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Monday
May 19, 1997

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Title 3—

The President

Prolamation 7003 of May 14, 1997

National Safe Boating Week, 1997

By the President of the United States of America

A Proclamation

America's scenic waterways—the beautiful lakes, magnificent rivers, and immense oceans at our borders—are a national treasure. Some 76 million Americans of all ages and abilities—more than one-fourth of our Nation's population—take to these vast resources every year to enjoy the beauty of the outdoors, each in his or her own way. But boaters too often forget that, besides being relaxing and fun, boating can be dangerous.

The U.S. Coast Guard's most recent annual statistics reveal 851 fatalities related to recreational boating, a 13 percent increase from the previous year. Tragically, 90 percent of those victims were not wearing a life jacket. Because falling overboard and capsizing are the two leading causes of all recreational boating fatalities, this safety device is essential to boating safety. Refraining from drinking alcohol is also essential to assure safe boating, as more than half of all boating accidents involve alcohol.

Safe-boating education, which is available through a wide variety of sources—the U.S. Coast Guard Auxiliary, U.S. Power Squadrons, State and local governments, and numerous private organizations—is another key to accident prevention. Ninety percent of all boating fatalities occur on boats whose operators had no formal boating safety instruction. By word and by example, we must inform and educate both current and future generations of boaters to become knowledgeable boat operators. Learn about safety equipment and the ''rules of the road.'' Then follow a few simple rules: wear a life jacket; never drink while boating; operate at safe speeds; and be alert for weather changes.

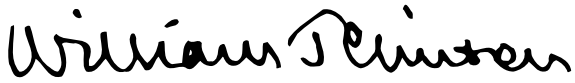
By making safety the first priority and emphasizing the necessity for all boaters, especially children, to wear life jackets, we can help to put tragic boating accidents behind us and enjoy more fully the beauty and excitement of the open water.

I commend the U.S. Coast Guard, Federal departments and agencies, States and local governments, and the many recreational boating organizations who are actively promoting saving lives on the water through the theme of this year's campaign: ''Life Jackets. They Float. You Don't.''

In recognition of the importance of safe boating practices the year-round, the Congress, by joint resolution approved June 4, 1958 (36 U.S.C. 161), as amended, has authorized and requested the President to proclaim annually the seven-day period prior to the Memorial Day Weekend as ''National Safe Boating Week.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 17 through May 23, 1997, as National Safe Boating Week. I encourage the Governors of the 50 States, the Commonwealth of Puerto Rico, and officials of other areas subject to the jurisdiction of the United States to join in observing this occasion and to urge all Americans to practice safe boating habits not only during this week but also throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of May, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.



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Rules and Regulations

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV97–947–1 IFR]

Irish Potatoes Grown in Modoc and Siskiyou Counties, California, and in all Counties in Oregon, Except Malheur County; Define Fiscal Period and Decrease Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes, in the regulatory text, the fiscal period of the Oregon-California Potato Committee (Committee) to begin July 1 of each year and end June 30 of the following year, and decreases the assessment rate established under Marketing Order No. 947 for the 1997–98 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of Irish potatoes grown in Modoc and Siskiyou Counties, California, and in all counties in Oregon, except Malheur County. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on July 1, 1997. Comments received by June 18, 1997, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090–6456; telephone 202–720–9918; FAX 202–720–5698, or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204; telephone 503–326–2724; FAX 503–326–7440. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone 202–720–2491; FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 114 and Order No. 947, both as amended (7 CFR part 947) regulating the handling of Irish potatoes grown in Oregon-California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Oregon-California potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes beginning July 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule establishes, in regulatory text, the fiscal period of the Committee to begin July 1 of each year and end June 30 of the following year, and decreases the assessment rate established for the Committee for the 1997–98 and subsequent fiscal periods from $0.005 to $0.004 per hundredweight.

The Oregon-California potato marketing order provides authority for the Committee, with the approval of the Department, to establish a fiscal period. The Committee has operated under a fiscal period of July 1 through June 30 for many years. This rule adds to the order's rules and regulations a definition of the fiscal period of the Committee to be the 12 month period beginning July 1 and ending June 30 of the following year, both dates inclusive.

The Oregon-California potato marketing order also provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Oregon-California potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in

effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on March 5, 1997, and unanimously recommended 1997–98 expenditures of $53,600 and an assessment rate of $0.004 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were $61,200. The assessment rate of $0.004 is $0.001 less than the rate currently in effect. As the Committee's reserve exceeds the amount authorized in the order of one fiscal period's operational expenses, the Committee voted to lower its assessment rate and use more of the reserve to cover its expenses. The Committee discussed alternatives to this rule, including alternative expenditure levels, but recommended that the major expenditures for the 1997–98 fiscal period should include $30,000 for an agreement with the Oregon Potato Commission to provide miscellaneous services to the Committee, $4,000 for Committee meeting expenses, $3,000 for staff travel, and $3,000 for investigation and compliance. Budgeted expenses for these items in 1996–97 were $30,000, $4,200, $3,000, and $3,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Oregon-California potatoes. Potato shipments for the year are estimated at 8,500,000 hundredweight, which should provide $34,000 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

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

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

There are approximately 550 producers of Oregon-California potatoes in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Oregon-California potato producers and handlers may be classified as small entities.

This rule establishes, in the regulatory text, the fiscal period of the Committee to begin July 1 of each year and end June 30 of the following year, and decreases the assessment rate established for the Committee and collected from handlers for the 1997–98 and subsequent fiscal periods from $0.005 to $0.004 per hundredweight. The Committee unanimously recommended 1997–98 expenditures of $53,600 and an assessment rate of $0.004 per hundredweight of potatoes. The assessment rate of $0.004 is $0.001 less than the rate currently in effect. As the Committee's reserve exceeds the amount authorized in the order of one fiscal period's operational expenses, the Committee voted to lower its assessment rate and use more of the reserve to cover its expenses.

The Committee discussed alternatives to this rule, including alternative expenditure levels, but recommended that the major expenditures for the 1997–98 fiscal period should include $30,000 for an agreement with the Oregon Potato Commission to provide miscellaneous services to the Committee, $4,000 for Committee meeting expenses, $3,000 for staff travel, and $3,000 for investigation and compliance. The Committee also discussed the alternative of not decreasing the assessment rate. However, it decided against this course of action because continuation of the higher rate would not allow it to bring its operating reserve in line with the maximum amount authorized under the order. The reduced assessment rate will require the Committee to use more of its reserve for authorized expenses, and help bring the reserve within authorized levels.

Potato shipments for the year are estimated at 8,500,000 hundredweight, which should provide $34,000 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Recent price information indicates that the grower price for the 1997–98 marketing season will range between $4.00 and $7.00 per hundredweight of potatoes. Therefore, the estimated assessment revenue for the 1997–98 fiscal period as a percentage of total grower revenue will range between .100 and .057 percent.

This action will reduce the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Oregon-California potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 5, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action will not impose any additional reporting or recordkeeping requirements on either small or large Oregon-California potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, because: (1) This action reduces the current assessment rate; (2) the 1997–98 fiscal period begins on July 1, 1997, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable

potatoes handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 947 is amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR part 947 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 947.114 is added to Subpart—Rules and Regulations to read as follows:

§ 947.114 Fiscal period.

The fiscal period shall begin July 1 of each year and end June 30 of the following year, both dates inclusive.

§ 947.247 [Amended]

3. Section 947.247 is amended by removing the words ''July 1, 1996,'' and adding in its place the words ''July 1, 1997,'' and by removing ''$0.005'' and adding in its place ''$0.004.''

Dated: May 12, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–12999 Filed 5–16–97; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AB59

Assessments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is preserving the current adjusted rate schedule for assessments paid to the Bank Insurance Fund (BIF) for the second semiannual period of 1997 (July–December), and for subsequent semiannual periods subject to review on a semiannual basis. Absent action by the FDIC, the BIF rates would revert to the base rates, which are 4 basis points higher. The resulting assessments would exceed the amount allowed by law.

The FDIC is issuing the final rule without prior notice and comment under the procedure established by the FDIC's regulations for making limited adjustments to base assessment rates.

The final rule removes obsolete provisions regarding the special assessment and pre-1997 rates, and clarifies other provisions without altering their substance.

EFFECTIVE DATE: Effective May 6, 1997.

FOR FURTHER INFORMATION CONTACT: Fred Carns, Assistant Director, Division of Insurance, (202) 898–3930; William Farrell, Chief, Assessment Management Section, Division of Finance, (202) 416–7156; Richard Osterman, Senior Counsel, (202) 898–3523, or Jules Bernard, Counsel, (202) 898–3731, Legal Division, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. The Final Rule

A. Background

In accordance with section 7(b) of the Federal Deposit Insurance (FDI Act), 12 U.S.C. 1817(b), the FDIC has adopted a risk-based assessment program for the BIF. The program has two main components. The first component is a set of base rates that are appropriate for the BIF over the long term. These rates, which are presented in the BIF Base Assessment Schedule, *see* 12 CFR 327.9(a)(2)(i), will be changed only after full notice-and-comment rulemaking. The second component is a mechanism for making limited and relatively short-term adjustments to the BIF base rates. The adjustments are made by rulemaking without prior notice and comment, *see id.* 327.9(c), but are revisited by the FDIC on a semiannual basis. The adjusted rates are presented in the BIF Adjusted Assessment Schedule. *See id.* 327.9(b)(2)(i). The adjusted rates are the effective ones—that is, the rates that BIF-assessable institutions currently pay to the BIF.[1]

The BIF base assessment rates are appropriate, over the long term, to generate assessments that maintain the BIF's capitalization at the level prescribed by statute. The base rates reflect a thorough historical analysis of FDIC experience, including consideration of recent statutory changes that may moderate future deposit insurance losses (*e.g.,* prompt corrective action authority and the least-cost resolution requirement). *See* 60 *FR* 42680 (Aug. 16, 1995). The BIF base rates range from 4 basis points (bp) for institutions in the best assessment risk classification (1A institutions) to 31 bp for institutions in the least favorable one. The final rule does not alter these rates.

Over the short term, however, the BIF base rates would produce a continued rise in the Bank Insurance Fund reserve ratio (BIF reserve ratio)—that is, in the ratio of the BIF's net worth to the aggregate estimated deposits that the BIF insures. *See* 12 U.S.C. 1817(l)(6). The BIF reserve ratio is currently above the target ratio prescribed by statute, and is rising. (See discussion at I.B., below). The FDIC's Board of Directors (Board) has therefore adopted a temporary adjustment to the BIF base rates. *See* 61 *FR* 64609 (Dec. 6, 1996). The adjustment has lowered the base rates by 4 bps. The resulting adjusted rates (which are now in effect) range from zero to 27 bp.

