section 1677a(d)(1)(C). In this context, Torrington argues that *Hyster* does not require the Department to add actual amounts of foreign market taxes to USP. According to Torrington, the CIT in *Hyster* simply instructed the Department to ''consider'' adjusting USP for taxes in a manner ''consistent with *Zenith* and title 19.'' Therefore, Torrington concludes that the method that the Department used to account for taxes in the preliminary results of these reviews is consistent with judicial precedent.

Department's Position: We disagree with respondents' contentions that we violated current administrative practice and recent judicial precedent by failing to apply the VAT rate to USP and FMV at the same point in the chain of commerce. We made an addition to USP for VAT in accordance with section 772(d)(1)(C) of the Tariff Act. In making this adjustment, we followed the instructions that the CIT issued in *Federal-Mogul.* Specifically, we added to USP the result of multiplying the foreign market tax rate by the price of the U.S. merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales.

Contrary to respondents' claim that we did not apply the foreign VAT rate to the USP at the same point in the stream of commerce as applied by the foreign market authority, we in fact did apply the tax rate to USP at the same point in the chain of commerce, that is, the invoice price net of price adjustments such as discounts and rebates. We also adjusted the tax amount calculated for USP and the amount of tax included in FMV. Specifically, we deducted those portions of the foreign market tax and the hypothetical U.S. tax that are the result of expenses that are included in the foreign market price used to calculate the foreign market tax and in the USP used to calculate the U.S. tax. Because these expenses are later deducted to calculate FMV and USP, these adjustments are necessary to prevent our new methodology for calculating the USP tax from creating dumping margins where no margins would exist if no taxes were levied upon foreign market sales. By making these adjustments to the taxes added to USP and included in FMV, margins are not dependent on differences in expenses.

We agree with petitioner that *Hyster* does not order the Department to adjust for VAT by applying the absolute amount of the HM VAT to USP. Rather, *Hyster* states that *Zenith* ''permits Commerce to adjust USP by the amount of the *ad valorem* tax,'' and directs the Department to ''consider any further adjustments to USP consistent with *Zenith* and title 19.'' The CAFC in *Zenith* held that ''[b]y engaging in dumping, the exporters themselves are responsible for the multiplier effect. The multiplier effect does not create a dumping margin where one does not already exist.'' See *Zenith Electronics Corp.* v. *United States,* 988 F2d at 1581–82 (1993). Furthermore, in *Federal-Mogul Corp.* v. *United States,* 834 F. Supp. 1391 (October 7, 1993), the CIT held that *Zenith* made clear that tax neutrality is irrelevant to the proper application of the statute. Therefore, the Department is under no obligation either to adjust for VAT by the absolute amount of VAT that is assessed in the HM or to make the VAT adjustment tax neutral.

We determine that our calculation of the amount of tax added to USP is appropriate. Applying the rate to USP simply calculates the amount of tax that would be applied in the HM if the product were sold in the HM at the same price as it is in the United States. The ''multiplier effect'' only occurs if FMV is higher than USP. We are under no obligation to change our method of adjusting for VAT in order to account for a firm's pricing practices when they differ between the HM and the United States.

We disagree with NSK's argument that the Department should not add taxes to FMV or otherwise calculate FMV so as to include taxes when FMV is based on HM price. Taxes imposed in the foreign market are an integral part of the final price paid by the customer and are only ''added'' when reference is made to a tax-exclusive price. Furthermore, section 772(d)(1)(C) of the Tariff Act directs us to adjust for any taxes which are rebated or uncollected by reason of exportation to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation. This direction can only imply that taxes would be included in the prices used by the Department in its calculation of FMV. For the foregoing reasons, we have not amended our treatment of U.S. and HM taxes for these final results.

Comment 3: FAG-Germany contends that the Department improperly applied a VAT rate of 14 percent, instead of 15 percent, for 1993 sales.

Department's Position: We disagree with FAG. We correctly applied the 15 percent VAT rate for 1993 sales in the preliminary calculations. See FAG KGS preliminary margin program at lines 1370–1372.

Comment 4: Torrington alleges that NMB/Pelmec made ''Route B'' and bonded warehouse sales in order to avoid the payment of import duties on imported raw materials. Torrington argues that to the extent that the Department relied on bonded warehouse or ''Route B'' sales, no adjustment should be made to USP for duty drawback. In addition, even with respect to actual local sales, Torrington asserts that the Department should disallow NMB/Pelmec's claimed adjustment since NMB/Pelmec failed to demonstrate that: (1) It imported sufficient inputs to account for the alleged rebates of import duties that it received; (2) it actually paid, and received rebates of, import duties on these inputs, and (3) it actually paid import duties on merchandise sold in the HM and passed the duties on to customers in the form of increased HM prices during the POR. Therefore, Torrington concludes that the Department should disallow NMB/Pelmec's claim for a duty drawback adjustment to USP.

NMB/Pelmec states that it did not claim a duty drawback adjustment for those U.S. sales that were compared to bonded warehouse or ''Route B'' HM sales. With respect to direct HM sales, NMB/Pelmec asserts that the Department verified that NMB/Pelmec made duty payments on imported components used to manufacture merchandise sold in the HM. Therefore, NMB/Pelmec concludes that the Department should allow NMB/Pelmec's claimed adjustment to USP for duty drawback for these final results.

Department's Position: We disagree with Torrington. We apply a two-pronged test to determine whether a respondent has fulfilled the statutory requirements for a duty drawback adjustment. In accordance with section 1677a(d)(1)(B) of the statute, a duty drawback adjustment will be made if the Department determines (1) import duties and rebates are directly linked to and dependent upon one another, and (2) the company claiming the adjustment can demonstrate that there are sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product. The CIT consistently has accepted this application of the law. See *Far Eastern Machinery,* 688 F. Supp. at 612, *aff'd. on remand,* 699 F. Supp. at 311; *Carlisle Tire & Rubber Co.* v. *United States,* 657 F. Supp. 1287, 1289 (1987); *Huffy Corp.* v. *United States,* 10 CIT 215–216, 632 F. Supp. (*Huffy*).

The Department's two-pronged test meets the requirements of the statute. The first prong of the test requires the Department ''to analyze whether the foreign country in question makes entitlement to duty drawback dependent upon the payment of import duties.'' *Far East Machinery,* 699 F. Supp. at 311. This ensures that a rebate is received by the manufacturer only if import duties were paid or accrued. The second prong requires the foreign producer to show that it imported a sufficient amount of raw materials (upon which it paid import duties) to account for the exports, based on which it claimed rebates. *Id.* Under this prong, the duty drawback adjustment to USP is limited to the amount of duty actually paid.

At verification, we determined that NMB/Pelmec satisfied both prongs of our test. Specifically, we verified (1) that Thailand's duty drawback system makes rebates of import duties dependent upon payment of these duties, and (2) that NMB/Pelmec paid import duties on materials incorporated into subject merchandise, and that it imported a sufficient amount of raw materials to account for the amount of duty drawback claimed.

Further, in *Huffy,* the CIT held that section 1677a(d)(1)(B) allows the Department to presume that HM prices include the cost of import duties. See *Avesta Sheffield* v. *United States,* Slip Op. 93–217 (CIT 1993). Therefore, when, as in this case, the record demonstrates that import duties were paid on raw materials, the Department is not required to determine whether duties were passed on to customers in the form of increased HM prices.

Finally, NMB/Pelmec did not claim an addition to USP for duty drawback for those U.S. sales that were compared to FMV based on HM ''Route B'' sales or bonded warehouse sales. Therefore, we have allowed NMB/Pelmec's claim for a duty drawback adjustment to USP for these final results.

14. U.S. Price Methodology

Comment 1: Torrington asserts that resale profits should be deducted from ESP. Torrington contends that the intent of exporter's sales price is to determine the net amount returned to the foreign exporter. Torrington asserts that, under the Department's interpretation of ESP, related parties receive special advantageous treatment that is contrary to Congressional objectives and purpose. For example, in the case of an unrelated reseller, the Department deducts the full commissions paid, which must cover the agent's expenses and a reasonable profit. However, in the case of a related reseller, the Department deducts the selling expenses associated with the resale, but not a reasonable profit earned on the transaction.

RHP points out that partly due to Torrington's efforts, several bills have been introduced in Congress in recent years to amend the antidumping law to provide for the deduction of resale profits from ESP sales. However, not one has become law. RHP feels this is an issue of fundamental importance and should only be modified by statutory amendment.

Koyo, NTN, and FAG argue that Torrington's claim that the Department should deduct resale profits from ESP must be rejected. The three respondents point out that the CIT has already repeatedly rejected the argument, noting that the Department's practice of refusing to deduct profits from ESP is in accordance with the antidumping law. *See Timken Co.* v. *United States,* 673 F. Supp. 495, 518–21 (1987). Additionally, the same arguments were rejected in previous reviews by the Department. FAG also states that in *Federal-Mogul* v. *United States,* 19 CIT, Slip Op. 93–17 at 23, the CIT stated, ''It is well established that profit is correctly a part of the ITA's calculation of USP.'' Thus, FAG argues that these judicial decisions do not give the Department the discretion to deduct resale profits from ESP.

NSK contends that the Department appropriately declined to deduct profit on resale transactions in calculating ESP. NSK asserts that the literal language of the statute does not permit the deduction of so-called resale profit. NSK also holds that retention of so-called profit in calculating ESP leads to a fair result. Even if the Department disregarded both the statute and case law, NSK claims strong reasons remain for not deducting purported resale profit from ESP. Profit is included in the FMV side of the antidumping equation. To deduct profit from the USP side would lead to a disequilibrium and result in a false comparison as the CIT recently observed. See *Federal-Mogul Corp.* v. *United States,* 813 F. Supp. 856, 866 (CIT 1993).

SKF argues that resale profits should not be deducted from USP on ESP sales, and that Torrington's argument has been consistently rejected by the Department, the CIT, and Congress. SKF maintains that the relevant section of the Act does not include an adjustment for resale profits, and that Congress has recently specifically rejected an attempt to provide for such a deduction. See H.R. Conf. Rep. No. 576, 100th Cong., 2d Sess. 629, *reprinted in* 1988 U.S.C.C.A.N. 1547, 1662. Therefore, one cannot infer that Congress intended to include this provision in the statute.

SKF also claims that there is no evidence supporting Torrington's theory that resale profits must be deducted in order to equalize PP and ESP. SKF contends that such a deduction would penalize importers who raise their prices in order to eliminate dumping. SKF holds that the CIT has upheld the Department's practice of not deducting resale profits on ESP sales. See *Federal-Mogul Corp.* v. *United States,* 813 F. Supp. 856, 866 (1993).

Department's Position: As stated in *AFBs III* (at 39777), we disagree with Torrington that resale profits should be deducted from ESP. We find no statutory authority for making this adjustment. Furthermore, the CIT has upheld the Department's practice of not deducting resale profits on ESP sales. See *Federal-Mogul Corp.* v. *United States,* 813 F. Supp. 856, 866 (1993).

Comment 2: Koyo, RHP, SNR, NSK, and FAG claim that the Department's practice of deducting U.S. direct selling expenses from USP, in ESP situations, instead of adding them to FMV is unlawful. Respondents cite judicial precedent in support of their position that direct selling expenses should be added to FMV. For example, NSK maintains that the Department's methodology violates the ruling of the CIT in *NSK Ltd.* v. *United States,* Slip Op 93–216 (CIT 1993). Respondents claim that the Department should treat direct selling expenses as COS adjustments to be added to FMV in order to comply with recent CIT rulings.

Department's Position: The CAFC has upheld the Department's practice of deducting U.S. direct selling expenses from USP in ESP situations. See *Koyo Seiko Co.* v. *United States,* 36 F.3d 1565 (Fed. Cir. 1994). Therefore, we have continued to deduct direct selling expenses from ESP in these reviews.

Comment 3: Koyo contends that the Department's failure to average USPs in the same manner as it averaged FMV was an abuse of discretion and contrary to law. Koyo argues that the Department has distorted the dumping margins through its comparison of single transaction prices in the United States with average prices weighted over the entire review period in the home market. Koyo maintains the ''inequity'' of this methodology is largely attributable to the Department's practice of not crediting manufacturers with negative dumping margins on U.S. sales at prices ''above those in the foreign market.'' Koyo states that pursuant to 19 U.S.C. 1677(f)(1) the Department is required to use averaging to establish both USP and FMV when such averaging techniques yield fair and representative results. Koyo notes that the Department used weighted-averaged U.S. prices in *Final Results of Administrative Review; Certain Fresh Cut Flowers from Mexico,* 55 FR 12696, 12697 (April 5, 1990). Koyo requests that the Department use its annual average methodology for both USP and FMV in order to achieve representative results as required by the antidumping law.

Torrington and Federal-Mogul disagree with Koyo's argument that comparing weighted-average USPs with a weighted-averaged FMV is reasonable and in accordance with Departmental precedent and the law. Torrington's reasoning is that averaging U.S. price would ''encourage and reward price discrimination, the very practice that antidumping law is designed to combat.'' In response to Koyo's argument that the Department should credit foreign manufacturers for ''negative dumping margins,'' Torrington argues that this ''would allow dumping to continue so long as other sales were made at prices sufficiently high to mask dumped sales.'' In support of this position Torrington cites the ruling in *Serampore Industries Pvt., Ltd. et al.* v. *United States,* 11 CIT 866, 874, 675 F. Supp. 1354, 1360–61 (1987). Torrington also maintains that the Department generally only averages USPs in the case of perishable products or other merchandise characterized by price volatility. Torrington notes that AFBs are not perishable; therefore, Koyo's citation to the Fresh Cut Flowers from Mexico case, a precedent with respect to perishable goods, is inappropriate. Federal-Mogul maintains that the Department should not average USP in this review because it has rejected Koyo's request to do so in the past and Koyo's arguments have not changed.

Department's Position: As stated in *AFBs III* (at 39779), we disagree with Koyo's assertion that we must average USPs on the same basis as FMV to ensure an ''apples-to-apples'' comparison. In addition, we agree with Torrington that averaging USP is unacceptable in most cases because it would allow a foreign producer to mask dumping margins by offsetting dumped prices with prices above FMV. For example, a foreign producer could sell half its merchandise in the United States at less than FMV, and the other half at more than FMV, and arrive at a zero dumping margin while still dumping.

Except in limited instances in which we have conducted reviews of seasonal merchandise with very significant price fluctuations due to perishability (see, *e.g., Final Results of Administrative Review; Certain Fresh Cut Flowers from Mexico,* 55 FR 12696, 12697 (April 5, 1990)), we have not averaged U.S. prices. See *Final Results of Antidumping Administrative Review; Pressure Sensitive Plastic Tape from Italy,* 54 FR 13091 (March 30, 1989). Since the merchandise under review is not a perishable product, there is no reason to change our current methodology, which has been upheld by the Court of Appeals. See *Koyo Seiko* v. *United States,* 20 F.3d 1156 (Fed. Cir. 1994).

Comment 4: Torrington argues that the Department should reclassify Honda's sales to the United States as PP transactions, rather than treating Honda as a reseller of AFBs. Although Torrington acknowledges that the Department found no evidence at verification that Honda's suppliers were aware of the ultimate destinations of their merchandise, Torrington asserts that Honda's Japanese suppliers must have known that Honda had substantial manufacturing activities in the United States and that, therefore, many of their AFBs were destined for the United States.

Honda responds that it is a reseller of AFBs, rather than a manufacturer, and that Honda's suppliers in Japan did not know, or have reason to know, that specific AFBs were ultimately destined for the U.S. market. According to Honda, no AFBs were ordered directly by any of its U.S. affiliates from its Japanese suppliers. Furthermore, Honda states that its orders of AFBs from its suppliers did not indicate, by way of timing of shipments or orders, the terms of sale, or any other factors, the ultimate destination of the AFBs. Honda also contends that these conclusions were fully verified by the Department and confirmed in the Department's verification reports.

Honda notes that Torrington does not dispute Honda's statements or the Department's findings. Honda further points out that the standard for suppliers' knowledge concerning the ultimate destination of merchandise ''is high.'' See *Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Administrative Review,* 58 FR 11216 (February 24, 1993). As a result, Honda states that the fact that Honda's suppliers were aware that some AFBs would be exported to the United States because Honda has U.S. manufacturing operations is insufficient to justify reclassifying Honda's sales as PP transactions.

Department's Position: We agree with Honda that it should be treated as a reseller. This issue was examined extensively at verification. See *Honda Motors Verification Report* at 3 and 4, March 4, 1994. The standard for the ''knowledge test'' is high. See *Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping*

Administrative Review, 58 FR 11216 (February 24, 1993). Based on this standard, we concluded that Honda's suppliers did not have reason to know that their sales to Honda would be exported to the United States. Therefore, we continue to classify Honda as a reseller.

15. Accuracy of the Home Market Database

Comment 1: Torrington argues that all reported HM sales destined for export should be purged from respondents' HM sales listings. Citing 19 U.S.C. 1677a(b), (section 772(b) of the Tariff Act), Torrington claims that sales by foreign manufacturers or producers that result in exports to the United States are by definition PP transactions and that there is no requirement in the statute that the foreign manufacturer knew, or should have known, that the sale was an export sale. The statute only refers to the knowledge of a manufacturer or producer in the context of sales to a ''reseller'' for exportation to an intermediate country. In addition to identifying reported HM sales which were destined for the United States, Torrington holds that it is equally important to ensure that FMV is based only on sales for consumption in the HM. Therefore, where there is evidence that particular sales were not for HM consumption, such sales should be purged from the HM sales listing even if there is insufficient evidence to suggest that the sales were for export to the United States. Torrington further argues that, at the least, the Department should adopt presumptions that shift the burden of establishing whether sales are for exportation from the Department to respondents.

Torrington argues in particular that all reported HM sales which were made to known German wholesalers/exporters, also referred to as ''indirect exporters,'' should be disregarded in calculating FMV. Torrington claims it has made a substantial effort to demonstrate to the Department a pattern whereby German producers sell bearings at lower prices to German resellers who are exporters. The inclusion of such sales in the HM database tends to lower FMV. Furthermore, the Department should assume the questionable sales were actually sales to the United States.

Torrington claims that FAG was uncooperative in this proceeding or may have even impeded the Department's search for truth in this matter, and urges the Department to apply BIA to FAG's entire response. Torrington contends that FAG continued to claim a complete lack of knowledge of sales to exporters until just several days before the preliminary results were issued. Torrington cites evidence discovered by the Department at verification, such as the fact that FAG sold to one exporter from its export, rather than domestic, price list, and other information provided for the record by the petitioner that implies that the inclusion of these sales in the HM database would be improper. Torrington further argues, however, that if the Department declines to reject FAG's response and use punitive BIA, the Department should at least reclassify as U.S. sales all FAG HM sales to customers fairly known to export AFBs.

Torrington also argues that the Department acted properly in excluding certain FAG sales to such HM customers. Torrington contends that the Department has a statutory basis for this action and that the Department established the validity of its factual findings at verification. See *FAG Verification Report*, February 23, 1994. Torrington maintains that the preliminary results call into question all sales to German wholesalers/exporters and contends that the Department should presume all sales to such customers are destined for export, adding that the Department has the discretion to exclude all questionable sales.

FAG maintains that the Department unlawfully removed sales to two HM customers from FAG's HM database, and that FAG properly reported all HM sales. FAG argues that the Department's test for determining whether FAG should have known that such sales were for export, and not for HM consumption, was arbitrary and capricious. This test involved telephone interviews with customers to determine whether FAG had knowledge that the merchandise sold to those customers would be exported. FAG contends that HM sales can be excluded only under section 772(b) of the Tariff Act (19 USC 1677 a(b)). Under that provision, the Department must first establish that the respondent had knowledge at the time of the sale that the merchandise was intended for export, then must determine that the United States was the destination of the export sale. FAG further argues that the Department has consistently maintained that the standard for imputed knowledge is high. FAG cites *Fuel Ethanol From Brazil: Final Determination of Sales at Less Than Fair Value*, 51 FR 5572 (February 14, 1986) (*Fuel Ethanol*), in which the Department imputed knowledge to the supplier that exports were destined for the United States because the reseller did not sell in the HM and the United States accounted for 100 percent of the export market for the in-scope product.

FAG notes that, where the Department cannot say with objective certainty that 100 percent of a reseller's goods go to a known destination, the Department has not determined that the supplier ''should have known'' the disposition of the goods. FAG argues that even beyond having a high standard for imputing knowledge, the Department requires objective information that can be corroborated by the administrative record, citing *Television Receivers, Monochrome and Color, From Japan: Final Results of Antidumping Administrative Review*, 58 FR 11211 (February 24, 1993) (*Television Receivers*) and *Oil Country Tubular Goods From Canada: Final Results of Antidumping Duty Administrative Review*, 55 FR 50739 (December 10, 1990) (*OCTG*). FAG claims that the Department cannot satisfy the high burden of proof for imputing knowledge by means of telephone calls to customers. FAG maintains that the information gathered from these phone calls amounts to hearsay, and that the information cannot be corroborated by the administrative record.

FAG contends that its test for determining whether a sale should be classified as a HM sale, which involves checking whether VAT was charged and paid on the sale, is the most objective method for making such a determination, and is the best indication of what FAG knew at the point of sale regarding the destination of the merchandise. FAG argues that the Department verified that all HM sales reported by FAG included VAT.

FAG also argues that the term ''exporter'' has been so loosely used as to have no meaning, and further argues that, even if sales to these alleged exporters can be isolated, it is unclear whether all such sales were actually exported. FAG maintains that the method proposed by Torrington, as well as the one utilized by the Department, is subjective and unverifiable.

SKF argues that its data have been thoroughly verified and that there is no compelling evidence on the record to indicate that any of its HM sales were made at low prices to German resellers known to export.

INA noted that HM sales which it claimed as export sales were made to companies that were known by INA to be exporters and were classified as such in INA's records. INA states that the Department verified that such sales were not included among INA's reported HM sales. INA noted, however, that two customers classified as exporters also resell within Germany.

All sales to these two customers were reported as HM sales because INA had no way of knowing which particular bearings were resold in Germany and which were exported.

Department's Position: In accordance with section 772(b) of the Tariff Act, transactions in which the merchandise was ''purchased * * * for exportation to the United States'' must be reported as U.S. sales in an antidumping proceeding. However, we have not found in this review sufficient evidence to conclude reasonably that any alleged HM sales are in fact U.S. sales under section 772(b). Therefore, we have not reclassified any respondent's HM sales as U.S. sales in these reviews.

Section 773(a) of the Tariff Act provides that FMV be based on sales ''for home consumption.'' Therefore, sales which are not for home consumption, even if they are not classifiable as U.S. sales under section 772(b), are not appropriately classified as HM sales for antidumping purposes. In these reviews, except for certain sales reported as HM sales by one company, we did not find sufficient evidence to conclude reasonably that reported HM sales were not ''for home consumption'' as required by section 773(a).

With respect to German wholesalers/exporters specifically, at verification we determined that, except for certain FAG sales, there were no distinguishing characteristics by which to differentiate sales by German manufacturers to alleged exporters from other HM sales, and we found insufficient evidence to indicate that respondents' HM sales to customers that Torrington alleges to be wholesalers/exporters were destined for export.

We do not agree with Torrington's argument that all sales made to so-called wholesalers/exporters should be treated as U.S. sales, because we do not have sufficient reason to conclude that such sales were for export to the United States, nor even that they were for export at all. We also do not agree that rejection of FAG's response and use of BIA is warranted. However, we do agree that there is sufficient evidence to conclude that certain sales reported by FAG as home market sales were in fact export sales.

With respect to FAG, for these final results we excluded reported HM sales to two customers. For these sales, the evidence indicates that the merchandise in question was destined for export and thus not for home consumption. We found at verification that FAG referred to these customers as ''indirect exporters'' and that FAG excluded sales to other ''indirect exporters'' based on its conclusion that these were export sales. In addition, one FAG subsidiary sold to one of these two ''indirect exporters'' from its export, rather than domestic, price list. We also visited and interviewed one of these resellers and found that it only sells in export markets. This reseller claimed that its suppliers, including FAG, know that it does not resell within Germany. For these reasons, we conclude that these sales were for export and not for domestic consumption. Therefore, these sales cannot be included in FAG's HM sales.

We do not agree with FAG's assertion that the collection of VAT is confirmation that a sale is for HM consumption. Collection of VAT on the sale between FAG and its customer does not preclude the customer from reselling the merchandise for exportation and ultimately receiving a VAT rebate on the resale of the merchandise. Thus, collection of VAT by FAG is not a determinant of the ultimate destination of the merchandise.

FAG's reference to *Fuel Ethanol* is only relevant to the question of whether certain sales should be regarded as U.S. sales. We agree with FAG that there is not sufficient evidence to reclassify any of its reported HM sales as U.S. sales. However, this does not mean that such sales are automatically sales ''for home consumption'' as required by section 773(a) of the Tariff Act. Furthermore, *Television Receivers* and *OCTG* also concerned the issue of whether certain sales should be regarded as U.S. sales, not whether certain sales should be regarded as sales for home consumption.

In *Television Receivers* and *OCTG*, the unrelated reseller sold the product in both Canada and the United States. Therefore, the producer did not know the ultimate destination of the merchandise at the time of sale to the unrelated reseller. *OCTG* at 50740. In this case, where unrelated German resellers both export and resell within Germany, we determined that the manufacturer did not know the ultimate destination of the merchandise. Such sales were retained in the HM database.

Therefore, based on the above circumstances, no further changes have been made to either the HM or the U.S. databases with regard to HM sales to alleged wholesalers/exporters.

Comment 2: Torrington argues that U.S. dollar- or Singapore dollar-denominated HM sales in Singapore and/or Thailand should be excluded from the HM database, because such sales are not HM sales.

The NMB/Pelmec companies rebut Torrington's argument by stating that it is not unusual for multinational companies in developing countries sometimes to conduct business in foreign currencies. Further, the NMB/Pelmec companies claim that nothing has changed since *AFBs III* (at 39783), when the Department determined that there was no evidence that the NMB/Pelmec companies had any reason to know that U.S. dollar-denominated sales, or sales to Thai affiliates of U.S. companies, consisted of merchandise destined for the United States. In addition, the NMB/Pelmec companies note that where they knew that a sale to a domestic customer was actually destined for export, the Department verified that such sale was excluded from the HM database.

Department's Position: We agree with the NMB/Pelmec companies. We verified sales made in U.S. dollars and Singapore dollars, and found no evidence to indicate that the NMB/Pelmec companies had any reason to know or to believe that its U.S. dollar- or Singapore dollar-denominated transactions were destined for the United States.

Comment 3: Torrington claims that NMB Pelmec/Thai's bonded warehouse sales and Route B sales of AFBs should be excluded from the HM sales listing because the Department determined in the original investigation that such sales properly represented third country sales. Torrington states that due to the exemption of VAT and import duties, it can be inferred that all such sales are ultimately being exported. Finally, Torrington argues that such sales are not in the ordinary course of trade.

NMB/Pelmec Thai states that the Department has consistently treated bonded warehouse sales as HM sales since *AFBs I.* Further, NMB/Pelmec asserts that the Department has treated Route B sales as HM sales in the past three administrative reviews. It claims that such sales fit the statutory definition of sales made in the ordinary course of trade. NMB/Pelmec also claims that Torrington has not offered any new evidence as to why the Department should treat Route B sales differently than it has in the past.

Department's Position: We agree with NMB/Pelmec Thai. We have treated such sales as HM sales consistently in the past three reviews, and find the facts in this review to be the same. With respect to the sales in question, we find that the first sale to an unrelated party occurred in Thailand. Route B sales are sales made through NMB/Pelmec Thai's related selling agent, Minebea Singapore Branch (MSB). We verified that MSB's sales, which represent the first sale to an unrelated party, are to customers in Thailand. Therefore, we conclude that they are properly classified as HM sales. See *AFBs II* (at 28422) and *AFBs III* (at 39783). We also verified NMB/Pelmec Thai's reported home market sales and find that such sales were in the ordinary course of trade. See verification reports for NMB/Pelmec Singapore and Thailand.

Comment 4: Referring to Nachi's supplemental questionnaire response (at 4), Torrington notes that Nachi has admitted to assisting certain customers in obtaining Japan Bearing Institute (JBI) Inspection certificates for a portion of Nachi's HM sales. Torrington claims that JBI inspection certificates are prepared for merchandise destined for export. Thus, all sales for which JBI inspection certificates were completed should be deleted from the HM database. Further, Torrington asserts that JBI certificates may identify destinations which would serve as additional evidence that JBI inspected-merchandise is destined for export.

Nachi contends that simply because merchandise is JBI inspected does not necessarily mean it is destined for export, and that Nachi has no way of knowing which, if any, JBI-inspected bearings were exported.

Department's Position: We agree with Nachi. We previously determined that JBI inspection certificates merely attest to the quality of the inspected merchandise. See *Final Results of Redetermination Pursuant to Court Remand, Federal-Mogul Corp. and the Torrington Company* v. *United States,* Slip Op. 93–180 (September 14, 1993). We thoroughly examined the Japanese laws that mandated which information was to be included on the certificates. Reporting the final destination was only required for certain commodities for which quality standards are applied based on destination. AFBs were not included among such commodities. The certificates are not country-specific nor sale-specific. Inspection certificates indicate brand, model number and quantity inspected, but are of no help in determining whether sales reported as HM sales were destined for export. Torrington has presented no new evidence to indicate that respondents knew, or should have known, that reported HM sales were destined for export because JBI inspection certificates were completed.

Comment 5: Torrington asserts that INA's HM sales database is incomplete. Torrington states that the Department found at verification that HM models for which INA failed to report dynamic load ratings (DLRs) were not reported in their proper families and were deleted from the HM sales listing. Torrington further alleges that the Department's verification report demonstrates that the HM models for which INA failed to provide DLRs not only belonged to the same family, but were, in fact, identical to the bearings for which INA reported DLRs. Finally, Torrington asserts that the Department's verification findings support Torrington's allegations that INA reported models whose characteristics are not listed in INA's catalogs and that do not appear to be logical. For these reasons, Torrington concludes that INA deliberately attempted to manipulate the Department's analysis and, therefore, that the Department should determine INA's dumping margins using first-tier BIA for these final results.

INA acknowledges that it improperly created certain bearing families as a result of a computer programming error. According to INA, however, this error has an insignificant impact on the Department's calculations. First, INA asserts that the matches for the specific models that the Department examined at verification were not affected by missing load ratings, because the Department made identical rather than family matches for one of the products at issue, and because INA made no sales of the other product during the sample weeks. INA further argues that its own analysis demonstrates that only a handful of U.S. sales were matched to HM families for which INA failed to report certain bearings. Finally, INA provides explanations of each product for which Torrington challenged INA's reporting of physical characteristics. For these reasons, INA contests Torrington's request that the Department reject INA's reported HM sales and use BIA to determine INA's dumping margins for this review.

Department's Position: We agree in part with Torrington. At verification, we found that INA failed to report DLRs for certain bearings that it sold in the HM. INA subsequently acknowledged that it improperly created certain bearing families in responding to the HM sales portion of our questionnaire. Accordingly, we have identified the bearing families that INA created incorrectly by matching models reported without DLRs in INA's summary HM sales database with models reported in INA's HM sales database that we determined to be in the same family based on family characteristics excluding DLRs, and used BIA to determine the dumping margins for those U.S. sales that we compared to those families. There is no evidence in the record, however, to support Torrington's arguments that other aspects of INA's reporting of physical characteristics are erroneous and that INA deliberately manipulated its reporting of the physical characteristics of its bearings in order to lower its dumping margins. Accordingly, we have not rejected INA's reported HM sales database for these final results.

16. Miscellaneous Issues

16A. Verification

Comment 1: Federal-Mogul challenges the Department's statement that it found no discrepancies during the verification that it conducted at INA's U.S. subsidiary. According to Federal-Mogul, certain data contained in the verification exhibits do not correspond with those contained in INA's questionnaire responses. Specifically, Federal-Mogul states that: (1) The Deutsche mark values of certain shipments differ from those in the responses; (2) the gross and net weights of one shipment differ from those in the responses; and (3) the per-unit freight charge for the one sea shipment that INA included among the sample used to calculate per-unit movement expenses during the verification is less than the per-unit amount that INA reported in its questionnaire response for the same shipment. As a result, Federal-Mogul requests that the Department increase INA's reported ocean freight expenses by the percentage difference between the ocean freight charge contained in the verification exhibit and that contained in INA's questionnaire response.

INA explains that differences in the Deutsche mark values reported in the verification exhibits and the questionnaire responses are the result of rounding, and are insignificant. In explaining the discrepancy between the gross and net weights reported in the verification exhibits and the questionnaire responses, INA acknowledges that it incorrectly calculated the total gross and net weights reported in the verification exhibits. According to INA, however, the weights reported for this shipment in the questionnaire response are accurate. Finally, INA explains that the difference between the freight charges reported in the verification exhibits and the questionnaire responses is the result of the fact that the charges shown in the verification exhibit include harbor maintenance and merchandise processing fees, which are not included in the freight charge reported in the response. Because the information reported in INA's responses is accurate, INA concludes that the Department is not required to make any adjustments to INA's reported freight charges.

Department's Position: We agree with INA. During our verification at INA's U.S. subsidiary, we examined numerous documents relating to INA's reported movement charges, and found no discrepancies between the source documents and the information reported in INA's questionnaire responses. Further, although there may be minor discrepancies between the source documents and the worksheets that INA prepared for us at verification, the worksheets are merely prepared for the verifier's convenience. As the actual source documents and the questionnaire responses were in agreement, errors in the worksheets are irrelevant to the adequate verification of INA's movement expenses. Further, regarding the differences in Deutsche mark values, we note that the difference is small and the result of rounding. Finally, with respect to the freight charge at issue, we verified that the difference was due to harbor maintenance and merchandise processing fees which were included in the verification exhibit. These fees were not included in the freight charges reported to the Department, but rather were broken out and reported separately. As a result, we have not made any adjustments to INA's reported freight charges for these final results.

16B. Database Problems

Comment 2: Nachi argues that in the Department's recalculation of its export selling expenses incurred in Japan on U.S. sales, the Department mistakenly treated all transfer prices as U.S. dollar values when certain transfer prices were reported in yen.

Torrington responds that before making a correction to Nachi's export selling expense calculation, the Department must determine which transfer prices were reported in dollars and which transfer prices were reported in yen.

Department's Position: We agree with Nachi that some transfer prices were not properly treated. We have been able to determine which transfer prices were reported in dollars and which were reported in yen by using the codes reported in Nachi's currency variable field on the computer tape. We have made the appropriate corrections for these final results.

Comment 3: Koyo maintains that after reviewing the preliminary results of review, it found that it had made a clerical error in reporting the family name for one cylindrical roller bearing (CRB) transaction. The other seven transactions of this CRB model correctly list the family name.

Torrington argues that Koyo's proposal constitutes untimely, new information, which should be rejected. The Department should not correct the alleged error unless it is apparent from the record that it existed prior to the preliminary results.

Department's Position: The Department agrees with Koyo. We reviewed the record and found that the typographical error was in the database at the time of its submission. Therefore, the error has been corrected for these final results.

Comment 4: FAG-Germany requests that the Department exclude from the final margin calculations U.S. sales to related customers which they inadvertently reported. FAG-Germany identified the sales in question and noted that information already on the record supports its position that these sales are to related U.S. customers and therefore should not be included in the Department's final margin calculations.

Torrington contends that such revisions are allowable only where the underlying data have been verified and the changes are small.

Department's Position: The customer codes already submitted on the record by FAG-Germany support the position that these sales were made to related U.S. customers. While the specific sales in question were not examined at verification, we did verify randomly chosen sales made by FAG-Germany and found no discrepancies which would undermine our confidence in the accuracy of the reported customer codes. We also note that FAG-Germany properly reported all subject resales made by related customers in the U.S. during the POR.