The adjustment only applies to the current semiannual period (January-June 1997), and expires at the end of it. *See* 12 CFR 327.9(b)(2)(ii). Absent this final rule, the effective BIF rates would revert to the long-term rates set forth in the BIF Base Assessment Schedule.

The final rule preserves the effective BIF rates at their current levels for the second semiannual period of 1997 (July–December) and indefinitely thereafter. The final rule does so by making an adjustment to the BIF Base Assessment Schedule in accordance with the procedure prescribed in *id.* 327.9(c). The adjustment lowers the rates in the BIF Base Assessment Schedule by four bp. The adjustment is of indefinite duration, but is reviewed semiannually.

B. Statutory and Regulatory Framework for Adjusting the Base Assessment Rates

1. Statutory Provisions

The touchstone for setting a fund's assessments is the fund's reserve ratio. When that ratio is below the ''designated reserve ratio'' (DRR),[2] the

[1] An institution that holds BIF-assessable deposits must also pay an assessment to the Financing Corporation (FICO) based on those deposits. 12 U.S.C. 1441(f)(2); *see* Deposit Insurance Funds Act of 1996 (Funds Act), Pub. L. 104–208, section 2703, 110 Stat. 3009, 3009–479 *et seq.* (Sept. 30, 1996). The FICO payment is separate from, and in addition to, the BIF assessment.

The FDIC will continue to collect the FICO assessments on the FICO's behalf. The FDIC's quarterly invoices will reflect the current amount of the FICO assessment.

[2] The DRR is a target ratio that has a fixed value for each year. The default value is 1.25 percent. The FDIC may set a higher value under certain

Continued

FDIC must set assessments to increase the fund's reserve ratio to the DRR. When the reserve ratio is at or above the DRR—as is now the case for the BIF—the FDIC must set assessments to maintain the reserve ratio at the target DRR. 12 U.S.C. 1817(b)(2)(A)(i). The FDIC may not generally set assessments in excess of the amounts needed to meet these goals. *Id.* 1817(b)(2)(A)(iii). But the FDIC may set such assessments for institutions that exhibit financial, operational, or compliance weaknesses or are not well capitalized. *Id.* 1817(b)(2)(A)(v).[3]

In order to determine the aggregate amount to be collected for a fund, the FDIC must consider: (1) The fund's expected operating expenses; (2) the fund's case resolution expenditures and income; (3) the effect of assessments on the earnings and capital of fund members; and (4) any other factors that the FDIC deems appropriate. *Id.* 1817(b)(2)(A)(ii).[4]

2. Regulatory Provisions

The FDIC has adopted a special procedure for making limited and relatively short-term adjustments to a fund's base rates in order to maintain the fund's reserve ratio at the target DRR. *See* 12 CFR 327.9(c).

Adjustments are subject to strict constraints. An adjustment must apply uniformly to every rate in the base assessment schedule. No adjustment may, when aggregated with prior adjustments, cause the adjusted rates to deviate at any time from the base rates by more than 5 bp. No one adjustment may constitute an increase or decrease of more than 5 bp. And no adjustment may result in a negative assessment rate. *Id.* 327.9(c)(1).

In line with the statutory requirements for setting assessments, an adjustment is determined by (1) the amount of assessment revenue necessary to maintain the fund's reserve ratio at the DRR, and (2) the assessment schedule that would provide the amount so needed considering the risk profile of the institutions that pay assessments to the fund. *Id.* To determine the assessment revenue needed for a fund, the FDIC considers the fund's expected operating expenses, its case resolution expenditures and income, the effect of assessments on the earnings and capital of the institutions paying assessments to the fund, and any other relevant factors. *Id.* 327.9(c)(2).

C. The BIF Adjusted Assessment Schedule

For the reasons given below, the FDIC considers that there is no current need for assessment income to maintain the BIF's reserve ratio at the target DRR. Accordingly, the final rule adjusts the rates in the BIF Base Assessment Schedule by lowering each rate 4 bp, effective July 1, 1997, thereby retaining the rates currently in effect. The adjusted rates are as follows:

BIF ADJUSTED ASSESSMENT SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
1	0	3	17
2	3	10	24
3	10	24	27

1. Maintaining the BIF Reserve Ratio at the Target DRR. As of December 31, 1996 (unaudited), the latest date for which complete data are available, the BIF had a balance of $26.854 billion (see Table 3) and a reserve ratio of 1.34 percent. The industry's performance in recent months has been strong; the growth of the BIF reserve ratio has been robust. Accordingly, the near-term outlook for the BIF reserve ratio is favorable.

Expected operating expenses. Operating expenses were approximately $505 million during 1996. They averaged $42 million per month for the year, but increased to an average of $55 million per month during the last quarter of 1996 (a full-year equivalent figure of $656 million). For 1997, operating expenses are projected to be $652 million. The savings from corporate downsizing is offset by a higher allocation of overhead expenses to corporate, a result of fewer receiverships.

Case resolution expenditures and income. Expected case resolution expenditures and income are reflected in projected insurance losses, which consist of two components: a contingent liability for future failures, and an allowance for losses on institutions that have already failed. Using the FDIC's current estimates of failed-bank assets and a 20 percent loss rate on such assets, the change in the contingent liability for future failures is estimated to be between $100 million (low estimate) and $300 million (high estimate) for calendar year 1997.

While annual changes in the allowance for losses on past failures, as a percent of the estimated net recovery value of closed banks,[5] have been as high as +13 percent and as low as −16 percent over the last five years, the change in 1994 was −5.75 percent , +10.2 percent in 1995, and −3.0 percent in 1996. An estimated range of +5 percent to −5 percent was used in the projections detailed below.

Table 1 summarizes the effect of these assumptions on projections of the provision for losses:

TABLE 1.—CHANGES IN CONTINGENT LIABILITIES AND ALLOWANCE FOR LOSSES (1)

	Low loss estimate (million)	High loss estimate (million)
Contingent Liability for Future Cases	$100	$300
Allowance for Losses: Closed Banks (2)	(200)	200
Total Provision for Losses	(100)	500

Notes:

(1) Both projections assume a continuation of current economic conditions during 1997.

(2) Assumes a range of −5 percent to +5 percent of the estimated net recovery value of closed banks ($4.34 billion as of 12/31/96).

conditions, but has not exercised that power. *See* 12 U.S.C. 1817(b)(2)(A)(iv).

[3] The FDIC has by regulation interpreted this provision to embrace institutions that have an assessment risk classification other than 1A. *See* 12 CFR 327.10.

[4] The FDIC must base a particular institution's semiannual assessment on the following factors: (1) The probability that the institution will cause a loss to the fund, (2) the likely amount of the loss, and (3) the fund's revenue needs. 12 U.S.C. 1817(b)(1)(C). To that end, the FDIC assigns every institution to an ''assessment risk classification,'' and sets rates for each of the classifications. *See* 12 CFR 327.4 and 327.9.

[5] The estimated recovery value of closed banks was $4.34 billion as of December 31, 1996.

Assessment Income. Based on the distribution of the assessment base across the BIF assessment rate matrix as of January 1, 1997, BIF assessment income for 1997 would be $23 million under the existing assessment rate schedule.

Table 2 summarizes the distribution of institutions across the risk-based assessment matrix:

TABLE 2.—BIF ASSESSMENT BASE DISTRIBUTION (1)

[Deposits as of December 31, 1996; Supervisory Subgroup and Capital Groups in Effect January 1, 1997]

Capital group	Supervisory subgroups					
	A	Percent	B	Percent	C	Percent
1. Well:						
Number	9,362	95.0	304	3.1	57	0.6
Base ($billion)	2,597.0	98.3	29.4	1.1	2.4	0.1
2. Adequate:						
Number	84	0.9	17	0.2	15	0.2
Base ($billion)	9.7	0.4	1.2	0.1	1.2	0.1
3. Under:						
Number	0	0.0	2	0.0	11	0.1
Base ($billion)	0.0	0.0	0.4	0.0	0.8	0.0

Estimated annual assessment revenue—$23 million
Assessment Base—$2,642 billion
Average annual assessment rate (bp)—0.09 bp

Notes: (1) ''Number'' reflects the number of BIF members, including BIF-member Oakar institutions; ''Base'' reflects all BIF-assessable deposits.

With 99.0 percent of the number of institutions and 99.8 percent of the assessment base in the three lowest assessment risk classifications (1A, 1B and 2A), the current distribution in the matrix reflects little fundamental difference from the previous period when the percentages were 98.7 percent and 99.2 percent, respectively. The slightly lower number of institutions in these three categories (down 229) reflects continuation of industry consolidation trends, as the overall total declined by 247 institutions. There are only 102 institutions outside the three lowest assessment risk classifications compared to 120 during the previous period, and only 490 outside the 1A classification as compared with 561 in the previous period.

Interest Income. Income from the estimated average investment portfolio of $24.5 billion is estimated at $1.485 billion for 1997 (6.06 percent yield). Given a range of + or − 19 bp for the yield (5.87 percent to 6.25 percent) for 1997, based on a range for interest rate changes of + or − 100 bp, interest income is projected to be between $1.438 billion and $1.531 billion.

Table 3 summarizes the effects on the fund balance of the low and high estimates that define the ranges assumed for interest income and insurance losses:

TABLE 3.—FUND BALANCE

[$ in millions]

	Low projected estimate	High projected estimate
Revenue [1]:		
Assessments [2]	$23	$23
Interest Income [3]	1,438	1,531
Total Revenue	1,461	1,554
Expenses & Losses [1]:		
Operating Expenses	652	652
Provision for Losses	500	(100)
Total Expenses & Losses	1,152	552
Net Income [1]	309	1,002
Fund Balance (Unaudited)—12/31/96	26,854	26,854
Projected Fund Balance—12/31/97	27,163	27,856

Notes:

[1] Figures are for the full year ending December 31, 1997.

[2] Assumes that the current assessment rate schedule remains in effect through December 31, 1997.

[3] Portfolio yield is estimated to be between 5.87 percent (low) and 6.25 percent (high), reflecting variation of + or − 100 bp in interest rates. The average invested fund balance is estimated to be $24.5 billion.