We note that the CIT has upheld the Department's authority to permit corrections to a respondent's submission where the error is obvious from the record, and the Department can determine that the new information is correct. See *NSK Ltd.* v. *United States,* 798 F. Supp. 721 (CIT 1992). Adopting Torrington's argument would amount to a rule that such corrections can never be made after verification. This is clearly inconsistent with our practice and the holdings of the CIT.

FAG-Germany's errors were obvious from the record once brought to our attention. It is in accordance with our longstanding practice to exclude U.S. sales to related customers in favor of resales by such customers to unrelated parties. Therefore, we have removed FAG-Germany's sales to related U.S. customers from the margin calculations for these final results.

Comment 5: Torrington argues that NSK's response indicates that "almost all" bearings that meet the ITA's definition of CRBs were produced by a certain company related to NSK, and were not sold in the U.S. market during sample weeks. Torrington alleges the database used by the Department and the entries suspended by Customs may be unreliable if NSK identified something less than all CRBs. Also, Torrington claims NSK was required to report all sales of CRBs and to implement a reporting methodology that systematically identifies and tracks those entries.

Torrington contends that because of the alleged misreporting, the ITA should base its final determination on BIA. The best information should be the highest rate calculated for NSK in any prior review or the original LTFV determination.

NSK argues that Torrington has misquoted NSK's response. NSK's response actually states that almost all bearings classified as CRBs, but which NSK considers needle roller bearings, were produced by the related party in question. NSK asserts that it properly reported all U.S. sales of CRBs with a ratio of length to diameter of less than four to one.

Department's Position: We agree with NSK. NSK's response does not give any indication that its reporting of CRB sales in the United States was incomplete. Moreover, the Department verified the completeness of NSK's U.S. database, and is satisfied with the reliability and completeness of the database.

16C. Home Market Viability

Comment 6: Torrington states that the Department discovered at verification that NMB/Pelmec Singapore and NMB/Pelmec Thailand submitted sales in third countries rather than to third countries. For purposes of the final results, ITA should ensure that the HM is viable based on NMB's revised data.

NMB/Pelmec argues that it reported sales in third countries rather than to third countries due to the Department's instructions in prior reviews.

Department's Position: We determined at verification that both NMB/Pelmec Singapore and NMB/Pelmec Thailand reported sales in third countries rather than to third countries due to prior instructions from the Department. We verified that there was only a minor difference in the number of sales made to third countries versus in third countries and ensured that the HM was viable in both Singapore and Thailand based on the revised data.

Comment 7: Torrington alleges that NMB/Pelmec Thailand's questionnaire response reveals that the ratio of total HM sales quantity of AFBs to the total number of AFBs sold in third countries only shows a viable HM when sales of parts are excluded. In addition, it is less than the five percent threshold if parts are included. Torrington states that the Department should separately calculate the viability for ball bearing parts.

NMB/Pelmec states that their HM is viable according to the methodology which was outlined in the Department's questionnaire. In the supplemental questionnaire, NMB/Pelmec was instructed by the Department to calculate HM viability on a weight basis, if using quantities of complete bearings yielded a different result than using quantities of complete bearings and parts. Following the Department's instructions, NMB/Pelmec reported a viable HM using this calculation methodology.

Department's Position: We agree with NMB/Pelmec. NMB/Pelmec was instructed by the Department in the supplemental questionnaire to calculate HM viability on a weight basis, if using quantities of complete bearings yielded a different result than using quantities of complete bearings and parts. NMB/Pelmec reported a viable HM using this calculation methodology. Moreover, we verified the information used in this calculation. See *NMB/Pelmec Thailand Verification Report,* February 10, 1994. Thus, Torrington's allegation that NMB/Pelmec Thailand did not demonstrate that the HM is viable is inaccurate. We determined that the HM was viable based on a weight basis, since using quantities of complete bearings yielded a different result than using quantities of complete bearings and parts.

We note that our methodology implements the ruling of the CIT in *NMB Singapore Ltd.* v. *United States,* 780 F. Supp. 823, 826 (CIT 1992). The CIT held that the Department must take into account the difference between complete bearings and bearing parts in determining viability. The CIT noted that while bearings of different sizes are comparable, bearing parts are not similar to complete bearings of any size (*Id.* at n.2). The Department implements this decision by basing viability on weight where sales of parts are sufficient to affect viability.

16D. Scope Ruling

Comment 8: Torrington argues that individual components of disassembled bearings, such as locking collars and housings, are within the scope of the antidumping duty order. However, petitioner asserts that prior scope rulings have created a situation wherein bearing accessories, when imported separately from a bearing, are excluded from the order, while those same accessories are included in the order when imported attached to a bearing. Thus, when accessories are imported separately, the antidumping duty is applied only to the value of the bearing, and not to the value of the entirety as it is sold in the U.S. market. Torrington notes that SKF in particular takes advantage of this distinction by importing housed bearing units in disassembled form. Torrington also specifically points out NPBS as one of the companies importing housings and ball bearing inserts separate from its bearings in order to evade the order.

Torrington makes the point that by simply changing the packaging of the shipment, and assembling the various accessories on the bearing after entry, SKF avoided the antidumping duty order insofar as it applies to housed bearings. Torrington claims that when such parts are imported together, the clear implication is that the importer is attempting to evade the antidumping duty order. The CAFC sanctioned a comprehensive construction of the ''class or kind'' subject to an antidumping duty order in *Mitsubishi Elec. Corp.* v. *United States,* 898 F.2d 1577, 1582 (Fed. Cir. 1990), to avoid attempts to evade the antidumping duty order.

Torrington concludes that where the imported accessories and parts arrive together with the bearings, housings, and other parts, the Department should instruct Customs to suspend liquidation and collect antidumping duty deposits and duties with respect to the entirety. The mere repackaging of a housed bearing with locking collar or sleeves and with other accessories should not serve to exempt all of the accessories from the antidumping duty order.

SKF argues that it has already been determined that pillow blocks and accessories are not covered by the scope of the order and the fact that they may be used in AFB applications upon importation is irrelevant.

NPBS responds that the housings are imported separately and as such are not included in the scope of the order. Furthermore, there is no avoidance issue since the price of the completed bearing is reduced by the costs of the imported housing, as well as by further-manufacturing costs incurred in the United States and an allocated share of profit.

Department's Position: Locking collars, adaptor sleeves, housings and such accessories to antifriction bearings, when not assembled to those bearings, are not within the scope of the orders. The orders apply only to ''ball bearings, mounted or unmounted, and parts thereof * * * cylindrical roller bearings, mounted or unmounted, and parts thereof * * * (and) spherical plain bearings, mounted or unmounted, and parts thereof.'' See *Final Determinations of Sales at Less Than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan,* 54 FR 19102 (May 3, 1989). The language makes no specific statement that housings and like accessories were considered during the LTFV investigation, nor were such accessories specifically included in the orders.

In a scope ruling in this case, the Department determined that ''eccentric collars are not integral parts of a bearing and are * * * outside the scope of the antidumping duty orders.'' Furthermore, the Department found that eccentric collars were not ''constituent part(s) of completed bearing(s) which are irreplaceable in their function,'' that ''(a)n eccentric collar is an attachment to the bearing, not a part of a completed bearing,'' and that ''the function of locking a bearing to the shaft (could) be performed by other accessories such as concentric collars, sleeves, or set-screws.'' Based on this evidence, the Department determined that an ''eccentric collar,'' when imported unattached, is an accessory to a bearing, not a bearing part, and is, therefore, outside the scope of the antidumping duty orders.'' See memorandum dated May 14, 1993, ''Final Scope Ruling—Antidumping Duty Orders on Antifriction Bearings (Other Than Tapered Roller Bearings) from Japan.''

When such accessories are assembled with an antifriction bearing and imported into the United States, we treat them as one unit because they are imported as one unit, and because addition of the accessory does not remove the bearing from the class or kind of merchandise. This does not mean that such accessories are, in and of themselves, subject to the orders. The housings, collars, and sleeves that are mentioned by the petitioner, like eccentric collars, are attachments to the bearings that are not essential to the antifriction property of the bearings; thus, they do not constitute either bearings or bearing parts by themselves. Therefore they are not subject to the order. Based on the foregoing argument, we conclude that importing such items not attached to the bearing is not, as petitioner contends, an evasion of the order.

Comment 9: FAG-Germany argues that the Department improperly included in its preliminary margin calculations U.S. sales of needle roller bearings with roller length-to-diameter ratios between three to one and four to one. FAG states that although the Department made a scope determination on December 23, 1991 in another case establishing this standard, it was not until September 2, 1992, four months into the fourth period of review, that the Department formally notified parties that the four to one standard would be applied in all circumstances for distinguishing needle roller bearings from CRBs. Hence, FAG claims that it was not forewarned that such merchandise would become part of the margin calculation and standards of due process of law were violated.

Torrington holds that the Department properly included all CRBs, including those with roller length-to-diameter ratios equal to or less than four to one. Torrington states that the respondents were aware of the scope determination 10 months before they received the questionnaire for the fourth review.

Department's Position: We agree with Torrington. In several prior scope rulings, including one requested by FAG, the Department stated that ''the ratio of 4 to 1 is the common industry standard to distinguish a needle roller bearing from a cylindrical roller bearing. Accordingly, we have determined for purposes of this scope proceeding that the ratio of 4 to 1, as selected by the ITC in its final determination, is the dispositive ratio in defining the physical characteristics of a needle roller bearing.'' See memorandum dated December 23, 1991, ''Final Determination on the Request by FAG for Exclusion of Certain Engine Crank Shaft and Engine Main Shaft Pilot Bearings from the Scope of *Antidumping Duty Orders: Ball Bearings, Cylindrical Roller Bearings, and Spherical Plain Bearings and Parts Thereof From the Federal Republic of Germany.''* Conversely, those roller bearings with roller length-to-diameter ratios of less than 4 to 1 are properly classified as cylindrical roller bearings and are therefore subject to the antidumping duty orders, as was stated in a later memorandum. See memorandum dated June 1, 1993, ''Final Scope Ruling—Antidumping Duty Orders on Antifriction Bearings (Other than Tapered Roller Bearings) from Germany: INA Walzlager.'' This determination has been upheld by the CIT. See *Koyo Seiko Co. Ltd.* v. *United States,* Slip. Op. 93–191 (CIT 1993).

Additionally, the Department's scope ruling issued in December of 1991 to FAG clearly adopted an industry standard which was applicable to all cylindrical roller bearings. This occurred well before the POR. Moreover, the September 2, 1992, clarification was issued long before FAG's questionnaire responses were due. Therefore, there was no ambiguity regarding the fact that the Department would consider CRBs with roller length-to-diameter ratios of less than four to one to be covered in this review.

16E. Pre-Final Reviews

Comment 10: RHP, SNR, IKS, and FAG request that the Department authorize and implement pre-final disclosure of computer programs and printouts. Respondents claim that in prior administrative reviews the correction of clerical errors has been delayed until many months after the final determination. Respondents maintain that the delay occurred because an action was filed in the CIT depriving the Department of jurisdiction to correct the relevant errors. RHP proposes that the Department either delay publication pending analysis or publish tentative final results so that clerical errors can be corrected.

Department's Position: As noted in the previous review (see *AFBs III* (at 39786)), in the interest of issuing the final results in a timely manner, the Department cannot implement this step. Furthermore, it is unnecessary. Because there were few changes made between the preliminary results and the final results, the Department finds that granting this request would cause unnecessary delay in the release of the final results.

Comment 11: SNR and FAG request that upon final disclosure the Department give parties a complete printout of all positive margin sales used by the Department in its final determination. SNR and FAG maintain that prompt release of complete printouts is essential for their analysis of the Department's results.

Department's Position: In response to SNR and FAG's request that additional data be printed out for final disclosure, we must decline to change our procedure. It is not practical to print out every bit of data that might be generated by our computer programs. Therefore, we have chosen to print out as much data as is necessary to ensure that the programs are functioning as intended. While FAG and SNR may wish to examine certain additional data, other interested parties may wish to examine still other data. In that printing out additional data is not needed to ensure the accuracy of our results and it is burdensome to the Department to tailor printouts for individual parties, we must decline requests that additional data be printed. Furthermore, we note that all parties have access to the same original data used by the Department and complete copies of our computer programs. Therefore, parties have the ability to duplicate the Department's results and generate any additional data they wish.

16F. Termination Requests

Comment 12: GMN argues that the Department's rejection of GMN's termination request is unreasonable and constitutes an abuse of agency discretion. GMN admits that it made a late request to withdraw its request for review and to terminate this review. This review was requested by GMN in order to obtain revocation of the order against it. GMN declared bankruptcy on December 1, 1993, but still tried to complete the review and the sales verification during the week of January 10, 1994. The only domestic competitor, Torrington, did not object to GMN's request. Federal-Mogul, an interested party although not a competitor, filed an objection. GMN responded to this objection, but Federal-Mogul did not respond to GMN's rebuttal. According to GMN, the use of the BIA rate is in no way reflective of GMN's recent history. GMN notes that because the request for review was made by GMN itself, and its existing deposit rate was zero percent, its late request for withdrawal from the review could only be motivated by the bankruptcy. By allowing Federal-Mogul ''veto power'' over GMN's request, the Department abdicated its statutory right to exercise discretion in such matters.

If the Department rejects GMN's request to withdraw, and if the Department maintains that it cannot calculate a margin for GMN without further verification, GMN suggests that we sever GMN's review and place it on a separate schedule.

Department's Position: The Department has determined that it would be inappropriate to terminate this review for GMN. Our decision is based on the fact that GMN's request to terminate the review was submitted during the verification process, an advanced stage of the review process, and that we were unable to complete sales and cost verifications successfully. Moreover, GMN was aware that it would be unable to complete verification, and thus that its margin would probably be based on BIA when it requested the termination. We also note that Federal-Mogul objected to termination of the review.

Although GMN substantially cooperated with our review, we consider the inability of a respondent to complete a verification in progress to be a serious matter. Though GMN's pending bankruptcy may have played a role in GMN's inability to complete the verifications, we cannot determine what other factors may have hindered the verifications. We note that, at the hearing, GMN's counsel acknowledged that GMN was aware of its financial troubles long before the verification. Respondents should not be given incentive to request reviews and then withdraw their requests if verifications appear to be going poorly. This is one of the reasons why 19 CFR 353.22(a)(5) generally requires that review requests be withdrawn no later than 90 days after the date of publication of the initiation notice. Federal-Mogul's objection only indicates that other parties have an interest in the outcome of an administrative review, which supports the Department's decision not to terminate this proceeding.

16G. Programming

Comment 13: Torrington argues that RHP's the Department's preliminary SAS programs for RHP improperly assigned a zero margin to sales with a USP of less than zero. Torrington continues that it is possible to have a U.S. sale with a value of less than zero. Torrington asserts that the Department should calculate margins on all U.S. sales including those with a value less than zero.

RHP states that it has no objection to the Department adjusting the program so that sales with an adjusted price of less than zero are included.

Department's Position: Torrington misunderstood our program. The lines of the program which are quoted in its case brief do not improperly assign all sales with a negative USP a zero margin. Generally, margins were calculated for such sales as appropriate. However, for certain U.S. sales RHP provided no FMV information and, accordingly, we determined BIA dumping margins for such sales by applying the appropriate BIA rate to the USP of each of those sales. For these sales, negative margins would be generated by applying the BIA rate to a negative USP. Therefore, the lines of the program in question merely set to zero the margins for any U.S. sales to which a BIA rate should be applied but which have a negative USP.

Comment 14: Torrington contends that while RHP's program should assign a BIA rate to RHP's U.S. sales of models that would be matched with HM sales by NSK Europe, it appears that there are errors in the treatment of NSK's sales which prevented the application of BIA to those U.S. sales. Torrington argues that the program did not properly classify these NSK sales in the RHP preliminary program.

RHP states that it attempted to find the alleged errors, but has been unable to do so. RHP argues that because it did not find any errors and Torrington has not identified specific errors, the Department should not change the treatment of NSK sales.

Department's Position: We agree with Torrington that there was a flaw in RHP's preliminary program. However, the flaw merely created duplicate listings of NSK Europe models and was not the reason that no RHP U.S. sales matched to HM sales by NSK Europe. Rather, no sales were matched because there were no comparable families of bearings, *i.e.*, similar merchandise, sold by NSK Europe. In response, we modified the program to match NSK Europe's sales with RHP's U.S. sales by model instead of by family. The fact that no NSK Europe models matched with RHP models further demonstrates that RHP and NSK did not sell comparable merchandise.

Comment 15: FAG UK/Barden alleges that the Department incorrectly identified domestic brokerage and handling expenses (DBROKHE) using the variable name for domestic presale inland freight (DPRSFRE).

Department's Position: We disagree with FAG UK/Barden. Our analysis of the firm's response, including its format sheets, leads us to conclude that FAG reported its brokerage and handling expenses in the field DPRSFRE. Therefore, we have deducted brokerage and handling expenses as DPRSFRE.

Comment 16: Torrington asserts that a clerical error occurs at line 990 in FAG UK's program where the margin is set to zero whenever USP is less than zero.

FAG UK argues that there is no clerical error at line 990 of the program, and that the setting of PCTMARG equal to zero where USP is less than zero, in any event, has no impact on the margin.

Department's Position: We disagree with Torrington that there is a clerical error. Without this line of the program, U.S. sales with dumping margins and negative U.S. prices would show a negative percentage margin. This programming eliminates this anomaly. The setting of the PCTMARG variable at line 990 has no effect on the calculation of the dumping margin.

Comment 17: Torrington states that, in PP transactions, the UNTCUSE variable (customs value) in the program for FAG-Germany is defined as UNITPRE—OCNFRE—MARNINE, and that UNITPRE was modified to include an amount representing VAT, to allow comparison with a VAT-inclusive FMV. Torrington argues that the VAT amount should be removed from UNTCUSE.

Department's Position: We disagree with Torrington that any change is necessary. This variable is not used for PP sales in either the margin calculation or in the calculation of assessment rates. The UNTCUSE variable is only used when calculating *ad valorem* assessment rates. However, purchase price sales are assessed on a per-unit, not *ad valorem*, basis.

16I. Revocation

Comment 18: Torrington asserts that the Department should deny SKF-France's request to revoke the antidumping duty orders spherical plain bearings (SPBs). Torrington notes that revocation is permissible only if the requesting company is unlikely to sell below FMV in the future. Torrington contends the circumstances indicate that this is doubtful, since SKF-France is part of a larger multinational organization which has preliminarily received dumping margins for SPBs in other countries.

SKF responds that Torrington has presented no legal basis on which to deny revocation. SKF argues that since neither the antidumping law nor the Department's regulations mandate a different standard for revocation for multinational corporations, Torrington's argument concerning SKF's multinational activity for purposes of revocation is irrelevant.

Department's Position: Under 19 CFR 353.25(a)(2)(i), the Department may revoke an order in part if it finds sales at not less than FMV for a period of at least three consecutive years. The results in this review, combined with the results in the two prior reviews, satisfies this requirement for SKF-France in the antidumping duty proceeding SPBs. Additionally, respondent has agreed, pursuant to 19 CFR 353.25(a)(2)(iii), to the immediate reinstatement of the order if circumstances develop indicating that they have resumed dumping the subject merchandise. We are satisfied that the respondents is not likely to sell the merchandise in the future at less than FMV, and we agree with respondents that the requirements for revocation have been met.

16J. No Sales During Period of Review

Comment 19: Kaydon, a U.S. producer of ball bearing products, urges the Department to reconsider its preliminary finding that Hoesch and Rollix had no U.S. sales of subject merchandise during the review period. Kaydon asserts that it has provided evidence to the Department which indicates that the respondents sell merchandise in the U.S. market which are properly characterized as bearings subject to the order rather than slewing rings. According to Kaydon, sales of these products, or substantially similar products, may have taken place during the POR but remain unreported due to the respondents insistence that the merchandise are slewing rings and therefore fall outside the scope of the orders. Kaydon argues that if the Department concludes that these products are bearings, not slewing rings, and if respondent made sales of these products during the POR, the Department should consider Hoesch and Rollix's responses as inadequate and should seek further information regarding the merchandise sold by these respondents during the POR.

Hoesch and Rollix believe that Kaydon's request is not appropriate. Respondents claim that a scope determination rather than an administrative review is the proper context for considering scope issues. According to the respondents any scope questions Kaydon had with respect to the merchandise in question should have been raised within the context of a scope determination request. Therefore, respondents claim that Hoesch and Rotek's (a related affiliate in the United States) filing of its own scope determination request preclude consideration of the same issues in these final results. Furthermore respondents claim that the evidence Kaydon presented to support its allegations fails to justify any investigation by the Department of unreported sales.

Department's Position: We have confirmed through the U.S. Customs service that neither Hoesch nor Rollix have entered subject merchandise into the U.S. market during the POR. Furthermore, there is no information on the record to support Kaydon's assertion that these respondents, or related affiliates in the United States, have made sales of subject merchandise during the POR. Finally, we agree with respondents that a scope determination rather than an administrative review is the proper context for considering scope issues. Therefore, we will address the scope issues raised by Kaydon through the process of a scope inquiry which has been requested by both Kaydon and Hoesch.

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[A–475–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order

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

ACTION: Notice of final results of antidumping duty administrative reviews and revocation in part of an antidumping duty order.

SUMMARY: On February 28, 1994, the Department of Commerce (the Department) published the preliminary results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from Italy. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof and cylindrical roller bearings and parts thereof. The reviews cover three manufacturers/exporters. The review period is May 1, 1992, through April 30, 1993.

Based on our analysis of the comments received, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms for each class or kind of merchandise are listed below in the section entitled ''Final Results of Review.''

The Department also is revoking the antidumping duty order on cylindrical roller bearings from Italy with respect to SKF.

EFFECTIVE DATE: February 28, 1995.

FOR FURTHER INFORMATION CONTACT: The appropriate case analyst, for the various respondent firms listed below, at the Office of Antidumping Compliance, International Trade Administration, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733. Charles Riggle (Meter), Jacqueline Arrowsmith (SKF), Michael Rausher (FAG), or Michael Rill.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1994, the Department published in the **Federal Register** the preliminary results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from Italy (59 FR 9463). We gave interested parties an opportunity to comment on our preliminary results.

At the request of certain interested parties, we held a public hearing on general issues pertaining to the reviews of the orders covering AFBs from all countries on March 28, 1994.

Revocation In Part

In accordance with § 353.25(a)(2) of the Department's regulations (19 CFR 353.25(a)(2)), the Department is revoking the antidumping duty order covering cylindrical roller bearings from Italy with respect to SKF.

SKF has submitted, in accordance with 19 CFR 353.25(b), a request for revocation of the order with respect to its sales of the merchandise in question. SKF has also demonstrated three consecutive years of sales at not less than foreign market value (FMV) and has submitted the required certifications. It has agreed in writing to its immediate reinstatement in the order, as long as any producer or reseller is subject to the order, if the Department concludes under 19 CFR 353.22(f) that the firm, subsequent to the revocation, sold the merchandise at less than FMV. Furthermore, it is not likely that SKF will sell the subject merchandise at less than FMV in the future. Therefore, the Department is revoking the order on cylindrical roller bearings from Italy with respect to SKF.

Scope of Reviews

The products covered by these reviews are AFBs and constitute the following ''classes or kinds'' of merchandise: ball bearings and parts thereof (BBs) and cylindrical roller bearings and parts thereof (CRBs). For a detailed description of the products covered under these classes or kinds of merchandise, including a compilation of all pertinent scope determinations, see the ''Scope Appendix'' to ''Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Japan, Singapore, Sweden, Thailand, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders,'' which is published in this issue of the **Federal Register**.

Sales Below Cost in the Home Market

The Department disregarded sales below cost for the following firms and classes or kinds of merchandise:

Country	Company	Class or kind of merchandise
Italy	FAG	BBs.
	SKF	BBs.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made the following changes in these final results.

• Where applicable, certain programming and clerical errors in our preliminary results have been corrected. Any alleged programming or clerical errors with which we do not agree are discussed in the relevant sections of the Issues Appendix.

• Pursuant to the decision of the United States Court of Appeals for the Federal Circuit in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States,* 13 F.3d 398 (CAFC 1994) (Ad Hoc Comm.), we have allowed a deduction for pre-sale inland freight in the calculation of foreign market value only as an indirect selling expense under 19 CFR 353.56(b), except where such expenses have been shown to be directly related to sales.

Analysis of Comments Received

All issues raised in the country-specific case and rebuttal briefs by parties to these administrative reviews are addressed in the ''Issues Appendix'' which is appended to this notice of final results. General issues pertaining to these and all other reviews of the orders covering AFBs from various countries may be found in the ''Issues Appendix'' to ''Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Japan, Singapore, Sweden, Thailand, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders,'' which is published in this issue of the **Federal Register**.

Final Results of Reviews

We determine the following percentage weighted-average margins to exist for the period May 1, 1992, through April 30, 1993:

Company	BBs	CRBs
FAG	2.74	(1)
Meter	6.02	(1)
SKF	3.79	0.00

[1] No U.S. sales during the review period.

Cash Deposit Requirements

To calculate the cash deposit rate for each exporter, we divided the total dumping margins for each exporter by the total net USP value for that exporter's sales for each relevant class or kind during the review period under each order.

In order to derive a single deposit rate for each class or kind of merchandise for each respondent (*i.e.*, each exporter or manufacturer included in these reviews), we weight-averaged the purchase price (PP) and exporter's sales price (ESP) deposit rates (using the USP of PP sales and ESP sales, respectively, as the weighting factors). To accomplish this where we sampled ESP sales, we first calculated the total dumping margins for all ESP sales during the review period by multiplying the sample ESP margins by the ratio of total weeks in the review period to sample weeks. We then calculated a total net USP value for all ESP sales during the review period by multiplying the sample ESP total net value by the same ratio. We then divided the combined total dumping margins for both PP and ESP sales by the combined total USP value for both PP and ESP sales to obtain the deposit rate.

We will direct Customs to collect the resulting percentage deposit rate against the entered Customs value of each of the exporter's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Entries of parts incorporated into finished bearings before sales to an unrelated customer in the United States will receive the exporter's deposit rate for the appropriate class or kind of merchandise.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of AFBs entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above, except that for firms whose weighted-average margins are less than 0.50 percent, and therefore *de minimis,* the Department shall not require a deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''All Others'' rate for the relevant class or kind and country made effective by the final results of review published on July 26, 1993 (see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39729, July 26, 1993). These rates are the ''All Others'' rates from the relevant LTFV investigations.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and other simplification methods prevent entry-by-entry assessments, we will calculate wherever possible an exporter/importer-specific assessment rate for each class or kind of antifriction bearings.

1. Purchase Price Sales

With respect to PP sales for these final results, we divided the total dumping margins (calculated as the difference between FMV and USP) for each importer by the total number of units sold to that importer. We will direct Customs to assess the resulting unit dollar amount against each unit of merchandise in each of that importer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer under each order for the review period will be almost exactly equal to the total dumping margins.

2. Exporter's Sales Price Sales

For ESP sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. While the Department is aware that the entered value of sales during the period of review (POR) is not necessarily equal to the entered value of entries during the

POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR.

In the case of companies which did not report entered value of sales, we calculated a proxy for entered value of sales, based on the price information available and appropriate adjustments (*e.g.*, insurance, freight, U.S. brokerage and handling, U.S. profit, and any other items, as appropriate, on a company-specific basis).

For calculation of the ESP assessment rate, entries for which liquidation was suspended, but which ultimately fell outside the scope of the orders through operation of the ''Roller Chain'' rule, are included in the assessment rate denominator to avoid over-collecting. (The ''Roller Chain'' rule excludes from the collection of antidumping duties bearings which were imported by a related party and further processed, and which comprise less than one percent of the finished product sold to the first unrelated customer in the United States. See the section on Further Manufacturing and the ''Roller Chain'' Rule in the Issues Appendix to ''Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Japan, Singapore, Sweden, Thailand, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders,'' which is published in this issue of the **Federal Register**.)

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 1, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

Issues Appendix

- Abbreviations
- Comments and Response

Company Abbreviations

FAG-Italy—FAG Italia S.p.A.; FAG Bearings Corp.
Federal-Mogul—Federal-Mogul Corporation
Meter—Meter S.p.A.
SKF—Italy—SKF Industrie; RIV–SKF Officina de Villar Perosa; SKF Cuscinetti Speciali; SKF Cuscinetti; RFT
Torrington—The Torrington Company

Other Abbreviations

COP—Cost of Production
COM—Cost of Manufacturing
CV—Constructed Value
ESP—Exporter's Sales Price
FMV—Foreign Market Value
HM—Home Market
POR—Period of Review
PP—Purchase Price
USP—United States Price

AFBs I—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 FR 31692 (July 11, 1991)

AFBs II—Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360 (June 24, 1992)

AFBs III—Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39729 (July 26, 1993)

Comments and Responses

Comment 1: Meter noted in its Section B questionnaire response that it did not incur any warranty expense during the POR, yet the Department improperly deducted warranty expenses.

Federal-Mogul responds that, while Meter claimed to have incurred no warranty expenses during this POR, Meter's historical U.S. warranty experience suggests that the absence of warranty expenses is improbable. Given the fact that Meter claimed to have incurred such expenses in 1988, 1989, 1990, 1991, and the first four months of 1992, as well as after the POR, Federal-Mogul urges the Department to resort to extra-period warranty expenses as BIA. Furthermore, Federal-Mogul argues that the assignment and use of U.S. warranty expenses as an adjustment to CV appears to represent a reasonable application of BIA for purposes of quantifying a known, but unreported selling expense directly related to Meter's U.S. sales.

Department's Position: The adjustment for warranty expenses included in our preliminary calculation was a clerical error. Meter reported no warranty expenses on U.S. sales during this POR, and there is no evidence that such expenses were incurred during the POR. Therefore, we have not imputed warranty expenses and have not deducted these expenses for the final results.

Comment 2: Federal-Mogul notes that Meter limited its reported direct selling expense (DSE) for CV to its imputed credit expense, which Meter calculated by applying to the COM a percentage factor based on its short-term interest rate and the average number of days from shipment to payment. Federal-Mogul claims that this methodology understates the expense because the percentage factor should be multiplied by the sale price, *i.e.*, the value on which credit would be extended in the HM. Federal-Mogul adds that by understating this portion of the general expense element of CV, it also understates the profit element, which Meter quantified as eight percent of materials, labor and general expenses. Federal-Mogul argues that the Department should increase Meter's reported DSE by the ratio of Meter's total sales to its cost of goods sold (COGS). The revised DSE should then be combined with the revised G&A expense amounts and the other elements of Meter's general expenses for CV, and Meter's statutory profit should also be recalculated accordingly.

Department's Position: We agree with Federal-Mogul that Meter's methodology for calculating its imputed credit expense for CV was flawed, and that the percentage factor should be multiplied by the sale price. In the absence of HM sale prices, we calculated a ratio of Meter's total sales to its COGS from Meter's 1992 financial statements, and multiplied that ratio by Meter's reported DSE. We used the revised DSE to recalculate G&A expenses and Meter's profit.

Comment 3: Federal-Mogul argues that in quantifying its reported G&A expenses for CV, Meter netted out negative expense amounts for ''Net Gain on Foreign Exchange'' and ''Customs Reimbursement.'' These amounts are attributable only to purchases by foreign customers and merchandise exported by Meter. Since the statute requires that the general expenses included in CV be those ''usually reflected in sales which are made by producers in the country of exportation,'' no reduction in Meter's G&A expenses may be made for gains on foreign exchange or for customs reimbursement.

Meter argues that reported G&A expenses were taken directly from its audited financial statements and allocated based on cost of sales. Meter contends that it is standard Department practice not to eliminate certain expenses from G&A that are unrelated to subject merchandise or a particular market. Instead, the Department treats G&A as general expenses of the company as a whole.

Department's Position: We agree in part with Federal-Mogul. Meter's ''Foreign Exchange Gain or Loss'' relates to trade accounts receivable on export sales transactions. At verification we found that the ''Customs Reimbursement'' related to returned merchandise. Accordingly both of the above items are directly related to the company's sales revenues, not G&A expenses, and therefore were excluded from the G&A calculation.

Comment 4: Federal-Mogul argues that Meter understated its factory overhead cost for CV as outlined in the cost verification report. Therefore, the Department must adjust Meter's submitted fixed overhead costs in order to accurately compute CV for subject merchandise.

Meter argues that the methodology it used to report factory overhead expenses was the same methodology the Department directed Meter to use in the second review. The Department should not penalize Meter for using an incorrect allocation methodology which the Department suggested in the first place. Therefore, resorting to BIA, as suggested by Federal-Mogul, would be unreasonable.

Department's Position: It was not Meter's fixed overhead costs but rather Meter's submitted variable overhead costs that were understated. Variable costs were understated due to the fact that Meter inappropriately allocated these costs on the basis of total hours incurred to produce all subject merchandise rather than the hours incurred to produce only the U.S. merchandise. Therefore, we adjusted Meter's submitted variable overhead costs in order to appropriately capture all costs.

Comment 5: Federal-Mogul notes that during the POR, Meter relocated its production facilities. Federal-Mogul contends that Meter should have submitted separate manufacturing costs for each facility that produced subject merchandise during the POR. Petitioner argues that since Meter did not submit facility-specific manufacturing costs, the Department should reject submitted weighted-average grinding and assembly labor rates and, as BIA, use the higher of the grinding and assembly rates experienced at each facility.

Meter argues that the Department did not ask for separate CV data for its labor rates in the old and new facilities. Furthermore, Meter argues that it complied with the Department's regulations in submitting weighted-average costs to account for different production facilities being used in the same POR.

Department's Position: We agree with Meter. It is our policy that if a respondent produces subject merchandise at more than one facility, the reported COM should be the weighted-average manufacturing costs from all facilities. The costs reported by Meter properly reflect the costs of both facilities.

Comment 6: Federal-Mogul contests Meter's claim that each of Meter's model numbers reported in the company's HM database represents a unique product. According to Federal-Mogul, certain models in Meter's HM database are reported to be in different families, but the models are identical in all family criteria, and therefore, these models should be in the same family. In addition, Federal-Mogul states that two other HM models vary insignificantly from reported U.S. models in one criterion. For these reasons, Federal-Mogul argues, the Department should not accept Meter's claim that there are no HM matches for any U.S. sales.

Meter claims that it correctly utilized the matching methodology prescribed by the Department and such methodology accurately reflects Meter's business and production processes.

Department's Position: We disagree with Federal-Mogul. When we reviewed Meter's family designations we found two U.S. models with identical family characteristics that had been assigned different family designations. Likewise, we found two HM models which should have been given the same family designation but were not. However, in no instance were any HM models identical or similar to U.S. models based on our criteria for determining such or similar merchandise. Therefore, these errors did not affect these results.

We also disagree with Federal-Mogul's argument that ''insignificant'' variations in family matching characteristics, between HM and U.S. models, should have been disregarded. The U.S. and HM models in question were not identical in all characteristics. Furthermore, we consider a bearing sold in the HM to be similar to a U.S. model when the eight characteristics outlined in our questionnaire are identical. Because these eight characteristics were not identical for these bearings, we do not consider these bearings to be identical or similar matches.

Comment 7: FAG-Italy contends that the Department's assessment rate methodology is flawed, and states that the Department acted contrary to law in basing assessment rates on the Customs entered values of those sales reviewed by the Department for the POR, because the sales actually reviewed by the Department for the POR may have involved merchandise entered before the POR. Instead, FAG-Italy claims that the Department should base assessment rates on the Customs entered values of merchandise actually entered during the POR, as submitted by respondent. FAG-Italy maintains that the Department should determine assessment rates by dividing total antidumping duties due (calculated as the difference between statutory FMV and statutory USP for the sales reported for the POR) by the entered values of the merchandise actually entered during the POR (not by the entered values of the merchandise actually sold during the POR). FAG-Italy argues that the Department's current methodology can lead to a substantial overcollection of dumping duties.