Growth of insured deposits. Insured deposit growth has been volatile. Since 1986, annual growth of BIF-insured deposits has been as high as 7.1 percent and annual shrinkage as much as 2.1 percent:

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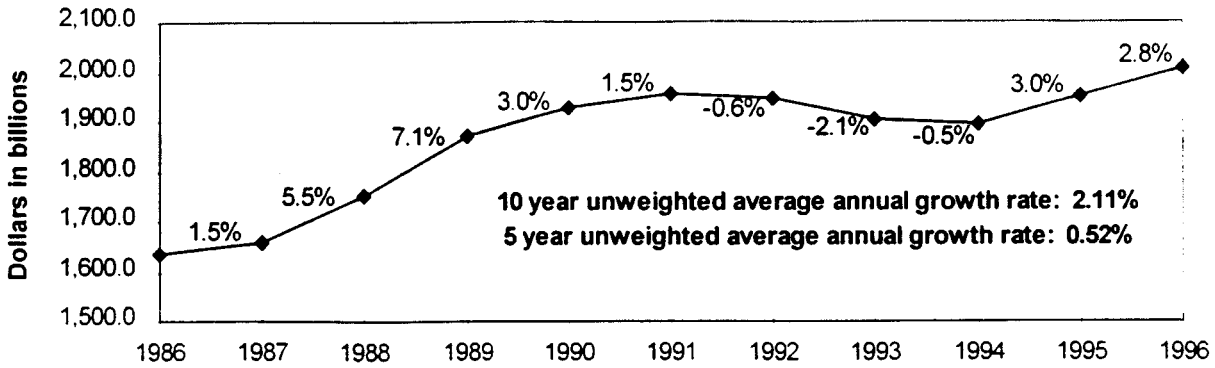
Figure 1

BIF Estimated Insured Deposits



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The recent trend has been toward growth. Over the last two years there have been only two quarters in which insured deposits have shrunk, and even then the shrinkage has been slight (.01 percent and .03 percent). It is difficult to determine whether this development primarily reflects the incentives created by reduced BIF assessment rates, including the incentive for deposit-shifting from the Savings Association Insurance Fund (SAIF) to the BIF, or whether it indicates a change in the pattern of BIF-insured deposit growth due to other causes. With the passage of the Funds Act and the recent revision of FDIC rules governing the allocation of deposit growth or shrinkage between the BIF and the SAIF, both of which should inhibit deposit-shifting, the primary causes of recent BIF-insured deposit growth should become clearer. In the interim, considering the experience of the last five years taken together, the FDIC considers that BIF-insured deposits are likely to experience a growth rate in the range of −2 percent to +5 percent between year-end 1996 and year-end 1997.

Based on the projected BIF balance and the growth of the insured deposit base, the FDIC projects the BIF reserve ratio to be within the range of 1.29 to 1.42 at December 31, 1997:

TABLE 4.—PROJECTED BIF RESERVE RATIOS

[$ in millions]

	December 31, 1996
Fund Balance (Unaudited)	$26,854
Estimated Insured Deposits	$2,007,447
BIF Ratio	1.34

	Low Estimate [1]—December 31, 1997	High Estimate [2]—December 31, 1997
Projected Fund Balance	$27,163	$27,856
Estimated Insured Deposits	$2,107,819	$1,967,298
Estimated BIF Ratio	1.29	1.42

Notes:

[1] The low estimate refers to the scenario of lower interest income (portfolio yield: 5.87 percent), higher insurance losses ($500 million) and a higher insured deposit growth rate (+5 percent).

[2] The high estimate refers to the scenario of higher interest income (portfolio yield: 6.25 percent), a reduction in insurance losses (−$100 million) and a shrinkage of the insured deposit base (−2 percent).

The low estimate produces a 5 bp decrease below the December 31, 1996, ratio. It reflects an assumed increase in the insured deposit base (+5 percent for 1997) and a small offset from an increase in the fund balance. (The fund balance in the low-estimate scenario increases because the higher projected insurance losses still do not fully offset interest income.) The high-estimate scenario produces an 8 bp increase above the December 31, 1996, ratio. It reflects an assumed shrinkage of the BIF-insured deposit base (−2 percent for 1997) and a strong increase in the BIF balance due to low insurance losses and high interest income.

In light of recent trends and current conditions in the banking industry, the FDIC considers that the low-estimate scenario is not likely to be realized. Even if it were, however, the current rate schedule still would be sufficient to maintain the BIF's reserve ratio at the DRR through year-end 1997.

2. Impact on Institutions' Earnings and Capital

The estimated annual costs to BIF-assessable institutions, before taxes, from the existing rate schedule is $23 million, down from the $43 million estimate based on July 1, 1996, classifications. This decline is largely due to the assessment base of 1A institutions increasing from 96.8 percent to 98.3 percent of the total. Additionally, the estimated total base increased $148.0 billion while the 1A base increased $181.3 billion.

Institutions having approximately $45 billion in deposits, out of a total base of approximately $2,642.0 billion (1.7 percent), will be charged a non-zero risk-based assessment. Having considered the impact on these institutions' earnings and capital, the FDIC believes that the BIF adjusted rates will have no unwarranted adverse effects.

3. Assessment Schedule Needed to Generate the Revenue

The FDIC does not presently need to collect assessment revenues from 1A institutions in order to maintain the BIF reserve ratio at the DRR over the short term.[6] The FDIC is therefore lowering the rates in the BIF Base Assessment Schedule by four bp. The adjustment results in an effective assessment rate for 1A institutions of zero bp. The BIF effective rates are set forth in the BIF Adjusted Assessment Schedule.

D. Technical Changes

1. Removal of Pre-1997 SAIF Adjusted Rates

The final rule removes provisions pertaining to pre-1997 SAIF adjusted rates. These provisions are obsolete.

[6] The assessments payable by non-1A institutions reflect the amounts needed to maintain a risk-based assessment system for the BIF.

Removing them simplifies and clarifies the current regulation.

During the final calendar quarter of 1996, a particular group of SAIF-assessable institutions—namely, SAIF-member savings associations—were subject to a special interim set of adjusted rates. The interim rates expired on December 31, 1996. From the start of 1997 forward, all SAIF-assessable institutions have been subject to the same SAIF adjusted rates. The references to the pre-1997 SAIF adjusted rates—and, in particular, to the special interim rates—are no longer needed.

The final rule does not alter either the SAIF Base Assessment Schedule or the SAIF Adjusted Assessment Schedule now in effect, but merely republishes these schedules. The effective SAIF rates, which range from zero to 27 bp, remain at the current levels.

2. Removal of Special-Assessment Provisions

The final rule eliminates subpart C of part 327, which is chiefly concerned with the special assessment imposed by the Funds Act. The FDIC has assessed and collected the special assessment. The vast majority of subpart C has therefore become obsolete.

A few provisions of Subpart C—those that pertain to institutions that were exempted from the special assessment—have a continuing vitality. The Funds Act requires these institutions (and their successors) to pay SAIF assessments at the rates in effect on June 30, 1995, for three years. Funds Act section 2702(f)(4)(A). The Funds Act also gives the institutions (and their successors) the power to terminate that obligation by paying a pro rata share of the amount otherwise due for the special assessment. Funds Act section 2702(f)(4)(B). The final rule retains but relocates the provisions from subpart C that pertain to these matters.

3. Definitions

The final rule adds an introductory phrase to 12 CFR 327.8, which sets forth definitions. The introductory phrase makes it clear that § 327.8's definitions apply throughout part 327, and not just within subpart A.

The final rule retains the provisions, heretofore found in subpart C, defining ''BIF'' and ''SAIF.''

E. Rulemaking Procedures; Effective Date

1. The BIF Rate Adjustment

The Board is issuing this final rule in pursuant to *id.* 327.9(c), which enables the Board to adjust the rates in a fund's base assessment schedule without engaging in notice-and-comment rulemaking proceedings for each adjustment. The final rule is therefore effective immediately upon adoption. The adjustment made by the final rule, and the BIF adjusted rates specified in the final rule, apply during the second semiannual period of 1997 (July-December, 1997) and subsequent semiannual periods.

The Board has found it necessary to establish this procedure because the FDIC must set ''semiannual'' assessments, *see* 12 U.S.C. 1817(b)(2)(A), and therefore reviews the assessment schedule for each insurance fund every six months. Moreover, the FDIC ''shall set assessments when necessary, and only to the extent necessary'' to maintain an insurance fund's reserve ratio at the DRR, or to raise an insurance fund's reserve ratio to that level, *id.* 1817(b)(2)(A)(i); conversely, the FDIC ''shall not set assessment rates in excess of the amount needed'' for those purposes, *id.* 1817(b)(2)(A)(iii). These twin commands require the FDIC to respond quickly in order to keep each fund's assessments commensurate with its level of capitalization.

As discussed in more detail in the **Federal Register** of December 24, 1996, in which the FDIC established the current procedure for adjusting the base rates, and also in the **Federal Register** of August 16, 1995, in which the FDIC adopted its prior procedure for adjusting the BIF base rates temporarily by means of a Board resolution, the FDIC recognizes and understands the concern for the possibility of assessment rate increases without the benefit of full notice-and-comment rulemaking. *See* 61 *FR* 67687, 67693-67694 (Dec. 24, 1996); see also 60 FR 42680, 42739–42740 (Aug. 16, 1995). Nevertheless, for the reasons given below, the FDIC considers that notice and public participation with respect to the adjustment made by this final rule would generally be ''impracticable, unnecessary, or contrary to the public interest'' within the meaning of 5 U.S.C. 553(b). For the same reasons, the FDIC considers that it has ''good cause'' within the meaning of *id.* 553(d) to make the final rule effective immediately, and not after a 30-day delay.

Notice-and-comment rulemaking procedures are ''unnecessary'' in this case because BIF-assessable institutions are already on notice with respect to: (1) The benchmark rates that are set forth in the BIF Base Assessment Schedule; (2) the need for making routine semiannual adjustments to those rates; and (3) the maximum amount of the adjustment. In short, institutions are fully aware that the effective rates are subject to some limited amount of variability, and that any variations in the rates are directly tied to the capitalization of the BIF.

Notice-and-comment rulemaking procedures are also ''unnecessary'' because they would not provide additional relevant information. Institutions provide part of the needed information in their quarterly reports of condition. The FDIC generates the rest of the information internally: *e.g.*, the current balance and expected operating expenses of the BIF, and the BIF's case resolution expenditures and income.