Both Torrington and Federal-Mogul argue that the Department's methodology is valid. Torrington notes that the Department concluded that the current methodology is reasonable and that it constitutes an appropriate use of the Department's discretion to implement sampling and averaging techniques as provided for in section 777A of the Tariff Act. See AFBs I at 31694. Torrington states that since the U.S. sales used to calculate the dumping margins are only a sample of the total U.S. sales during the POR, application of FAG-Italy's proposed methodology would lead to substantial undercollection of antidumping duties, unless the Department adjusts that methodology to take into account all U.S. sales during the POR.

Torrington also states that both the Department's current methodology and FAG-Italy's proposed methodology are deficient in that neither method ''ties entries to sales.'' Torrington proposes two methods for dealing with the problem of reviewed sales that do not match to particular entries during the POR. First, Torrington suggests that the Department review entries rather than sales. Torrington points out that this method is not ideal because it could place the Department in the position of reviewing entries made during the POR that contained merchandise that was sold after the POR. Second, Torrington proposes that the Department require respondents to submit adequate information to trace each entry directly to the sale in the United States. Torrington observes that at present this method would be impossible because the administrative record in this review does not permit tracing each sale to the entry.

Federal-Mogul states that the Department's methodology is logical because it establishes a link between the values calculated on the basis of the sales analyzed and the actual assessment values over time and, therefore, avoids the distortions that FAG's alternative would engender.

Department's Position: We disagree with the FAG-Italy. As stated in AFBs III (at 39737), section 751 of the Tariff Act requires that the Department calculate the amount by which the FMV exceeds the USP and assess antidumping duties on the basis of that amount. However, there is nothing in the statute that dictates how the actual assessment rate is to be determined from that amount.

In accordance with section 751, we calculated the difference between FMV and USP (the dumping margin) for all reported U.S. sales. For PP sales we have calculated assessment rates based on the total of these differences for each importer divided by the total number of units sold to that importer. Therefore, each importer is only liable for the duties related to its entries. In ESP cases, we generally cannot tie sales to specific entries. In addition, the calculation of specific antidumping duties for every entry made during the POR is impossible where dumping margins have been based on sampling, even if all sales could be tied to specific entries. Hence, for ESP sales, in order to obtain an accurate assessment of antidumping duties on all entries during the POR, we have expressed the difference between FMV and USP as a percentage of the entered value of the examined sales for each exporter/importer (*ad valorem* rates). We will direct the U.S. Customs Service to assess antidumping duties by applying that percentage to the entered value of each of that importer's entries of subject merchandise under the relevant order during the POR.

This approach is equivalent to dividing the aggregate dumping margins, *i.e.*, the difference between statutory FMV and statutory USP for all sales reviewed, by the aggregate USP value of those sales and adjusting the result by the average difference between USP and entered value for those sales. While we are aware that the entered value of sales during the POR is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties that would have been determined if we had reviewed those sales of merchandise actually entered during the POR.

Comment 8: Federal-Mogul argues that the Department should disallow any additional credit expenses attributed to late payments made by SKF-Italy's HM customers. Citing *Federal-Mogul Corp.* v. *United States*, 824 F. Supp. 223 (1993), Federal-Mogul argues that, since COS adjustments are only allowed for those factors which affect price or value, additional credit expenses incurred from a purchaser's unexpected failure to pay within the agreed-upon period cannot affect the price which was set specifically in contemplation of payment being made at the end of the agreed-upon credit period. While Federal-Mogul acknowledges that SKF-Italy submitted an upward adjustment to FMV which reflects interest revenue collected from customers due to late payments, it asserts that this does not properly offset the late payment credit expenses since the interest revenue was calculated using an allocation while the additional credit expenses are transaction specific.

SKF-Italy contends that its credit expense calculations, which are based on the actual payment date, are consistent with Departmental policy. SKF-Italy cites the Department's position in Final Results of Antidumping Administrative Review; Certain Welded Carbon Steel Pipe and Tube Products from Turkey, 55 FR 42230, 42231 (1990), and Final Determination of Sales at Less than Fair Value; Certain Tapered Journal Roller Bearings and Parts Thereof From Italy, 49 FR 2278, 2279–80 (1984), to support its position. SKF-Italy states that interest revenue is a separate COS which has been verified and accepted by the Department in each of the three prior administrative reviews.

Department's Position: The Department disagrees with Federal-Mogul. Consistent with Departmental policy, we adjust for credit expenses based on sale-specific reporting of actual shipment and payment dates. See AFBs I at 31724. This policy recognizes the fact that all customers do not always pay according to the agreed terms of payment and that respondent is aware of this fact when setting its price. Therefore, it would be inappropriate to make a COS adjustment for credit based entirely on the agreed terms of payment, since it would not take into account all of the circumstances surrounding a sale.

Comment 9: Torrington contends that, in the recalculation of COP for SKF-Italy, the Department inadvertently excluded research and development (R&D) expenses.

According to SKF-Italy, R&D expenses were included in the recalculated general and administrative (G&A) expenses.

Department's Position: We agree with SKF-Italy that its R&D expenses were included in the revised G&A expenses included in the recalculation of COP.

Comment 10: Torrington argues that the Department should reject FAG-Italy's cost data because FAG-Italy provided costs for only completed bearings and not for the individual material elements as required by the questionnaire.

FAG-Italy argues that its cost responses were accurate and acceptable as reported because its model-specific COPs and CVs were correctly reported in accordance with Departmental precedent.

Department's Position: We agree with respondent. We have accepted FAG-Italy's cost data in this format for this review. Also, petitioners have provided no basis for the Department to reject FAG-Italy's cost responses.

Comment 11: Torrington argues that the Department's decision to treat SKF-Italy's early payment cash discounts as a direct expense is inconsistent with Departmental practice and is an error as a matter of law. Torrington notes that verification of SKF-Italy's cash discounts revealed that, for at least one sale examined, certain discounts did not fall within the range of discounts SKF submitted in its original response describing its early payment cash discount program. Torrington contends that the Department's practice is to require that discounts be part of a respondents standard business practice and not intended to avoid potential antidumping duty liability. Torrington argues that if the discounts offered in the HM are not made pursuant to specified terms contemplated at the time of sale, they should be disallowed because they could be designed to reduce the HM price and dumping margins found. Torrington asserts that, based on the findings at verification, the Department should reject SKF-Italy's HM cash discounts offered on the basis of terms of payment since they cannot be deemed reliable. At the very least, Torrington maintains, the Department should eliminate any discounts granted to customers which are greater than the range of discounts described by SKF-Italy in its original response.

SKF-Italy maintains that the Department satisfactorily verified that customers received discounts as specified in the payment terms set forth in SKF-Italy's invoices. According to SKF-Italy, Torrington's statements pertain to the Department's verification of one of its sales traces. SKF-Italy asserts that a complete examination of this sale reveals that, consistent with its reporting methodology, SKF-Italy did not claim a cash discount for this HM transaction. Accordingly, SKF-Italy asserts that Torrington's discussion of this issue is pointless. Furthermore, SKF-Italy contends that Torrington is incorrect in arguing that only cash discounts granted according to specified terms contemplated at the date of sale are allowed. SKF-Italy claims that by reporting only actual cash discounts in both the HM and the United States, it has remained consistent with Departmental practice as outlined in the questionnaire.

Department's Position: We agree with petitioner that discounts should be part of a respondent's standard business practice and are not intended to avoid potential antidumping duty liability. However, our HM verification findings do not support petitioner's conclusions that SKF-Italy's reported cash discounts were not made pursuant to the discount program outlined in its response.

While verifying SKF-Italy's HM sales response, we found one sale in which SKF-Italy had booked the difference between the amount due and the amount paid by the customer as a cash discount. This occurred despite the fact that, pursuant to SKF-Italy's cash discount program, the customer did not qualify for a cash discount. However, in accordance with its reporting methodology for its discount program, SKF-Italy did not claim a cash discount on this sale in the response submitted to the Department. Our further examination of SKF-Italy's cash discounts confirmed that SKF-Italy's reported cash discounts were made pursuant to the terms listed on the sales invoice. Furthermore, we examined SKF-Italy's entire HM sales listing and found no cash discounts that exceeded the discount program outlined in the response. Therefore, we have accepted SKF-Italy's cash discounts for these final results.

Comment 12: Torrington argues that the Department's preliminary decision to deny FAG-Italy an adjustment for 1993 HM rebates based on the fact that FAG-Italy failed to report either actual or estimated 1993 U.S. corporate rebates is insufficient. Torrington argues that FAG-Italy's failure to report 1993 corporate rebates is a fundamental deficiency which calls for the application of a ''second-tier'' BIA to those U.S. transactions in which FAG-Italy failed to properly report a corporate rebate. Torrington contends that the Department's preliminary response may reward FAG-Italy for its failure to report 1993 U.S. corporate rebates if the HM rebates denied do not apply to the same types of sales as those found in the U.S. market or are not of the same magnitude as the U.S. corporate rebates which went unreported. Torrington argues that, according to FAG-Italy's responses, the discount program in the HM more closely resembles U.S. corporate rebates than the HM rebates denied by the Department. Finally, Torrington asserts that when deciding what BIA approach to use for the final results, the Department should also consider the fact the FAG never clearly stated in its responses that it had not reported estimated 1993 corporate rebates.

FAG-Italy asserts that its rebates were accurately reported given the nature of the rebate programs in each market and that the use of BIA is unwarranted. The companies reported estimated 1993 rebates differently for the HM and U.S. markets because clear differences exist between their HM and U.S. rebate programs. Therefore, the Department erred in denying rebate adjustments in the HM on 1993 sales in order to remain consistent with FAG-US' methodology of not reporting 1993 rebates.

Department's Position: We agree with Torrington that disallowing an adjustment for FAG-Italy's estimated 1993 HM rebates is not the most appropriate means to account for respondent's failure to report estimated 1993 U.S. rebates. Accordingly, as BIA for these final results we used the highest 1992 U.S. corporate rebate rate to calculate corporate rebates for 1993 U.S. sales to customers that received rebates in 1992. We also made adjustments to FMV for estimated 1993 HM rebates as reported by respondents.

Comment 13: Torrington notes that changes to FAG-Italy's packing labor and material expense factors outlined in the analysis memo were not included in the margin program used to calculate the preliminary results. In addition, Torrington contends that the exchange rate factor was applied twice to the adjustment for marine insurance.

FAG-Italy contends that the preliminary computer program does contain the appropriate adjustment factors for its U.S. packing labor and material expenses. Additionally, FAG-Italy notes that the double application of the exchange rate to the adjustment for marine insurance was necessary to correct a conversion error committed by FAG-Italy in its computer response.

Department's Position: We agree with FAG-Italy. We included in the margin program the necessary corrections to FAG-Italy's packing expenses. In addition, we intentionally applied the exchange rate to the marine insurance adjustment twice to compensate for an exchange rate error committed in FAG-Italy's submitted data.

Comment 14: Federal-Mogul asserts that the Department should consider the expenses associated with a bonded warehouse maintained by SKF-Italy to accommodate sales to one U.S. customer as movement expenses and remove the expenses directly from the U.S. price. Federal-Mogul disagrees with the position taken by the Department in earlier reviews that characterized SKF-Italy's bonded warehouse expenses as indirect selling expenses because they were incurred prior to the date of sale. Federal-Mogul maintains that according to the CIT decision in *Nihon Cement Co., Ltd.* v. *United States,* 17 CIT______, Slip Op. 93–80 at 40 (1993), these warehousing expenses should be considered movement expenses because the subject merchandise is merely residing in the warehouse incident to bringing them from Italy to SKF-Italy's U.S. customer. Citing Carbon Steel Wire Rod from Trinidad and Tobago (48 FR 43206, 43208), and *NTN Bearing Corporation of America* v. *United States,* 14 CIT 623, 747 F. Supp. 726 (1990), Federal-Mogul argues that since the pre-sale warehousing expenses are directly related to sales to the one customer served by the warehouse they qualify as movement expenses and should be removed directly from the U.S. price.

SKF-Italy notes that the Department rejected a similar argument in a prior review (see AFBs II at 28398) and contends that no valid reason has been presented to support a different result. SKF-Italy maintains that according to the CIT's definition of warehousing expense in the *Nihon Cement* case cited by Federal-Mogul (''expenses associated with putting aside merchandise in a structure or room for use when needed''), the expenses associated with SKF's FTZ bonded warehouse constitute warehousing expenses and not movement expenses. SKF-Italy further argues that the number of customers served by a warehouse does not in any way transform the expenses into movement expenses.

Department's Position: We disagree with Federal-Mogul. SKF-Italy's decision to position its merchandise in an SKF warehouse in close proximity to a customer does not necessarily indicate that the warehousing expense is directly related to sales. Unlike the situation in Carbon Steel Wire Rod, where merchandise was shipped pursuant to specific orders, the record indicates that SKF-Italy stores its merchandise in the bonded warehouse in anticipation of future sales. See Final Determination of Sales at Less Than Fair Value; Brass Sheet and Strip from the Republic of Korea, 51 FR 40833 (November 10, 1986). Although SKF-Italy sells to only one customer from its bonded warehouse, the warehousing expenses are incurred prior to date of sale and regardless of whether the anticipated sales are made. As a result, the warehousing expenses are not directly related to individual sales, and the warehousing costs are properly classified as an indirect expense. Therefore, in accordance with our decision in AFBs II (at 28398), we have determined that SKF-Italy's bonded warehousing expenses are properly treated as indirect selling expenses (see also Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, 52 FR 30700 (August 17, 1990); *NTN Bearing Corp. of America, American NTN Bearing Manufacturing Corp., and NTN Toyo Bearing Co., Ltd.* v. *U.S. and Timken Co.*, 747 F. Supp. 726 (CIT 1990)).

Comment 15: SKF-Italy argues that the Department eliminated a number of HM transactions based on the erroneous conclusion that such transactions reflected preferential prices to related parties. SKF-Italy asserts that there is no direct or indirect ownership or control between the companies, and that the relationship between the parties noted by the Department at verification has no influence on price. SKF-Italy also states that the Department's comparison of average prices is insufficient to test the arm's-length nature of the transactions because the Department included companies with no common ownership interests and companies with ownership interests of less than 20 percent, did not individually analyze the companies involved, and did not consider the relative quantities involved.

Torrington maintains that the Department will use sales to related parties as a basis for FMV only if it is satisfied that the price is comparable to the price at which the producer or reseller sold such or similar merchandise to unrelated parties, and that the only valid criterion in this determination is price. Torrington argues that there is a regulatory presumption that related-party sales should be excluded in a calculation of FMV. Federal-Mogul and Torrington state that the burden is on the respondent, not the Department, to overcome this presumption by demonstrating affirmatively that related-party transaction prices are comparable to prices to unrelated parties.

Torrington also asserts that SKF-Italy has failed to submit any data demonstrating that its prices to related and unrelated parties are comparable and thus has not met its burden. Torrington and Federal-Mogul further point out that SKF-Italy has provided no evidence on the record regarding any particular related-party sales or the price comparability of its related-party sales.

Department's Position: We disagree with SKF-Italy. 19 CFR 353.45 provides that the Department ordinarily will include related-party sales in the calculation of FMV only if it is satisfied that the sales were made at arm's-length prices, *i.e.*, that the prices of such sales are comparable to the prices at which the seller sold such or similar merchandise to unrelated parties. For purposes of applying this provision, section 353.45 also refers to section 771(13) of the Tariff Act for the definition of related parties. We preliminarily determined that SKF-Italy made HM sales to customers related to them as described in section 771(13)(D) of the Tariff Act. Accordingly, we conducted an analysis to determine whether these sales were made at arm's-length prices. Because we determined that these sales were not made at arm's-length prices, we excluded them from our calculations of FMV.

On reexamination of the evidence on the record, however, we determined that one of these HM customers in fact did not meet the definition of a related party as specified in section 771(13) of the Tariff Act. Therefore, for these final results we retained sales to this customer SKF-Italy in calculating FMVs and did not include these sales in our arm's-length analysis for related-party sales.

In determining whether prices to related parties are in fact arm's-length prices, we rely on a comparison of average unrelated-party prices for each model to average related-party prices for the same models. When average prices to unrelated parties are predominantly higher than average prices to related parties for the class or kind of merchandise, we disregard sales to related parties for that class or kind. Because SKF has provided no evidence to refute our findings that the average prices of certain models sold to related parties are not comparable to the average prices of these models sold to unrelated parties, other than reference to statements by company personnel at verification that these companies were not related, we have continued to exclude these sales for the final results. See SKF Sverige AB Verification Report, February 23, 1994, and *Rhone Poulenc Inc.* v. *United States*, 899 F. 2d 1185 (Fed Cir. 1990).

Comment 16: FAG-Italy contends that the Department improperly used zero-priced U.S. sample and prototype sales in the calculation of USP because such sales are not made in the ordinary course of trade and are therefore similar to the type of sales the statute permits the Department to exclude in the HM. Additionally, FAG-Italy claims the Department is not required to review each and every U.S. sale.

Alternatively, FAG-Italy argues that if the Department compares the U.S. zero-price sample sales to HM sales in which value was received, the Department should make a COS adjustment to account for the different circumstances under which the sales were made. FAG-Italy argues that the Department should adjust FMV in the amount of the expenses directly associated with the U.S. sample sale and suggests reducing FMV by the amount of the COP of the U.S. sample sale.

SKF-Italy contends that the Department should have excluded from its margin analysis, as outside the ordinary course of trade, two Italian prototype products sold into the U.S. market. SKF-Italy claims that, based on the commercial, sales and cost data provided in response to the Department's questionnaire, SKF-Italy's claim for exclusion should be allowed.

Federal-Mogul and Torrington contend that, in order to assure the validity of the Department's sample, the Department must not drop these U.S. sample and prototype sales from its analysis. Federal-Mogul and Torrington further maintain that the arguments regarding the ordinary course of trade are completely irrelevant because the ordinary course of trade provision applies only to the calculation of FMV, not USP. Petitioners claim that section 751(a)(2)(A) of the Tariff Act (19 USC 1675(a)(2)(A)) requires the Department to calculate the amount of duty payable on ''each entry of merchandise'' into the United States. Torrington states that this provision should be compared with section 773(a)(1)(A) of the Tariff Act (19 USC 1677b(a)(1)(A)), which requires

FMV to be calculated on the basis of sales in the ''ordinary course of trade.''

Federal-Mogul also rejects the idea of a COS adjustment, arguing that the cost to produce the merchandise cannot reasonably be used to quantify any difference between a sample sale and a sale with a price because the cost to produce the merchandise remains the same whether the producer sells it at a profit, sells it at a dumped price, or gives it away.

Department's Position: The Department agrees with Federal-Mogul and Torrington. As set forth in AFBs II (at 28395), other than for sampling, there is neither a statutory nor a regulatory basis for excluding any U.S. sales from review. The Department must examine all U.S. sales within the POR. See Final Results of Antidumping Administrative Review; Color Television Receivers From the Republic of Korea, 56 FR 12701, 12709 (March 27, 1991).

Although we have made COS adjustments as required by section 773 of the Tariff Act and 19 CFR 353.56, we disagree with FAG-Italy's argument that a further COS adjustment should be made if the U.S. sample sales are not excluded from the analysis. This adjustment is not warranted under sections 772 and 773 of the Tariff Act. FAG-Italy's argument that a COS adjustment should be made when a zero-price U.S. sale is compared either to HM sales in which value was received or to CV, which includes profit, suggests that a COS adjustment should be made because of the marked difference in the prices of the U.S. sale ($0) and the comparable HM sale. However, differences in prices do not constitute a *bona fide* difference in the circumstances of sale.

Furthermore, it would clearly be contrary to the purpose of the dumping law to make a COS adjustment in order to compensate for price discrimination. Moreover, we do not deduct expenses directly related to U.S. sales from FMV either in PP or ESP comparisons. In making COS adjustments in PP comparisons, U.S. selling expenses are added to FMV, while in ESP comparisons U.S. selling expenses are neither added to nor deducted from FMV; they are deducted from USP. Finally, regarding FAG-Italy's argument that we should use the COP of U.S. merchandise (SAMPCOPE) as the basis for such an adjustment, the difmer methodology accounts for appropriate differences in merchandise.

Comment 17: Federal-Mogul asserts that the Department should reject SKF-Italy's claim for an upward adjustment to USP for duty drawback. First, Federal-Mogul argues that the record contains no evidence that SKF-Italy's claimed duty drawback relates to actual import duties paid on the contents of exported merchandise. Specifically, Federal-Mogul contends that SKF-Italy has provided no evidence to substantiate a link between the amount of import duties paid and the amount of duty drawback claimed, and that the amount of claimed duty drawback exceeds the amount of import duties that SKF-Italy actually paid. In this context, Federal-Mogul further contends that SKF-Italy's claimed duty drawback adjustment includes not only refunded import duties, but also refunded internal taxes, which are not properly included in a duty drawback adjustment.

Furthermore, Federal-Mogul argues that the Department should not accept this claim even under its authority to adjust USP for rebated or uncollected taxes. According to Federal-Mogul, 19 USC 1677a(d)(1)(C) permits an adjustment to USP only for taxes imposed directly upon the merchandise. Federal-Mogul asserts, however, that SKF-Italy's claimed adjustment includes amounts for taxes imposed both directly and indirectly upon the exported merchandise. Therefore, Federal-Mogul concludes that SKF-Italy does not qualify for any upward adjustment to USP even if its ''duty drawback'' is considered to be a refund of taxes by reason of exportation.

SKF-Italy claims that the duty drawback adjustment it submitted in this review remains consistent with its submissions in the previous three administrative reviews and the LTFV investigation. Additionally, SKF-Italy notes that the Department verified its duty drawback adjustment methodology in the second review. According to SKF-Italy, the Department should continue to reject Federal-Mogul's argument since it lacks any persuasive reasoning which would make the Department conclude that its reasoning in prior reviews is not applicable for these final results.

Department's Position: We disagree with Federal-Mogul. As discussed in response to the previous comment, we apply a two-pronged test to determine whether to grant a respondent's claimed adjustment to USP for duty drawback. We applied this test in addressing the issue of SKF-Italy's claimed duty drawback adjustment in *AFBs II.* In that review, we verified SKF-Italy's duty drawback adjustment and, based on those verification findings, accepted the adjustment for the final results (see AFBs II at 28420). Thus, we previously have determined that under the Italian duty drawback system, a sufficient link exists between the amount of duties paid and the amount of duty drawback claimed. We again accepted SKF-Italy's reported duty drawback adjustment in AFBs III. Because SKF-Italy used the same method to report duty drawback in this review as it did in the previous reviews, and in the absence of evidence to the contrary, we conclude that SKF-Italy's duty drawback claim for this review satisfies both prongs of our test.

Further, Federal-Mogul's assertion that SKF-Italy's duty drawback claim includes amounts for indirect taxes is unsubstantiated. Although Federal-Mogul cited the Italian duty drawback statute in support of its assertion, it provided no specific evidence that SKF-Italy's duty drawback claim included any indirect taxes. Therefore, consistent with AFBs I, AFBs II and AFBs III, we have accepted SKF-Italy's duty drawback adjustment for these final results.

Comment 18: FAG-Italy requests that the Department exclude from the final margin calculations U.S. sales to related customers which they inadvertently reported. FAG-Italy identified the sales in question and noted that information already on the record supports its position that these sales are to related U.S. customers and therefore should not be included in the Department's final margin calculations.

Torrington contends that such revisions are allowable only where the underlying data have been verified and the changes are small. Since the modifications have not been verified, Torrington opposes the modifications requested by FAG-Italy.

Department's Position: The customer codes already submitted on the record by FAG-Italy support the position that these sales were made to related U.S. customers. While the specific sales in question were not examined at verification, we did verify randomly-chosen sales made by FAG-Italy and found no discrepancies which would undermine our confidence in the accuracy of the reported customer codes. We also note that FAG-Italy properly reported all subject resales made by related customers in the U.S. during the POR.

We note that the CIT has upheld the Department's authority to permit corrections to a respondent's submission where the error is obvious from the record, and the Department can determine that the new information is correct. See *NSK Ltd.* v. *United States,* 798 F. Supp. 721 (CIT 1992). Adopting Torrington's argument would amount to a rule that such corrections can never be made after verification. This is clearly inconsistent with our practice and the holdings of the CIT.

FAG-Italy's errors were obvious from the record once brought to our attention. It is in accordance with our longstanding practice to exclude U.S. sales to related customers in favor of resales by such customers to unrelated parties. Therefore, we have removed FAG-Italy's sales to related U.S. customers from the margin calculations for these final results.

Comment 19: Torrington asserts that the Department should deny SKF-Italy's request to revoke the antidumping duty order regarding CRBs. Torrington notes that revocation is permissible only if the requesting company is unlikely to sell below FMV in the future. Torrington contends the circumstances indicate that this is doubtful, since SKF-Italy is part of a larger multinational organization which has preliminarily received dumping margins for CRBs in other countries. Furthermore, Torrington contends that the minuscule amount of CRBs sold in the U.S. market by SKF-Italy during the POR is not sufficient to show a pattern of continued fair pricing and may even indicate a fictitious market.

SKF responds that Torrington has presented no legal basis on which to deny revocation. SKF argues that since neither the antidumping law nor the Department's regulations mandate a different standard for revocation for multinational corporations, Torrington's argument concerning SKF's multinational activity for purposes of revocation is irrelevant.

SKF-Italy also contends that even if SKF-Italy's sales could be considered minimal, there is nothing in the Department's regulations to indicate that minimal sales in a given year would preclude revocation. Moreover, SKF-Italy argues that since the level of sales at issue in this review is significantly greater than the quantity of sales upon which the Department made its initial LTFV determination, and upon which the order was based, it should be considered an acceptable level on which to base revocation.

Department's Position: Under 19 CFR 353.25(a)(2)(i), the Department may revoke an order in part if it finds sales at not less than FMV for a period of at least three consecutive years. The results in this review, combined with the results in the two prior reviews, satisfies this requirement for SKF-Italy in the antidumping duty proceeding for CRBs. Additionally, the respondent has agreed, pursuant to 19 CFR 353.25(a)(2)(iii), to the immediate reinstatement of the order if circumstances develop indicating that it has resumed dumping the subject merchandise. Furthermore, the record, including our verification findings, in the past three reviews does not indicate that SKF-Italy's U.S. market for CRBs is fictitious. We also find that Torrington's argument fails to make the case that SKF-Italy is likely to sell below FMV in the future merely because SKF is a multinational corporation. Torrington's argument merely points to a possibility of evasion by SKF-Italy in the future, and does not present any evidence that SKF-Italy is likely to engage in such behavior. If we find evidence of evasion, we will take appropriate action. Finally, since Torrington has made no other arguments indicating that SKF-Italy is likely to resume dumping, we are satisfied that the respondent is not likely to sell the merchandise in the future at less than FMV, and we agree with respondent that the requirements for revocation have been met.

[FR Doc. 95–4616 Filed 2–27–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–804, A–428–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan and Germany; Amendment to Final Results of Antidumping Duty Administrative Reviews

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

ACTION: Notice of amendment to final results of antidumping duty administrative reviews.

SUMMARY: On February 3, 1995, the Department of Commerce (the Department) issued the final results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). The reviews covered 29 manufacturers/exporters and the period May 1, 1992, through April 30, 1993. Based on corrections to the calculation of cost of production (COP) and constructed value (CV), we are amending the final results with respect to Japanese ball bearings and cylindrical roller bearings sold by one company, Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A. (collectively Koyo). We are also amending our final results to indicate that we disregarded sales below cost with respect to sales of AFBs from Germany by two companies.

EFFECTIVE DATE: February 28, 1995.

FOR FURTHER INFORMATION CONTACT: Richard Rimlinger or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 1995, the Department issued the final results of its administrative reviews of the antidumping duty orders on AFBs from France, Germany, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom. The notice of these final results is published in this issue of the **Federal Register**. The classes or kinds of merchandise covered by these reviews were BBs, CRBs, and SPBs. The reviews covered 29 manufacturers/exporters and the period May 1, 1992, through April 30, 1993.

Subsequent to the issuance of our final results, Koyo alleged a clerical error per its letter of February 7, 1995. We determined there was a ministerial error in the calculation of COP and CV in the final results for AFBs from Japan sold by Koyo. Specifically, in those instances where Koyo reported finished or semi-finished bearings purchased from other suppliers, we included both the total cost of manufacturing (COM) and the acquisition cost of such bearings in the calculation of COP and CV. This effectively doubled the COM for these purchased bearings since Koyo's acquisition cost is its COM for these bearings. We have therefore corrected our calculation of Koyo's COP and CV.

Sales Below Cost in the Home Market—Germany

With respect to AFBs from Germany, the final results issued on February 3, 1995, and published in this issue of the **Federal Register** inadvertently failed to indicate that we disregarded certain sales below cost in the home market. Those omitted were sales of SPBs by FAG and BBs by Fichtel & Sachs.

Concerning AFBs from Germany, the Department disregarded sales below cost for the following firms and classes or kinds of merchandise:

Country	Company	Class or kind of merchandise
Germany	FAG	BBs, CRBs, SPBs.
	INA	BBs, CRBs.

Country	Company	Class or kind of merchandise
	SKF	BBs, CRBs, SPBs.
	Fichtel & Sachs	BBs.

Amended Final Results of Reviews

As a result of our corrections, we have determined the following percentage weighted-average margins to exist for the period May 1, 1992 through April 30, 1993:

Company	BBs	CRBs
Koyo	14.28	3.54

Based on these results, we will direct the Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of these reviews.

These deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice is published in accordance with section 751(f) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(f)) and 19 CFR 353.28(c).

Dated: February 17, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–4617 Filed 2–27–95; 8:45 am]

BILLING CODE 3510–DS–P

federal register

Tuesday
February 28, 1995

Part III

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490
Alternative Fuel Transportation Program; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 490

[Docket No. EE–RM–95–110]

RIN 1904–AA64

Alternative Fuel Transportation Program

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of Proposed Rulemaking and Public Hearings.

SUMMARY: The Department of Energy today proposes rules required by the Energy Policy Act of 1992 in order to implement statutorily-imposed alternative fueled vehicle acquisition requirements that become effective by operation of law on September 1, 1995, when model year 1996 begins. These statutory requirements apply to certain alternative fuel providers and some State government vehicle fleets. The proposed rules principally cover: (1) Required interpretations necessary for affected entities to determine whether and to what extent the statutory requirements apply; (2) required procedures for exemptions and administrative remedies; and (3) a program of marketable credits to reward whose who voluntarily acquire vehicles in excess of mandated requirements or before the requirements take effect, and to allow use of such credits in order to demonstrate compliance with those requirements.

DATES: Written comments (8 copies and, if possible, a computer disk) on the proposed rule must be received by the Department on or before May 1, 1995.

Oral views, data, and arguments may be presented at public hearings which are scheduled as follows:

1. March 23, 1995, beginning at 9:30 a.m. in Chicago, Illinois.
2. March 30, 1995, beginning at 9:30 a.m. in Berkeley, California.
3. April 4, 1995, beginning at 9:30 a.m. in Washington, DC.

Requests to speak at a hearing should be submitted to the Department no later than 4 p.m. on:

1. March 20, 1995 for the March 23, 1995 Chicago, Illinois, hearing.
2. March 27, 1995 for the March 30, 1995 Berkeley, California, hearing.
3. March 30, 1995 for the April 4, 1995 Washington, DC, hearing.

The length of each oral presentation is limited to 10 minutes.

ADDRESSES: Written comments (8 copies) and requests to speak at a public hearing should be addressed to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–33, Docket Number EE–RM–95–110, 1000 Independence Ave., SW, Washington, DC 20585, (202) 586–3012. The public hearings will be held at the following locations:

1. Chicago—University of Illinois at Chicago, Chicago Circle Center Building (Student Union), Room 605 (6th floor), 750 S. Halsted Street, Chicago, IL.
2. Berkeley—Lawrence Berkeley Laboratory, 1 Cyclotron Road, Building 50 Auditorium, Berkeley, CA 94720.

The Lawrence Berkeley Laboratory (LBL) Shuttle stops at Center Street and Shattuck Street as well as the BART station and downtown public parking lots.

3. Washington, DC—U.S. Department of Energy, Forrestal Building, Auditorium, 1000 Independence Avenue, SW, Washington, DC 20585.

Copies of transcripts from hearings and written comments may be inspected and photocopied in the DOE Freedom of Information Reading Room, Room 1E–190, (202) 586–6020, between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays.

For more information concerning public participation in this rulemaking see the ''Opportunity for Public Comment'' section found in the Supplementary Information section of this proposed rule.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed rule: Mr. Kenneth R. Katz, Program Manager, Office of Energy Efficiency and Renewable Energy (EE–33), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. (202) 586–6116. Josephine B. Patton, Esq., U.S. Department of Energy, Office of General Counsel (GC–72), 1000 Independence Avenue SW., Washington, DC 20585. (202) 586–9507.

For information concerning the public hearings and submitting written comments: Andi Kasarsky, (202) 586–3012.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to title V of the Energy Policy Act of 1992 (Act) (Pub. L. 102–486), the Department of Energy (Department or DOE) today proposes rules required by law to implement statutorily-imposed alternative fueled vehicle acquisition requirements that take effect by operation of law on September 1, 1995, when model year 1996 begins. These statutory requirements establish that specified percentages of vehicles acquired by covered fleets must be alternative fueled vehicles. These requirements apply to certain alternative fuel providers and some State government fleets. The statutory percentages for model year 1996 are 30 percent for affected alternative fuel providers and 10 percent for affected State government fleets, and these percentages increase over time. This notice of proposed rulemaking principally covers: (1) Required interpretations of statutory provisions essential for affected entities to determine whether and to what extent the mandatory vehicle acquisition requirements apply; (2) procedures for exemptions and administrative remedies; and (3) a program of marketable credits to reward voluntary acquisition of alternative fueled vehicles in excess of mandatory requirements or before the requirements take effect, and to allow use of such credits as an alternative means of compliance. This notice also summarizes, and is accompanied by, a detailed cost impact analysis for public review.

A. Background

A primary goal of the Energy Policy Act of 1992 (the Act) (Pub. L. 102–486) is to enact a comprehensive national energy policy that strengthens U.S. energy security by reducing dependence on imported oil. Currently, the United States consumes seven million barrels of oil more per day than it produces. Section 502 of the Act (42 U.S.C. 13252) provides goals of a 10 percent displacement in U.S. motor fuel consumption by the year 2000 and a 30 percent displacement in U.S. motor fuel consumption by the year 2010 through the production and increased use of replacement fuels. Section 504 of the Act (42 U.S.C. 13254) allows the Secretary to revise these goals downward. According to the latest projections by the Energy Information Administration, the transportation sector will consume 13.1 million barrels per day of petroleum in 2010. Of this total, about 7.4 million barrels per day of petroleum are projected to be used by light duty vehicles. The Energy Information Administration also estimates that 65 percent of our total petroleum demand will be imported in 2010.

The greatest gains in displacing petroleum motor fuel consumption by the year 2010 are expected to occur by replacing gasoline with alternative fuels such as electricity, ethanol, hydrogen, methanol, natural gas and propane, in a portion of the U.S. car and truck population, which is projected to be in excess of 200 million vehicles in the year 2010. Currently, alternative fueled vehicles comprise a small fraction of the total U.S. vehicle stock. According to the Energy Information Administration, of the 180 million light duty vehicles registered in 1992, 250,000 were alternative fueled vehicles. Of this total, about 221,000 were fueled by liquified petroleum gas (propane), about 24,000 were fueled by compressed natural gas, and about 3,400 were fueled by methanol or ethanol. The remaining quantity of vehicles was comprised of electric vehicles and vehicles fueled by liquified natural gas. In 1994, it is expected that 300,000 alternative fueled vehicles will be registered in the U.S. and that the proportion of vehicles operating on each fuel will be approximately the same. (Alternatives to Traditional Transportation Fuels: An Overview, DOE/EIA–0585/0, 1994)

To enable the Act's displacement goals to be met, alternative fuels must be readily accessible and motor vehicles that operate on these alternative fuels must be available for purchase. Thus, two important elements of reducing petroleum motor fuel consumption are: a nationwide alternative fuels infrastructure and the availability of alternative fueled vehicles for purchase at a reasonable cost by the general public in a wide variety of vehicle types and fueling options.

B. Description of the Energy Policy Act Alternative Fuel Transportation Program's Basic Provisions

1. General structure. Titles III, IV, V, and VI of the Act contain the basic provisions for regulatory mandates and authorities, as well as various financial incentives, all of which are aimed at displacing substantial quantities of oil consumed by motor vehicles. Title III contains general definitions which set forth legislatively mandated policy essential to understanding: (1) What constitutes an alternative fueled vehicle; (2) who must comply with regulatory mandates to acquire such vehicles; and (3) the extent to which a regulated entity's inventory of vehicles is subject to mandates to acquire alternative fueled vehicles. Title III also sets forth mandatory requirements for Federal fleet acquisitions of alternative fueled vehicles, which began in fiscal year 1993.

Title IV includes a financial incentive program for states, a public information program, and a program for certifying alternative fuel technician training programs.

Title V provides for separate regulatory mandates for the purchase of alternative fueled vehicles which apply to: (1) Alternative fuel providers; (2) State government fleets; and (3) private and municipal fleets. These mandates set forth annual percentages of new light duty motor vehicle acquisitions which must be alternative fueled vehicles. The minimum acquisition requirements are phased-in, escalating from year to year until reaching a fixed percentage. The acquisition schedules for alternative fuel providers and State governments automatically take effect at the beginning of model year 1996. The acquisition schedule for private and municipal fleets in section 507(a) is a tentative schedule which may only take effect if confirmed in a DOE rulemaking. Such a rulemaking could conclude that imposition of a vehicle acquisition mandate on private and municipal fleets is not appropriate.

Title V also allows for credits for new light duty alternative fueled motor vehicles acquired beyond what is legally required. These credits may be sold and used by other persons or fleets subject to a vehicle acquisition mandate. Finally, title V contains investigative and enforcement authorities including provisions for civil penalties and, in certain circumstances, criminal fines for noncompliance with the statutory mandates and implementing regulations.

Title VI of the Act contains a variety of authorities to promote development and utilization of electric motor vehicles. More specifically, subtitle A provides for a commercial demonstration program, and subtitle B provides for an infrastructure and support systems development program.

This notice of proposed rulemaking focuses principally on: (1) The general definitions of title III applicable to alternative fuel providers, state governments, and private and municipal fleets; (2) procedures for obtaining interpretive rulings applying the regulations to particular facts; (3) the title V vehicle acquisition mandates applicable to alternative fuel providers and to state governments; (4) the credit program applicable to alternative fuel providers, state governments, and private and municipal fleets; and (5) the investigative and enforcement authorities which also apply to alternative fuel providers, state governments, and private and municipal fleets. In a separate notice, the Department will be proposing rules for the financial incentive program for States under section 409 of the Act. 42 U.S.C. 13235.

As provided by section 507, DOE will be initiating a statutorily required rulemaking to determine whether a fleet requirement program is necessary for private and municipal fleets, 42 U.S.C. 13257. Section 507 contains complex requirements for making such a determination, and it is not clear at this time what determination will be made. Nevertheless, private persons (other than alternative fuel providers) and municipal authorities may be interested in reviewing and commenting on the proposed rules in the general subpart A and subpart F (credit program) of this notice which could apply to private and municipal fleet owners if the Department were to issue rules for a private and municipal fleet requirement program.

With respect to alternative fuel providers, there is discretion in section 501(b) of the Act to reduce the acquisition percentage requirements to as low as 20 percent for model years 1997 and beyond, and to extend the time to comply for up to two years. 42 U.S.C. 13251(b). The Department currently does not intend to exercise its discretion under section 501(b). The Department seeks comment on the conditions under which it should propose a rule to reduce the percentage requirements. There is no similar provision in section 507 authorizing modifications to the vehicle acquisition mandate on state governments. See 42 U.S.C. 13257(h), (o).

2. Who must comply and which vehicles are covered. The vehicle acquisition mandate applicable to alternative fuel providers is set forth in section 501 of the Act, 42 U.S.C. 13251. There are a series of subsections in section 501 which, when read in conjunction with certain definitions in section 301 of the Act, make the task of determining who must comply and to what extent the vehicle inventory is affected a complex matter.

The vehicle acquisition mandate applicable to states in section 507(o) of the Act, 42 U.S.C. 13257, also has to be read in conjunction with the definitions in section 301. While it is clear that the mandate in section 507(o) applies to state governments as distinguished from municipal governments, determining the extent to which a State's vehicle inventory is subject to the mandate is also a complex matter.

The beginning of an understanding of who must comply with the regulatory mandates in title V, and of which vehicles are in the base number against which the acquisition percentages are applied, lies in the partially overlapping statutory definitions of the terms ''fleet'' and ''covered person.'' The statutory definition of ''fleet,'' in section 301(9), provides that the term ''fleet'' means a group of 20 or more light duty motor vehicles, used primarily in a metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of more than 250,000, that are centrally fueled or capable of being centrally fueled and are owned, operated, leased or otherwise controlled by a governmental entity or other person who owns, operates, or otherwise controls 50 or more such vehicles, by any person who controls such person, by any person controlled by such person, and by any person under common control with such person, except that such term does not include—

(A) motor vehicles held for lease or rental to the general public;

(B) motor vehicles held for sale by motor vehicle dealers, including demonstration vehicles;

(C) motor vehicles used for motor vehicle manufacturer product evaluations or tests;

(D) law enforcement motor vehicles;

(E) emergency motor vehicles;

(F) motor vehicles acquired and used for military purposes that the Secretary of Defense has certified to the Secretary must be exempt for national security reasons;

(G) nonroad vehicles, including farm and construction motor vehicles; or

(H) motor vehicles which under normal operations are garaged at personal residences at night.

In the section-by-section analysis in part II of this Supplementary Information, DOE explains proposed regulatory provisions related to the above-quoted statutory definition of ''fleet.'' Among other things, DOE: (1) Lists all of the relevant metropolitan statistical areas and consolidated metropolitan statistical areas; (2) defines ''centrally fueled'' and ''capable of being centrally fueled''; (3) discusses in some detail how the provisions for aggregating vehicles are interpreted; and (4) provides interpretive regulatory language for some of the exclusions.

The word ''fleet,'' with all its complexities, is embedded in the definition of the term ''covered person'' at section 301(5) which provides that ''covered person'' means a person that owns, operates, leases, or otherwise controls—

(A) a fleet that contains at least 20 motor vehicles that are centrally fueled or capable of being centrally fueled, and are used primarily within a metropolitan statistical area or a consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of 250,000 or more; and

(B) at least 50 motor vehicles within the United States.

The term ''fleet'' is used for making determinations with regard to who must comply, and to what extent, with the vehicle acquisition mandates in section 507 on state governments, private persons, and municipal governments. The term ''covered person'' is used for making such determinations with regard to the vehicle acquisition mandate on alternative fuel providers in section 501 of the Act.

Under section 507, only a ''fleet'' is obligated to comply. Congress appears to have used the word ''fleet'' rather than ''covered person'' to limit the affected portion of the vehicle inventory to the vehicles in the ''fleet.'' By contrast, under section 501(a), certain ''covered persons'' are obligated to comply, and consequently, the section 501 vehicle acquisition mandate potentially applies to all vehicles in the inventory throughout the United States and not just those vehicles in a ''fleet'' of a ''covered person'' who is subject to the mandate. 42 U.S.C. 13251. However, the potentially broad impact of section 501(a) is heavily qualified by the succeeding subsections of section 501, which limit the sweeping impact of section 501(a) both with regard to who must comply and the extent of the affected vehicle inventory.

Paragraph (a)(2) of section 501 limits application of the vehicle acquisition mandate to a subset of covered persons consisting of:

(A) A covered person, whose principal business is producing, storing, refining, processing, transporting, distributing, importing, or selling at wholesale or retail any alternative fuel other than electricity;

(B) A non-Federal covered person whose principal business is generating, transmitting, importing, or selling at wholesale or retail electricity; or

(C) A covered person—

(i) Who produces, imports, or produces and imports in combination, an average of 50,000 barrels per day or more of petroleum; and

(ii) A substantial portion of whose business is production of alternative fuels * * *.

Paragraph (a)(2) appears to be a description of alternative fuel providers subject to the vehicle acquisition mandate. The proposed regulations interpret the underscored phrase ''principal business.''

The statutory refinement of which ''covered persons'' must comply and to what extent continues in subsection (a)(3) of section 501 which provides that:

(A) In the case of a covered person described in paragraph (2) with more than one affiliate, division, or other business unit, only an affiliate, division, or business unit which is substantially engaged in the alternative fuels business (as determined by the Secretary by rule) shall be subject to this subsection.

(B) No covered person or affiliate, division, or other business unit of such person whose principal business is—

(i) transforming alternative fuels into a product that is not an alternative fuel; or

(ii) consuming alternative fuels as a feedstock or fuel in the manufacture of a product that is not an alternative fuel shall be subject to this subsection.

Paragraph (a)(3) of section 501 has two effects. First, it limits the vehicle acquisition mandate of paragraph (a)(1) to the vehicles owned, operated, leased, or otherwise controlled by certain affiliates, divisions or other business of major energy producing corporations. Second, it excludes from coverage those covered persons, affiliates, divisions, or other business units that use an alternative fuel to create a product other than an alternative fuel. It is possible when the definitions of ''affiliate'' and ''covered person'' are applied to an entity, it may be both. However, merely being an affiliate does not necessarily mean that an entity must also be a covered person.

Section 501(a)(5) provides for petitions for exemption in certain circumstances for alternative fuel providers who otherwise would have to comply. The exemptions are available for those alternative fuel providers who can show that alternative fuels are not available in the operating area or that alternative fueled vehicles are not reasonably available.

There is a parallel exemption provision applicable to State governments in section 507(i). 42 U.S.C. 13257(i). That provision also makes ''financial hardship'' a ground for exemption. However, section 507 does not define ''financial hardship,'' and the legislative history is devoid of any guidance as to what circumstances would constitute ''financial hardship.'' The Department would welcome comments from States making recommendations as to how to interpret and apply the term ''financial hardship'' in practice.

In the section-by-section analysis in part II of this Supplementary Information, the Department systematically distinguishes between proposed regulatory text that tracks the statutory language and proposed regulatory text that represents what the Department is proposing to add, such as, proposed procedures and interpretations. Members of the public are particularly encouraged to comment on the proposed regulations in the latter category. Members of the public are reminded that many of the details of the complex program described in this proposal are specified in the statute, and thus are not within the Department's discretion to change.

3. Comparison to Environmental Protection Agency (EPA) Fleet Requirement Program. As many State and local officials and members of the public are undoubtedly aware, there is a fleet requirement program under the provisions of the Clean Air Act, (42 U.S.C. 7401 et seq.), that is somewhat similar to those in the Energy Policy Act of 1992. Section 246 of the Clean Air Act requires each State in which there is located all or part of an ozone non-attainment area classified as extreme, severe, or serious under the Clean Air Act, or a carbon monoxide non-attainment area with a design value at or above 16.0 parts per million, to submit a state implementation plan revision establishing a clean fuel vehicle program providing that, beginning in model year 1998, certain percentages of covered fleet vehicles be clean fuel vehicles operating on clean alternative fuels. 42 U.S.C. 7586. Section 241 of the Clean Air Act contains definitions for the terms ''clean alternative fuel,'' ''covered fleet,'' and ''covered fleet vehicle'' that contain some phrases later used in the definitions in section 301 of the Energy Policy Act of 1992. Compare 42 U.S.C. 7581 with 42 U.S.C. 13211. For example, the definition of ''covered fleet vehicle'' in section 241 refers to motor vehicles ''* * * in a covered fleet which are centrally fueled (or capable of being centrally fueled). * * *.'' [Emphasis added.] 42 U.S.C. 7581(6). That phraseology is similar to the definitions of ''fleet'' and ''covered person'' in section 301 of the Energy Policy Act of 1992 which refer to motor vehicles ''* * * that are centrally fueled or capable of being centrally fueled * * *.'' 42 U.S.C. 13211(5)(A), 13211(9).

While such similarities in statutory text are significant and should not be ignored in formulating regulations, the differences between the two pieces of legislation are more important. The critical differences are: (1) The primary goal of the EPA program is to significantly improve air quality through reduced emissions of pollutants and the primary goal of the DOE program is to strengthen national energy security by reducing dependence on imported oil; (2) the lists of fuels enumerated in the definitions of ''clean alternative fuel'' under section 241 of the Clean Air Act and of ''alternative fuel'' under section 301 of the Energy Policy Act of 1992 are not identical, and the Department's rulemaking discretion to add to the section 301 list is limited by stringent statutory standards; (3) the EPA program applies to fleets as small as 10 vehicles while 20 is the minimum number of vehicles for a fleet as defined by section 301; (4) the EPA program applies to light duty motor vehicles (up to 8,500 gross vehicle weight rating) and heavy duty motor vehicles (up to 26,000 gross vehicle weight rating) while the DOE program applies only to light duty motor vehicles; (5) the States will administer the EPA program while DOE will directly administer the Energy Policy Act program; and (6) the EPA program applies only to fleets in 22 ozone or carbon monoxide nonattainment areas while the DOE program applies to fleets in approximately 121 areas including both nonattainment and attainment areas.

The Department recognizes that fleet owners and operators who are subject to the EPA and the DOE fleet requirement programs would like to use the same vehicles and fuels to comply with both. In order to minimize differences, the Department has reviewed EPA's rulemaking notice implementing its statutory provisions, 40 CFR part 88; 58 FR 64679 (December 9, 1993), and followed EPA's lead where legally permissible and consistent with the Act's policy goals. Nevertheless, there are some unavoidable differences that will constrain the options of those fleet owners and operators interested in using the same vehicles and fuels to comply simultaneously with both statutory requirements. Where relevant, the Department identifies the basis for those differences in parts of the Supplementary Information that follow hereafter. Members of the public are invited to comment on ways the Department could lawfully make it easier to comply with both statutory requirements.

4. Reformulated gasoline. Although percentages can vary to a small degree, it is the Department's understanding that reformulated gasoline is comprised of over 90 percent petroleum on an energy equivalent basis. Reformulated gasoline is an enumerated ''clean alternative fuel'' in section 241 of the Clean Air Act. 42 U.S.C. 7581. It is not mentioned at all in the definition of ''alternative fuel'' in section 301 of the Energy Policy Act of 1992. Section 301(2) provides that the term ''alternative fuel'' means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary, by rule, to provide for cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline, or other fuels; natural gas; liquified petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.

Each of the above-underscored phrases sets forth limited authority for the Department to add fuels to the definition of ''alternative fuel.'' Under either authority, the Department must undertake notice and comment rulemaking under the Administrative Procedure Act, 5 U.S.C. § 553, to add a fuel to the statutory list. The Department did not include in today's proposal a provision adding reformulated gasoline to the definition of ''alternative fuel.'' The percentage of petroleum in reformulated gasoline, at least 90 percent of the total volume, is too large to warrant proposing to make any of the necessary substantive determinations described above. To the extent that reformulated gasoline is an alcohol/gasoline mixture, it does not meet the minimum 70 percent alcohol volume requirement described above. To the extent that reformulated gasoline is some other kind of mixture, the 90 percent petroleum volume precludes a determination that the mixture is ''substantially not petroleum'' and would ''substantially enhance energy security.''

Members of the public are invited to comment on the Department's determination not to propose a rule that would include reformulated gasoline as an ''alternative fuel'' under section 301.

II. Section-By-Section Analysis

This part of the Supplementary Information discusses those provisions of the proposed regulations that are not self-explanatory.

A. Subpart A—General Subpart

Definition of ''Fleet''

In order to promote easier understanding, DOE has divided the statutory definition into two parts. The main paragraph in the statutory definition appears in proposed § 490.2 under the word ''fleet.'' This proposed regulatory definition of ''fleet'' cross references proposed § 490.3, that describes the categories of vehicles excluded from the definition.

In the proposed definition of ''fleet,'' there is a cross reference to proposed appendix A to subpart A which sets forth a list of metropolitan statistical areas (MSAs) and consolidated metropolitan statistical areas (CMSAs), as defined by the Bureau of the Census, with the requisite 250,000 population as of the 1980 census. The statutory definition of ''fleet'' does not state whether the list must be updated in light of changes in the geographic areas designated by the Bureau of the Census as MSAs and CMSAs which meet the 1980 population requirement of the Act. The proposed rule allows DOE to update the list, but DOE may delete this provision in the final rule to eliminate uncertainty. Members of the public are invited to comment on this choice.

Consistent with the statutory language, the proposed definition requires that there be a minimum of 20 light duty motor vehicles ''used primarily'' in a relevant statistical area. DOE is proposing to interpret those words to mean that the majority of the vehicles' total miles are accumulated within a covered statistical area.

With regard to fleet fueling characteristics, the statutory and proposed regulatory definition of ''fleet'' provide that the vehicles be ''centrally fueled or capable of being centrally fueled.'' Proposed § 490.2 defines the term ''centrally fueled'' as meaning that a vehicle is fueled 75 percent of the time at a location that is owned, operated, or controlled by a fleet or covered person or is under contract with the fleet or covered person.

It should be noted that simply because a fleet vehicle is not centrally fueled does not mean it is exempt from counting, because the statutory requirement covers those vehicles that are centrally fueled or are *capable of being centrally fueled*. It is possible that a vehicle that is not currently centrally fueled could be centrally fueled. Therefore, an organization which has determined that its vehicles are not centrally fueled must still determine if the vehicles are capable of being centrally fueled. If the vehicles are, then the total of these vehicles, i.e., those vehicles either centrally fueled or capable of being centrally fueled, may result in a ''fleet'' or ''covered person'' that is subject to the acquisition requirements of the Act.

In determining whether 20 or more light duty motor vehicles within a MSA or CMSA are centrally fueled or capable of being centrally fueled, the organization must also consider situations where vehicles that are centrally fueled or capable of being centrally fueled are present in more than one location within the MSA or CMSA. The number of vehicles at all locations that are centrally fueled or capable of being centrally fueled must be totaled. For example, if a fleet or covered person has 12 vehicles at location A that are centrally fueled or capable of being centrally fueled and 10 vehicles at location B that are also centrally fueled or capable of being centrally fueled, the organization has 22 vehicles in a MSA or CMSA that are centrally fueled or capable of being centrally fueled.

In providing that contract fueling is a method of being centrally fueled, retail credit card purchases by themselves are not considered to be a contractual refueling agreement. However, commercial fleet credit cards are considered to be a contractual refueling agreement, since they are intended as a special fuel arrangement for fleet purchases alone. The intent of DOE's definition is to ensure that only those fleet-based agreements which provide special fleet refueling benefits at a particular facility or group of facilities would qualify as central fueling. DOE does not intend the definition of ''centrally fueled'' to pertain to fleet service card agreements which include a wide network of fuel providers, unless the service card agreement effectively operates as a commercial refueling arrangement between a circumscribed subset of such refueling facilities and a given fleet operator.

Proposed § 490.2 defines the term ''capable of being centrally fueled'' as meaning a vehicle can be refueled at least 75 percent of its time at a location, that is owned, operated, or controlled by the fleet or covered person, or is under contract with the fleet or covered person. One method that DOE is proposing for determining central fueling capability is whether 75 percent of a vehicle's total miles traveled are derived from trips that are less than the operational range of the vehicle. As defined by EPA, in its December 9, 1993, **Federal Register** notice on the final rule for the definitions and general provisions for the Clean Fuel Fleet Program, 58 FR 64684, the operational range is the distance a vehicle is able to travel on a round trip with a single refueling. The operational range should be no less than 50 percent of the average range of the existing fleet and in no instance should be less than 300 miles. It is important to note that the fuel in question is the fuel that the vehicle currently operates on. DOE believes that this proposed definition will allow fleets and covered persons to easily determine which vehicles are ''capable of being centrally fueled.'' DOE requests comment on this definition of operational range, and on the operational range of alternative fueled vehicles which may be required to comply with this program.

In defining the same phrase in 40 CFR 88.302–94, EPA provided that the presence of one or more nonconforming vehicles in a fleet does not exempt an entire fleet from the requirements of this program; those vehicles that are capable of being centrally fueled will count towards the 20-vehicle minimum fleet size. DOE agrees, but does not find a need to include a phrase to this effect in the definition of ''capable of being centrally fueled.''

The DOE proposed definition differs from the EPA definition of ''capable of being centrally fueled,'' at 40 CFR 88.302–94, because the DOE proposed definition does not require that vehicles covered must be capable of being centrally fueled 100 percent of the time. In developing its definition, EPA had to consider the fueling characteristics of both light duty and heavy duty vehicles. EPA amended its proposed definition to reflect the 100 percent fueling requirement based on the comments of heavy duty engine manufacturers, who argued that vehicles purchased by heavy duty vehicle fleet operators in order to comply with the Clean Fuel Fleet Program would have to be dedicated to a single fuel that may not be widely available. It appears that if the heavy duty vehicles had not been involved in the program that EPA would have settled on the 75 percent figure. DOE did not take these comments into consideration when developing the proposed definition because the Act has no requirement for fleets to acquire heavy duty vehicles. Thus, separate heavy duty vehicle fueling characteristics do not have to be considered. DOE requests comment on whether the 75 percent level is appropriate.

DOE's proposed definition of ''capable of being centrally fueled'' is based on EPA's work. However, DOE requests comment as to whether further editing is necessary to clarify the meaning of this phrase.

The statutory definition of ''fleet'' requires that a minimum of 20 vehicles be ''owned, operated, leased, or otherwise controlled by a governmental entity or other person.'' The proposed regulatory definition of ''fleet'' substantially tracks this language. However, there is also a definition of ''lease'' in proposed § 490.2 that excludes rental agreements of less than 120 days. This provision is consistent with the EPA regulations. As EPA explained, a person does not have the same level of control over a vehicle lease for a short period of time, and the 120-day period takes into account short term variations in fleet operations and the number of fleet vehicles that ought not to trigger the vehicle acquisition mandates. 58 FR at 64687. DOE shares this view.

The proposed regulatory definition of ''fleet'' further tracks the statutory definition by requiring that a person controls 50-light duty motor vehicles regardless of where they are located. The proposed definition of ''fleet'' uses the concept of ''control'' to establish the guidelines for attributing vehicles to a ''fleet'' for the purposes of determining whether the 50-vehicle minimum is satisfied. The concept is used with regard to: (1) Control of vehicles; (2) control by another person; (3) control of another person; and (4) being subject to common control together with another person.

There is similar language in the definition of ''covered fleet'' which applies to the EPA fleet program requirement. EPA has promulgated an elaborate definition of ''control'' in 40 CFR § 88.302–94 which reflects the various ways in which the concept of ''control'' is used in the definition of ''covered fleet.'' The explanation of that definition appears at 58 FR 64686–7. DOE is proposing to adopt EPA's definition of ''control.''

Other Definitions

Proposed § 490.2 defines the term ''after-market converted vehicle'' as a new or used conventional fuel Original Equipment Manufacturer vehicle that has been converted to operate on alternative fuel by an after-market converter. This converter must be in compliance with all Federal, state, and local laws at the time of conversion. After-market converted vehicles differ from Original Equipment Manufacturer converted vehicles with respect to which company warranties the conversion and its components. In the case of an Original Equipment Manufacturer converted vehicle, the vehicle is converted prior to first sale by a manufacturer-authorized conversion company under contract to the manufacturer to convert Original Equipment Manufacturer vehicles, and is then offered by the Original Equipment Manufacturer, with warranty coverage through the Original Equipment Manufacturer, for sale to the general public. In the case of an after-market converted vehicle, the conversion is performed by an after-market converter, who provides the warranty for the vehicle conversion and the conversion kit.

Proposed § 490.2 defines the term ''alternative fuel'' consistent with the definition for that term in section 301 of the Act. The text of the statutory definition of ''alternative fuel'' was quoted earlier in this Supplementary Information section in a discussion of reformulated gasoline. The terms of that definition do not restrict ''alternative fuels'' to fuels used only for transportation purposes. However, section 501(a)(3)(B) of the Act specifically exempts certain businesses that do not use ''alternative fuels'' for transportation purposes. That provision is reflected in proposed § 490.303(b) which is discussed in detail below in this section-by-section analysis.

Proposed § 490.2 defines the term ''covered person'' consistent with the definition for that term in section 301 of the Act.

''Dealer demonstration vehicles'' are excluded from the definition of ''fleet.'' Proposed § 490.2 follows the EPA definition for the term ''dealer demonstration vehicle'' found at 40 CFR § 88.302–94 which defines ''dealer demonstration vehicle'' as meaning any vehicle that is operated by a motor vehicle dealer solely for the purpose of promoting motor vehicle sales, either on the sales lot or through other marketing or sales promotions, or for permitting potential purchasers to drive the vehicle for pre-purchase or pre-lease evaluation. The intent of this definition is to exempt the vehicles held on the lot of a motor vehicle dealer as stock from which potential purchasers or lessees can choose. Vehicles held by dealers for their own business purposes, such as shuttle buses, loaner vehicles, or other repair or business-related vehicles are not exempt, unless they are also offered for retail sale as part of the dealer stock or are rotated through the fleet back to the dealer stock.

As required by section 301(8) of the Act, proposed § 490.2 defines the term ''dual fueled vehicle,'' consistent with section 513(h)(1)(D) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. § 2013, as a motor vehicle that is capable of operating on alternative fuel and on gasoline or diesel fuel. These include flexible-fuel vehicles that operate on a mixture of an alternative fuel and a petroleum-based fuel, and bi-fuel vehicles that can be switched to operate on either an alternative fuel or a petroleum-based fuel. The intent of this definition is to include all vehicles that are capable of operating on an alternative fuel and a petroleum-based fuel, regardless of what terminology is used to describe the vehicle. The Department is aware that the terms ''bi-fuel'' and ''dual-fuel'' are being used interchangeably to describe the same motor vehicle and does not wish to further confuse the situation.

''Emergency vehicles'' are excluded from the definition of ''fleet.'' Proposed § 490.2 adopts EPA's definition for the term ''emergency vehicle'' in 40 CFR § 88.302–94 which defines ''emergency vehicle'' as meaning any vehicle that is legally authorized by a governmental authority to exceed the speed limit to transport people and equipment to and from situations in which speed is required to save lives or property, such as a rescue vehicle, fire truck or ambulance. These vehicles normally have red and/or blue flashing lights and sirens. DOE is relying on the speed limit criterion because this is the way that many states define ''emergency vehicles.'' The requirement for legal authorization to exceed the speed limit may be problematic, however, for localities that authorize certain utility vehicles to exceed the speed limit in special circumstances. However, those vehicles are not normally considered emergency vehicles in that their primary function does not include exceeding the speed limit to transport people and equipment to and from situations in which speed is required to save lives or property. Their response to an emergency does not usually require them to exceed the speed limit, and they are not usually equipped with red and/or blue flashing lights and sirens for use when exceeding the speed limit. Therefore, those vehicle types are not considered excluded from the definition of ''fleet'' unless, on a vehicle-by-vehicle basis, they are specifically and legally authorized by a governmental authority to respond to emergencies as described above.

''Law enforcement vehicles'' are excluded from the definition of ''fleet.'' Proposed § 490.2 adopts EPA's definition of the term ''law enforcement vehicle'' found at 40 CFR § 88.302–94 which defines ''law enforcement vehicle'' as meaning any vehicle which is primarily operated by a civilian or military police officer or sheriff, or by personnel of the Federal Bureau of Investigation, the Drug Enforcement

Administration, or other law enforcement agencies of the Federal Government, or by state highway patrols, municipal law enforcement, or other similar law enforcement agencies, and which is used for the purpose of law enforcement activities including, but not limited to, chase, apprehension, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities. This definition is intended to clarify the difference between law enforcement vehicles and vehicles used for other security purposes. Under this definition, a vehicle is considered to be a law enforcement vehicle and is exempt by virtue of its use for official law enforcement purposes, as conveyed by local, state or federal government mandate. Security vehicles do not usually comply with this definition, and as such are not excluded from the definition of ''fleet'' unless they are contracted by a law enforcement agency for the purposes described above.

Proposed § 490.2 defines the term ''lease'' to mean use of a vehicle for transportation purposes pursuant to a rental contract or similar arrangement, the term of such contract or similar arrangement is for a period of 120 days or more, and such person has control over the vehicle. This definition closely tracks EPA's definition of ''owned or operated, leased or otherwise controlled by such person,'' found at 40 CFR § 88.302–94. The intent of this definition is to include, for compliance purposes, any vehicles controlled by a covered person, whether by ownership or lease. The 120-day period is slightly longer than a calendar season, and is intended to reflect the fact that the leasing of vehicles can occur for short periods of time, including seasonal uses, and that such short term, temporary leases should not be subject to the conditions of the program. However, fleets and covered persons leasing or renting a vehicle for more than 120 days must include this vehicle in the company's total count of new light duty motor vehicles acquired for the respective model year.

Proposed § 490.2 defines the term ''model year'' for the purposes of vehicle acquisition requirements as September 1 of the previous calendar year through August 31. This definition closely tracks EPA's definition of ''model year,'' found at 40 CFR § 88.302–94. For purposes of compliance, covered persons should compute their vehicle acquisitions during the period beginning September 1 of each year through August 31. This definition of model year coincides with the period in which most automobile manufacturers introduce their new annual models, which should facilitate compliance since fleets can make their acquisition plans regarding alternative fueled vehicles when they make plans for acquiring new model year vehicles. This definition is intended to clarify which vehicles count toward the required annual acquisitions under the program. This definition is also intended to ensure that all fleets and covered persons acquire vehicles based on the same annual period, which is important to facilitate enforcement of the programs. Thus, any new vehicles that are acquired by a fleet or covered person between September 1 and August 31 are counted and used as the basis for determining the acquisition requirement of the same year, and are considered of the same model year as the January that falls between them.

''Motor vehicles held for lease or rental to the general public'' are excluded from the definition of ''fleet.'' Proposed § 490.3 follows EPA's definition of this phrase found at 40 CFR § 88.302–94 which defines ''motor vehicles held for lease or rental to the general public'' as meaning a vehicle that is owned or controlled primarily for the purpose of short-term rental or extended-term leasing, without a driver, pursuant to a contract. According to this definition, the vehicles must be owned primarily for the purpose of renting or leasing them without a driver, effectively granting someone else control over them in exchange for money or other compensation. In addition, this exchange must be based on a contract. Thus, a firm cannot be found to ''lease'' its vehicles to its employees unless the vehicles are owned primarily for leasing them to the general public and they are leased pursuant to formal contracts which give control of the vehicle to the lessee.

''Motor vehicles used for motor vehicle manufacturer product evaluations and test'' are also excluded from the definition of ''fleet.'' Proposed § 490.3 follows EPA's definition of the phrase ''vehicle used for motor vehicle manufacturer product evaluations and tests'' at 40 CFR § 88.302–94. There the phrase is defined to mean vehicles that are owned and operated by a motor vehicle manufacturer, or motor vehicle component manufacturer, or owned or held by a university research department, independent testing laboratory, or other such evaluation facility, solely for the purpose of evaluating the performance of such vehicle for engineering, research and development, or quality control reasons. It is the intent of this provision to exclude vehicles which are part of a ''fleet'' used by an Original Equipment Manufacturer for production control or quality control reasons.

''Motor vehicles which under normal operations are garaged at personal residences at night'' is another category of vehicles excluded from the definition of ''fleet.'' Proposed § 490.2 tracks the language of section 301(h) of the Act.

Proposed § 490.2 defines the term ''Original Equipment Manufacturer Vehicle'' as meaning a vehicle engineered, designed and produced by an Original Equipment Manufacturer. This term applies to conventionally fueled Original Equipment Manufacturer vehicles as well as to alternative fueled vehicles. Included in this definition are vehicles that were conventionally fueled Original Equipment Manufacturer vehicles, but were converted prior to sale by the Original Equipment Manufacturer, through a contract with a conversion company, to operate on an alternative fuel and which are covered under the Original Equipment Manufacturer warranty.

Proposed Section 490.3 Excluded Vehicles

Proposed § 490.3 sets forth the vehicles which may be excluded when counting to determine whether there are a sufficient number of vehicles to constitute a ''fleet'' as defined in proposed § 490.2. Some of the exclusions are categories capsulized in a term such as ''dealer demonstration vehicle,'' ''emergency vehicle,'' and ''law enforcement vehicle.'' Those terms are defined in proposed § 490.2 and are discussed above.

Proposed Section 490.4 General Information Inquiries

In other regulatory programs, DOE has learned that on occasion representatives of regulated persons make informal inquiries, usually by telephone, and need a quick response from the program office even if the response is not binding on DOE. Proposed § 490.4 would make this device for obtaining information available to those who are subject to regulation under part 490.

Proposed Section 490.5 Requests for an Interpretive Ruling

For those who want a more authoritative answer as to how the Department intends to construe and apply its regulations to particular factual situations, and for whom other procedures such as petitions for exemption are irrelevant, proposed § 490.5 would provide a useful option. The uncertainties related to the complex provisions applicable to determining who must comply and the extent of affected vehicle inventories prompted DOE to devise proposed § 490.5. Any interpretive ruling that the Department issues would apply only to the person who requested it. However, the Department will make copies of these rulings available for inspection and copying in a public file in its Freedom of Information Reading Room in the Forrestal Building at 1000 Independence Ave., SW, Washington, DC 20585.

Proposed Section 490.6 Petitions for Generally Applicable Rulemaking

Proposed § 490.6 sets forth procedures for petitioning the Department to issue new or amended rules of general applicability for part 490. These procedures implement rights available to members of the public under the Administrative Procedure Act. 5 U.S.C. 553(e).

Proposed Section 490.7 Relationship to Other Law

Proposed § 490.7 makes a declaratory statement to avoid arguments that provisions of part 490, by their silence, authorize acquisition of vehicles or conversion of vehicles in a manner that does not comply with other laws and regulations at the Federal, state, or local level.

Subpart B—[Reserved]

Subpart C—Mandatory State Fleet Program

Proposed Section 490.201 Alternative Fueled Vehicle Acquisition Mandate Schedule

Proposed § 490.201 sets forth the requirements, subject to some exemptions, for the percentage of new light duty motor vehicles for State fleets that must be alternative fueled vehicles when acquired under the Mandatory State Fleet Program. Beginning with the 1996 model year, September 1, 1995, any state fleet that is covered under this subpart must comply with these requirements, unless otherwise provided in this subpart.

In cases where acquisition percentages result in something less than a whole number, DOE is proposing that these fractions be rounded up to the next whole number.

Proposed Section 490.202 Acquisitions Satisfying the Mandate

Proposed § 490.202 provides in substance that an acquisition of an alternative fueled vehicle, regardless of the year of manufacture, counts toward satisfaction of the vehicle acquisition mandate. Such a vehicle would be new to the fleet operator. Credits acquired under subpart F also count toward satisfaction of the mandate.

Proposed Section 490.203 Light Duty Alternative Fueled Vehicle Plan

The Act provides an alternative means of compliance for States. In lieu of a State meeting the acquisition requirements proposed by § 490.201 solely through acquisition of new State-owned vehicles, a State may comply with a Light Duty Alternative Fueled Vehicle Plan submitted by the State and approved by DOE. The Plan must demonstrate that there will be a sufficient number of light duty motor vehicles by State, local and private fleets, which in aggregate meet or exceed the applicable vehicle percentage for any given year.