Notice-and-comment rulemaking procedures are ''impracticable'' and ''contrary to the public interest'' in this case because they are not compatible with the need to satisfy two competing interests. On one hand, the FDIC must comply with the statutory directive to maintain the BIF's reserve ratio at the target DRR. The FDIC must monitor the BIF closely, and must use data that are as current as possible to set BIF assessments on a semiannual basis. On the other hand, the FDIC must give institutions adequate notice of those assessments. In the current case, the assessment is due on June 30. *See* 12 CFR 327.3(c)(2). The FDIC must issue invoices by May 31. *See id.* 327.3(d)(1). The FDIC must announce the rates—and therefore must adopt the final rule—by May 16. *See id.* 327.9(c)(4). Notice-and-comment procedures entail delays that are incompatible with these tight scheduling requirements.

2. Other Changes

The other changes made by the final rule are ''housekeeping'' measures of a purely interpretative nature. Neither prior notice and comment, nor a delayed effective date, are required for such rules. 5 U.S.C. 553(b) and (d).

II. Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) are contained in this rule. Accordingly, no information has been submitted to the Office of Management and Budget for review.

III. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, does not apply to this rule. The RFA defines ''rule'' to exclude ''a rule of particular applicability relating to rates''. *Id.* 601(2). The FDIC considers that the rule is governed by this exclusion.

In addition, the legislative history of the RFA indicates that its requirements are inappropriate to this proceeding.

The RFA focuses on the ''impact'' that a rule will have on small entities. The legislative history shows that the ''impact'' at issue is a differential impact—that is, an impact that places a disproportionate burden on small businesses:

> Uniform regulations applicable to all entities without regard to size or capability of compliance have often had a disproportionate adverse effect on small concerns. The bill, therefore, is designed to encourage agencies to tailor their rules to the size and nature of those to be regulated whenever this is consistent with the underlying statute authorizing the rule. 126 Cong. Rec. 21453 (1980) (''Description of Major Issues and Section-by-Section Analysis of Substitute for S. 299'').

The final rule does not impose a uniform cost or requirement on all institutions regardless of size. Rather, it imposes an assessment that is directly proportional to each institution's size. Nor does the rule cause an affected institution to incur any ancillary costs of compliance (such as the need to develop new recordkeeping or reporting systems, to seek out the expertise of specialized accountants, lawyers, or managers) that might cause disproportionate harm to small entities. As a result, the purposes and objectives of the RFA are not affected, and an initial regulatory flexibility analysis is not required.

IV. Riegle Community Development and Regulatory Improvement Act

Section 302(b) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act) requires that, as a general rule, new and amended regulations that impose additional reporting, disclosure, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter. *See* 12 U.S.C. 4802(b). This restriction is inapplicable because the final rule would not impose such additional or new requirements. Nevertheless, the changes made by the final rule apply beginning July 1, 1997, in line with the Riegle Act's specification.

V. Congressional Review

As a general matter, when an agency adopts a final rule, the agency must submit to each House of Congress and to the Comptroller General a report containing a copy of the rule, a general statement relating to the rule, and the rule's proposed effective date. 5 U.S.C. 801(a)(1). But the term ''rule'' excludes ''any rule of particular applicability, including a rule that approves or prescribes for the future rates''. *Id.* 804(3). The final rule is governed by this exclusion, because the final rule sets assessment rates and relates to the computations associated with assessment rates. Accordingly, the reporting requirement of *id.* 801(a)(1), and the more general requirements of *id.* sections 801–808, do not apply.

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Banks, banking, Financing Corporation, Savings associations.

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation is amending part 327 of title 12 of the Code of Federal Regulations as follows:

PART 327—ASSESSMENTS

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

Authority: 12 U.S.C. 1441, 1441b, 1813, 1815, 1817–1819; Pub. L. 104–208, 110 Stat. 3009–479 (12 U.S.C. 1821).

2. Section 327.8 is amended by adding introductory text and by revising paragraphs (f) and (g) to read as follows:

§ 327.8 Definitions.

For the purpose of this part 327:

* * * * *

(f) *BIF; BIF member.* (1) *BIF.* The term *BIF* means the Bank Insurance Fund.

(2) *BIF member.* The term *BIF member* means a depository institution that is a member of the BIF.

(g) *SAIF; SAIF member.* (1) *SAIF.* The term *SAIF* means the Savings Association Insurance Fund.

(2) *SAIF member.* The term *SAIF member* means a depository institution that is a member of the SAIF.

* * * * *

3. Section 327.9 is amended by revising paragraph (b) to read as follows:

§ 327.9 Assessment schedules.

* * * * *

(b) *Adjusted assessment schedules*—(1) *In general.* Except as provided in paragraph (b)(3)(ii) of this section, institutions shall pay semiannual assessments at the rates specified in this paragraph (b) whenever such rates have been prescribed by the Board.

(2) *Adjusted rates for BIF members.* The Board has adjusted the BIF Base Assessment Schedule by reducing each rate therein by 4 basis points for the first semiannual period of 1997 and thereafter. Accordingly, the following adjusted assessment schedule applies to BIF members:

BIF ADJUSTED ASSESSMENT SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
1	0	3	17
2	3	10	24
3	10	24	27

(3) *Adjusted rates for SAIF members*—(i) *In general.* The Board has adjusted the SAIF Base Assessment Schedule by reducing each rate therein by 4 basis points for the first semiannual period of 1997 and thereafter. Accordingly, except as provided in paragraph (b)(3)(ii) of this section, the following adjusted assessment schedule applies to SAIF members:

SAIF ADJUSTED ASSESSMENT SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
1	0	3	17
2	3	10	24

SAIF ADJUSTED ASSESSMENT SCHEDULE—Continued

Capital group	Supervisory subgroup		
	A	B	C
3	10	24	27

(ii) *Institutions exempt from the special assessment*—(A) *Rate schedule.* An institution that, pursuant to former § 327.43 (a) or (b) as in effect on November 27, 1996 (See 12 CFR 327.43 as revised January 1, 1997.), was exempt from the special assessment prescribed by 12 U.S.C. 1817 Note shall pay regular semiannual assessments to the SAIF from the first semiannual period of 1996 through the second semiannual period of 1999 according to the schedule of rates specified in former § 327.9(d)(1) as in effect for SAIF members on June 30, 1995 (See 12 CFR 327.9 as revised January 1, 1996.), as follows:

Capital group	Supervisory subgroup		
	A	B	C
1	23	26	29
2	26	29	30
3	29	30	31

(B) *Termination of special rate schedule.* An institution that makes a pro-rata payment of the special assessment shall cease to be subject to paragraph (b)(3)(ii)(A) of this section. The pro-rata payment must be equal to the following product: 16.7 percent of the amount the institution would have owed for the special assessment, multiplied by the number of full semiannual periods remaining between the date of the payment and December 31, 1999.

* * * * *

Subpart C—[Removed]

4. Subpart C is removed.

By order of the Board of Directors.

Dated at Washington, DC, this 6th day of May 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 97–12587 Filed 5–16–97; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 543, 552, and 571

[No. 97–48]

RIN 1550–AA76

De Novo Applications for a Federal Savings Association Charter

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is issuing its final regulation describing the requirements for *de novo* applications for federal savings association charters. The term ''*de novo* application'' generally refers to any application to establish a new federal savings association, rather than applications from existing institutions that merely wish to convert to federal savings association charters. This final rule converts the agency's existing policy statement on *de novo* applications into a regulation, conforms the regulation to current law, and simplifies the regulatory requirements for establishing a *de novo* federal association, thereby reducing compliance costs.

EFFECTIVE DATE: July 1, 1997.

FOR FURTHER INFORMATION CONTACT: Gary Masters, Financial Analyst, Corporate Activities Division (202) 906–6729; Edward O'Connell, Project Manager, Thrift Policy (202) 906–5694; Kevin Corcoran, Assistant Chief Counsel, Business Transactions Division, Chief Counsel's Office (202) 906–6962; or Valerie J. Lithotomos, Counsel (Banking and Finance), Regulations and Legislation Division, Chief Counsel's Office, (202) 906–6439, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The OTS is issuing a new regulation to revise and update its treatment of *de novo* applications for federal savings association charters.

The Federal Home Loan Bank Board (FHLBB), the OTS's predecessor agency, originally promulgated a policy statement (policy statement), which currently appears at 12 CFR 571.6, to explain its policies relating to the approval of applications for *de novo* federal associations. When the policy statement was issued, the FHLBB was the operating head of the Federal Savings and Loan Insurance Corporation, the insurance fund for thrifts. At that time, *de novo* applications included not only applications for permission to organize and requests for a federal charter, but also applications for insurance of accounts.

Subsequently enacted statutes, including the Financial Institutions Reform, Recovery, and Enforcement Act of 1989[1] (FIRREA) and the Federal Deposit Insurance Corporation Improvement Act of 1991[2] (FDICIA), made significant changes in the federal regulatory structure for savings associations. Under FIRREA, the OTS succeeded to the chartering and supervisory functions of the FHLBB, but the insurance function was transferred to the Federal Deposit Insurance Corporation (FDIC). FIRREA and FDICIA also revised much of the law applicable to the *de novo* approval process.[3] Accordingly, the OTS determined that revisions were needed to update and streamline the *de novo* application requirements.

Accordingly, on March 6, 1995, the OTS published in the **Federal Register** a notice of proposed rulemaking

[1] Pub. L. 101–73, 103 Stat. 183 (1989).

[2] Pub. L. 102–242, 105 Stat. 2236 (1991).

[3] The preamble to the proposed rule included a detailed discussion of the statutory requirements regarding *de novo* applications. *See* 60 FR 12103 (March 6, 1995).

revising these application requirements.[4] The OTS proposed to codify the policy statement as a regulation, remove obsolete and duplicative provisions, revise minimum capitalization and business plan requirements, and update requirements on management officials.

The public comment period closed on May 5, 1995. The OTS did not receive any comments on the proposal. Accordingly, the final rule adopted today is substantially similar to the proposal, except for certain changes intended to further reduce regulatory burden and to enhance the clarity of the regulation. These changes are fully described below.

II. Description of the Final Rule

A. Recodification

The requirements governing *de novo* applications for federal savings association charters have been moved from Part 571 (Statements of Policy) to Part 543 (Incorporation, Organization, and Conversion of Federal Mutual Associations). In addition, the OTS has incorporated these requirements into Part 552 (Incorporation, Organization, and Conversion of Federal Stock Associations) by including cross-references to Part 543. This recodification will make the *de novo* requirements easier to locate, since the requirements will be grouped with other corporate governance regulations, rather than with policies affecting all savings associations. Recodifying these provisions as regulations also makes the *de novo* provisions regulatory requirements.