DOE is proposing that any acquisition or conversion of light duty alternative fueled vehicles for a State may be part of the Plan, irrespective of whether the vehicles are in the excluded categories of vehicles in the definition of "fleet" as enumerated in proposed § 490.3. This allows for law enforcement vehicles, or other vehicles otherwise excluded from the definition of "fleet" to be part of a Light Duty Alternative Fueled Vehicle Plan.

DOE is proposing that, until a Plan is approved or unless DOE grants an exemption, a State is subject to the fleet percentage requirements in proposed § 490.201. This will be equally true in instances where a State plan participant (such as a municipality) fails to fulfill its commitments under the Plan. However, if the State is able to find a substitute participant, then the State may submit to DOE for approval an amendment to the Plan.

DOE is proposing in paragraph (b) of this section to require States to monitor and verify on an ongoing basis the implementation of its Plan. This is to ensure that all participants in the Plan are indeed in compliance, and that at the end of the model year, all requirements will have been met. If for whatever reasons a participant is unable to fulfill its commitments, the State should be able to find a substitute participant before the end of the year.

Paragraph (c) proposes to require a State to submit to DOE, for approval, its Light Duty Alternative Fueled Vehicle Plan no later than the June 1 prior to the model year covered by the Plan. A State should know by this deadline the number of light duty motor vehicles it plans to acquire during the upcoming model year. DOE would like to receive comments as to whether it is reasonable to require all Plans be submitted by the June 1 prior to the model year.

Proposed Section 490.204 Process for Granting Exemptions

Section 507 (i)(1) of the Act provides three categories under which a State may seek exemptions in whole or in part from the annual acquisition percentages. A State may seek exemption if it can demonstrate that—

(1) Alternative fuels that meet the normal requirements and practices of the principal business of the State fleet are not available in the area where the vehicles are to be operated; or

(2) Alternative fueled vehicles that meet the normal requirements and practices of the principal business of the state fleet are not reasonably available for acquisition because they are not offered for acquisition commercially on reasonable terms and conditions in any of the States; or

(3) The application of such requirements would pose an unreasonable financial hardship.

Category 1 tracks section 507(i)(1) of the Act. Category 2 is based on section 507(i)(1) and would preclude arguments that the physical unavailability in a state is not a valid reason for exemption when a vehicle can be ordered from somewhere else in the United States. Time delays in delivery of alternative fueled vehicles are generally not acceptable as an excuse. States must be cognizant of the possible irregular manufacturer production schedules and considerably longer lead times involved in the acquisition of alternative fueled vehicles compared with conventional vehicles. It is the responsibility of the state to plan and schedule its ordering and acquisitions of alternative fueled vehicles so as to comply with the acquisition requirements for each model year. Regarding category 3, section 507(i)(1) allows only States, not alternative fuel providers, the right to seek an exemption based on financial hardship. Proposed paragraph (d)(3) describes the few items of information that a State must submit to DOE when requesting an exemption based on financial hardship. (Earlier in this Supplementary Information, States were invited to comment on how DOE should interpret and apply the term "financial hardship.")

Proposed paragraph (g) provides that the Assistant Secretary for Energy Efficiency and Renewable Energy may grant a request for exemption. In order to keep the procedures simple, the Assistant Secretary may act finally for the Department, and there is no requirement to obtain the specific approval of the Secretary. If the Assistant Secretary denies the request for exemption, proposed paragraph (g) further provides for a State right to appeal to the Department's Office of Hearings and Appeals, whose decision would be final for the purpose of judicial review. Further discussion on the exemption process is found in section-by-section analysis for the Alternative Fuel Provider Vehicle Acquisition Mandate.

The Act requires that the exemption process be reasonable and simple. The DOE invites comments on the proposed process for States to request exemptions, in whole or in part.

Proposed Section 490.205 Reporting Requirements

Proposed § 490.205 will require each state that is subject to the vehicle acquisition mandate to submit to DOE an annual report. This report will assist DOE in determining if a state has met the requirements of this subpart as well as to determine how successfully the goals and requirements of this subpart are being met. For further discussion on reporting requirements, see proposed section 490.309. DOE invites comment as to the reasonableness of these reporting requirements, as well as recommendations for additional, substitute or reduced requirements which would achieve the desired results.

Subpart D—Alternative Fuel Provider Vehicle Acquisition Mandate

I. Background

The Alternative Fuel Provider Vehicle Acquisition Mandate is intended to cover a broad range of alternative fuel providers in a flexible, workable program that will allow for compliance in the most economical fashion possible. The program allows alternative fuel providers flexibility in the acquisition of new alternative fuel vehicles via purchase, lease, or conversion, and in the geographical placement of alternative fuel vehicles. It also provides a minimum of restrictions on how the alternative fueled vehicles are to be used.

The program specifies the criteria for determining whether an alternative fuel provider is covered and under what circumstances exemptions from the program will be granted. Only those alternative fuel providers who are classified as ''covered persons'' are subject to the requirements of this proposed regulation and only that affiliate, division, or other business unit which is substantially engaged in the alternative fuels business may be subject to the acquisition mandate requirements of the Act.

Proposed Section 490.300 Purpose and Scope

Proposed § 490.300 defines the purpose and scope of part 490 Subpart D as implementing the statutory requirements of section 501 of the Energy Policy Act of 1992, which sets forth a mandate for those alternative fuel providers, who are classified as covered persons, to acquire alternative fuel vehicles at an escalating percentage of their new vehicle acquisitions.

Proposed Section 490.301 Definitions

Proposed § 490.301 sets forth the definitions for part 490, Subpart D.

Proposed § 490.301 defines the term ''alternative fuels business'' as meaning an activity undertaken to derive revenue from: (1) Producing, storing, refining, processing, transporting, distributing, importing, or selling at wholesale or retail any alternative fuel other than electricity; or (2) generating, transmitting, importing, or selling at wholesale or retail electricity. This definition tracks the language of section 501(a)(2).

Proposed § 490.301 provides definitions for the terms ''affiliate,'' ''division,'' and ''business unit'' which are used in section 501 of the Act and proposed §§ 490.303 and 490.304. The first two are dictionary definitions. ''Business unit'' is defined to make clear the grouping of business activities must be similar in autonomy to affiliates and divisions.

Proposed § 490.301 defines the term ''normal requirements and practices'' as meaning the operating business practices and required conditions under which the principal business of the covered person operates. In a request for an interpretive ruling or in a civil penalty proceeding, the burden would be on the fuel provider to show that actions to acquire alternative fuel vehicles and/or obtain alternative fuel are outside the normal practices of the covered person's principal business.

Proposed § 490.301 defines the term ''principal business'' as meaning the largest sales-related gross revenue producing activity. If an organization derives a plurality of gross revenue from sales-related alternative fuels activity then the organization's principal business is alternative fuels. As it is used above, plurality does not require that over 50 percent of an organization's sales-related gross revenue be based on activities related to alternative fuels. Sales-related in this context means that the gross revenue does not come from investments such as corporate stocks.

In determining whether an organization's principal business is alternative fuels, the important criterion to look at is what is the organization's single largest source of sales-related gross revenue. For example, if an organization derives 35 percent of its sales-related gross revenue from alternative fuels and the next largest single source of sales-related gross revenue comprises 25 percent of the organization's gross revenue, the organization's principal business is alternative fuels.

Proposed § 490.301 defines the term ''substantially engaged'' to mean that a covered person, or affiliate, division, or other business unit thereof, regularly derives sales-related gross revenue from an alternative fuels business. To determine whether a covered person or affiliate, division, or other business unit thereof is ''substantially engaged'' in the alternative fuels business, it is important to look at the involvement the covered person, affiliate, division, or other business unit has with the alternative fuels business. Thus, only that affiliate, division, or business unit that meets the substantially engaged criteria, as defined above, is subject to the acquisition requirements of this program.

The covered person is responsible for clearly defining the specific affiliate, division, or other business unit that is substantially engaged and is therefore subject to the acquisition requirements of this rule. If this designation is not made or is not made clearly, DOE will assume that the entire organization is subject to the acquisition requirements of this rule and will enforce it as such.

Proposed § 490.301 defines the term ''substantial portion'' to mean that at least 2 percent of a covered person's refinery yield of petroleum products is composed of alternative fuels. Alternative fuel is as defined in proposed § 490.2. This proposed definition was formulated using reliable data compiled by the Energy Information Administration and published in its Petroleum Supply Annual 1993, Volume 1 (DOE/EIA–0340(93)/1). Table 19 provides aggregate data on refinery yield for the Petroleum Administration for Defense districts and can be readily verified.

The 2% threshold was chosen because it represents the average yield for the production of alternative fuel by petroleum refiners as reported by the Energy Information Administration. DOE believes that the use of this percentage in the definition of ''substantial portion'' allows for the initial identification of that group of covered persons described in Sec. 501(a)(2)(c) of the Act and provides a sound basis for identifying those affiliates, divisions, or other business units of such covered persons which are substantially engaged in the alternative fuel business.

The Department considered including some measure of the gross revenue attributed to the production of alternative fuels as an alternative in the definition of ''substantial portion.'' The first measure that was considered was setting a minimum level of gross revenue from the sale of alternative fuels that an organization would have to equal or exceed to be classified as an alternative fuel provider. The second measure that was considered was establishing a minimum percentage, that reflects the percent of total gross revenue attributed to the sale of alternative fuels, that an organization would have to equal or exceed to be classified as an alternative fuel provider. Unfortunately, the information available on these measures is too fragmented to be the basis for proposed regulatory language. DOE seeks comment on whether reliable information exists that would allow establishment of a monetary measure (or any measure apart from the measure in the proposed rule) for determining whether alternative fuels production comprises a substantial portion of a company's business. DOE also seeks comment recommending any other alternative definitions for ''substantial portion.''

Proposed Section 490.302 Vehicle Acquisition Mandate Schedule

Proposed § 490.302 describes the vehicle acquisition schedule that alternative fuel providers must comply with if they are classified as covered persons. Proposed paragraph (a) requires that of the new light duty motor vehicles acquired by alternative fuel providers, the following percentages shall be alternative fueled vehicles for the following model years:

(A) 30 percent for model year 1996.
(B) 50 percent for model year 1997.
(C) 70 percent for model year 1998.
(D) 90 percent for model year 1999 and thereafter. For example, if an alternative fuel provider purchases or leases 50 light duty motor vehicles in model year 1996, 30 percent, or 15, of the vehicles have to be alternative fueled vehicles.

Proposed paragraph (b) states that, except as provided by § 490.304, these requirements apply to all new light duty vehicles acquired by a ''covered person,'' not just those vehicles acquired for the fleets which initially qualified the alternative fuel provider as a ''covered person.'' These requirements also apply regardless of where the new vehicles are to be located. For example, if an alternative fuel provider, which is a covered person, is acquiring new light duty motor vehicles for a location that is not in a subject MSA or CMSA, the required percentage of these vehicles must be alternative fueled vehicles. The MSA/CMSA requirement is used for classifying ''covered persons,'' not for determining how many light duty vehicles must be alternative fueled vehicles. The provisions of proposed § 490.302(b) are not discretionary because they follow the wording of section 501(a)(1) of the Act. 42 U.S.C. 13251(a)(1).

Proposed paragraph (c) provides for rounding off to the next higher number if application of a percent to the base number of new light duty vehicles acquired results in a requirement to acquire a fraction of a vehicle. This procedure is consistent with the statutory objective of promoting the acquisition of alternative fuel vehicles.

Proposed paragraph (d) states that only acquisitions satisfying the mandate, as described in proposed § 490.305, and/or Alternative Fueled Vehicle credits will be counted toward compliance with the acquisition schedule in proposed paragraph (a).

Proposed Section 490.303 Who Must Comply

Proposed § 490.303 gives an answer to the question: who is a covered person that must comply? This proposed section tracks section 501(a)(2) of the Act. There are two components to this determination. The first component involves determining whether the organization fits the profile of an alternative fuel provider as provided by section 501(a)(2) of the Act. The second component eliminates from coverage those alternative fuel providers whose principal business uses alternative fuel to create a product that is not an alternative fuel.

Types of companies likely to be covered persons subject to the alternative fuel providers mandate include, but are not limited to, private and public electric and natural gas utilities; natural gas distribution companies; pipeline companies; petroleum companies; propane producers, distributors, and suppliers; methanol providers; ethanol providers; and fuel transport companies.

Municipal utilities possessing the required fleet size, fueling characteristics, and located within the specified geographical areas are classified as alternative fuel providers under section 501(a)(2)(B). Therefore, they are expected to comply with the requirements of the mandate under § 490.302 and will not be subject to any future municipal fleet mandate imposed by rule under section 507 of the Act.

If an organization produces, imports, or produces and imports in combination, an average of 50,000 barrels per day or more of petroleum, and regularly derives gross revenue from the production of alternative fuels, that organization has a ''substantial portion'' of its business in alternative fuels. To determine whether an organization has a substantial portion of its business in alternative fuels it is important to look at the organization's involvement in the alternative fuels business, not just the amount of gross revenue from alternative fuels production or the level of investment in alternative fuels production. DOE's determination of whether an organization has a substantial portion of its business in alternative fuels will be made on a case-by-case basis. Comment is invited as to what criteria might be used in making this determination.

Paragraph (b) of proposed § 490.303 deals with covered persons who are excluded from having to comply with this subpart. This section tracks the language of section 501(a)(3)(B) of the Act. Two types of covered persons may be excluded from the requirements of this regulation: (1) Those who transform alternative fuels into a product that is not an alternative fuel; and (2) those who consume alternative fuels as a feedstock or fuel in the manufacture of a product that is not an alternative fuel.

An example of an excluded person described in paragraph (b)(1) would be a manufacturer of windshield washer fluid. The manufacturer would be classified as an excluded person because it blends an alternative fuel, methanol, in producing windshield washer fluid, which is not an alternative fuel.

An example of an excluded person described in paragraph (b)(2) would be a company that burns natural gas to provide a heat source for a manufacturing operation.

An example of an excluded person under paragraphs (b)(1) and (b)(2) would be an entity whose principal business is the production of alcoholic beverages.

Proposed Section 490.304 Which New Light Duty Motor Vehicles Are Covered

Under section 501(a)(3)(A) of the Act, if the covered person has more than one affiliate, division, or other business unit, only the vehicles of an affiliate, division, or business unit that is ''substantially engaged in the alternative fuels business'' are subject to the vehicle acquisition mandate. Proposed § 490.304 reflects the provisions of section 501(a)(3)(A), and should be read in conjunction with the proposed definitions of ''affiliate,'' ''division,'' and ''business unit'' in § 490.301.

Proposed Section 490.305 Acquisitions Satisfying the Mandate

Proposed § 490.305 deals with the three types of acquired vehicles that will count toward compliance with proposed § 490.302, in addition to alternative fueled vehicle credits under Subpart F. These categories provide flexibility for organizations in acquiring vehicles to meet this regulation. An alternative fueled light duty motor vehicle shall be considered newly acquired, regardless of model year, if:

(a) The vehicle is an Original Equipment Manufacturer vehicle capable of operating on alternative fuels and was not previously under the control of the covered person; or

(b) The vehicle is an after-market converted vehicle and was not previously under the control of the covered person; or

(c) The vehicle is an Original Equipment Manufacturer vehicle that has been converted to operate on alternative fuels prior to the vehicle's first use in service.

A vehicle that meets the description of paragraph (a) is one that is manufactured by an Original Equipment Manufacturer to be capable of operating on alternative fuels. For example, if a covered person acquires a 1993 flex-fuel light duty motor vehicle during model year 1996, this vehicle is classified as being a new acquisition for that organization.

A vehicle that meets the description of paragraph (b) is one that has been converted by a licensed converter to be capable of operating on alternative fuels. A vehicle that meets the description of paragraph (c) is a vehicle that upon acquisition by the organization is taken to a licensed converter for conversion to an alternative fueled vehicle and is never intended to be operated solely on petroleum-based fuel. It is important to note that section 507(j) of the Act states that no fleet owner shall be required to acquire converted vehicles in order to meet compliance with this or any fleet acquisition requirement.

Proposed Section 490.306 Vehicle Operation Requirements

Proposed § 490.306 largely tracks the provisions of section 501(a)(4), which requires that all alternative fueled vehicles acquired pursuant to section 501 be operated solely on alternative fuels, except when these vehicles are operating in an area where alternative fuel is not available.

Proposed Section 490.307 Option for Electric Utilities

Proposed § 490.307 deals with the statutory option for electric utilities. Proposed paragraph (a) tracks the provisions of section 501(c) of the Act, which provides that a covered person whose principal business is generating, transmitting, importing, or selling, at wholesale or retail, electricity has the option of delaying the alternative fuel vehicle acquisition schedule in section 501(a) of the Act until January 1, 1998, if that covered person intends to comply with this regulation by acquiring electric motor vehicles. DOE considered delaying the date that electric utilities would have to start acquiring vehicles until the beginning of model year 1999 which starts on September 1, 1998. But given that the California Air Resources Board requires that 2 percent of all vehicles sold in California by major auto producers be Zero Emission Vehicles, (emission level currently only achievable by electric vehicles) starting September 1, 1997, DOE decided not to propose a delay in the effective date of the 30 percent alternative fueled vehicle acquisition requirement. Also, the States of New York and Massachusetts have enacted laws which adopt California standards and timetables.

Proposed paragraph (b) provides the date (January 1, 1996) by which notification must be received by DOE for an electric utility to be eligible for this delayed schedule. That date is dictated by section 501(c) of the Act. This notification should be in letter format and must explain the utility's commitment to electric vehicles.

Proposed paragraph (c) describes the acquisition schedule that an electric utility must comply with if the electric utility notifies the Secretary by the required date.

Proposed Section 490.308 Process for Granting Exemptions

Proposed § 490.308 deals with the requirements of section 501(a)(5) of the Act which provides for a simple and reasonable exemption process for those covered persons seeking exemptions either because alternative fuel is not available or alternative fueled vehicles are not reasonably available. Proposed paragraph (a) describes the procedure that a covered person needs to complete to receive an exemption. The first category of exemption is if any covered person demonstrates to the satisfaction of the Secretary that alternative fuels that meet the normal requirements and practices of the principal business of that person are not available in the area where the vehicles are to be operated. The second category of exemption is if any covered person demonstrates to the satisfaction of the Secretary that alternative fueled vehicles that meet the normal requirements and practices of the principal business of that person are not reasonably available for acquisition because they are not offered for acquisition commercially on reasonable terms and conditions in the United States. These exemptions would be granted for one model year only. To receive exemptions for additional model years, alternative fuel providers must re-apply to the Secretary each year. Criteria for granting exemptions will be based on documentation that specifically relates to the availability of alternative fuels and alternative fueled vehicles.

To determine whether alternative fuel is ''not available,'' an alternative fuel provider must map out the operating area and base of operations for its fleet of vehicles. Next it must locate on the map the alternative fueling facilities within its MSA or CMSA. Then, for each vehicle, it must determine whether any location providing alternative fuel is in the area in which the vehicle is operated. If there is any location providing alternative fuel within the vehicle's operating area, alternative fuel is available. If there are no locations providing alternative fuel, for *any* alternative fuel that meets the normal requirements and practices of the covered person's principal business, within the vehicle's operating area, then alternative fuel is ''not available.''

The Act requires that the exemption process be reasonable and simple. DOE invites comment on the proposed process for exemptions, in whole or in part.

It is anticipated that alternative fuel will be available and accessible for almost all alternative fuel providers, and that it will be difficult for fuel providers to prove that alternative fuel is not available. Since alternative fuel providers stand to benefit greatly from the expanded use of alternative fuels and the proliferation of alternative fueled vehicles, it is also anticipated that they will help accelerate the establishment of the alternative fuels infrastructure and be less likely to seek exemptions based on alternative fuels being ''not available.''

To receive an exemption based on the criteria in subparagraph (a)(2) a covered person must show that there are no alternative fueled vehicles available for commercial acquisition on reasonable terms and conditions in any State. The covered person also must show good faith effort in attempting to obtain these vehicles. DOE requests comment on the extent to which vehicle cost, either initial cost or life-cycle cost, should be considered in determining whether vehicles are available on ''reasonable terms.''

If a covered person normally and historically acquires vehicles from one automobile dealer or from one automobile manufacturer, but is unable to acquire alternative fueled vehicles of the model type needed from these same sources, this is not sufficient to qualify for an exemption under subparagraph (a)(2) if appropriate alternative fueled vehicles are available from other dealers or manufacturers. Having to use another dealer or manufacturer is not classified as outside the normal requirements and practices of the covered person, because the same procedures that are currently being employed by the covered person to obtain these vehicles can be used to obtain them from different sources.

Having to wait slightly longer for delivery of alternative fueled vehicles than for conventionally fueled vehicles is not a sufficient reason for granting an exemption. If, however, the time delay will result in a covered person violating the regulation, DOE will consider the covered person to be in compliance with this regulation if the delivery delay was through no fault of its own. Thus, if alternative fueled vehicles are ordered during the model year with expectations that they will be delivered by the end of the model year, but are not delivered until the next model year, the covered person will be deemed to be in compliance if it can provide DOE with proof of order date and anticipated delivery schedule. On the other hand, if a covered person orders alternative fueled vehicles and knows, at the time of the order, that it will not be receiving these alternative fueled vehicles by the end of the model year, it will be deemed to be in noncompliance and no exemption will be granted.

Additionally, in determining whether alternative fueled vehicles are reasonably available, a covered person must examine whether alternative fueled vehicles of the appropriate type are available in any alternative fuel configuration. Thus, the availability of the type of vehicle a covered person needs that operates on the fuel that the covered person provides is not the appropriate test for determining whether alternative fueled vehicles are ''not reasonably available.'' The test for determining whether alternative fueled vehicles are ''not reasonably available'' is whether there are alternative fueled vehicles available that operate on *any* alternative fuel and meet the normal requirements and practices of the business, including the vehicle performance requirements of the business.

Proposed paragraph (b) sets forth the types of documentation in support of exemption requests that should be provided to DOE.

Proposed paragraph (e) states that exemption determinations are letter rulings binding for the covered person only and cannot be used to establish a precedent for other exemption requests. DOE will review each exemption request on a case-by-case basis.

In proposed paragraphs (f) and (g) DOE is proposing an administrative remedy for those aggrieved by the initial decision of the DOE Deciding Official, who will be the Assistant Secretary for Energy Efficiency and Renewable Energy. In order to exhaust administrative remedies, it will be necessary to appeal to DOE's Office of Hearings and Appeals. This procedure has two virtues. It would be less expensive than pursuing a judicial remedy immediately. It would also ensure that DOE has made a record which is appropriate for judicial review in the event a petition for review is filed in a Federal court.

Proposed Section 490.309 Annual Reporting Requirements

Proposed § 490.309 sets forth annual reporting requirements. An annual report to verify regulation compliance is required of all alternative fuel providers. Proposed paragraph (a) sets forth where and by when annual reports should be sent.

Proposed paragraph (b) describes the required information that would be included in this annual report. Most of the requirements are self-explanatory; however, several of them deserve discussion for clarification purposes.

Proposed subparagraph (b)(2) would require covered persons to calculate the number of new light duty alternative fueled vehicles that they are required to acquire. To determine this number, a covered person would multiply the number entered for proposed subparagraph (b)(1), by the acquisition percentage from § 490.302 or § 490.307 that applies for that model year. For example, in model year 1996, if the number of new light duty motor vehicles acquired is 50, the number of new light duty vehicles that are required to be acquired is 30 percent of 50, or 15 ($50 \times .3 = 15$). The number of new light duty alternative fueled vehicles acquired, added to the number of alternative fueled vehicle credits applied, from proposed subparagraph (b)(5), should be greater than or equal to the number calculated for proposed subparagraph (b)(2).

Proposed paragraph (c) sets forth the procedure that a covered person must follow if it is applying alternative fueled vehicle credits against its acquisition requirements.

Consistent with the requirements of 5 CFR Part 1320.6(f), proposed paragraph (d) would require that records related to this reporting requirement be maintained and retained for a period of three years.

DOE seeks comment on the reporting requirements, especially relating to the information that is requested to be included in the report.

Subpart F—Alternative Fueled Vehicle Credit Program

Background

Section 508 of the Act requires DOE to establish an alternative fueled vehicle credit program that will allocate alternative fueled vehicle credits to a fleet or covered person that is required to acquire alternative fueled vehicles under Title V of the Act if that fleet or covered person acquires alternative fueled vehicles in excess of the number that fleet or covered person is required to acquire or acquires alternative fueled vehicles prior to the date that fleet or covered person is required to acquire alternative fueled vehicles. An alternative fueled vehicle credit may be used to comply with alternative fuel provider or fleet program requirements in a later year, or may be traded or sold for use to another fleet or covered person who is required to acquire alternative fueled vehicles by Part 490.

The purpose of establishing a credit program is to provide purchasing flexibility for the regulated fleet operators without sacrificing the program's energy security goals. The general concept is that some fleet operators may, at times, find it attractive to buy more alternative fueled vehicles than required, if in doing so they can get credit against future acquisition requirements, or can sell or transfer the credits to another party. If the credits program is properly implemented and managed, there will be no decrease in energy security compared to a program based strictly on compliance through acquisitions.

Both section 246(f) of the Clean Air Act (42 U.S.C. 7586(f)) and section 508 of the Act (42 U.S.C. 13258) allow for awarding credits to entities that initiate clean fuel vehicle or alternative fueled vehicle programs sooner or in greater numbers than required. But the laws differ in their goals: the goal of the Clean Air Act Amendments is to improve air quality while the goal of the Act is energy security. Thus, the credit programs and implementing regulations emanating from these acts also have different goals and objectives.

The EPA has a program called the Clean Fuel Fleet Credit Program (40 CFR § 88.304–94) that may be confused with the Department's Alternative Fueled Vehicle Credit program. In the Clean Fuel Fleet Credit program, a fleet owner obtains credits by implementing clean fuel vehicles earlier, in greater numbers, or which meet more stringent emission standards than those established by EPA. Clean Fuel Fleet credits can also be obtained for Clean Fuel Vehicle purchases in vehicle categories that are excluded from the Energy Policy Act definition of ''fleet''. These credits are awarded based on a formula that compares the clean fuel vehicle emissions with conventional vehicle emissions. By contrast, under section 508 of the Energy Policy Act, one credit is allocated for each alternative fueled vehicle acquired in excess of the required number. Also, the Energy Policy allocates one credit for each year the alternative fueled vehicle is acquired before the required date.

Another area of difference between the two statutes is where they allow credits to be traded. Under the Clean Air Act, credit trading is only allowable within the same non-attainment area. For example, fleet operators in the Baltimore non-attainment area can only buy, sell, or trade credits with other fleet operators in the Baltimore area. Congress appears to have concluded that it was not logical for non-attainment areas to trade credits with other areas, because the air quality in the area where credits were purchased and used would not be improved as a result of this transaction. On the other hand, the Energy Policy Act credits can be traded freely among those organizations that are required to acquire alternative fueled vehicles, which are located within the United States. However, there is an exception to this trading provision, based upon the last sentence of section 508(d) of the Act, which provides that vehicles representing credits generated or transferred to alternative fuel providers operate solely on alternative fuel. (42 U.S.C. 13258). This requirement is discussed under § 490.506 of this Supplementary Information. Because one of the major goals of the Act is the reduction of our Nation's foreign oil dependency, it makes little difference where in the United States this reduction takes place.

Proposed Section 490.500 Purpose and Scope

Proposed § 490.500 defines the purpose and scope of part 490 subpart F as implementing the statutory requirements of Section 508 of the Act, which instructs the Secretary to allocate credits to fleets or covered persons that acquire alternative fueled vehicles in excess of the number required, or obtain alternative fueled vehicles prior to the date when they are required to acquire alternative fueled vehicles.

Proposed Section 490.501 Applicability

Proposed § 490.501 deals with the applicability of the credit program to fleets and covered persons.

Proposed Section 490.502 Creditable Actions

Proposed § 490.502 describes the actions associated with allocation of alternative fueled vehicle credits by DOE. Proposed paragraphs (a) and (b) are consistent with the language of section 508(a) of the Act, which authorizes the Secretary to allocate credits to fleets or covered persons that acquire alternative fueled vehicles in excess of the number they are required to acquire, or acquire alternative fueled vehicles in advance of the date they are required to. Once a fleet or covered person is required to acquire alternative fueled vehicles the only way credits can be generated is by exceeding their required acquisition number. For example, an alternative fueled vehicle acquired in excess of the number required in model year 1996 cannot be claimed to be an early alternative fueled vehicle acquisition for model year 1999. The excess alternative fueled vehicle will generate 1 alternative fueled vehicle credit only, not 3 credits because it was acquired 3 years in advance.

Additionally, DOE is proposing that one credit be allocated for the acquisition of a light duty alternative fueled vehicle in a category listed in proposed § 490.3, such as motor vehicles held for lease or rental to the general public, law enforcement vehicles, etc. Section 508(b) provides the statutory basis for this proposal because it refers to the allocation of credits for the acquisition of alternative fueled vehicles in excess of the number required. Therefore, the acquisition of light duty alternative fueled vehicles in the excluded categories constitutes the acquisition of alternative fueled vehicles in excess of the number required qualifies for the allocation of credits. Because these excluded vehicles are not required to be acquired they are not eligible to earn credits for early acquisition which results in multiple credits. Thus, DOE is proposing that the acquisition of these vehicles in excess of the required number will generate only one credit per vehicle.

It is reasonable to expect that any requirements placed on alternative fueled vehicles which are acquired to comply with alternative fuel provider or fleet program requirements would also apply to vehicles that generate credits. For example, the Act requires that alternative fuel providers operate their alternative fueled vehicles solely on alternative fuels except when operating in an area where the appropriate alternative fuel is unavailable. A net loss to energy security goals would occur if a credit-generating vehicle, such as an alternative fueled vehicle bought a year earlier than required by an alternative fuel provider, did not also operate solely on alternative fuel. This requirement applies only to those alternative fueled vehicles that generate credits to be used by covered persons who are alternative fuel providers. The Department is unaware of any possible requirements which would apply to vehicles purchased to demonstrate compliance and not to vehicles purchased for credits. Therefore, DOE is proposing that any such requirements apply equally to both types of vehicles.

The Department considered whether to allow the acquisition of medium duty and heavy duty alternative fueled vehicles (those alternative fueled vehicles with gross vehicle weight ratings of greater than 8,500 lbs.), by covered persons and fleets, to generate credits. Many medium duty and heavy duty vehicles are predominantly urban use vehicles, such as transit buses and delivery trucks, and could take advantage of the anticipated fueling infrastructure within these urban areas. These vehicles possess larger capacity engines, which consume significantly more fuel than light duty vehicles and result in increased displacement of petroleum-based fuel. However, paragraph (b) of section 508 provides that credits can only be allocated for the acquisition of the same type of vehicles that are required under the fleet mandates of Title V of the Act. The only type of vehicles that are required to be acquired in Title V are light duty vehicles. Thus, credits cannot be awarded for the acquisition of medium duty and heavy duty vehicles because the Act does not require any fleet or covered person to acquire them.

Proposed Section 490.503 Credit Allocation

Proposed § 490.503 deals with alternative fueled vehicle credit allocation. Proposed paragraphs (a) and (b) are consistent with the language of section 508(a) of the Act, which describes how credits are to be allocated. Before alternative fueled vehicle credits are allocated they must be applied for using the procedure described in proposed § 490.507.

Proposed paragraph (a) provides for the allocation of one credit for each alternative fueled vehicle a fleet or covered person acquires that exceeds the number of alternative fueled vehicles that fleet or person is required to acquire. If a fleet or covered person is required to acquire 10 alternative fueled vehicles in a model year and they acquire 15 alternative fueled vehicles, they can apply for allocation of five alternative fueled vehicle credits.

Proposed paragraph (b) provides for the allocation of one credit per alternative fueled vehicle for each year the alternative fueled vehicle is acquired in advance of the date the fleet or covered person is required to acquire alternative fueled vehicles. These credits cannot be allocated until the date that a fleet is required to acquire alternative fueled vehicles. Thus, only covered persons and State fleets are presently eligible for credit allocation. Until such time as private and municipal fleets are required to acquire alternative fueled vehicles, they cannot be allotted credits for early acquisition. At that time, all alternative fueled vehicles acquired between October 24, 1992, and the start date of the private and municipal fleet mandate would be eligible for credit allocation.

Proposed paragraph (c) provides for the allocation of credits to alternative fuel providers and State governments for alternative fueled vehicles acquired from October 24, 1992, the date the Energy Policy Act was enacted.

Credit allocation is best explained by the following examples. In the first example a covered person acquires 10 alternative fueled vehicles in model year 1994 and 15 alternative fueled vehicles in model year 1995. Because the covered person is not required to acquire alternative fueled vehicles until model year 1996, each alternative fueled vehicle acquired in model year 1994 will generate 2 credits and each alternative fueled vehicle acquired in model year 1995 will generate 1 credit. Thus, the covered person generates 35 credits [$(10\times2)+(15\times1)=35$], which can be used against future alternative fueled vehicle acquisition requirements or can be traded.

In the second example a state fleet acquires 50 alternative fueled vehicles in model year 1995 and 15 alternative fueled vehicles in excess of their required acquisition number in model year 1996. The state generates 50 credits for acquiring alternative fueled vehicles early and 15 credits for acquiring alternative fueled vehicles in excess of their required number. If the state doesn't trade away or use any credits, it will have 65 credits that it can use against future acquisitions or can trade.

A database will be established that will keep a record of credit allocations, trades and credit balances.

Proposed Section 490.504 Use of Alternative Fueled Vehicle Credits

Consistent with the language of section 508(c) of the Act, proposed § 490.504 states that a credit shall be treated as the acquisition of a light duty alternative fueled vehicle. Each alternative fueled vehicle credit will represent one light duty alternative fueled vehicle and can be applied against the required alternative fueled vehicle acquisition number for one model year only, designated by a fleet or covered person, in lieu of the acquisition of a light duty alternative fueled vehicle during that model year.

Proposed Section 490.505 Credit Accounts

Proposed § 490.505 deals with Alternative Fueled Vehicle Credit accounts. Proposed paragraph (a) states that DOE will establish a credit account for each fleet or covered person who obtains an alternative fueled vehicle credit.

Proposed paragraph (b) states that each fleet or covered person will receive an annual credit account balance statement after the receipt and recording of its annual activity report. This statement will reflect the credit account activity that occurred in the previous model year and can be used as proof of the credit balance for an account.

DOE is considering whether to provide updated credit account balance statements to fleets and covered persons upon request during the year and is also considering whether to charge a nominal fee for this service. These updated credit account balance statements would provide written proof of a fleet or covered person's credit account balance as of the date they are printed. These updated credit account balance statements may be required of a credit seller by a credit purchaser before proceeding with the credit transfer. Thus, the credit seller can use this updated credit account balance statement to gain independent private benefit.

The charging of a fee for this service is authorized under 31 U.S.C. 9701, which provides that each Federal government agency may establish a charge for a service of a thing of value provided by the agency if this service results in independent private benefit. This charge must be fair and based on the costs to the Government, the value of the service or thing to the recipient, public policy or interest served, and other relevant facts. DOE asks for comments related to the desirability of providing updated credit account balance statements and what value a fleet or covered person would place on this service.