B. Scope

A bank or other depository institution that converts to a thrift charter generally is not a *de novo* federal association, as that term is defined under the current OTS policy statement or the new regulation. Rather, a *de novo* association is a federal savings association chartered by the OTS, the business of which has not been conducted previously under any charter nor conducted in the previous three years in substantially the same form as is proposed by the *de novo* federal association.

C. Obsolete Statutory References and Certain Duplicative Factors

Today's final rule adopts without change the proposed deletions of certain obsolete statutory references and other duplicative provisions. The final rule deletes requirements contained in paragraph (b)(1) of § 571.6, which implemented former section 5(a)(2) of the FDIA and required the OTS to certify to the FDIC that it has considered the factors listed under section 6 of the FDIA.[5] FDICIA eliminated this certification requirement from the FDIA. These pre-FDICIA certification requirements are also contained in current §§ 543.2(g)(2) and 552.2–1(b)(2), which address the organization of federal mutual and federal stock institutions, respectively. These provisions have also been deleted. Of course, the FDIC will continue to consider the factors listed in section 6 of the FDIA when evaluating an application for deposit insurance.

Today's final rule also deletes requirements contained in § 571.6(b)(2), regarding certain factors considered in evaluating applications to organize a federal savings association. These factors duplicate requirements currently contained in §§ 543.2(g)(1) and 552.2–1(b)(1).

D. Minimum Initial Capitalization Requirement

The final rule also adopts the proposed provisions governing the minimum initial capitalization requirement for *de novo* federal associations. It is important to distinguish between the minimum initial capitalization requirement, which applies only to *de novo* federal associations at the time they commence operations, and the standard regulatory capital requirements, which apply to all savings associations on a continuous basis.[6] *De novo* federal associations must meet both requirements.

Under the standard regulatory capital requirements, savings associations must maintain prescribed minimum levels of capital measured as a percentage of assets. By contrast, the minimum initial capitalization requirement for *de novo* federal associations is a specified amount. The purpose of the minimum initial capitalization requirement is to ensure that a *de novo* federal association has a sufficient amount of capital to launch its business successfully, support reasonable initial growth, and provide an adequate buffer against losses to the deposit insurance fund. The need for a substantial initial capitalization is accentuated by the fact that *de novo* federal associations have no operating or supervisory history.

It is difficult to pinpoint objectively the precise amount of start-up capital necessary to ensure that a *de novo* federal association will be able to operate safely and soundly. However, the OTS has concluded that the $3 million initial capital requirement in the policy statement has been too high and may unnecessarily discourage community groups and local investors from seeking to establish new savings associations. The FDIC customarily requires a minimum of only $2 million in start-up capital for new institutions applying for federal deposit insurance.[7] The OTS believes that this is an effective and workable standard for the FDIC. Accordingly, the final rule adopts the minimum initial capitalization requirement contained in the proposed rule, which reduces the minimum initial capital requirement for *de novo* federal associations from $3 million to $2 million. The OTS also has retained the authority, at new § 543.3(b)(2), to impose a higher or lower capital requirement on a case-by-case basis.

E. Business Plan Requirements

Because *de novo* federal associations have no operating or supervisory history, the OTS believes that a thorough business plan is essential to ensuring that a *de novo* federal association will be operated in a safe and sound manner. In the proposed rule, the OTS proposed to revise existing business plan requirements to consolidate certain provisions, to update the requirements, and to delete obsolete statutory references. The required elements of the business plan were clarified, including descriptions of lending, leasing and investment activity, plans for meeting the qualified thrift lender (QTL) requirements, deposit, savings and borrowing activity, compliance with the Community Reinvestment Act, continuation or succession of competent management, and information on the proposed institution's ability to maintain required minimum regulatory capital levels. The final rule adopts the proposed provisions on business plans without substantive change, except to delete obsolete cross references to the QTL regulations formerly located at § 563.50 and to state expressly that the business plan must include any additional information required by the OTS.

F. Composition of the Board of Directors

Proposed § 543.3(d) included various requirements governing the composition of the *de novo* federal association's board of directors. These provisions require that the board of directors must be representative of the state in which the savings association is located. In addition, the board of directors must be diversified, and must be composed of

[4] *Id.*

[5] 12 U.S.C.A. 1816 (West 1989).

[6] 12 CFR part 567.

[7] *See* FDIC Policy Statement, 57 FR 12822 (April 13, 1992).

individuals meeting specified requirements relating to their experience, personal integrity, and competence. Where a *de novo* federal association is owned by a holding company that does not have substantial independent economic substance, these additional requirements also apply to the holding company's board of directors. The final rule adopts the proposed requirements without change.

G. Policies Pertaining to Management Officials

1. Capital Maintenance Agreements

The OTS proposed to delete existing provisions in § 571.6 governing capital maintenance agreements and pledges of stock. Section 571.6(d)(4) required controlling shareholders to agree to maintain a *de novo* federal association's required regulatory capital level under Part 567 for a minimum of five years. Controlling shareholders were also prohibited from pledging more than 50% of their stock to secure borrowed funds to finance their stock purchase for a period of three years.[8]

The final rule adopts the proposed revisions deleting these requirements. The OTS has not required controlling shareholders applying to charter a *de novo* federal association to execute capital maintenance agreements since 1991. The OTS has recognized that sufficient statutory and regulatory protections now exist to ensure that savings associations maintain adequate capital and to enable the OTS to address capital deficiencies promptly and thoroughly.[9] The restriction on controlling shareholders who pledge their stock is deleted because the restriction is unnecessary and may be unduly burdensome to organizers of a *de novo* federal association.

2. Conflicts of Interest and Usurpation of Corporate Opportunity

Today's rule also adopts the proposal to delete provisions requiring the organizers of a *de novo* federal association to file a plan identifying areas where conflicts of interest and abuse of corporate opportunity may occur, and describing specific policies and actions that the association will institute to avoid that abuse. The OTS has made clear that directors, officers, and other persons having the power to direct the management of a savings association stand in a fiduciary relationship to the association and its accountholders or shareholders. This fiduciary relationship requires them to avoid conflicts of interest and self-dealing. The OTS regulations on conflicts of interest and corporate opportunity provide guidance on these issues.[10] Conflicts of interest and usurpation of corporate opportunity also are addressed by the statutory and regulatory provisions governing transactions between savings associations and their affiliates and insiders.[11]

The OTS continues to believe that the statutory and regulatory structure governing these areas is sufficiently detailed. Accordingly, the final rule does not require organizers of *de novo* federal associations to file plans for avoidance of conflicts of interest and usurpations of corporate opportunity. Of course, if organizers submit a business plan that raises concerns about conflicts of interests or usurpations of corporate opportunity, the OTS will address such concerns before acting on the application.

3. Standard Approval Conditions

The OTS proposed to incorporate standard approval conditions for *de novo* federal associations into the regulation. The final rule, however, omits these conditions. The OTS recognizes that, in some instances, it may be appropriate to omit or modify one or more standard conditions. Accordingly, this change was made so as to preserve regulatory flexibility and to prevent the imposition of unnecessary regulatory burdens.

To ensure that the public is aware of the conditions that the OTS typically imposes in approving *de novo* applications, these conditions will be published in the OTS Application Processing Handbook (Handbook). The OTS anticipates that its Handbook guidance regarding standard conditions will reflect the conditions suggested in the proposed rule.

4. Oath of Director for Savings Associations

Existing § 571.6(d)(2) required each new director of a *de novo* federal association to sign an Oath of Director for Savings Associations, and submit the original to the Regional Director. The OTS believes that this requirement is more appropriate as guidance in the Handbook. Moreover, the OTS is studying the retention of this requirement in light of the practices of the other federal banking agencies.

III. Executive Order 12866

The Director of the OTS has determined that this final rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

IV. Paperwork Reduction Act

The reporting requirements contained in this final rule have been submitted to and approved by the Office of Management and Budget under OMB Control No. 1550–0005, in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, D.C. 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

Respondents are not required to respond to this collection of information unless it displays a currently valid OMB control number.

The reporting requirements in this final rule are found in 12 CFR 543.3. The information is needed by the OTS to determine whether applicants will operate a federal savings association in a safe and sound manner and to reduce the risk of loss to newly-chartered institutions and the Savings Association Insurance Fund.

V. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule does not impose additional burdens or requirements upon a small entity that files an application to become a *de novo* institution. To the contrary, the final rule reduces burden for all *de novo* federal associations, including those that may be small businesses.

VI. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 104 Pub. L. 104–4 (signed into law on March 22, 1995) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the

[8] *See* 12 CFR 571.6(d)(3)(iii) (1996).

[9] Under the Prompt Corrective Action provisions of section 38 of FDICIA (12 U.S.C.A. 1831o(e)(2)(C) (West Supp. 1996)) and implementing regulations (12 CFR 565.5), the OTS may not approve a capital restoration plan for any ''undercapitalized'' institution unless each company that controls the institution: (1) guarantees that the institution will comply with the plan until the institution has been adequately capitalized for four consecutive quarters; and (2) provides appropriate assurances of performance of the plan.

[10] *See* 12 CFR 563.200 and 563.201.

[11] *See* 12 U.S.C.A. 371c, 371c–1, 375 and 375b (West 1989 and Supp. 1996) and 12 CFR 563.41, 563.42 and 563.43. *See also* 12 U.S.C.A. 1468 (West Supp. 1996).

private sector, of $100 million or more in one year. If the budgetary impact statement is required, section 205 of the Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this final rule is limited in application to *de novo* applications for a federal savings association charter. The OTS has therefore determined that the final rule will not result in expenditure by State, local, or tribal governments or by the private sector of more than $100 million. Accordingly, the Unfunded Mandates Reform Act does not apply to this rulemaking.

List of Subjects

12 CFR Part 543

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 552

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 571

Accounting, Conflict of interests, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Director, Office of Thrift Supervision, hereby amends Parts 543, 552, and 571, chapter V, title 12 of the Code of Federal Regulations, as set forth below:

PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL MUTUAL ASSOCIATIONS

1. The authority citation for part 543 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 *et seq.*

2. Section 543.2 is amended by removing ''and'' at the end of paragraph (g)(1)(iv), by removing the period at the end of paragraph (g)(1)(v) and adding ''; and'' in its place, by adding paragraph (g)(1)(vi), by removing paragraph (g)(2) and by redesignating paragraph (g)(3) as paragraph (g)(2), to read as follows:

§ 543.2 Application for permission to organize.