Proposed Section 490.506 Alternative Fuel Vehicle Credit Transfers

Proposed § 490.506 deals with the transfer of alternative fueled vehicle credits. Proposed paragraph (a)(1) states that any fleet may transfer an alternative fueled vehicle credit to any other fleet, which is required to acquire alternative fueled vehicles. In contrast, proposed paragraph (a)(2) states that any fleet may transfer an alternative fueled vehicle credit to an alternative fuel provider, who is a covered person, if the fleet provides certification to the covered person that the credit represents a vehicle that operates solely on alternative fuel. This restriction on the transfer of credits from a fleet to an alternative fuel provider, who is a covered person, is necessary because of the vehicle operational requirement placed on alternative fuel provider vehicles. 42 U.S.C. 13251(a)(4). Section 508(d) of the Energy Policy Act permits alternative fuel providers to use credits only if these operational requirements are met. 42 U.S.C. 13258(d).

Proposed paragraph (c) states that proof of credit transfer should be provided to DOE within seven days of the transfer date, and provides for the use of a DOE form, or other written documentation containing the dated signatures of the transferor and transferee. This provision allows for the maintenance and verification of credit transfer activity.

Proposed Section 490.507 Credit Activity Reporting Requirements

Proposed § 490.507 describes the credit program's activity reporting requirements. An annual report is required of all fleets or covered persons who have generated or traded alternative fueled vehicle credits to record and track their credit activity. Proposed paragraph (a) sets forth where and by when annual reports should be sent.

Proposed paragraph (b) describes the required information that would be included in this annual report. Most of the requirements are self-explanatory, however, subparagraph (b)(4) deserves discussion for clarification purposes.

Proposed subparagraph (b)(4) would only allow a fleet or covered person to report either the number of alternative fueled vehicles acquired in excess of acquisition requirements or the number of alternative fueled vehicles acquired in advance of the start date of the acquisition requirements, not both of them. Once the first model year in which acquisition requirements apply has begun, credits can no longer be earned for early acquisition of alternative fueled vehicles.

Subpart G—Investigations and Enforcement

Proposed Section 490.601 Powers of the Secretary

Proposed § 490.601 sets forth the powers of the Secretary provided specifically by section 513 of the Act. Some of these powers (e.g., subpoenas for witnesses or documents) can be used either in a investigative effort begun with orders to show cause or in connection with a civil penalty proceeding.

Proposed Section 490.602 Special Orders

Proposed § 490.602 tracks the provisions of section 505(b)(1) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. § 2005(b)(1). Those provisions are applicable under part 490 because section 505(b)(1) is cross referenced in section 513 of the Act. Orders under this section could be used to deal with a wide variety of circumstances. One example would be the failure to submit a required report. Another would be an order to show cause why civil penalty proceedings should not be initiated for failure to comply with subparts C, D, or F.

Proposed Section 490.603 Prohibited Acts

This proposed regulation tracks the language of section 511 of the Act. 42 U.S.C. 13261.

Proposed Section 490.604 Penalties and Fines

This proposed regulation follows section 512 of the Act. 42 U.S.C. § 13262. The text reflects DOE conclusions with regard to which of the subsections of section 512 provide for civil penalties and which provide for criminal fines.

Proposed Section 490.605 Statement of Enforcement Policy

In rare instances, DOE may initiate enforcement with the object of ensuring compliance and deterring future violations. This proposed section indicates that DOE will not proceed with enforcement if there is a satisfactory compliance agreement.

Proposed Section 490.606 Proposed Assessments and Orders

This proposed section provides for issuance of proposed assessments of civil penalty and an order to pay which becomes a final order for the Department if the recipient fails to appeal on a timely basis to the Office of Hearings and Appeals.

Proposed Section 490.607 Appeals

This proposed section provides for administrative due process if the recipient of a proposed assessment and order to pay wishes to contest the basis therefore. The appeal must be filed in the Office of Hearings and Appeals on or before 30 days from the date of the issuance of a proposed assessment and order. Most of the applicable procedures for the Office of Hearings and Appeals are in subpart H of 10 CFR part 205. In addition, paragraph (b) of proposed § 490.607 provides that the appellant has the ultimate burden of persuasion which is appropriate because the appellant will in most cases have unequal access to the relevant evidence (its own records). Paragraph (b) also provides that a trial-type hearing on contested issues of fact may occur only if the hearing officer concludes that cross examination will materially assist in determining the facts in addition to the evidence available in documentary form. There should not be extended hearings in order to fill the record with evidence which is largely repetitious.

III. Opportunity for Public Comment

A. Participation in Rulemaking

Interested persons are invited to participate in this proposed rulemaking by submitting written data, views, or comments with respect to the subject set forth in this notice. The Department encourages the maximum level of public participation possible in this rulemaking. Individual consumers, representatives of consumer groups, manufacturers, associations, coalitions, states or other government entities, and others are urged to submit written comments on the proposal. The Department also encourages interested persons to participate in the public hearings to be held at the times and places indicated at the beginning of this notice. Comments relating to the energy security, environmental, or economic effects that might result from the adoption of the proposals contained in this notice are specifically invited and desired. Whenever applicable, full supporting rationale, data and detailed analyses should also be submitted.

B. Written Comment Procedures

Written comments (eight copies) should be identified on the outside of the envelope, and on the comments themselves, with the designation: ''Alternative Fuel Provider Vehicle Acquisition Mandate and Alternative Fuel Vehicle Credit Program, NOPR, Docket Number EE–RM–95–110'' and must be received by the date specified at the beginning of this notice. In the event any person wishing to submit a written comment cannot provide eight copies, alternative arrangements can be made in advance by calling Andi Kasarsky at (202) 586–3012. Additionally, the Department would appreciate an electronic copy of the comments to the extent possible. The Department is currently using WordPerfect 5.1 for DOS.

All comments received on or before the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed rule. All comments submitted will be available for examination in the Rule Docket File in DOE's Freedom of Information Reading Room both before and after the closing date for comments. In addition, a transcript of the proceedings of the public hearings will be filed in the docket.

Pursuant to the provisions of 10 CFR 1004.11 any person submitting information or data that is believed to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be confidential has been deleted. The Department of Energy will make its own determination of any such claim and treat it according to its determination.

C. Public Hearing Procedures

The time and place of the public hearings are indicated at the beginning of this notice. The Department invites any person who has an interest in the proposed regulation or who is a representative of a group or class of persons which has an interest to make a request for an opportunity to make an oral presentation at the hearing. Requests to speak should be sent to the address or phone number indicated in the **ADDRESSES** section of this notice and be received by the time specified in the **DATES** section of this notice.

The person making the request should briefly describe his or her interest in the proceedings and, if appropriate, state why that person is a proper representative of the group or class of persons that has such an interest. The person also should provide a phone number where they may be reached during the day. Each person selected to speak at a public hearing will be notified as to the approximate time that they will be speaking. They should bring ten copies of their statement to the hearing. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made in advance with Andi Kasarsky, (202) 586–3012.

The DOE reserves the right to select persons to be heard at the hearings, to schedule their presentations, and to establish procedures governing the conduct of the hearing. The length of each presentation will be limited to ten minutes, or based on the number of persons requesting to speak.

A Department official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553 and Section 501 of the Department of Energy Organization Act. 42 U.S.C. 7191. At the conclusion of all initial oral statements, each person will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the Presiding Officer at the hearing.

If DOE must cancel a hearing, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register**. Notice of cancellation will also be given to all persons scheduled to speak at the hearing. Hearing dates may be canceled in the event no public testimony has been scheduled in advance.

IV. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effect on states, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are substantial effects, then the Executive Order requires a preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing policy action.

This proposed rule establishes an Alternative Fueled Vehicle Credit Program under which states may generate credits if they obtain alternative fueled vehicles in excess of their required quantity or if they obtain alternative fueled vehicles prior to the date when they are required and establishes a mandate for state fleets to acquire alternative fuel vehicles. The allocation of credits is based on the measurable actions of obtaining alternative fueled vehicles and is available to fleets, that meet the requirements, throughout the United States.

The granting of credits to states will be handled in the same manner as the granting of credits to any other fleet operator. The enforcement of the state fleet mandate will be handled in the same manner as other mandate programs. States can also apply for a hardship exemption which would exempt them from acquiring alternative fuel vehicles in any given year.

The Department has determined that since states are treated the same as any other fleet operator in the allocation of credits and in the administration and enforcement of the fleet mandate, the proposed rule will not have a substantial direct effect on the institutional interests or traditional functions of States. In addition, the provision for hardship exemptions included in the state fleet mandate precludes any possible violation in the authority that the Federal government has over States. Thus, preparation of a federalism assessment is therefore unnecessary.

V. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in section 2 (a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation describes any administrative proceeding to be available prior to judicial review and any provisions for the exhaustion of administrative remedies. DOE certifies that the proposed rule meets the requirements of section 2 (a) and (b)(2) of Executive Order 12778.

VI. Review Under Executive Order 12866

This regulatory action has been determined to be a significant regulatory action under Executive order 12866, Regulatory Planning and Review, October 4, 1993. Accordingly, today's action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA). DOE concluded that the proposed rule would not result in (1) an annual effect on the economy of $100 million or more or (2) have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete in domestic export markets. OIRA requested that DOE prepare a cost analysis. In this section of the Supplementary Information, DOE describes the assumptions and main conclusions of that cost analysis. A copy of that cost analysis is available for public inspection in the administrative record on file in DOE's Freedom of Information Reading Room. DOE has also placed in that file a copy of the notice of proposed rulemaking as transmitted to OIRA, as well as exchanges of correspondence between DOE and OIRA showing changes in the notice agreed to by the two agencies.

The cost analysis spans a 25-year time frame, from 1995 to 2020, which included the incremental vehicle purchase cost and the cost differential between alternative fuels and gasoline under five different scenarios. The analysis examines the effects the proposed rule will have on the acquisition of alternative fueled vehicles by fuel providers and State fleets, exclusive of the effects of non-mandated acquisition of vehicles by these and other fleets. In doing so it assumes that no alternative fueled vehicles will be acquired by these fleets prior to model year 1996. In actuality, these fleets currently are acquiring alternative fueled vehicles—either because of economics, State laws or business strategies—and will probably continue to do so in the future. This assumption focuses the analysis on the estimated costs to fuel providers and State fleets in complying with the proposed regulation without distorting it in any substantial way. Assumptions about the number of vehicles acquired, the operating characteristics of those vehicles, fleet vehicle replacement rates, current and future alternative fueled vehicle incremental costs, and current and future retail fuel costs were based on previous analyses undertaken by the Department.

The costs to fuel providers and State fleets in complying with the proposed rule varies depending upon vehicle type, fuel type and fuel consumption, but in no case are the annual costs estimated to exceed $61 million per year. More typically, the estimated annual costs are approximately $25 million, decreasing to $10 million per year in later years. In reaching these conclusions, the Department took into account the fact that some alternative fuel providers may not operate vehicles solely on the fuel they provide and may have to purchase other alternative fuels at retail prices. Retail fuel prices for all alternative fuels were used in the analysis. These prices have three main components: (1) The wholesale fuel cost; (2) the cost of transporting the fuel from production points to retail outlets; and (3) the retail outlet mark-ups.

In one scenario, the annual costs to State fleets decreased to a point where it is estimated that these fleets would incur savings as a result of complying with the proposed rule. This scenario assumes that the most popular alternative fueled vehicles will be flexible-fuel vehicles that can operate on gasoline and/or methanol. Because the proposed rule does not impose a fuel use requirement on State fleets, it is logical to assume that States will choose to operate these vehicles on the fuel which costs less at a certain point in time; currently that fuel is gasoline. It is expected that the nominal incremental cost for these vehicles, together with the fact that their operation and refueling is identical to a gasoline-only version, should make them very attractive to State fleet managers. The expected popularity of these vehicles, combined with estimates that show methanol prices falling below gasoline by model year 2001, result in annual cost savings to State fleets, starting with model year 2005, in the range of $400,000 to $1 million.

In order to provide commenters with a better understanding of the effects of this proposal, the Department plans to make revisions and improvements to its analysis before the close of the comment period. To aid in this effort, the Department seeks comments on all aspects of its analysis. In particular, the Department is interested in comment on the following elements of the analysis: the retail and net-of-excise-tax future price projections for gasoline and alternative fuels; the assumption that alternative fueled vehicle purchases, that would result in apparent life-cycle cost savings, would not occur in the absence of this rule; and the assumption that the cost per gallon of gasoline displaced falls as the amount of gasoline displaced increases. The Department would also be interested in data that would aid in estimating the extra refueling costs for ''covered persons'' whose fleets use fuels other than the one they themselves provide, e.g., a natural gas pipeline company whose alternative fueled vehicles operate on methanol or ethanol.

VII. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, was enacted by Congress to ensure that small entities do not face significant negative economic impact as a result of Government regulations. In instances where significant impacts are possible on a substantial number of entities, agencies are required to perform a regulatory flexibility analysis.

DOE has determined that this proposed rule will not have a significant negative impact on a substantial number of small entities. To be covered by this rulemaking, an organization must own, operate or control at least 50 light duty motor vehicles, of which at least 20 light duty motor vehicles used primarily within a single MSA or CMSA must be capable of being centrally fueled. An organization that fits this description is usually not a small organization, but one of medium size or larger.

VIII. Review Under the Paperwork Reduction Act

New information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., and recordkeeping requirements are proposed by this rulemaking. Accordingly, this notice has been submitted to the Office of Management and Budget for review and approval of paperwork requirements. The information DOE proposes to collect as reporting requirements is necessary to determine whether an organization is in compliance with the proposed regulation and whether they are eligible for the allocation of alternative fueled vehicle credits. The frequency of the information collection is annually and is due four months after the end of the compliance period. It is estimated the number of organizations submitting reports will be approximately 1000 for the years 1996 through 1999. The estimated number of organizations who will be submitting reports after that date has not been determined and is subject to the DOE decision on future rulemakings.

The public reporting burden is estimated to average 12 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and retrieving the collection of information. The collection of information contained in this proposed rule is considered the least burdensome for the Department of Energy functions to comply with the legal requirements and achieve program objectives. However, comments are requested concerning the accuracy of the estimated paperwork reporting burden.

IX. Review Under the National Environmental Policy Act

The provisions of this proposed rule would establish procedures for the implementation of an Alternative Fuel Transportation Program to assist in and monitor the progress of State fleet and certain alternative fuel providers compliance activity. The proposed rule provides for reporting procedures to demonstrate compliance with the alternative fueled vehicle acquisition mandates as specified by Title V of the Energy Policy Act of 1992, and includes proposed procedures for interpretive rulings, exemption, appeals, and the approval process for State plans.

The proposed rule would also establish and define the parameters for who must comply, the parts of a vehicle inventory which are affected by the acquisition mandates, the allocation of credits for voluntary acquisitions, the investigation and enforcement in the assessment of civil penalties, and the contents of a State's light duty alternative fueled vehicle plan. Because of the foregoing non-procedural parts of the proposed rule, the Department has determined that preparation of an Environmental Assessment (EA) is appropriate. The Department will complete the EA and any further analysis found to be required prior to the issuance of a final rule.

X. Impact on State Governments

Section 1(b)(9) of Executive Order 12866 (''Regulatory Planning and Review''), 58 FR 51735 (September 30, 1993) established the following principle for agencies to follow in rulemakings: ''Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, agencies shall seek to harmonize Federal regulatory actions with regulated state, local and tribal regulatory and other governmental functions.'' Executive Order 12875 (''Enhancing Intergovernmental Partnership''), 58 FR 58093 (October 26, 1993) provides for reduction or mitigation, to the extent allowed by law, of the burden on State, local, and tribal governments of unfunded Federal mandates not required by statute.

Section 507(o) of the Act explicitly prescribes the alternative fueled vehicle acquisition mandate which is reflected in subpart C of today's proposed regulations, but does not specifically authorize appropriation of funds to defray the costs of compliance. However, it is important to observe that the effect of the mandate is mitigated in terms of its impacts and costs in a number of respects.

First, section 507(o) authorizes approval of acceptable alternative State plans to comply with the acquisition mandate by enlisting the voluntary commitments from other fleet operators with fleets that are not subject to vehicle acquisition requirements under the Energy Policy Act of 1992. Second, section 507(i) authorizes the Department to grant exemptions from vehicle acquisition requirements for States in cases of financial hardship. Third, Congress has authorized and appropriated some fiscal year 1994 and fiscal year 1995 funds for financial assistance to State alternative fuel transportation programs some of which may include plans to fund the incremental costs of acquiring alternative fueled vehicles. Section 409 of the Act specifically authorizes financial assistance to States for this purpose. However, the funds, even if exclusively used to pay for such incremental costs, may not be sufficient to fund all such costs incurred by each State annually.

The Department preliminarily estimates that, in the aggregate, the costs to States in model year 1996 will be between $3.3 million and $7.4 million. The annual aggregate costs should never exceed $13 million in FY 1995 dollars. A copy of the analysis which includes these figures is in the public file in the DOE Freedom of Information Reading Room and is available upon request from the information contact identified at the outset of this notice. The Department does not have estimates for each State. The Department would welcome comments from State financial officials knowledgeable about near term State plans for replacing existing vehicles so that DOE can refine its estimates of incremental costs attributable solely to the section 507(o) mandate.

In developing today's notice of proposed rulemaking, the Department consulted with a focus group of State officials from the National Association of State Energy Officials which represents energy offices in 53 States, territories and the District of Columbia. The principal concern expressed by some of these officials was conflict between the DOE program and similar programs operating under EPA or State regulations. With respect to EPA, DOE has attempted to avoid unnecessary differences between its proposed regulations and those already promulgated by EPA. When asked for comments on a draft of today's notice, EPA did not suggest any changes to eliminate or mitigate unnecessary differences.

Earlier in this notice, DOE noted that the overlap between the proposed regulations and the EPA regulations is limited because the DOE program would apply in MSAs and CMSAs with a 1980 Bureau of Census population of 250,000 or more and the EPA program applies only in non-attainment areas. EPA has published a table, 59 FR 50043, listing the 22 non-attainment areas as follows:

STATES AND AREAS AFFECTED BY THE CLEAN FUEL FLEET PROGRAM

Affected area	State(s)
1. Atlanta	Georgia.
2. Baltimore	Maryland.
3. Baton Rouge	Louisiana.
4. Beaumont-Port Arthur	Texas.
5. Boston-Lawrence-Worcester (Eastern Massachusetts).	Massachusetts, New Hampshire.
6. Chicago-Gary-Lake County.	Illinois, Indiana.
7. Denver-Boulder	Colorado.
8. El Paso	Texas.
9. Greater Connecticut	Connecticut.
10. Houston-Galveston-Brazoria.	Texas.
11. Los Angeles-South Coast Air Basin.	California.
12. Milwaukee-Racine	Wisconsin.
13. New York-Northern New Jersey-Long Island.	Connecticut, New Jersey, New York.
14. Philadelphia-Wilmington-Trenton.	Delaware, Maryland, New Jersey, Pennsylvania.
15. Providence (All Rhode Island).	Rhode Island.
16. Sacramento Metro	California.
17. San Diego	California.
18. San Joaquin Valley	California.
19. Southeast Desert Modified AQMA.	California.
20. Springfield (Western Massachusetts).	Massachusetts.
21. Ventura County	California.
22. Washington (District of Columbia).	Maryland, Virginia.

As indicated above, 11 of these 22 areas have applications to opt out of the EPA Clean Fuel Fleet Program which are still pending as of the date of publication of this notice.

With respect to the State programs, DOE is unaware of any that would be in conflict with the program proposed today. If DOE has overlooked any such conflicts, State officials are invited to submit comments explaining the conflicts.

List of Subjects in 10 CFR Part 490

Appeal procedures, Energy, Energy conservation, Fuel, Gasoline, Motor vehicles, Oil imports, Petroleum, Recordkeeping and Reporting requirements, and Utilities.

Issued in Washington, D.C. on February 2, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the Preamble, Title 10, Chapter II, Subchapter D, of the Code of Federal Regulations is proposed to be amended by adding a new Part 490 as set forth below:

PART 490—ALTERNATIVE FUEL TRANSPORTATION PROGRAM

Subpart A—General Provision

Sec.

§ 490.1 Purpose and Scope.
§ 490.2 Definitions.
§ 490.3 Excluded vehicles.
§ 490.4 General information inquiries.
§ 490.5 Requests for an interpretive ruling.
§ 490.6 Petitions for general applicable rulemaking.
§ 490.7 Relationship to other law.

Appendix A to Subpart A of Part 490—Metropolitan Statistical Areas/Consolidated Metropolitan Statistical Areas with 1980 Populations of 250,000 or More

Subpart B—[Reserved]

Subpart C—Mandatory State Fleet Program

§ 490.200 Purpose and scope.
§ 490.201 Alternative fueled vehicle acquisition mandate schedule.
§ 490.202 Acquisitions satisfying the mandate.
§ 490.203 Light Duty Alternative Fueled Vehicle plan.
§ 490.204 Process for granting exemptions.
§ 490.205 Reporting requirements.
§ 490.206 Violations.

Subpart D—Alternative Fuel Provider Vehicle Acquisition Mandate

Subpart E—[Reserved]

Subpart F—Alternative Fueled Vehicle Credit Program

Subpart G—Investigations and Enforcement.

Authority: 42 U.S.C. 7191, 13235, 13251, 13257, 13258, 13260–3.

Subpart A—General Provisions

§ 490.1 Purpose and Scope.

(a) The provisions of this part implement the alternative fuel transportation program under titles III, IV, V, and VI of the Energy Policy Act of 1992. (Pub. L. 102–486)

(b) The provisions of this subpart cover the definitions applicable throughout this part and procedures to obtain an interpretive ruling and to petition for a generally applicable rule to amend this part.

§ 490.2 Definitions.

The following definitions apply to this part—

Act means the Energy Policy Act of 1992 (Pub. L. 102–486) and any amendments thereof.

After-Market Converted Vehicle means an Original Equipment Manufacturer vehicle that is reconfigured by a conversion company, which is not under contract to the Original Equipment Manufacturer, to operate on an alternative fuel and whose conversion kit components are under warranty of the conversion company.

Alternative Fuel means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; and electricity (including electricity from solar energy).

Alternative Fueled Vehicle means a dedicated vehicle or a dual fueled vehicle.

Assistant Secretary means the Assistant Secretary for Energy Efficiency and Renewable Energy or any other DOE official to whom the Assistant Secretary's duties under this part may be redelegated by the Secretary.

Capable of Being Centrally Fueled means a vehicle can be refueled at least 75 percent of its time at a location, that is owned, operated, or controlled by the fleet or covered person, or is under contract with the fleet or covered person for refueling purposes, including commercial fleet credit card agreements.

Centrally Fueled means that the vehicle is fueled at least 75 percent of the time at a location that is owned, operated, or controlled by the fleet or covered person, or is under contract with the fleet or covered person for refueling purposes, including commercial fleet credit card agreements.

Control means—

(1) When it is used in the context determining whether one person controls another or whether two persons are under common control, means any one or a combination of the following:

(i) A third person or firm has equity ownership of 51 percent or more in each of two firms; or

(ii) Two or more firms have common corporate officers, in whole or in substantial part, who are responsible for the day-to-day operation of the companies; or

(iii) One firm leases, operates, supervises, or in 51 percent or greater part owns equipment and/or facilities used by another person or firm, or has equity ownership of 51 percent or more of another firm.

(2) When it is used to refer to the management of vehicles, means a person has the authority to decide who can operate a particular vehicle, and the purposes for which the vehicle can be operated.

(3) When it used to refer to the management of people, means a person has the authority to direct the activities of another person or employee in a precise situation, such as the workplace.

Covered Person means a person that owns, operates, leases, or otherwise controls—

(1) A fleet, as defined by this section, that contains at least 20 light duty motor vehicles that are centrally fueled or capable of being centrally fueled, and are used primarily within a metropolitan statistical area or a consolidated metropolitan statistical area, as established by the Bureau of the Census, with a 1980 population of 250,000 or more as set forth in Appendix A to this subpart or in a **Federal Register** notice; and

(2) at least 50 light duty motor vehicles within the United States, as defined by this section.

Dealer Demonstration Vehicle means any vehicle that is operated by a motor vehicle dealer solely for the purpose of promoting motor vehicle sales, either on the sales lot or through other marketing or sales promotions, or for permitting potential purchasers to drive the vehicle for pre-purchase or pre-lease evaluation.

Dedicated Vehicle means—

(1) A dedicated automobile as defined in section 513(h)(1)(C) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2013(h)(1)(C)); or

(2) A motor vehicle, other than an automobile, that operates solely on alternative fuel.

DOE means the Department of Energy.

Dual Fueled Vehicle means—

(1) A dual fueled automobile which is capable of operating on alternative fuel and on gasoline or diesel fuel and as defined in section 513(h)(1)(D) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. § 2013(h)(1)(D)); or

(2) A motor vehicle, other than an automobile, that is capable of operating on alternative fuel and on gasoline or diesel fuel including flexible-fuel vehicles that operate on a mixture of an alternative fuel and a petroleum-based fuel or bi-fuel vehicles that can be switched to operate on either an alternative fuel or a petroleum-based fuel.

Electric-hybrid Vehicle means a vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells or other sources of electric current and also relies on a non-electric source of power.

Electric Motor Vehicle means a motor vehicle primarily powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, photovoltaic arrays, or other sources of electric current and may include an electric-hybrid vehicle.

Emergency motor vehicle means any vehicle that is legally authorized by a government authority to exceed the speed limit to transport people and equipment to and from situations in which speed is required to save lives or property, such as a rescue vehicle, fire truck or ambulance.

Fleet means, except as provided by § 490.3, a group of 20 or more light duty motor vehicles, used primarily in a metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census as of December 31, 1992, with a 1980 Census population of more than 250,000 (listed in Appendix A to this Subpart or in an annual notice in the **Federal Register**), that are centrally fueled or capable of being centrally fueled, and are owned, operated, leased, or otherwise controlled—

(1) By a person who owns, operates, leases, or otherwise controls 50 or more light duty motor vehicles within the United States and its possessions and territories;

(2) By any person who controls such person;

(3) By any person controlled by such person; and

(4) By any person under common control with such person.

Law Enforcement Motor Vehicle means any vehicle which is primarily operated by a civilian or military police officer or sheriff, or by personnel of the Federal Bureau of Investigation, the Drug Enforcement Administration, or other agencies of the Federal government, or by state highway patrols, municipal law enforcement, or other similar enforcement agencies, and which is used for the purpose of law enforcement activities including, but not limited to, chase, apprehension, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities.

Lease means the use and control of a motor vehicle for transportation purposes pursuant to a rental contract or similar arrangement with a term of 120 days or more.

Light Duty Motor Vehicle means a light duty truck or light duty vehicle, as such terms are defined under section 216(7) of the Clean Air Act (42 U.S.C. § 7550(7)), having a gross vehicle weight rating of 8,500 pounds or less.

Model Year means the period from September 1 of the previous calendar year through August 31.

Motor Vehicle has the meaning given such term under section 216(2) of the Clean Air Act (42 U.S.C. 7550(2)).

Original Equipment Manufacturer means a manufacturer that provides the original design and materials for assembly and manufacture of its product.

Original Equipment Manufacturer Vehicle means a vehicle engineered, designed and produced by an Original Equipment Manufacturer.

Person means any individual, partnership, corporation, voluntary association, joint stock company, business trust, Governmental entity, or other legal entity in the United States except United States Government entities.

Public Building means any closed structure owned, leased, or controlled by a state, or any instrumentality of a state.

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

§ 490.3 Excluded vehicles.

When counting light duty motor vehicles for the purpose of determining under this part whether a person has a fleet or whether acquisitions are for addition to a fleet, the following vehicles are excluded—

(a) Motor vehicles held for lease or rental to the general public, including vehicles that are owned or controlled primarily for the purpose of short-term rental or extended-term leasing, without a driver, pursuant to a contract;

(b) Motor vehicles held for sale by motor vehicle dealers, including demonstration motor vehicles;

(c) Motor vehicles used for motor vehicle manufacturer product evaluations or tests, including but not limited to, light duty motor vehicles owned or held by a university research department, independent testing laboratory, or other such evaluation facility, solely for the purpose of evaluating the performance of such vehicle for engineering, research and development or quality control reasons;

(d) Law enforcement vehicles;

(e) Emergency motor vehicles;

(f) Motor vehicles acquired and used for purposes that the Secretary of Defense has certified to DOE must be exempt for national security reasons;

(g) Nonroad vehicles, including farm and construction motor vehicles; and

(h) Motor vehicles which under normal operations are garaged at personal residences at night.

§ 490.4 General information inquiries.

DOE responses to inquiries with regard to the provisions of this part that are not filed in compliance with §§ 490.5 or 490.6 of this part constitute general information and the responses provided shall not be binding on DOE.

§ 490.5 Requests for an interpretive ruling.

(a) *Right to file.* Any person who is or may be subject to this part shall have the right to file a request for an interpretive ruling on a question with regard to how the regulations apply to particular facts and circumstances.

(b) *How to file.* A request for an interpretive ruling shall be filed—

(1) With the Assistant Secretary;

(2) In an envelope labeled ''Request for Interpretive Ruling under 10 CFR Part 490;'' and

(3) By messenger or mail at the Office of Energy Efficiency and Renewable Energy, EE–33, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585 or at such other address as DOE may provide by notice in the **Federal Register**.

(c) *Content of request for interpretive ruling.* At a minimum, a request under this section shall—

(1) Be in writing;

(2) Be labeled ''Request for Interpretive Ruling Under 10 CFR Part 490;''

(3) Identify the name, address, telephone number, and any designated representative of the person requesting the interpretive ruling;

(4) State the facts and circumstances relevant to the request;

(5) Be accompanied by copies of relevant supporting documents, if any;

(6) Specifically identify the pertinent regulations and the related question on which an interpretive ruling is sought with regard to the relevant facts and circumstances; and

(7) Contain any arguments in support of the terms of an interpretation the requester is seeking.

(d) *Public comment.* DOE may give public notice of any request for an interpretive ruling and invite public comment.

(e) *Opportunity to respond to public comment.* DOE may provide an opportunity for any person who requested an interpretive ruling to respond to public comments.

(f) *Other sources of information.* DOE may—

(1) Conduct an investigation of any statement in a request;

(2) Consider any other source of information in evaluating a request for an interpretive ruling; and

(3) Rely on previously issued interpretive rulings dealing with the same or a related issue.

(g) *Informal conference.* DOE, on its own initiative, may convene an informal conference with the person requesting an interpretive ruling.

(h) *Effect of an interpretive ruling.* The authority of an interpretive ruling shall be limited to the person requesting such ruling and shall depend on the accuracy and completeness of the facts and circumstances on which the interpretive ruling is based. An interpretive ruling by the Assistant Secretary shall be final for DOE.

(i) *Reliance on an interpretive ruling.* No person who obtains an interpretive ruling under this section shall be subject to an enforcement action for civil penalties or criminal fines for actions reasonably taken in reliance thereon, but a person may not act in reliance on an interpretive ruling that is administratively rescinded or modified, judicially invalidated, or its prospective effect is overruled by statute or regulation.

(j) *Denials of requests for an interpretive ruling.* DOE shall deny a request for an interpretive ruling if DOE determines that—

(1) There is insufficient information upon which to base an interpretive ruling;

(2) The questions posed should be treated in a general notice of proposed rulemaking under 42 U.S.C. 7191 and 5 U.S.C. 553(e);

(3) There is an adequate procedure elsewhere in this part for addressing the question posed, such as a petition for exemption; or

(4) For other good cause.

(k) *Public file.* From time to time, DOE may file a copy of an interpretive ruling in a public file labeled ''Interpretive Rulings Under 10 CFR Part 490'' which shall be available during normal business hours for public inspection at the DOE Freedom of Information Reading Room at 1000 Independence Avenue, SW, Washington, DC 20585, or at such other addresses as DOE may announce in a **Federal Register** notice.

§ 490.6 Petitions for generally applicable rulemaking.

(a) *Right to file.* Pursuant to 42 U.S.C. 7191 and 5 U.S.C. 553(e), any person may file a petition for generally applicable rulemaking under titles III, IV, and V of the Act with the DOE General Counsel.

(b) *How to file.* a petition for generally applicable rulemaking under this section shall be filed by mail or messenger in an envelope address to the Office of General Counsel, GC–1, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

(c) *Content of rulemaking petitions.* A petition under this section must—

(1) Be labeled ''Petition for Rulemaking Under 10 CFR Part 490'';

(2) Describe with particularity the terms of the rule being sought;

(3) Identify the provisions of law that direct, authorize, or affect the issuance of the rules being sought; and

(4) Explain why DOE should not choose to make policy by precedent through interpretive rulings, petitions for exemption, or other adjudications.

(d) *Determination upon rulemaking petitions.* After considering the petition and other information deemed to be appropriate, DOE may grant the petition and issue an appropriate rulemaking notice, or deny the petition because the rule being sought—

(1) Would be inconsistent with statutory law;

(2) Would establish a generally applicable policy that should be left to case-by-case determinations;

(3) Would establish a policy inconsistent with the underlying statutory purposes; or

(4) For other good cause.

§ 490.7 Relationship to other law.

Nothing in this part shall be construed to require or authorize acquisition of, or conversion to, light duty alternative fueled motor vehicles in violation of applicable regulations of the U.S. Environmental Protection Agency, U.S. Department of Transportation, or any State or local government agency.

Appendix A To Subpart A of Part 490

Metropolitan Statistical Areas/ Consolidated Metropolitan Statistical Areas With 1980 Populations of 250,000 or more

Albany-Schenectady-Troy MSA NY
Albuquerque MSA NM
Allentown-Bethlehem-Easton MSA PA
Appleton-Oshkosh-Neenah MSA WI
Atlanta MSA GA
Augusta-Aiken MSA GA-SC
Austin-San Marcos MSA TX
Bakersfield MSA CA
Baton Rouge MSA LA
Beaumont-Port Arthur MSA TX
Binghamton MSA NY
Birmingham MSA AL
Boise City MSA ID
Boston-Worcester-Lawrence CMSA MA-NH-ME-CT
Buffalo-Niagara Falls MSA NY
Canton-Massillon MSA OH
Charleston MSA SC
Charleston MSA WV
Charlotte-Gastonia-Rock Hill MSA NC-SC
Chattanooga MSA TN-GA
Chicago-Gary-Kenosha CMSA IL-IN-WI
Cincinnati-Hamilton CMSA OH-KY-IN
Cleveland-Akron CMSA OH
Colorado Springs MSA CO
Columbia MSA SC
Columbus MSA OH
Columbus MSA SC-GA-AL
Corpus Christi MSA TX
Dallas-Fort Worth CMSA TX
Davenport-Moline-Rock Island MSA IA-IL
Dayton-Springfield MSA OH
Daytona Beach MSA FL
Denver-Boulder-Greeley CMSA CO
Des Moines MSA IA
Detroit-Ann Arbor-Flint CMSA MI
El Paso MSA TX
Erie MSA PA
Eugene-Springfield MSA OR
Evansville-Henderson MSA IN-KY
Fort Wayne MSA IN
Fresno MSA CA
Grand Rapids-Muskegon-Holland MSA MI
Greensboro-Winston Salem-High Point MSA NC
Greenville-Spartanburg-Anderson MSA SC
Harrisburg-Lebanon-Carlisle MSA PA
Hartford MSA CT
Hickory-Morganton MSA NC
Honolulu MSA HI
Houston-Galveston-Brazoria CMSA TX
Huntington-Ashland MSA WV-KY-OH
Indianapolis MSA IN
Jackson MSA MS
Jacksonville MSA FL
Johnson City-Kingsport-Bristol MSA TN-VA
Kansas City MSA MO-KS
Knoxville MSA TN
Lakeland-Winter Haven MSA FL
Lancaster MSA PA
Lansing-East Lansing MSA MI
Las Vegas MSA NV-AZ
Lexington MSA KY
Little Rock-N. Little Rock MSA AR
Los Angeles-Riverside-Orange County CMSA CA
Louisville MSA KY-IN
Macon MSA GA
Madison MSA WI
McAllen-Edinburg-Mission MSA TX
Melbourne-Titusville-Palm Bay MSA FL
Memphis MSA TN-AR-MS
Miami-Fort Lauderdale CMSA FL
Milwaukee-Racine CMSA WI
Minneapolis-St. Paul MSA MN-WI
Mobile MSA AL
Modesto MSA CA
Montgomery MSA AL
Nashville MSA TN
New London-Norwich MSA CT-RI
New Orleans MSA LA
New York-N. New Jersey-Long Island CMSA NY-NJ-CT-PA
Norfolk-Virginia Beach-Newport News MSA VA-NC
Oklahoma City MSA OK
Omaha MSA NE-IA
Orlando MSA FL
Pensacola MSA FL
Peoria-Pekin MSA IL
Philadelphia-Wilmington-Atlantic City CMSA PA-NJ DE-MD
Phoenix-Mesa MSA AZ
Pittsburgh MSA PA
Portland-Salem CMSA OR-WA
Providence-Fall River-Warwick MSA RI-MA
Raleigh-Durham-Chapel Hill MSA NC
Reading MSA PA
Richmond-Petersburg MSA VA
Rochester MSA NY
Rockford MSA IL
Sacramento-Yolo CMSA CA
Saginaw-Bay City-Midland MSA MI
St. Louis MSA MO–IL
Salinas MSA CA
Salt Lake City-Ogden MSA UT
San Antonio MSA TX
San Diego MSA CA
San Francisco-Oakland-San Jose CMSA CA

San Juan MSA PR
Santa Barbara-Santa Maria-Lompoc MSA CA
Scranton-Wilkes Barre-Hazleton MSA PA
Seattle-Tacoma-Bremerton CMSA WA
Shreveport-Bossier City MSA LA
Spokane MSA WA
Springfield MSA MA
Stockton-Lodi MSA CA
Syracuse MSA NY
Tampa-St. Petersburg-Clearwater MSA FL
Toledo MSA OH
Tucson MSA AZ
Tulsa MSA OK
Utica-Rome MSA NY
Washington-Baltimore CMSA DC–MD–VA–WV
West Palm Beach-Boca Raton MSA FL
Wichita MSA KS
York MSA PA
Youngstown-Warren MSA OH

Subpart B—[Reserved]

Subpart C—Mandatory State Fleet Program

§ 490.200 Purpose and scope.