* * * * *

(g) *Approval.* (1) * * *

(vi) Whether the factors set forth in § 543.3 are met, in the case of an application that would result in the formation of a *de novo* association, as defined in § 543.3(a).

* * * * *

3. Section 543.3 is added to read as follows:

§ 543.3 ''De novo'' applications for a Federal savings association charter.

(a) *Definitions.* For purposes of this section, the term ''*de novo* association'' means any Federal savings association chartered by the Office, the business of which has not been conducted previously under any charter or conducted in the previous three years in substantially the same form as is proposed by the *de novo* association. A ''*de novo* applicant'' means any person or persons who apply to establish a *de novo* association.

(b) *Minimum initial capitalization.* (1) A *de novo* association must have at least two million dollars in initial capital stock (stock institutions) or initial pledged savings or cash (mutual institutions), except as provided in paragraph (b)(2) of this section. The minimum initial capitalization is the amount of proceeds net of all incurred and anticipated securities issuance expenses, organization expenses, pre-opening expenses, or any expenses paid (or funds advanced) by organizers that are to be reimbursed from the proceeds of a securities offering. In securities offerings for a *de novo* association, all securities of a particular class in the initial offering shall be sold at the same price.

(2) On a case by case basis, the Director may, for good cause, approve a *de novo* association that has less than two million dollars in initial capital or may require a *de novo* association to have more than two million dollars in initial capital.

(c) *Business and investment plans of de novo associations.* (1) To assist the Office in making the determinations required under section 5(e) of the Home Owners' Loan Act, a *de novo* applicant shall submit a business plan describing, for the first three years of operation of the *de novo* association, the major areas of operation, including:

(i) Lending, leasing and investment activity, including plans for meeting Qualified Thrift Lender requirements;

(ii) Deposit, savings and borrowing activity;

(iii) Interest-rate risk management;

(iv) Internal controls and procedures;

(v) A Community Reinvestment Act statement, pursuant to 12 CFR part 563e, and plans for meeting the credit needs of the proposed *de novo* association's community (including low- and moderate-income neighborhoods);

(vi) Projected statements of condition;

(vii) Projected statements of operations; and

(viii) Any other information requested by the Office.

(2) The business plan shall:

(i) Provide for the continuation or succession of competent management subject to the approval of the Regional Director;

(ii) Provide that any material change in, or deviation from, the business plan must receive the prior approval of the Regional Director;

(iii) Demonstrate the *de novo* association's ability to maintain required minimum regulatory capital under 12 CFR parts 565 and 567 for the duration of the plan.

(d) *Composition of the board of directors.* (1) A majority of a *de novo* association's board of directors must be representative of the state in which the savings association is located. The Office generally will consider a director to be representative of the state if the director resides, works or maintains a place of business in the state in which the savings association is located. If the association is located in a Metropolitan Statistical Area (MSA), Primary Metropolitan Statistical Area (PMSA) or Consolidated Metropolitan Statistical Area (CMSA) that incorporates portions of more than one state, a director will be considered representative of the association's state if he or she resides, works or maintains a place of business in the MSA, PMSA or CMSA in which the association is located.

(2) The *de novo* association's board of directors must be diversified and composed of individuals with varied business and professional experience. In addition, except in the case of a *de novo* association that is wholly-owned by a holding company, no more than one-third of a board of directors may be in closely related businesses. The background of each director must reflect a history of responsibility and personal integrity, and must show a level of competence and experience sufficient to demonstrate that such individual has the ability to direct the policies of the association in a safe and sound manner. Where a *de novo* association is owned by a holding company that does not have substantial independent economic substance, the foregoing standards will be applied to the board of directors of the holding company.

(e) *Management Officials.* Proposed stockholders of ten percent or more of the stock of a *de novo* association will be considered management officials of the association for the purpose of the Office's evaluation of the character and qualifications of the management of the association. In connection with the Office's consideration of an application for permission to organize and subsequent to issuance of a Federal savings association charter to the association by the Office, any individual

or group of individuals acting in concert under 12 CFR part 574, who owns or proposes to acquire, directly or indirectly, ten percent or more of the stock of an association subject to this section, shall submit a Biographical and Financial Report, on forms prescribed by the Office, to the Regional Director.

(f) *Supervisory transactions.* This section does not apply to any application for a Federal savings association charter submitted in connection with a transfer or an acquisition of the business or accounts of a savings association if the Office determines that such transfer or acquisition is instituted for supervisory purposes, or in connection with applications for Federal charters for interim *de novo* associations chartered for the purpose of facilitating mergers, holding company reorganizations, or similar transactions.

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

4. The authority citation for part 552 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§ 552.2–1 [Amended]

5. Section 552.2–1 is amended by adding the phrase ''and § 543.3'' after the phrase ''of 543.2'' in paragraph (a), and by removing and reserving paragraph (b)(2).

PART 571—STATEMENTS OF POLICY

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

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

§ 571.6 [Removed]

7. Section 571.6 is removed.

Dated: May 13, 1997.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

[FR Doc. 97–12956 Filed 5–16–97; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–01]

Removal of Class D Airspace; Shreveport Downtown Airport, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; confirmation of effective date.

SUMMARY: This rule removes the Class D airspace at Shreveport Downtown Airport, LA. This removal of Class D airspace results from the decommissioning of the air traffic control tower at Shreveport Downtown Airport, Shreveport, LA. This rule removes the Class D controlled airspace for aircraft operation in the vicinity of Shreveport Downtown Airport, Shreveport, LA.

EFFECTIVE DATE: 0901 UTC, April 21, 1997.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this final rule with a request for comment in the **Federal Register** on February 20, 1997 (62 FR 7672). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This final rule advised the public that revoking of the Class D airspace would avoid confusion on the part of pilots flying in the vicinity of the airport and would promote the safe and efficient handling of air traffic in the area. No adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 21, 1997. No adverse comments were received, and thus this notice confirms that this final rule was effective on that date.

Issued in Fort Worth, TX, on May 7, 1997.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 97–13070 Filed 5–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 97–ACE–4

Amendment to Class E Airspace, Wahoo, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; withdrawal.

SUMMARY: This action withdraws the Direct final rule with request for comments which changed the Class E5 airspace area at Wahoo, NE. The direct final rule is being withdrawn because the airspace was previously published in the **Federal Register** June 17, 1996 (61 FR 30507), as Docket Number 96–ACE–3 and was effective August 15, 1996.

EFFECTIVE DATE: The direct final rule at 62 FR 11766 is withdrawn effective May 19, 1997.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th Street, Kansas City, MO, 64106; telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule

On March 13, 1997, a Direct final rule with request for comments was published in the **Federal Register** to change the Class E5 airspace area at Wahoo, NE. The Class E5 airspace was published in the **Federal Register**, March 13, 1997 (62 FR 11766), as Docket Number 97–ACE–4 to become effective July 17, 1997.

Conclusion

In consideration of the earlier publication in the **Federal Register** on June 17, 1996 (61 FR 30507) of the Class E5 airspace, action is being taken to withdraw this direct final rule as described in Docket Number 97–ACE–4.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Withdrawal of Direct Final Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket Number 97–ACE–4, as published in the **Federal Register** on March 13, 1997 (62 FR 11766), is hereby withdrawn.

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

Issued in Kansas City, MO, on March 20, 1997.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 97–12240 Filed 5–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 600

[Docket No. 970304043–7105–02; I.D. 021997D]

RIN 0648–AJ59

Magnuson-Stevens Act Provisions; Foreign Fishing Vessels in Internal Waters; Reporting Requirements

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

ACTION: Final rule.

SUMMARY: NMFS implements new reporting requirements for foreign fishing vessels (FFV's) operating in the internal waters of a state. FFV's so authorized by the Governor of a state may engage in fish processing and support of U.S. fishing vessels within the internal waters of a state in compliance with the terms and conditions set by the authorizing Governor. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act (SFA), requires that FFV's report the tonnage and harvest location of fish received from vessels of the United States. The intent of this rule is to implement the new statutory requirements of the Magnuson-Stevens Act and collect landings information for management and conservation purposes.

DATES: Effective June 18, 1997.

ADDRESSES: Comments regarding burden-hour estimates for the collection-of-information requirements contained in this final rule should be sent to George H. Darcy, F/SF3, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: George H. Darcy, 301–713–2341.

SUPPLEMENTARY INFORMATION: On October 11, 1996, the President signed into law the SFA (Pub. L. 104–297), which made numerous amendments to the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Section 112(c) of the SFA amended section 306(c) of the Magnuson-Stevens Act to require that the owner or operator of a FFV engaged in fish processing and support of U.S. fishing vessels within the internal waters of a state submit reports on the tonnage of fish received from vessels of the United States and the locations from which such fish were harvested, in accordance with such procedures as the Secretary of Commerce, by regulation, shall prescribe.

On March 20, 1997, NMFS published a proposed rule at 62 FR 13360 revising § 600.508(f), to implement the SFA requirements. Comments on the proposed rule were requested through April 21, 1997; no comments were received and no changes to the proposed rule have been made, except to add the OMB control number for this approved collection of information to 15 CFR part 902. Section 3507(c)(B)(i) of the Paperwork Reduction Act (PRA) requires agencies to inventory and display a current control number assigned by the Director, OMB, for each agency information collection. Section 902.1(b) of 15 CFR identifies the location of NOAA regulations for which OMB control numbers have been issued. This final rule amends § 902.1(b) by adding the control number for this collection of information. Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

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

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

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

This rule contains a collection-of-information requirement subject to the PRA. This collection-of-information requirement has been approved by OMB under OMB control number 0648–0329. Public reporting burden is estimated to average 0.5 hours per response to fill out and submit each weekly report to the Regional Administrator, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 600

Fisheries, Fishing.

Dated: May 12, 1997.

C. Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b), the table is amended by adding in numerical order the following entry to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
600.508	–0239
* * * * *	

* * * * *

50 CFR Chapter VI

PART 600—MAGNUSON ACT PROVISIONS

3. The authority citation for part 600 continues to read as follows:

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

4. In § 600.508, paragraph (f) is revised to read as follows:

§ 600.508 Fishing operations.

* * * * *

(f) *Internal waters.* For FFV's authorized under section 306(c) of the Magnuson-Stevens Act:

(1) Each FFV may engage in fish processing and support of U.S. fishing vessels within the internal waters of that state in compliance with terms and conditions set by the authorizing Governor.

(2) The owner or operator of each FFV must submit weekly reports on the amount of fish received from vessels of the United States and the location(s) where such fish were harvested.

(i) Reports must include:

(A) Vessel identification information for the FFV.

(B) Date of each receipt of fish.

(C) Amount of fish received, by species.

(D) Location(s) from which the fish received were harvested.

(ii) Owners or operators of FFV's processing fish in internal waters under the provisions of this paragraph (f) must request, from the Regional Administrator, the requirements regarding timing and submission of the reports, at least 15 days prior to the first receipt of fish from a vessel of the United States. The Regional Administrator shall stipulate the timing and submission requirements in writing.

[FR Doc. 97–12988 Filed 5–16–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 806

[Docket No. 91N–0396]

Medical Devices; Reports of Corrections and Removals

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to establish procedures for implementing the reports of corrections and removals provisions of the Safe Medical Devices Act of 1990 (the SMDA) by requiring that manufacturers, importers, and distributors report promptly to FDA any corrections or removals of a device undertaken to reduce a risk to health posed by the device or to remedy a violation of the Federal Food, Drug, and Cosmetic Act (the act) caused by the device which may present a risk to health. FDA believes that this action is necessary to protect the public health by ensuring that the agency has current and complete information regarding those actions taken to reduce risks to health caused by the devices. Reports of such actions will improve the agency's ability to evaluate device-related problems and to take prompt action against potentially dangerous devices.

DATES: Effective November 17, 1997. Submit written comments on the information collection provisions of this final rule by July 18, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rosa M. Gilmore, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–827–2970.

SUPPLEMENTARY INFORMATION:

I. Background

FDA's reporting and recordkeeping requirements for medical devices reflect a series of amendments to the act (21 U.S.C. 321–394) as follows: (1) The Medical Device Amendments of 1976 (Pub. L. 94–295) (the 1976 amendments) which amended the act to establish the first comprehensive framework for the regulation of medical devices; (2) the SMDA (Pub. L. 101–629), which amended the act to correct noted problems with the implementation and enforcement of the 1976 amendments; and (3) The Medical Device Amendments of 1992 (Pub. L. 102–300) (the 1992 amendments), which amended certain provisions of the act relating to devices.

Section 519(f) of the act (21 U.S.C. 360i(f)), as added by the SMDA, authorizes FDA to issue regulations to require reports and recordkeeping of correction and removal actions taken by device manufacturers, distributors, and importers. Under the final rule, a correction means the repair, modification, adjustment, relabeling, destruction, or inspection (including patient monitoring) of a device without its physical removal from its point of use to some other location. Removal means the physical removal of a device from its point of use to some other location for repair, modification, adjustment, relabeling, destruction, or inspection.

Under section 519(f)(1) of the act, device manufacturers, distributors, and importers are to report promptly to FDA any correction or removal of a device undertaken: (1) To reduce a risk to health posed by the device; or (2) to remedy a violation of the act caused by a device which may present a risk to health. Section 519(f)(1) of the act also requires manufacturers, distributors, and importers to keep records of those corrections and removals that are not required to be reported to FDA. Section 519(f)(2) of the act provides that no report of a correction or removal action under section 519(f)(1) may be required if a report of the correction or removal action is required and has been submitted to FDA under section 519(a), which prescribes rules for reporting and keeping records of certain significant device-related events. Section 519(f)(3) of the act states that the terms ''correction'' and ''removal'' do not include routine servicing.

The final rule provides a mechanism for FDA to receive timely information about potentially dangerous marketed devices by requiring device manufacturers, distributors, and importers to report promptly to FDA any correction or removal of a device undertaken to reduce a risk to health posed by the device, or to remedy a violation of the act caused by the device which may present a risk to health. Section 519(f) of the act was enacted because Congress was concerned that device manufacturers, distributors, and importers were carrying out product corrections or removals without notifying FDA, or without notifying the agency in a timely fashion (H. Rept. 808, 101st Cong., 2d sess. 29 (1990)). Congress explained that industry's failure to report corrections and removals, particularly those undertaken to reduce risks associated with the use of a device, ''denies the agency the opportunity to fulfill its public health responsibilities by evaluating device-related problems and the adequacy of corrective actions'' (S. Rept. 513, 101st Cong., 2d sess. 23 (1990)), and ''has seriously interfered with FDA's ability to take prompt action against potentially dangerous devices'' (H. Rept. 808, 101st Cong., 2d sess. 29 (1990)).

The agency recognizes that Congress did not want to overburden industry or FDA with excessive reporting

requirements and that the reporting requirements apply to the ''more important postmarket actions, excluding those events already reported to the [agency].'' (S. Rept. 513, 101st Cong., 2d sess. 23 (1990)). To ensure that FDA has access to all relevant information on corrections and removals, Congress provided that records be maintained for those corrections and removals that need not be reported.

II. Highlights of the Final Rule

The agency has revised and clarified certain provisions of the final regulation. Further, the agency has narrowed the scope of the regulation to focus more explicitly on those corrections and removals that address more serious risks to health. The most significant changes from the March 23, 1994, proposed rule (59 FR 13828) to establish procedures to implement the reports of corrections and removals provisions of section 519(f) of the act (hereinafter referred to as the March 1994 proposed rule) follow:

1. The definition of ''risk to health'' has been narrowed by revising § 806.2(j) to focus explicitly on those corrections and removals undertaken to mitigate the potential for adverse health consequences. The revised definition of ''risk to health'' tracks the definitions of class I and class II recall in § 7.3(m) (21 CFR 7.3(m)).

2. Section 806.10(e) has been added to allow a device manufacturer, importer, or distributor to disclaim that the submission of a required report of correction or removal is an admission that the device caused or contributed to a death or serious injury.

3. Section 806.10(f) has been added to state clearly that a remedial action that is required and has been reported to the agency under part 803 (21 CFR part 803) (Medical Device Reporting), 21 CFR part 804 (Distributor Reporting), or part 1004 (21 CFR part 1004) (Repurchase, Repairs, or Replacement of Electronic Products) does not have to be resubmitted to the agency as a correction or removal report.

4. FDA has added the definition of ''market withdrawal'' at § 806.2(h) and has amended § 806.1(b)(2) to make clear that market withdrawals are not reportable events.

5. The requirement in § 806.10(b) to submit reports within 10-calendar days of initiating a correction or removal has been changed to 10-working days.

6. The agency has established an effective date of 180 days after publication of the final regulation for submission of reports of corrections and removals.

7. The definition of ''U.S. designated agent'' has been deleted. FDA is reconsidering the duties of foreign manufacturers with respect to reporting under this rule and under part 803 and may propose a new rule to address this issue in the future.

FDA believes that with these revisions, the final rule incorporates reasonable requirements that can be implemented by the regulated industry without unnecessary burden.

III. Summary and Analysis of Comments and FDA's Response

The March 1994 proposed rule proposed to establish procedures to implement the reports of corrections and removals provisions of section 519(f) of the act. FDA received 33 comments and 2 requests for an extension of the comment period in response to the March 1994 proposed rule. This total number represents comments received from manufacturers, distributors, trade associations, attorneys, and one hospital. For the most part, each comment addressed various aspects of the March 1994 proposed rule. Several of the comments stated that the March 1994 proposed rule was overly broad in scope, required the submission of unnecessary data, and imposed undue burdens on FDA and industry. Several comments also cited FDA's failure to address in the preamble the voluntary recall regulation, which was published in the **Federal Register** of June 16, 1978 (43 FR 26202), and the medical device reporting (MDR) regulation, which was published in the **Federal Register** of December 11, 1995 (60 FR 63578). Some of the comments stated that the definitions of certain regulatory terms lacked clarity. Other comments expressed concern regarding public disclosure of trade secrets, and confidential commercial and financial information in reports of corrections and removals submitted to FDA. FDA did not extend the comment period. The comments and FDA's responses are summarized below.

1. Several comments stated that the proposed requirements for reports of corrections and removals should clarify the relationship between the reports of corrections and removals regulation and FDA's voluntary recall policy in part 7 (21 CFR part 7). FDA notes that the recall policy (including product corrections) in part 7 was not addressed in the preamble to the March 1994 proposed rule.

In the voluntary recall regulation, FDA established the agency's policy and procedures for voluntary product recalls. This final notice was intended to provide guidance to manufacturers and distributors of all products regulated by FDA so that they could more effectively discharge their recall responsibilities. The voluntary guidelines apply to all FDA-regulated products (i.e. food, including animal feed; drugs; medical devices, including in vitro diagnostic products; cosmetics; and biological products intended for human use) except electronic products subject to the Radiation Control for Health and Safety Act (RCHSA) (Pub. L. 90–602) that are not medical devices, and may be undertaken at any time by manufacturers and distributors, or at the request of FDA. These voluntary guidelines remain in effect and will supplement the reports of correction and removal provisions of section 519(f) of the act. If a report of correction or removal is required under part 806 (21 CFR part 806), it must be submitted as provided in § 806.10. If a report is not required under part 806, an entity may voluntarily report under part 7. The definition of ''risk to health'' in this rule (§ 806.2(j)) tracks the definitions of class I and class II recall in § 7.3(m). The effect of using the same language in part 806 is to require reports of corrections and removals for class I and class II recalls. Under part 806, manufacturers, importers, and distributors must keep records of events categorized as class III recalls under part 7.

Section 518(e) of the act (21 U.S.C. 360h(e)) provides FDA with the authority to initiate mandatory recall actions if there is a reasonable probability that a device intended for human use would cause serious adverse health consequences or death. In the **Federal Register** of November 20, 1996 (61 FR 59004), FDA published a final rule requiring recall of medical devices under some circumstances. Any corrective or removal action initiated by an FDA order under section 518(e) of the act need not be reported under part 806 because FDA will already be aware that the action is taking place. In such cases, reporting or notification requirements of the section 518(e) order and the recall regulation will be applicable.

2. Comments stated that this rule duplicates the requirements of the MDR regulation (part 803). Other comments stated that it is unclear which events should be reported under the MDR regulation.

FDA agrees that the relationship between this final rule and the MDR regulation warrants clarification so as to avoid unnecessary duplication. Indeed, section 519(f)(2) of the act prohibits FDA from requiring a report of correction or removal, if that same

information has been required and has been submitted under MDR.