This subpart sets forth rules implementing the provisions of Section 507(o) of the Act which requires, subject to some exemptions, that certain percentages of new light duty motor vehicles acquired for state fleets be alternative fueled vehicles.

§ 490.201 Alternative fueled vehicle acquisition mandate schedule.

(a) Except as otherwise provided in this subpart, beginning with model year 1996, the following percentages of new light duty motor vehicles acquired annually for state government fleets, including agencies thereof but excluding municipal fleets, shall be alternative fueled vehicles;

(1) 10 percent of the vehicles acquired in model year 1996;

(2) 15 percent of the vehicles acquired in model year 1997;

(3) 25 percent of the vehicles acquired in model year 1998;

(4) 50 percent of the vehicles acquired in model year 1999; and

(5) 75 percent of the vehicles acquired in model year 2000 and thereafter.

(b) Each State shall calculate its alternative fueled vehicle acquisition requirements for the state government fleets, including agencies thereof, by applying the alternative fueled vehicle acquisition percentages for each model year to the total number of new light duty motor vehicles to be acquired during that model year for those fleets.

(c) If, when the mandated acquisition percentage of alternative fueled vehicles is applied to the number of light duty motor vehicles to be acquired by a fleet subject to this subpart, a number results that requires the acquisition of a partial vehicle, an adjustment to the acquisition number will be made by rounding the number of vehicles up to the next whole number.

§ 490.202 Acquisitions satisfying the mandate.

In addition to the use of alternative fueled vehicle credits under subpart F of this part, the following actions within a model year qualify as acquisitions that count toward compliance with the new light duty alternative fueled vehicle mandates by State fleets:

(a) The purchase or lease of an Original Equipment Manufacturer vehicle, (regardless of model year of manufacture), capable of operating on alternative fuels that was not previously in service in the fleet; or

(b) The purchase or lease of an after-market converted vehicle (regardless of model year of manufacture), that was not previously in service in the fleet; or

(c) The conversion of a newly purchased Original Equipment Manufacturer Vehicle (regardless of the model year of manufacture) to operate on alternative fuels prior to its first use in service.

§ 490.203 Light Duty Alternative Fueled Vehicle Plan.

(a) *General provisions.* (1) In lieu of meeting its acquisition requirements under § 490.201 exclusively through State-owned vehicles, a State may follow a Light Duty Alternative Fueled Vehicle Plan approved by DOE under this section.

(2) Unless a fleet is exempt under § 490.204, a State which does not have an approved plan in effect under this section will be subject to the State fleet acquisition percentage requirements of § 490.201.

(3) In the event that a significant commitment under an approved plan is not met by a participant of a plan, the State shall meet its percentage requirements under § 490.201 or submit to DOE an amendment to the plan for DOE approval.

(4) Only voluntary acquisitions or conversions, or combinations thereof, by state, local, and private fleets may be used to meet the State's alternative fuel vehicle acquisition requirement under the plan.

(5) Any acquisitions or conversions of light duty alternative fueled vehicles by fleets within the State may be included within the plan, irrespective of whether the vehicles are in excluded categories in the definition of fleet set forth in § 490.2 of this part.

(b) *Required elements of a plan.* Each plan must include the following elements:

(1) Certification by the Governor, or the Governor's designee, that the plan meets the requirements of this subpart;

(2) Identification of state, local and private fleets that will participate in the plan;

(3) Number of new alternative fueled vehicles per plan participant, either through conversion or acquisition;

(4) A written statement from each plan participant to assure commitment;

(5) A statement of contingency measures by the State to offset any failure to fulfill significant commitments by plan participants, in order to meet the requirements of § 490.201;

(6) A provision by the State to monitor and verify implementation of the plan;

(7) A provision certifying that all acquisitions and conversions under the plan are voluntary and will meet the requirements of § 247 of the Clean Air Act, as amended (42 U.S.C. § 7587) and all applicable safety requirements.

(c) *When to submit plan.* Beginning with model year 1996, any State wishing to submit a plan under this section must do so no later than June 1 prior to the model year covered by such plan.

(d) *Review and approval.* DOE shall review and approve a plan which meets the requirements of this subpart and is designed to achieve at a minimum, the same number of alternative fueled vehicle acquisitions or conversions as would be required under § 490.201 within 60 days of the date of receipt of the plan by DOE at the address in paragraph (h)(1) of this section.

(e) *Disapproval of plans.* If DOE disapproves or requests a State to submit additional information, the State may revise and resubmit the plan to DOE within a reasonable time. States, however, must comply with § 490.201 until such time as the plan is approved.

(f) *How a State may modify an approved plan.* If a State determines that it cannot successfully implement its plan, it may submit to DOE for approval, at any time, the proposed modifications with adequate justifications. Until the modifications are approved, the State must comply with § 490.201.

(g) *Where to submit plans.* (1) A State shall submit to DOE an original and two copies of the plan and shall be addressed to the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–33, 1000 Independence Ave., SW, Washington, DC 20585.

(2) Any requests for modifications shall also be sent to the address in paragraph (g)(1) of this section.

§ 490.204 Process for granting exemptions.

(a) To obtain an exemption, in whole or in part, from the vehicle mandates of this subpart, a State shall submit to DOE a written request for exemption, along with supporting documentation which demonstrates that—

(1) Alternative fuels that meet the normal requirements and practices of the principal business of the state fleet are not available in the area where the vehicles are to be operated; or

(2) Alternative fueled vehicles that meet the normal requirements and practices of the principal business of the state fleet are not reasonably available for acquisition because they are not offered for sale or lease commercially on reasonable terms and conditions in any of the States; or

(3) The application of such requirements would pose an unreasonable financial hardship.

(b) Requests for exemption may be submitted on an ongoing basis and must be accompanied with supporting documentation.

(c) DOE shall grant exemptions for one model year only, and they may be renewed annually if supporting documentation is provided.

(d) If a State is seeking an exemption under—

(1) Paragraph (a)(1) of this section, the types of documentation that are to accompany the request must include, but are not limited to, maps of vehicle operation zones and maps of locations providing alternative fuel; or

(2) Paragraph (a)(2) of this section, the types of documentation that are to accompany the request must include, but are not limited to, alternative fueled vehicle purchase or lease requests, a listing of vehicles that meet the normal practices and requirements of the State fleet and any other documentation that exhibits good faith efforts at acquiring alternative fueled vehicles; or

(3) Paragraph (a)(3) of this section, it must submit a statement identifying what portion of the alternative fueled vehicle acquisition requirement should be subject to the exemption and describing the specific nature of the financial hardship that precludes compliance.

(e) Requests for exemption shall be addressed to the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–33, 1000 Independence Ave., SW, Washington, DC 20585, or to such other address as DOE may announce in a **Federal Register** notice.

(f) The Assistant Secretary shall provide to the State within 30 days a written determination as to whether the State's request has been granted or denied.

(g) If the Assistant Secretary denies an exemption, in whole or in part, and the State wishes to exhaust administrative remedies, the State must appeal within 30 days of the date of the determination, pursuant to 10 CFR part 205, subpart D, to the Office of Hearings and Appeals, U. S. Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585. The Assistant Secretary's determination shall be stayed during the pendency of an appeal under this paragraph.

§ 490.205 Reporting requirements.

(a) Any State subject to the requirements of this subpart must submit a report on or before the December 31 after the close of the model year, beginning with model year 1996.

(b) The report shall include the following information:

(1) Number of new light duty motor vehicles acquired by a state during the model year;

(2) Number of new light duty alternative fueled vehicles that must be acquired in the model year;

(3) Number of new light duty alternative fueled vehicles acquired by a State during the model year;

(4) Number of alternative fueled vehicle credits transferred to or from the State during the model year;

(5) Number of alternative fueled vehicle credits applied against acquisition requirements;

(6) For each new light duty alternative fueled vehicle acquired—

(i) Vehicle make and model;

(ii) Model year; and

(iii) Vehicle identification number;

(7) Number of light duty alternative fueled vehicles acquired by municipal and private fleets during the model year under an approved Light Duty Alternative Fueled Vehicle Plan (if applicable).

(c) If credits are applied against vehicle acquisition requirements, then a credit activity report, as described in subpart F of this part, must be submitted with the report under this section.

(d) Records shall be maintained and retained for a period of three years from the start of this program.

(e) All reports, marked ''Annual Report,'' shall be sent to the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE–33, 1000 Independence Ave., SW, Washington, DC, 20585, or such other address as DOE may provide by notice in the **Federal Register**.

§ 490.206 Violations.

Violations of this subpart are subject to investigation and enforcement under subpart G of this part.

Subpart D—Alternative Fuel Provider Vehicle Acquisition Mandate

§ 490.300 Purpose and Scope.

This subpart implements section 501 of the Act, which requires, subject to some exemptions, that certain annual percentages of newly acquired light duty motor vehicles acquired by alternative fuel providers must be alternative fueled vehicles.

§ 490.301 Definitions.

In addition to the definitions found in § 490.2, the following definitions apply to this subpart—

Affiliate means a person that, directly or indirectly, controls, is controlled by, or is under common ownership or control of the subject person.

Alternative Fuels Business means activities undertaken to derive revenue from—

(1) Producing, storing, refining, processing, transporting, distributing, importing, or selling at wholesale or retail any alternative fuel other than electricity; or

(2) Generating, transmitting, importing, or selling at wholesale or retail electricity.

Business unit means a semi-autonomous major grouping of activities for administrative purposes and organizational structure within a business entity.

Division means a major administrative unit of an enterprise comprising at least several enterprise units or constituting a complete integrated unit for a specific purpose.

Normal Requirements and Practices means the operating business practices and required conditions under which the principal business of the covered person operates.

Principal Business means the sales-related activity that produces the greatest gross revenue.

Substantial Portion means that at least 2 percent of a covered person's refinery yield of petroleum products is composed of alternative fuels.

Substantially Engaged means that a covered person, or affiliate, division, or other business unit thereof, regularly derives sales-related gross revenue from an alternative fuels business.

§ 490.302 Vehicle acquisition mandate schedule.

(a) Except as provided in § 490.304 of this part, of the light duty motor vehicles newly acquired by a covered person described in § 490.303 of this part, the following percentages shall be alternative fueled vehicles for the following model years:

(1) 30 percent for model year 1996.

(2) 50 percent for model year 1997.

(3) 70 percent for model year 1998.

(4) 90 percent for model year 1999 and thereafter.

(b) Except as provided in § 490.304 of this part, this acquisition schedule applies to all light duty motor vehicles that a covered person newly acquires for use within the United States.

(c) If, when the mandated acquisition percentage of alternative fuel vehicles is applied to the number of new light duty motor vehicles to be acquired by a covered person subject to this subpart, a number results that requires the acquisition of a partial vehicle, an adjustment will be made to the required acquisition number by rounding up the number of vehicles to the next whole number.

(d) Only acquisitions satisfying the mandate, as defined by § 490.305, and use of alternative fueled vehicle credits acquired under subpart F of this part count toward compliance with the acquisition schedule in paragraph (a) of this section.

§ 490.303 Who must comply.

(a) Except as provided by paragraph (b) of this section a covered person must comply with the requirements of this subpart if that person is—

(1) A covered person whose principal business is producing, storing, refining, processing, transporting, distributing, importing or selling at wholesale or retail any alternative fuel other than electricity;

(2) A covered person whose principal business is generating, transmitting, importing, or selling, at wholesale or retail, electricity; or

(3) A covered person—

(i) Who produces, imports, or produces and imports in combination, an average of 50,000 barrels per day or more of petroleum; and

(ii) A substantial portion of whose business is producing alternative fuels.

(b) This subpart does not apply to a covered person whose principal business is—

(1) transforming alternative fuels into a product that is not an alternative fuel; or

(2) consuming alternative fuels as a feedstock or fuel in the manufacture of a product that is not an alternative fuel.

§ 490.304 Which new light duty motor vehicles are covered.

(a) *General rule.* Except as provided in paragraph (b) of this section, the vehicle acquisition mandate schedule in § 490.302 of this part applies to all new light duty motor vehicles acquired by a covered person described in § 490.303 of this part.

(b) *Exception.* If a covered person has more than one affiliate, division, or other business unit, then § 490.302 of this part only applies to new light duty motor vehicles acquired by an affiliate, division, or other such business unit—

(1) Which is substantially engaged in the alternative fuels business; but

(2) This subpart does not apply to the vehicles of an affiliate, division, or other business unit whose principal business is either transforming alternative fuels into a product that is not an alternative fuel or consumes alternative fuel as a feedstock or fuel in the manufacture of a product that is not an alternative fuel.

§ 490.305 Acquisitions satisfying the mandate.

In addition to the use of alternative fueled vehicle credits under subpart F of this part, the following actions within the model year qualify as acquisitions for the purpose of compliance with the requirements of § 490.302 of this part—

(a) The purchase or lease of an Original Equipment Manufacturer vehicle (regardless of the model year of manufacture), capable of operating on alternative fuels that was not previously under the control of the covered person; or

(b) The purchase or lease of an after-market converted vehicle (regardless of the model year of manufacture), that was not previously under the control of the covered person; or

(c) The conversion of a newly acquired Original Equipment Manufacturer vehicle (regardless of the model year of manufacture) to operate on alternative fuels prior to its first use in service.

§ 490.306 Vehicle operation requirements.

The alternative fueled vehicles acquired pursuant to § 490.302 of this part shall be operated solely on alternative fuels, except when these vehicles are operating in an area where the appropriate alternative fuel is unavailable.

§ 490.307 Option for electric utilities.

(a) A covered person whose principal business is generating, transmitting, importing, or selling, at wholesale or retail, electricity has the option of delaying the vehicle acquisition mandate schedule in § 490.302 until January 1, 1998, if the covered person intends to comply with this regulation by acquiring electric motor vehicles.

(b) *Notification Date.* If an electric utility intends to use the option under this section, the electric utility must notify the Department of its intent to do so. The notification must be postmarked no later than December 31, 1995 and must be sent to the Office of Energy Efficiency and Renewable Energy, EE–33, 1000 Independence Avenue, S.W., Washington, D.C. 20585 or such other addresses as DOE may provide in a **Federal Register** notice.

(c) If a covered person whose principal business is generating, transmitting, importing, or selling at wholesale or retail electricity has notified the Department by December 31, 1995, of their intent to acquire electric motor vehicles, the following percentages of new light duty motor vehicles acquired shall be alternative fueled vehicles for the following model years:

(1) 30 percent for model year 1998.

(2) 50 percent for model year 1999.

(3) 70 percent for model year 2000.

(4) 90 percent for model year 2001 and thereafter.

§ 490.308 Process for granting exemptions.

(a) To obtain an exemption from the vehicle acquisition mandate in § 490.302 of this part, a covered person, or its affiliate, division, or business unit which is subject to § 490.302 of this part, shall submit a written request for exemption to the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE–33, 1000 Independence Ave., SW, Washington, DC 20585, or such other address as DOE may publish in the **Federal Register**, along with supporting documentation which demonstrates that—

(1) Alternative fuels that meet the normal requirements and practices of the principal business of that person are not available in the area where the vehicles are to be operated; or

(2) Alternative fueled vehicles that meet the normal requirements and practices of the principal business of that person are not offered for purchase or lease commercially on reasonable terms and conditions in the United States.

(b) Documentation

(1) If a covered person is seeking an exemption under paragraph (a)(1) of this section, the types of documentation that are to accompany the request include, but are not limited to, maps of vehicle operation zones and maps of locations providing alternative fuel.

(2) If a covered person is seeking an exemption under paragraph (a)(2) of this section, the types of documentation that are to accompany the request include, but are not limited to, alternative fueled vehicle purchase requests, a listing of

vehicles that meet the normal practices and requirements of the covered person and any other documentation that exhibits good faith efforts at acquiring alternative fueled vehicles.

(c) Except as provided by paragraph (e) of this section, exemption determination shall be made in a letter ruling by the Assistant Secretary.

(d) Exemptions are granted for one model year only and may be renewed, if supporting documentation is provided, annually.

(e) Exemption determinations are binding for the covered person only and cannot be used to set precedent for other exemption requests.

(f) If a covered person is denied an exemption and believes that it meets the criteria established in paragraph (a) of this section, that covered person may file a request for relief with the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Ave, SW, Washington, DC 20585.

(g) Requests for relief will be processed utilizing the procedures codified at 10 CFR part 205, Subpart D.

§ 490.309 Annual reporting requirements.

(a) If a person is required to comply with the vehicle acquisition mandate schedule in § 490.302 or § 490.307, that person shall file an annual report under this section, on a form obtainable from DOE, with the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE–33, 1000 Independence Ave., SW, Washington, DC 20585, or such other address as DOE may publish in the **Federal Register**, on or before the December 31 after the close of the model year beginning with model year 1996.

(b) This report shall include the following information—

(1) Number of new light duty motor vehicles acquired in the United States during the model year;

(2) Number of new light duty alternative fueled vehicles that are required to be acquired;

(3) Number of new light duty alternative fueled vehicles acquired in the United States during the model year;

(4) Number of alternative fueled vehicle credits transferred to or from a covered person during the model year;

(5) Number of alternative fueled vehicle credits applied against acquisition requirements;

(6) For each new light duty alternative fueled vehicle acquired—

(i) Vehicle make and model;

(ii) Model year; and

(iii) Vehicle Identification Number.

(c) If credits are applied against alternative fueled vehicle acquisition requirements, as reported in the annual report, then a credit activity report, as described in subpart F, must be submitted with this report to DOE.

(d) Records shall be maintained and retained for a period of three years.

§ 490.310 Violations.

Violations of this subpart are subject to investigation and enforcement under subpart G of this part.

Subpart E [Reserved]

Subpart F—Alternative Fuel Vehicle Credit Program

§ 490.500 Purpose and Scope.

This subpart implements the statutory requirements of section 508 of the Act, which provides for the allocation of credits to fleets or covered persons who acquire alternative fueled vehicles in excess of the number they are required or obtain alternative fuel vehicles prior to the date when they are required to do so under this part.

§ 490.501 Applicability.

This subpart applies to all fleets and covered persons who are required to acquire alternative fuel vehicles by this Part.

§ 490.502 Creditable actions.

A fleet or covered person becomes entitled to alternative fuel vehicle credits by—

(a) Acquiring alternative fuel vehicles that qualify under § 490.305 and § 490.202, as applicable, in excess of the number that fleet or covered person is required to acquire in a model year when acquisition requirements apply; or

(b) Acquiring alternative fueled vehicles in model years prior to the model year when that fleet or covered person is first required to acquire alternative fueled vehicles.

§ 490.503 Credit allocation.

(a) Based on annual credit activity report information, as described in § 490.507 of this part, DOE shall allocate one credit for each alternative fueled vehicle a fleet or covered person acquires that exceeds the number of alternative fueled vehicles that fleet or person is required to acquire in a model year when acquisition requirements apply; or

(b) In the event that an alternative fueled vehicle is acquired by a fleet or covered person in a model year prior to the model year when acquisition requirements first apply, as reported in the annual credit activity report, DOE shall allocate one credit per alternative fueled vehicle for each year the alternative fueled vehicle is acquired before the model year when acquisition requirements apply.

(c) DOE shall allocate credits to fleets and covered persons under paragraphs (a) or (b) of this section for alternative fueled vehicles acquired after October 24, 1992.

§ 490.504 Use of alternative fueled vehicle credits.

At the request of a fleet or covered person in an annual report under this part, DOE shall treat each credit as the acquisition of a light duty alternative fueled vehicle that is counted in determining compliance with specific annual alternative fueled vehicle acquisition requirements of this part.

§ 490.505 Credit accounts.

(a) DOE shall establish a credit account for each fleet or covered person who obtains an alternative fueled vehicle credit.

(b) DOE shall send to each fleet or covered person an annual credit account balance statement after the receipt of its credit activity report under § 490.507.

§ 490.506 Alternative fueled vehicle credit transfers.

(a) Any fleet which is required to acquire alternative fueled vehicles may transfer an alternative fueled vehicle credit to—

(1) Any other fleet which is required to acquire alternative fueled vehicles.

(2) An alternative fuel provider which is a covered person, if the fleet provides certification to the covered person that the credit represents a vehicle that operates solely on alternative fuel.

(b) Any alternative fuel provider which is a covered person required to acquire alternative fueled vehicles may transfer its alternative fueled vehicle credits to any other fleet or covered person required to acquire alternative fueled vehicles.

(c) Proof of credit transfer may be on a form provided by DOE, or otherwise in writing, including dated signatures of the transferor and transferee. The proof should be received by DOE within 7 days of the transfer date to the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE–33, 1000 Independence Ave, SW, Washington, DC 20585 or such other address as may be provided by notice in the **Federal Register**.

§ 490.507 Credit activity reporting requirements.

(a) A covered person or fleet applying for allocation of alternative fueled vehicle credits must submit a credit activity report by December 31 after the close of a model year to the Office of Energy Efficiency and Renewable

Energy, U.S. Department of Energy, EE–33, 1000 Independence Ave, SW, Washington, DC 20585 or other such address as DOE may publish in the **Federal Register**.

(b) Included in this report should be the following information:

(1) Number of new light duty motor vehicles acquired;

(2) Number of new light duty alternative fueled vehicles acquired;

(3) Number of alternative fueled vehicles that are required to be acquired;

(4) Number of alternative fueled vehicle credits requested for:

(i) alternative fueled vehicles acquired in excess of required acquisition number; and

(ii) alternative fueled vehicles acquired in model year prior to model year in which alternative fueled vehicle acquisition requirements first apply;

(5) Purchase of alternative fueled vehicle credits:

(i) Credit source; and

(ii) Date of Purchase;

(6) Sale of alternative fueled vehicle credits:

(i) Credit purchaser; and

(ii) Date of Sale.

Subpart G—Investigations and Enforcement

§ 490.600 Purpose and scope.

This subpart sets forth the rules applicable to investigations under titles III, IV, V, and VI of the Act and to enforcement of section 501, 503(b), 507 or 508 of the Act, or any regulation issued under such sections.

§ 490.601 Powers of the Secretary.

For the purpose of carrying out titles III, IV, V, and VI of the Act, DOE may hold such hearings, take such testimony, sit and act at such times and places, administer such oaths, and require by subpena the attendance and testimony of such witnesses the production of such books, papers, correspondence, memoranda, contracts, agreements, or other records as the Secretary of Transportation is authorized to do under section 505(b)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. § 2005(b)(1)).

§ 490.602 Special orders.

(a) DOE may require by general or special orders that any person—

(1) File, in such form as DOE may prescribe, reports or answers in writing to specific questions relating to any function of DOE under this part; and

(2) Provide DOE access to (and for the purpose of examination, the right to copy) any documentary evidence of such person which is relevant to any function of DOE under this part.

(b) File under oath any reports and answers provided under this section or as otherwise prescribed by DOE, and file such reports and answers with DOE within such reasonable time and at such place as DOE may prescribe.

§ 490.603 Prohibited acts.

It is unlawful for any person to violate any provision of section 501, 503(b), or 507 of the Act, or any regulations issued under such sections.

§ 490.604 Penalties and Fines.

(a) *Civil penalties.* Whoever violates § 490.603 of this part shall be subject to a civil penalty of not more than $5,000 for each violation.

(b) *Willful violations.* Whoever willfully violates § 490.603 of this part shall pay a criminal fine of not more than $10,000 for each violation.

(c) *Repeated violations.* Any person who knowingly and willfully violates § 490.603 of this part, after having been subjected to a civil penalty for a prior violation of § 490.603 shall pay a criminal fine of not more than $50,000 for each violation.

§ 490.605 Statement of enforcement policy.

DOE may agree not to commence an enforcement proceeding, or may agree to settle an enforcement proceeding, if the person agrees to come into compliance in a manner satisfactory to DOE.

§ 490.606 Proposed assessments and orders.

DOE may issue a proposed assessment of, and order to pay, a civil penalty in a written statement setting forth supporting findings of violation of the Act or a relevant regulation of this part. The proposed assessment and order shall be served on the person named therein by certified mail, return-receipt requested, and shall become final for DOE if not timely appealed pursuant to § 490.607 of this part.

§ 490.607 Appeals.

(a) In order to exhaust administrative remedies, on or before 30 days from the date of issuance of a proposed assessment and order to pay, a person must appeal a proposed assessment and order to the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

(b) Proceedings in the Office of Hearings and Appeals shall be subject to subpart H of 10 CFR part 205 except that—

(1) Appellant shall have the ultimate burden of persuasion;

(2) Appellant shall have right to a trial-type hearing on contested issues of fact only if the hearing officer concludes that cross examination will materially assist in determining facts in addition to evidence available in documentary form; and

(3) The Office of Hearings and Appeals may issue such orders as it may deem appropriate on all other procedural matters.

(c) The determination of the Office of Hearings and Appeals shall be final for DOE.

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federal register

Tuesday
February 28, 1995

Part IV

Office of Management and Budget

Standard Occupational Classification Revision Policy Committee; Notice

OFFICE OF MANAGEMENT AND BUDGET

Standard Occupational Classification Revision Policy Committee Proposal To Revise the SOC

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of solicitation of comments.

SUMMARY: Under title 44 U.S.C. 3504, the Office of Management and Budget (OMB) is announcing its process for revising the Standard Occupational Classification (SOC), and is soliciting public comment on its proposal to develop a new occupational classification system based on a unified concept. OMB plans future public comment periods after completion of major milestones in the revision process including: (1) The Standard Occupational Classification Revision Policy Committee's (SOCRPC) recommendations to OMB on the principles and unified conceptual framework to use to guide the revision (fall 1995) and (2) the SOCRPC's recommendations for changes to the existing SOC at the 4-digit level based on the agreed upon principles and unified conceptual framework (fall 1996). The SOC revision is tentatively scheduled for implementation beginning in July, 1997. All Federal agencies that collect occupational data are expected to utilize the new system.

REQUESTS FOR COMMENTS: The Standard Occupational Classification Revision Policy Committee welcomes comments with respect to any topic related to occupational classification, including:

1. The uses of occupational data,
2. The purpose and scope of occupational classification,
3. The principles underlying the current SOC,
4. Conceptual options for the new SOC, and
5. The SOC Revision Policy Committee process.

DATES: To ensure consideration in the development of the principles and unified conceptual framework to guide the revision of the SOC, all comments must be in writing and received on or before March 31, 1995.

ADDRESSES: Please send comments to Thomas J. Plewes, Chairman, Standard Occupational Classification Revision Policy Committee, U.S. Bureau of Labor Statistics, Suite 4945, 2 Massachusetts Avenue, NE., Washington, DC 20212. Interested parties may also send comments via E-mail, to Ross____L:PSB@Cmail.bls.gov.

FOR FURTHER INFORMATION CONTACT: Laura Ross, U.S. Bureau of Labor Statistics, telephone number 202–606–6505.

SUPPLEMENTARY INFORMATION: The following sections of this notice provide a brief history of the SOC and further elaboration of topics on which comments are explicitly sought.

History

The development of a Standard Occupational Classification (SOC) began in December 1966 on the recommendation of the Interagency Committee on Occupational Classification. The Committee's recommendation was based on the results of an inquiry on occupational information circulated to Government agencies in August 1965 by the then Bureau of the Budget. This inquiry asked 28 agencies for their views on the desirability of establishing a Standard Occupational Classification, similar to the Standard Industrial Classification, for general use in classifying occupational data. Most of the agencies favored establishing such a system.

The desirability of establishing a Standard Occupational Classification actually had been recognized many years earlier. At the time of the 1940 Census of Population, a publication, *Convertibility List of Occupations with Conversion Tables and Industrial Classification for Reports from Individuals*, was developed by a joint committee of the Bureau of the Budget and the American Statistical Association. The main purpose of the publication was to develop a bridge between the occupational classification system used in the 1940 Census and that used by the U.S. Employment Service to classify its operating statistics. Subsequent modifications in the Census classification system and publication of the third edition of the Dictionary of Occupational Titles (DOT) rendered the earlier convertibility list obsolete.

The situation when the SOC project began in the mid-1960's was, therefore, essentially the same as it had been in the early 1940's. The two principal systems of occupational classification, those of the Bureau of the Census and of the U.S. Employment Service, needed reconciliation. However, the issue was of even greater concern than in the earlier period because a number of Government agencies had created their own occupational classification systems for specific purposes, thereby compounding the initial problem. In addition, requirements in Federal legislation resulted in increased demands for occupational data on a more comparable basis.

After an initial attempt to produce a Government-wide occupational classification standard in 1977, the *1980 Standard Occupational Classification (SOC) Manual* was prepared through the collaborative efforts of numerous Federal agencies concerned with occupational information. It served as the foundation for the 1980 Census of Population Classified Index of Industries and Occupations as well as for a revised system for the Bureau of Labor Statistics (BLS) Occupational Employment Statistics (OES) program, although neither system fully adopted the SOC. The *1980 SOC Manual* includes descriptions of the content of each occupation together with a list of corresponding occupations from the *1977 Dictionary of Occupational Titles* (DOT). This list of corresponding DOT occupations formed the basis of the current occupational crosswalks used to link various Federal occupational classification systems. When the revised OES system was implemented in 1983, a crosswalk was prepared linking it to the 1980 SOC, the 1977 DOT, and the 1980 Census of Population systems. As each system has added occupations, the original crosswalk has been updated to indicate the equivalent occupations in the other systems.

In the past few years, the BLS and the Employment and Training Administration (ETA) have been working together to organize activities aimed at developing information and new concepts related to classification principles for a new SOC. These activities have included commissioning papers on major occupational classification issues.

In 1993, the Advisory Panel for the Dictionary of Occupational Titles (APDOT) issued a report entitled *The New DOT: A Database of Occupational Titles for the Twenty-First Century.* 'In this report, the APDOT recommended creating a new database system that would identify and describe the skills, knowledge, and competencies needed in the changing work place.

BLS sponsored an International Occupational Classification Conference, held in June 1993, at which both specially commissioned and numerous other papers were presented. The Conference provided a forum for the discussion of new ideas and alternative approaches to occupational classification issues and served to introduce revision activities for the U.S. SOC. The approximately 100 participants represented statistical agencies from several countries, State-level interests, professional associations, academia, and relevant Federal agencies.

The conference was organized around five modules: (1) Perspectives of current occupational systems; (2) new challenges and alternative approaches to occupational classification; (3) user needs and experiences with different occupational classification systems; (4) possibilities for a unifying classification system; and (5) international perspectives on occupational classification. The proceedings from the conference were published in September 1993.[1] At the conclusion of the conference, there was agreement that work should begin on developing a new SOC.

The changing world of work requires a new approach to statistical classification, such as developing a single system to meet multiple needs or using a single database to develop multiple classifications. Therefore, a revision of the SOC is being undertaken. The Office of Management and Budget has formed the Standard Occupational Classification Revision Policy Committee to coordinate activities leading to a new SOC. The charter for that committee is included near the end of this notice.

Uses of Occupational Data

When devising a data classification system, it is crucial to begin with a clear vision of how the data to be classified will be used in order to structure the classification to maximize the usefulness of the data. The uses of occupational data vary widely. Uses include investigating the supply and demand of labor, planning education and training programs, fostering career choices and facilitating placement, studying labor mobility, analyzing the return on alternative investments in human capital, establishing comparable pay schedules, surveying labor productivity, and assessing employment benefits, stability, and working conditions. Not all of such uses will be equally well-served by any given classification.

Moreover, existing occupational information systems typically have data and information from various sources such as the Census of Population and Housing, the OES surveys, and the DOT. Currently, crosswalks provide bridges from one system to another. In the National Occupational Information Coordinating Committee's Occupational Information System, data from these different sources are presented together through the use of these crosswalks.

Unfortunately, linkages from occupations in one system to another are not always exact. In these cases, the crosswalk uses a ''best fit'' approach to link the systems. If Federal agencies all used one classification system, an SOC, the need for a crosswalk would be obviated or at least minimized.

Request for Comments

The Committee invites comments from members of the public on their uses of occupational data and the applicability of existing and potential classification systems to those uses. Descriptions of specific strengths and shortcomings users have experienced with data based on the existing occupational classification systems, including experiences related to the need to employ crosswalks, are most welcome.

Purpose and Scope of the SOC

The Standard Occupational Classification provides a mechanism for cross-referencing and aggregating occupation-related data collected by social and economic statistical reporting programs. The system is designed to maximize the analytical utility of statistics on labor force, employment, income, and other occupational data collected for a variety of purposes by various agencies of the United States Government, State agencies, professional associations, labor unions and private research organizations.

The classification covers all occupations in which work is performed for pay or profit, including work performed in family-operated enterprises where direct remuneration may or may not be made to family members. The SOC may also be used to classify volunteers, but occupations unique to volunteer settings were not included in the 1980 SOC.

The SOC provides a coding system and nomenclature for identifying and classifying occupations within a framework suitable for use in and out of government. However, because of the vast amount of occupational detail that was considered in developing such a system, and the wide variety of uses of occupational data, it was not possible to construct a system that would meet the specific needs of all organizations. The level of detail, for example, may not be sufficient for specialized analytical purposes or for internal organizational management requirements. In such cases, however, approaches generally can be taken that will not conflict with the overall scheme of the system.

Request for Comments

The Committee invites comments on the purpose and scope of the SOC.

Principles Underlying the Current SOC

The principles adopted in the new SOC should be relevant to the existing world of work. The twelve classification principles used in the 1980 SOC are listed below. Following some of the principles are questions designed to facilitate public comment.

1. The classification should realistically reflect the current occupational structure of the United States.

Should the new system attempt to reflect what analysts see as the future occupational structure?

2. An occupation should be classified on the basis of work performed. Skill level, training, education, licensing and credential requirements usually associated with job performance should be considered only when an inaccurate picture of the occupational structure would be presented without such consideration.

Should work performed continue to be the underlying principle of classification in the new SOC, or should skills or something else provide a new basis for classification?

3. Place of work (industry) should be considered in classifying an occupation only when the work setting alters the nature of the work sufficiently to warrant separate classification. For example, cooks in private households and commercial settings were classified in different unit groups because work is significantly dissimilar in their respective work settings.

4. The occupations should be classified in homogeneous groups that can be defined so that the content of each group is well delineated.

What factor(s) should be used to determine what is an occupational group?

5. An occupation that combines two distinct activities should be classified in one group on the basis of the primary activity—the one that accounts for the major portion of the worker's time. However, in cases where one activity requires special skills that are crucial in carrying out the duties of the occupation (although not required for as much time as other activities), that activity should determine the classification of the occupation.

Approximately what percentage of time should a worker in an occupation perform the highest skilled activity in order for the occupation to be classified based on that skill?

6. Each occupation should be assigned to only one group at the most

[1] Copies of the International Occupational Classification Conference proceedings may be obtained by writing to the Occupational Employment Statistics Program, Suite 4840, 2 Massachusetts Avenue, NE., Washington, DC 20212, or calling 202–606–6569.

detailed level of the classification system (unit group).

7. Large size should not by itself be considered sufficient reason for separate identification of a group.

8. Small size should not by itself be considered sufficient reason for excluding a group from separate identification, although size must be considered, or the system could become too large to be useful.

9. Supervisors should be identified separately from the workers they supervise wherever possible in keeping with the real structure of the world of work.

The 1980 SOC did not separately identify those who supervise professional or technical workers. Should any distinction be made between supervisors and workers in the case of professional or technical workers?

10. Apprentices and trainees should be classified with the occupations for which training is being taken.

11. Helpers should be identified separately when their work is such that they are not in training for the occupation for which they are providing help, or if their work is truly different.

Is there a need to distinguish among these workers according to the type of worker that they assist?

12. The need for comparability to the International Standard Classification of Occupations (ISCO) should be considered in developing the new structure, but it should not be an overriding factor.

Should the ISCO be the anchor for the U.S. system? (Please refer to the description of ISCO 88 below.)

Request for Comments

The Committee invites comments on the principles used in the current SOC. Suggestions for alternative principles are particularly welcomed.

Conceptual Options for the New SOC

The Policy Committee has identified four broad conceptual foundations of occupational classification systems: (1) The type of work performed, for example, the 1980 SOC, the U.S. Bureau of the Census system, the Dictionary of Occupational Titles (DOT) of the Employment and Training Administration, and the Occupational Employment Statistics (OES) system of the U.S. Bureau of Labor Statistics; (2) the International Standard Classification of Occupations (ISCO); (3) a skills-based system, for example, the National Occupational Classification (NOC) of Canada; and (4) an economic-based system.

(1) Type of Work Performed

The two major sources of occupational employment data in the U.S., the Census of Population and the OES survey, are based on the 1980 SOC. Both use classification systems based primarily upon work performed. The Census system, used to collect occupational data from households, consists of 501 occupations;[2] the OES system, used to collect data from establishments, consists of 760 occupations.[3] The DOT, used by the U.S. Employment Service, consists of more than 12,000 titles that also are based primarily on work performed.[4]

(2) The International Standard Classification of Occupations (ISCO–88)

ISCO–88 has a dual framework: The concept of the kind of work performed, or job; and the concept of skill. Job is defined as a set of tasks and duties executed by one person. It is the statistical unit classified by ISCO–88. A set of jobs whose main tasks and duties are characterized by a high degree of similarity constitutes an occupation. Persons are classified by occupation through their relationship to a past, present or future job.

Skill is defined as the ability to carry out the tasks and duties of a given job. It has two dimensions—skill level, which is a function of the complexity and range of the tasks and duties involved, and skill specialization, which is defined by the field of knowledge required, the tools and machinery used, the materials worked on or with, as well as the kinds of goods and services produced.

These were the basis for the delineation and further aggregation of the occupational groups in ISCO–88. In part due to the international properties of the classification, only four broad skill levels were defined, each according to the categories that appear in the International Standard Classification of Education (ISCED). Although there is a direct linkage with educational attainment, it does not follow that the skills necessary to perform the tasks and duties of a given job can be acquired only through formal education. Skills often are acquired through informal training and experience.[5]

There are some obstacles that may limit the desirability of completely adopting ISCO–88 for the U.S. SOC. A major focus of a new SOC would be to meet user needs that center on job placement, career guidance, and program planning; less demand exists for internationally-comparable occupational data. Only four skill levels are identified in ISCO–88, based upon formal education or vocational training, which are the basis for identifying major occupational groups. This leads to major groups that are somewhat divergent, resulting in a classification system that is not markedly different from existing ''work content based'' occupational classifications.

(3) Skills-Based Systems

Discussions about skills-based occupational classification concepts often are difficult, because the term ''skills'' means different things to different people. A number of other countries have dealt with this issue in revising their national classification systems, and it is useful to look to their experiences.

The National Occupational Classification of Canada merits study since Canada and the United States have a great deal in common in terms of occupational structure. The two major attributes that were used as classification criteria in developing the NOC were skill level and skill type. Other factors, such as industry and occupational mobility, also were taken into consideration. Skill level is defined as the amount and type of education and training required to enter and perform the duties of an occupation. In determining skill level, the experience required for entry and the complexity of the responsibilities typical of an occupation were also considered. Four skill levels are identified in the NOC:[6]

Skill Level A

—University degree (bachelor's, master's, or other post-graduate)

[2] Information on the Census classification system can be obtained by contacting the Bureau of the Census, HHES, Iverson Mall, Room 416, U.S. Department of Commerce, Washington, DC 20233–3300, or calling 301–763–8574.

[3] Information on the OES classification system can be obtained by writing the Bureau of Labor Statistics, Occupational Employment Statistics Program, Suite 4840, 2 Massachusetts Avenue, NE., Washington, DC 20212, or calling 202–606–6569.

[4] Information on the DOT can be obtained by writing the U.S. Department of Labor, Employment and Training Administration, Room N4470, 200 Constitution Ave., NW., Washington, DC 20210 or by calling 202–219–7161. Copies can be obtained by contacting the U.S. Government Printing Office, 732 North Capitol St., NW., Washington, DC 20401 or calling 202–512–1800.

[5] The ISCO can be obtained by contacting the International Labour Organisation (ILO), International Labour Office, CH–1211 Geneva 22, Switzerland or ILO Publications, 49 Sheridan Avenue, Albany, NY 12210 or by calling 518–436–9686, ext. 123.

[6] The NOC can be obtained by contacting Canada Communication Group—Publishing, Ottawa, Canada K1A 0S9 or by calling 819–956–4802.

Skill Level B

—Two to three years of post-secondary education at community college or institute of technology, or
—Two to four years of apprenticeship training, or
—Three to four years of secondary school and more than two years of on-the-job training, training courses, or specific work experience
—Occupations with supervisory responsibilities
—Occupations with significant health and safety responsibilities

Skill Level C

—One to four years of secondary school education
—Up to two years of on-the-job training, training courses, or specific work experience

Skill Level D

—Up to two years of secondary school and short work demonstration or on-the-job training

Skill type is defined generally as the type of work performed, although other factors related to skill type are also reflected in the NOC. One of these factors is similarity with respect to the education field of study required for entry into an occupation. Another factor is the industry of employment, where experience within an internal job ladder or within an industry is usually a prerequisite for entry. The ten broad occupational categories, based on skill type, identified in the NOC are:

O. Management Occupations

1. Business, Finance, and Administration
2. Natural and Applied Sciences and Related Occupations
3. Health Occupations
4. Occupations in Social Science, Education, Government Service, and Religion
5. Occupations in Art, Culture, Recreation, and Sport
6. Sales and Service
7. Trades, Transport and Equipment Operators, and Related Occupations
8. Occupations Unique to Primary Industry
9. Occupations Unique to Processing, Manufacturing, and Utilities

While the NOC changes the way in which occupations are grouped, it does not change the basic definition of what constitutes an individual occupation. Some advocates of skills-based systems suggest that occupations should be distinguished by their unique combinations of skills. There is no system currently that uses this type of combined skills base to classify individual occupations.

(4) Economic-Based Systems

As has been recognized explicitly in ongoing work by the Economic Classification Policy Committee (ECPC) (1993), classification systems should be designed to facilitate the uses of the information they provide. For example, data on employment and wages classified by occupation are used by researchers and policy makers to analyze a variety of labor market issues. As initially pointed out by Cain, Hansen, and Weisbrod (1967),[7] to be useful for economic analysis, occupational groupings should be relatively homogeneous in the sense that a high degree of substitutability should exist within each group compared to between groups. Two alternative approaches, each based on a consistent economic concept, have been suggested. A demand-based approach would group jobs or workers based on how employers choose to utilize different types of labor. A supply-based approach would group workers based on how individuals choose how much labor to supply and what jobs to enter.

A demand-based approach would build on the technological relationship between outputs and inputs that economists term a ‘‘production function.’’ Given a production function, together with product prices, wages of different types of labor, and prices of other inputs, firms will choose labor and other inputs so as to maximize profits or minimize costs. A demand-based classification approach would view an occupation essentially as a bundle of worker characteristics or skills that are needed to produce the product (for example, see Welch (1969).[8]

Such a system would be invaluable for analyzing a variety of issues pertaining to labor demand. For example, it would be helpful in studying how the economy’s demands for low and high skilled labor are changing over time due to changing technology and increasing globalization. A demand-based system would be of interest to researchers and policy makers, students deciding what types of courses to take, and unemployed workers searching for work. Another attractive feature of a demand-based occupational classification system is that it would be logically consistent with the production-based industrial classification system being developed by the Economic Classification Policy Committee.[9]

A supply-based conceptual approach would group occupations on the basis of considerations workers care about such as their incomes and the consumption aspects of their jobs (see Rosen, 1986).[10] Measurable attributes that are important to workers include the cost of obtaining the requisite skills, the risk of layoff and subsequent unemployment, onerous working conditions, such as risks to life and health and exposure to pollution, and special work-time scheduling and related requirements, including shift work and inflexible work schedules. A supply-based approach would group occupations according to these attributes. The resulting classification system would yield data of interest to both researchers and policy makers.

Both the demand-based and supply-based approaches motivate attention to some measure of skills in a classification system. Seemingly very different functions could require virtually identical skills. For example, a manufacturing firm may have a number of jobs in which workers perform different functions, but which require very little specific training and similar computer skills, motor coordination, interpersonal skills, and amounts of education. Because the workers in these positions will have similar skills and be nearly interchangeable, a demand-based argument would justify their being grouped together. If the positions do not differ in terms of working conditions, scheduling, and so forth, a supply-based argument would also indicate that they should be grouped together. From the research economist’s point of view, it is difficult to justify a system that makes detailed distinctions between occupations that require very similar skills and have very similar job attributes. Economic theory also suggests that more detail is required across high skill occupations than across low skill occupations because demand- and supply-based substitution is much more difficult and costly across high skill jobs than across low skill jobs.

Request for Comments

The Committee invites comments on any aspect of the alternative classification concepts. Specificity is encouraged particularly in commenting

[7] Cain, Glen, W. Lee Hansen, and Burton A. Weisbrod, ‘‘Occupational Classification: An Economic Approach.’’ *Monthly Labor Review,* February 1967, pp. 48–52.

[8] Welch, Finis, ‘‘Linear Synthesis of Skill Distribution,’’ *Journal of Human Resources,* Volume 4, 1969, pp. 311–327.

[9] For more information, see the **Federal Register**, Vol. 58, No. 60, March 31, 1993, pp. 16990–17004 and Vol. 59, No. 142, July 26, 1993, pp. 38092–96.

[10] Rosen, Sherwin, ‘‘The Theory of Equalizing Differences,’’ in Orley Ashenfelter and Richard Layard, eds., *Handbook of Labor Economics,* Volume I, New York: North Holland, 1986, pp. 641–692.

on either the skills-based or economic-based concepts. This will help ensure that the Committee will interpret the comments properly.

Standard Occupational Classification Revision Policy Committee Charter

Background

Concerns with the quality of the U.S. work force, skill formation and training issues, and changes in occupational structures due to new technology, competitive economic pressures, and shifts to forms of ''high performance'' work organization, have focused attention on the quality of occupational information and statistics. Current occupational data and their underlying classification structures have come under criticism for being fragmented, incompatible, outdated, and lacking in skills information. Many users and producers of occupational data feel that it is time to revise the U.S. Standard Occupational Classification (SOC) system to develop a unified classification structure that meets the occupational statistics and information needs of the twenty-first century.

The 1993 International Occupational Classification Conference provided a forum for the discussion of new ideas and alternative approaches to occupational classification issues. The Conference included many individuals and agencies directly involved with the occupational classification user community, as well as international occupational experts from numerous countries. The papers, discussions, and ideas generated at the conference will serve to inform revision activities for the SOC.

Establishment of the SOC Revision Policy Committee

The Office of Management and Budget (OMB) is hereby establishing a Standard Occupational Classification Revision Policy Committee, chaired by the Bureau of Labor Statistics, with representatives from the Bureau of the Census, the Employment and Training Administration, the Office of Personnel Management, the Defense Manpower Data Center, and, *ex officio,* the National Science Foundation and the Office of Management and Budget.

Charge to the Committee

The Policy Committee is charged with an examination of the Federal Government's various occupational classification systems for statistical and administrative uses, and with providing recommendations to OMB on the structure and implementation of a new SOC. This is a large undertaking with implications for the accuracy and utility of all occupation-related statistical data. The charge to the Committee includes: (1) Identifying the major statistical uses of occupational classifications; (2) identifying and developing new concepts, structures, and methodologies to determine what constitutes an occupation; (3) developing and empirically testing a standard classification system based on these concepts; (4) planning the implementation of the new classification system; and (5) ensuring that there is ample opportunity for widespread public participation in the revision process.

Classification Structure Criteria

The principal use of a revised SOC would be statistical, but it also would serve as a framework for administrative purposes and other occupational classifications. The Policy Committee should evaluate the utility of alternative classification structures in consideration of the following: (1) Ensuring compatibility between the descriptive material of the new Dictionary of Occupational Titles (DOT) and the revised SOC; (2) current public interest in a skills-based classification system; (3) users' needs for historical comparability of data; (4) ability to measure the concept in the context of its uses; (5) the expertise of other countries in revising national classification systems; (6) desirability, but not necessity, of compatibility with international occupational classification systems; and (7) the need for all Federal Government occupational classification systems to be part of the SOC framework.

Committee Process

The Policy Committee should adopt processes that ensure ample opportunity for public participation. These processes should involve all stakeholders, including the range of occupational data users, both government and private, as well as data collectors and data providers. The Policy Committee should consider forming a Consultation Group, composed of Federal agencies not represented on the Policy Committee. Such a group would meet on a flow basis, as necessary, to provide input to the work of the Policy Committee.

Notice of the Policy Committee's work should be widespread and should be published in the **Federal Register** for all interested public and private parties.

Interested parties will be given the opportunity to be included on a mailing list.

The conceptual framework for the new SOC should be completed prior to July 1995 to allow for testing related to the 2000 Census. The completed occupational classification structure should be available by July 1997 to coincide with development of the 2000 Census.

Request for Comments

The Committee invites comments on the SOC Revision Policy Committee process. Suggestions related to the classification structure criteria particularly are encouraged, as well as suggestions as to other major questions the Committee should be considering besides those mentioned in the charter.

Comment Procedure

Interested parties are invited to comment in writing to the Standard Occupational Classification Revision Policy Committee. Comments may be in reference to any topic related to occupational classification including the uses of the occupational data, the purpose and scope of an occupational classification system, the principles underlying the current SOC, and conceptual options for the new SOC. The Committee particularly solicits comments on present and future uses of data that are produced using occupational classification systems, with emphasis on the strengths and weaknesses of the present systems in meeting user needs. Interested parties may also send comments via E-mail, to Ross____L:PSB@Cmail.bls.gov.

Availability of Comment Materials

All written comments and materials received in response to this notice will be available throughout 1995 during normal business hours, 8:15 a.m. to 4:45 p.m., in Suite 4840, 2 Massachusetts Avenue NE., Washington, DC 20212. Individuals wishing to inspect these materials must call 202–606–6505 to obtain an appointment to enter the suite.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 95–4831 Filed 2–27–95; 8:45 am]

BILLING CODE 3110–01–P

federal register

Tuesday
February 28, 1995

Part V

Department of Education

Borrower Defenses Regulations Negotiated Rulemaking Advisory Committee; Notice

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Borrower Defenses Regulations Negotiated Rulemaking Advisory Committee; Establishment

AGENCY: Department of Education.

ACTION: Notice of intent to establish the Borrower Defenses Regulations Negotiated Rulemaking Advisory Committee (Committee) for the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) Program, and the Federal Perkins Loan (Perkins) Program regulations.

SUMMARY: The Secretary of Education and the Office of Postsecondary Education announce the intention to establish the Borrower Defenses Regulations Negotiated Rulemaking Advisory Committee to create draft proposed rules for borrower defenses in the Direct Loan, FFEL, and Perkins Programs.

DATES AND TIMES: The first meeting of the Committee is expected to be held in late March 1995. The specific time, date, and location will be announced in a subsequent notice prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Nicki Meoli, Program Specialist, Policy Development Division, Office of Postsecondary Education, U.S. Department of Education, Room 3053, ROB–3, 600 Independence Avenue, SW, Washington, DC 20202–5400. Telephone: (202) 708–9406. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Secretary has determined that it is necessary and in the public interest to establish the Borrower Defenses Regulations Negotiated Rulemaking Advisory Committee. The Department of Education (Department) has retained the services of a professional mediator to serve as a neutral convener and facilitator for the negotiated rulemaking. The Committee will be balanced and represent all parties that will be affected by these rules. The Committee will include representatives of institutions of higher education, higher education organizations, student loan lenders, guaranty agencies, loan servicers, legal aid organizations, students, and the Department. Administrative support for the Committee will be provided by the Office of Postsecondary Education.

Issues To Be Negotiated

The issues to be negotiated include which acts or omissions of an institution of higher education a borrower may assert as defenses to a demand for repayment of a loan made under the Direct Loan, FFEL, and Perkins Programs, and the consequences of such defenses for the institution, the Secretary, and, for FFEL Program loans, for the lender and the guaranty agency. The Committee may also negotiate issues regarding whether administrative procedures should be established to adjudicate whether a borrower has a valid defense and the effect the adjudication would have on the rights and liabilities of institutions, lenders, guaranty agencies, and the Secretary.

Agenda for First Meeting

The draft agenda for the first meeting, which will be organizational, follows:

(1) Welcoming remarks.

(2) Introduction of facilitator and participants.

(3) Discussion of procedural ground rules.

(4) General discussion of participants' perspectives on substantive issues.

(5) Development of issue agendas or drafts for subsequent meetings.

Structure of Committee

The ultimate goal of negotiated rulemaking is to reach consensus among all committee members through discussion and negotiation among all interested and affected parties, including the Department. With this in mind, the Department will conduct these negotiations within a structure that is designed to reach this goal fairly and efficiently and give strong consideration to the complex nature of the issues to be negotiated. All members of the Committee will be able to participate in discussion and negotiation. The Office of Postsecondary Education has selected the members because they, and the groups they represent, will be affected by the final rule. Thus, the widest possible variety of interests will be represented in the negotiating process while maintaining the possibility of reaching informed agreement.

The following list of organizations are "full" members of the Committee (some organizations with similar interests have joined as a coalition):

Department of Education
American Association of Community Colleges
American Association of Cosmetology Schools
American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Career College Association
Coalition of private non-profit multi-State guaranty agencies
Consumer Bankers Association
Education Finance Council
Hispanic Association of Colleges and Universities
Legal Services Team (a coalition)
National Association of Independent Colleges and Universities
National Association of State Universities and Land Grant Colleges
National Association of Student Financial Aid Administrators
National Association for Equal Opportunity in Higher Education/ United Negro College Fund (a coalition)
National Council of Higher Education Loan Programs
Sallie Mae
United States Student Association

Requests for Participation

If you feel you represent, or wish to nominate someone who represents, a significantly affected interest that is not included in the above list, please send a request for participation to Nicki Meoli, Program Specialist, Policy Development Division, Office of Postsecondary Education, U.S. Department of Education, Room 3053, ROB–3, 600 Independence Avenue, SW, Washington, DC 20202–5400, no later than 30 days after the publication of this notice.

The Application Must Include

1. Name of the applicant or nominee and a description of the interest or interests to be represented;

2. Evidence that the applicant or nominee is authorized to represent parties related to the interest or interests the person proposes to represent;

3. A written commitment that the applicant or nominee will actively participate in good faith in the development of the rule under consideration; and

4. The reasons that the organizations listed in the notice do not adequately represent the interest or interests of the person or organization submitting the application or nomination.

Please note that participation in the rulemaking process is not limited to members of the Committee. Meetings are open to the public so interested parties may observe the negotiations, and there will be an allotted public comment period at each session for the public to communicate their views. There are expected to be a total of three meetings held in the Washington Metropolitan area. In addition, proposed rules resulting from these negotiations will be published in the **Federal Register** with a comment period. The Department expects to publish these proposed rules by July 1, 1995. A final rule will be published by December 1, 1995.

Dated: February 23, 1995.

Richard W. Riley,

Secretary of Education.

[FR Doc. 95–4875 Filed 2–27–95; 8:45 am]

BILLING CODE 4000–01–P

Tuesday
February 28, 1995

Part VI

Department of Health and Human Services

Administration on Aging

Turning Resolutions Into Results; Building the Legacy of the 1995 White House Conference on Aging; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Administration on Aging

Turning Resolutions Into Results: Building the Legacy of the 1995 White House Conference on Aging

AGENCY: White House Conference on Aging, AoA, HHS.

ACTION: Notice; Request for Public Comments.

SUMMARY: The White House Conference on Aging (WHCoA), which will be held May 2–5, 1995 in Washington, D.C., will conclude with the passage of resolutions designed to influence aging policy into the next century. This notice announces two categories of post-conference activities devised to ensure implementation of these resolutions into policy: (1) Follow up meetings recognized by WHCoA and held throughout the country; and (2) submission of public comments.

FOR FURTHER INFORMATION CONTACT: Karen Goldmeier, White House Conference on Aging, 501 School Street, SW, 8th Floor, Washington, DC 20024–2755, phone (202) 245–7116.

SUPPLEMENTARY INFORMATION: As specified in Title II of the Older Americans Act Amendments of 1987 (Pub. L. 100–175, as amended) the 1995 White House Conference on Aging is to work jointly with States, individuals, and public and private organizations to devise a series of resolutions to guide national aging policy into the 21st century. Consistent with this grassroots focus, the WHCoA has solicited information and encouraged participation from a wide range of sources since President Clinton announced the Conference on February 17, 1994. The WHCoA has received input from individuals and organizations across the country, including over 900 responses generated by a proposed WHCoA agenda for public comment published in the October 12, 1994 **Federal Register.** In addition, by the May Conference in Washington D.C., more than 700 activities affiliated with the WHCoA will have been held around the country.

In keeping with this grassroots emphasis, the WHCoA proposes to recognize two avenues for public participation after the close of the Washington Conference. First, the WHCoA is announcing of a series of events to follow the May Conference. These events, described in more detail below, will narrowly focus on strategies to implement the resolutions adopted by the Conference. Second, individuals may submit comments regarding implementation of resolutions independent of these post-Conference events.

These two avenues, along with a final Conference report prepared by the Policy Committee with input by the Advisory Committee and Governors' offices, will help define a blueprint for proposed post-WHCoA implementation activities. This blueprint will provide the framework for immediate and long term actions to implement the Conference's highest priority recommendations. It will also identify areas and tasks in which the public and private sectors, including governmental and nongovernmental organizations and agencies, can play a role in implementing the Conference recommendations. These may include private initiatives as well as the enactment of public policies and laws affecting aging Americans, their families and their communities now and into the 21st century.

I. Post-Conference Events

The 1995 White House Conference on Aging proposes to recognize a final series of events focused on implementing the priority recommendations created in the May Conference. Organizations interested in sponsoring an event under the auspices of the WHCoA must adhere to guidelines similar to those that presently govern pre-conference events. Thus, to qualify for recognition, the activity must: (1) Be a policy-oriented event focusing on one or more of the priority resolutions adopted by the 1995 White House Conference on Aging; (2) guarantee the participation of older persons; (3) produce a written report within 30 days or by October 13, 1995, whichever is earlier; (4) raise funds only to the extent necessary to cover the cost of the event; and (5) be approved by the Executive Director of the WHCoA.

Recognition signifies the WHCoA's acknowledgement of the relevancy of the event to the goals of the WHCoA. It allows the sponsoring organization to publicize that the event has been recognized by the WHCoA and that it will be listed in the final report of the Conference. Recognition does not, however, imply that the WHCoA agrees with or endorses the recommendations.

Sponsoring organizations will be required to file a report of the event. The reports shall be 3–5 pages in length, double spaced, and should summarize recommendations adopted regarding implementation of WHCoA resolutions. These recommendations may address any aspect of implementation, including, but not limited to:

—Issues related to responsibility (federal, state and local government, private and/or foundation sector, individuals/families, or a combination of the above);
—Issues related to cost (reallocation of existing resources, obtaining additional funding if necessary, offsetting costs); and
—Issues related to process (specific legislative or regulatory recommendations, immediate goals and long-term timetables, suggestions to guide interested private sector participants).

These reports will be collected for future dissemination to the most appropriate entity. Some targets for distribution include: (1) The Administration on Aging and other divisions within the U.S. Department of Health and Human Services; (2) U.S. Departments of Housing, Veterans Affairs, and other federal government entities; (3) state and local government entities; (4) Congressional offices; (5) national and state organizations (6) corporations and private sector entities; and (7) nonprofit and grassroots organizations.

Interested organizations should submit a letter of intent asking for WHCoA recognition of the event to the White House Conference on Aging; 501 School Street, SW, 8th floor; Washington, D.C. 20024–2755. The letter must include the name, address, telephone number and contact person of the organization, as well as a brief description of the proposed post-conference event including the theme and/or title. All submissions must be received by May 31, 1995.

II. Public Comments

After the close of conference on May 5, 1995, the White House Conference on Aging will accept public comments from individuals and organizations that address practical aspects of resolution implementation. Like the reports generated from the post WHCoA events, submissions must focus on one or more of the three aspects of resolution implementation listed above and are to be a maximum of five pages long. Comments should be sent to the address listed in section I to be forwarded to the most appropriate entity to oversee implementation. The deadline for WHCoA consideration of these comments is October 13, 1995.

Dated: February 22, 1995.

Fernando M. Torres-Gil,

Assistant Secretary for Aging.

[FR Doc. 95–4851 Filed 2–27–95; 8:45 am]

BILLING CODE 4130–02–M

Tuesday
February 28, 1995

Part VII

The President

Executive Order 12952—Amendment to Executive Order No. 12950

Executive Order 12953—Actions Required of all Executive Agencies To Facilitate Payment of Child Support

Federal Register

Vol. 60, No. 39

Tuesday, February 28, 1995

Presidential Documents

Title 3—

The President

Executive Order 12952 of February 24, 1995

Amendment to Executive Order No. 12950

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to amend Executive Order No. 12950, it is hereby ordered that the list of Labor Organizations attached to and made a part of such order is amended to include the following:

International Brotherhood of Firemen & Oilers

THE WHITE HOUSE,
February 24, 1995.

[FR Doc. 95–5129
Filed 2–27–95; 10:56 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 12953 of February 27, 1995

Actions Required of all Executive Agencies To Facilitate Payment of Child Support

Children need and deserve the emotional and financial support of both their parents.

The Federal Government requires States and, through them, public and private employers to take actions necessary to ensure that monies in payment of child support obligations are withheld and transferred to the child's caretaker in an efficient and expeditious manner.

The Federal Government, through its civilian employees and Uniformed Services members, is the Nation's largest single employer and as such should set an example of leadership and encouragement in ensuring that all children are properly supported.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

PART I—PURPOSE

Section 101. This executive order: (a) Establishes the executive branch of the Federal Government, through its civilian employees and Uniformed Services members, as a model employer in promoting and facilitating the establishment and enforcement of child support.

(b) Requires all Federal agencies, including the Uniformed Services, to cooperate fully in efforts to establish paternity and child support orders and to enforce the collection of child and medical support in all situations where such actions may be required.

(c) Requires each Federal agency, including the Uniformed Services, to provide information to its employees and members about actions that they should take and services that are available to ensure that their children are provided the support to which they are legally entitled.

PART 2—DEFINITIONS

For purposes of this order:

Sec. 201. ''Federal agency'' means any authority as defined at 5 U.S.C. 105, including the Uniformed Services, as defined in section 202 of this order.

Sec. 202. ''Uniformed Services'' means the Army, Navy, Marine Corps, Air Force, Coast Guard, and the Commissioned Corps of the National Oceanic and Atmospheric Administration, and the Public Health Service.

Sec. 203. ''Child support enforcement'' means any administrative or judicial action by a court or administrative entity of a State necessary to establish paternity or establish a child support order, including a medical support order, and any actions necessary to enforce a child support or medical support order. Child support actions may be brought under the civil or criminal laws of a State and are not limited to actions brought on behalf of the State or individual by State agencies providing services under title IV-D of the Social Security Act, 42 U.S.C. 651 *et seq*.

Sec. 204. ''State'' means any of the fifty States, the District of Columbia, the territories, the possessions, and the Commonwealths of Puerto Rico and of the Mariana Islands.

PART 3—IMMEDIATE ACTIONS TO ENSURE CHILDREN ARE SUPPORTED BY THEIR PARENTS

Sec. 301. *Wage Withholding.* (a) Within 60 days from the date of this order, every Federal agency shall review its procedures for wage withholding under 42 U.S.C. 659 and implementing regulations to ensure that it is in full compliance with the requirements of that section, and shall endeavor, to the extent feasible, to process wage withholding actions consistent with the requirements of 42 U.S.C. 666(b).

(b) Beginning no later than July 1, 1995, the Director of the Office of Personnel Management (OPM) shall publish annually in the **Federal Register** the list of agents (and their addresses) designated to receive service of withholding notices for Federal employees.

Sec. 302. *Service of Legal Process.* Every Federal agency shall assist in the service of legal process in civil actions pursuant to orders of courts of States to establish paternity and establish or enforce a support obligation by making Federal employees and members of the Uniformed Services stationed outside the United States available for the service of process. Each agency shall designate an official who shall be responsible for facilitating a Federal employee's or member's availability for service of process, regardless of the location of the employee's workplace or member's duty station. The OPM shall publish a list of these officials annually in the **Federal Register**, beginning no later than July 1, 1995.

Sec. 303. *Federal Parent Locator.* Every Federal agency shall cooperate with the Federal Parent Locator Service, established under 42 U.S.C. 653, by providing complete, timely and accurate information that will assist in locating noncustodial parents and their employers.

Sec. 304. *Crossmatch for Delinquent Obligors.* (a) The master file of delinquent obligors that each State child support enforcement agency submits to the Internal Revenue Service for Federal income tax refund offset purposes shall be matched at least annually with the payroll or personnel files of Federal agencies in order to determine if there are any Federal employees with child support delinquencies. The list of matches shall be forwarded to the appropriate State child support enforcement agency to determine, in each instance, whether wage withholding or other enforcement actions should be commenced. All matches will be performed in accordance with 5 U.S.C. 552a(o)-(u).

(b) All Federal agencies shall inform current and prospective employees that crossmatches are routinely made between Federal personnel records and State records on individuals who owe child support, and inform employees how to initiate voluntary wage withholding requests.

Sec. 305. *Availability of Service.* All Federal agencies shall advise current and prospective employees of services authorized under title IV-D of the Social Security Act that are available through the States. At a minimum, information shall be provided annually to current employees through the Employee Assistance Program, or similar programs, and to new employees during routine orientation.

Sec. 306. *Report on Actions Taken.* Within 90 days of the date of this order, all Federal agencies shall report to the Director of the Office of Management and Budget (OMB) on the actions they have taken to comply with this order and any statutory, regulatory, and administrative barriers that hinder them from complying with the requirements of part 3 of this order.

PART 4—ADDITIONAL ACTIONS

Sec. 401. *Additional Review for the Uniformed Services.* (a) In addition to the requirements outlined above, the Secretary of the Department of Defense (DOD) will chair a task force, with participation by the Department of Health and Human Services (HHS), the Department of Commerce, and the Department of Transportation, that shall conduct a full review of current policies and practices within the Uniformed Services to ensure that children of Uniformed Services personnel are provided financial and medical support in the same manner and within the same time frames as is mandated for all other children due such support. This review shall include, but not be limited to, issues related to withholding non-custodial parents' wages, service of legal process, activities to locate parents and their income and assets, release time to attend civil paternity and support proceedings, and health insurance coverage under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). All relevant existing statutes, including the Soldiers and Sailors Civil Relief Act of 1940, the Uniformed Services Former Spouses Protection Act, and the Tax Equity and Fiscal Responsibility Act of 1982, shall be reviewed and appropriate legislative modifications shall be identified.

(b) Within 180 days of the date of this order, DOD shall submit to OMB a report based on this review. The report shall recommend additional policy, regulatory and legislative changes that would improve and enhance the Federal Government's commitment to ensuring parental support for all children.

Sec. 402. *Additional Federal Agency Actions.* (a) OPM and HHS shall jointly study and prepare recommendations concerning additional administrative, regulatory, and legislative improvements in the policies and procedures of Federal agencies affecting child support enforcement. Other agencies shall be included in the development of recommendations for specific items as appropriate. The recommendations shall address, among other things:

(i) any changes that would be needed to ensure that Federal employees comply with child support orders that require them to provide health insurance coverage for their children;

(ii) changes needed to ensure that more accurate and up-to-date data about civilian and uniformed personnel who are being sought in conjunction with State paternity or child support actions can be obtained from Federal agencies and their payroll and personnel records, to improve efforts to locate noncustodial parents and their income and assets;

(iii) changes needed for selecting Federal agencies to test and evaluate new approaches to the establishment and enforcement of child support obligations;

(iv) proposals to improve service of process for civilian employees and members of the Uniformed Services stationed outside the United States, including the possibility of serving process by certified mail in establishment and enforcement cases or of designating an agent for service of process that would have the same effect and bind employees to the same extent as actual service upon the employees;

(v) strategies to facilitate compliance with Federal and State child support requirements by quasi-governmental agencies, advisory groups, and commissions; and

(vi) analysis of whether compliance with support orders should be a factor used in defining suitability for Federal employment.

(b) The recommendations are due within 180 days of the date of this order. The recommendations are to be submitted in writing to the Office of Management and Budget.

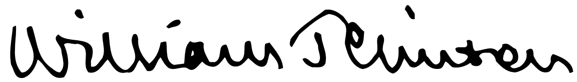
Sec. 501. *Internal Management.* This order is intended only to improve the internal management of the executive branch with regard to child support enforcement and shall not be interpreted to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers, or any other person.

Sec. 502. *Sovereignty of the United States Government.* This order is intended only to provide that the Federal Government has elected to require Federal agencies to adhere to the same standards as are applicable to all other employers in the Nation and shall not be interpreted as subjecting the Federal Government to any State law or requirement. This order should not be construed as a waiver of the sovereign immunity of the United

States Government or of any existing statutory or regulatory provisions, including 42 U.S.C. 659, 662, and 665; 5 CFR Part 581; 42 CFR Part 21, Subpart C; 32 CFR Part 54; and 32 CFR Part 81.

Sec. 503. *Defense and Security.*

This order is not intended to require any action that would compromise the defense or national security interest of the United States.



THE WHITE HOUSE,
February 27, 1995.

[FR Doc. 95–5146
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Federal Register

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