Generally, there is expected to be little overlap between these reporting requirements. This is because MDR's are based on adverse events that have occurred (i.e., deaths, serious injuries, and malfunctions) regardless of whether a remedial action (i.e., correction or removal) has been undertaken by the manufacturer or distributor. Moreover, the MDR report, which is tied to the adverse event itself and its possible association with the device, will only rarely address any remedial action taken by the manufacturer because, in most cases, no such remedial action has yet occurred.

The primary area where such overlap between the final rule and MDR would be expected is with the 5-day MDR report. This is because 5-day MDR reports are required within 5 days of the submitter becoming aware that an MDR reportable event (i.e., death, serious injury, or malfunction) *requires remedial action* to prevent an unreasonable risk of substantial harm to the public health (§ 803.55). Thus, by linking the 5-day MDR reports to the need for remedial action, information concerning the correction or removal will necessarily be submitted under MDR and will not need to be resubmitted under part 806. FDA has modified the final rule to reflect this (§ 806.10(f)).

In addition, in those rare cases where the routine MDR reports submitted to FDA (30-day reports for manufacturers and 10-day reports for distributors) are required to and do contain information on the remedial actions taken (i.e., corrections or removals), then no additional report under this final rule needs to be submitted to the agency.

FDA notes that, under regulations issued to implement the RCHSA, the equivalent of a report of a correction or removal is required under part 1004 for electronic products which may also be medical devices. Part 1004 requires that, if an electronic product has a defect or fails to meet an applicable Federal performance standard, the manufacturer shall, repair, replace, or refund the cost of the electronic product. Devices for which Federal standards are currently in place under the RCHSA include x-ray equipment, fluoroscopy equipment, magnetic resonance imaging devices, medical lasers, and ultrasound devices.

FDA believes that the information that is required by part 1004 is sufficient notice to FDA of a correction or removal. Furthermore, manufacturers of these products are familiar with the reporting requirements of part 1004. Therefore, on its own initiative, FDA is modifying § 806.10(e) to state that, if a report is required and is submitted under part 1004 for a correction or removal that would otherwise be required to be reported under part 806, no report under part 806 is required.

3. Comments questioned FDA's authority to review any correction or removal report to determine if the correction or removal action should be extended to other units of the same device, other products of the same manufacturer or distributor, or similar products of other manufacturers and distributors.

FDA believes that it is appropriate and necessary, and in the interest of the public health, for FDA to review reports of corrections and removals to determine if any further remedial action such as a recall or safety alert is required, and to further determine if there is a need to extend the correction or removal action to other units of the same device, other products of the same manufacturer, distributor, or importer, or similar products of other manufacturers, distributors, or importers, which may present a similar risk to health.

4. Some of the comments received in response to the March 1994 proposed rule for reports of corrections and removals stated that manufacturers of general purpose articles, such as chemical reagents and laboratory equipment, are not subject to medical device regulations.

Under § 807.65(c) (21 CFR 807.65(c)), general purpose articles whose uses are generally known by persons trained in their use, unless labeled or promoted for medical use, are exempt from registration, listing, and premarket notification requirements. However, unless exempted by regulation, general purpose articles that are medical devices are subject to section 519(f) of the act and to the requirements of this rule.

The March 1994 proposed rule at § 806.1(b)(3) exempted certain actions undertaken by manufacturers of general purpose articles that were already exempted from reporting under § 806.1(b)(1). The exemption that formerly appeared at § 806.1(b)(3) does not appear in the final rule because it is redundant and unnecessary.

5. Comments objected that the March 1994 proposed rule does not differentiate removals done solely upon customer request from other removals.

Removals done solely upon customer request (i.e., overstock, discontinued use of the item, order error, old stock, not current design, or perceived issues with specific lots) that are not performed to reduce a risk to health posed by the device, or to remedy a violation of the act caused by the device that may present a risk to health, are not removals within the meaning of section 519(f)(1) of the act. FDA has amended § 806.2 to include the definition of ''market withdrawal'' and § 806.1(b)(2) to make clear that market withdrawals are not reportable events. The definition of market withdrawal in § 806.2(h) tracks the definition in the voluntary recall provisions in § 7.3(j). The example in § 7.3(j) of ''routine equipment adjustments and repairs'' is not included in new § 806.2(h) because it would be redundant to the definition of ''routine servicing'' in § 806.2(k).

6. Comments stated that it would be redundant to require convenience kit manufacturers to report when the supplier of the component initiates a correction or removal; to do so would be redundant and no additional value would be added to the process.

FDA agrees that duplicate reports would be redundant, but disagrees that the rule requires duplicate reports. Only the person who initiates the correction or removal is required to report.

7. Comments stated that the manufacturer should not be required to report if a manufacturer discovers after removing or correcting a medical device that the device did not pose a risk to health or that the risk posed was no greater than the risk described on the labeling of the device.

A manufacturer, distributor, or importer that initiates a correction or removal of a device to reduce a risk to health or remedy a violation of the act that could present a risk to health must submit a report to FDA within 10-working days of initiation of the action. In most cases, if the action has been completed, it should have been reported. The only way the action would be exempt from reporting within the required 10-working days is if it was determined by the manufacturer, distributor, or importer during that 10-day period that the device did not present a risk to health, or there was no violation of the act that could present a risk to health. After a report is received by the agency, if FDA determines that there is no health risk, or violation of the act that could present a risk to health, FDA would not classify the action as a safety alert or as a recall under part 7, but more likely as a market withdrawal.

8. Comments stated that distributors may not have the capacity to make the determination as to whether a given action is reportable. Other comments suggested that the reports of corrections and removals should not apply to drug wholesalers that distribute devices

because they have neither the authority nor the expertise to determine health risk or to undertake any corrections or removals of a manufacturer's product. Some comments stated that the definition of distributor in the March 1994 proposed rule is too broad.

It is clear from the statute that Congress intended that distributors be required to submit reports of corrections and removals if they initiate a correction or removal action. The agency believes that the definition of distributor in § 806.2(f) is sufficient. Narrowing this definition would prevent the agency from monitoring corrective action taken concerning adulterated or misbranded devices.

9. Comments objected that routine reporting by distributors would disproportionately utilize the agency's resources.

Section 519(f) of the act only requires distributors to report corrective or removal actions if they initiate the action and only one report for each correction or removal is required. Therefore, FDA does not believe that distributor reporting will disproportionately use the agency's resources.

10. Comments said that device rental companies should be defined as multiple distributors and not manufacturers.

The rule does not define rental companies as manufacturers. Rather, companies that rent devices would fall within the definition of ''distributor'' (§ 806.2(f)) for the purposes of this rule. Manufacturers and distributors are subject to the same requirements under this rule to report and keep records of corrections and removals initiated by them.

11. Some comments stated that the scope of the March 1994 proposed rule for reports of corrections and removals should apply to entities that refurbish or recondition a device for resale.

Under section 519(f) of the act, the requirement for reporting corrections and removals applies to any manufacturer, importer, or distributor of a device, which would include a refurbisher and a reconditioner. Accordingly, if a refurbisher or refinisher of a device initiates a correction or removal, that refurbisher or reconditioner is responsible for reporting under part 806.

12. Some comments stated that the reports of corrections and removals regulation should be written to exclude some medical devices which clearly pose no threat to the safety of the patient in case of label mixups.

FDA believes that the request to exclude some medical devices which clearly pose no threat to the safety of the patient in case of label mixups is neither appropriate nor necessary. If a label mixup does not present a risk to the public health, no report is required.

13. Comments suggested that the proposed regulation should be narrowed so as to focus more explicitly on those removals and corrections undertaken to mitigate the potential for serious illness or serious injury. Other comments stated that the threshold for reporting corrections and removals is too low.

The agency believes that it is appropriate to narrow the scope of the regulation to focus more explicitly on those corrections and removals initiated to mitigate the potential for adverse health consequences. As discussed elsewhere in this regulation, FDA has revised the definition of ''risk to health'' (§ 806.2(j)) to enable the agency to focus its resources on more significant health problems.

14. Comments said that FDA should add the following explicit examples of potential corrections and removals that are not intended to reduce a risk to health posed by the device or remedy a violation of the act: (1) When no injury has been, or is likely to be, associated with the event; (2) when a product has reached the end of its useful life; (3) when a device is returned to its original specifications due to extensive use; (4) when no cause for the device failure can be found following failure investigation; (5) where the withdrawal is for the purpose of retracting a new product line and/or upgrading the device to a more recent version; (6) where a request is made to return product for a complaint or MDR evaluation; or (7) when a device from a batch/lot is needed to aid in the investigation of a complaint about the same batch/lot.

The agency believes that it is not necessary to provide explicit examples of potential reports of corrections and removals that are not intended to reduce a risk to health posed by the device or remedy a violation of the act caused by the device that may present a risk to health. A firm may routinely correct or remove its devices in the marketplace or under its control for various reasons other than to reduce a risk to health or remedy a violation of the act that may present a risk to health. However, in response to these comments, FDA has added the definition of ''stock recovery'' at § 806.2(l) and exempted actions meeting this definition from the reporting requirements at § 806.1(b)(4). The definition of ''stock recovery'' in § 806.2(l) tracks the definition in the voluntary recall provisions in § 7.3(k). Only actions taken by a manufacturer can meet the definition of ''stock recovery.''

15. Comments said that the scope of the March 1994 proposed rule should be broadened to include a definition of ''device enhancement''.

The agency does not believe that it is necessary to define ''device enhancement''. If a correction or removal is initiated in order to enhance a device in the absence of a risk to health, no report is required. The central question is whether there is a risk to health and not whether the device is enhanced. Section 806.1(b) makes it clear that an action taken to improve a device in the absence of a risk to health is not a reportable event.

16. Comments said that the requirement that only one report be submitted for each reportable event means that a reportable event is a specific correction or removal program for a defined population of devices rather than a correction or removal of an individual device. Other comments said that the proposed regulation appears to require reporting whenever a particular device is inspected, adjusted, or repaired in an identical way more than once even when the triggering events are random, are separated in time, and no program of repair or correction is in progress or is needed.

FDA agrees that generally, a single correction or removal that involves more than one device requires only one report. However, when the triggering events for removals or corrections are the same but are separated in time, for example, when consecutive lots of a product with the same defect are not released at the same time, separate reports will have to be made for each event unless the timing is such that more than one event can be reported at once, given the time period for reporting in this regulation. FDA encourages manufacturers, distributors, and importers to consider whether it would be appropriate to extend removal or corrective actions performed in response to one event to other units of the same device or similar devices and, in some cases, this type of investigation may be required under part 820 (21 CFR part 820). If multiple repairs of the same or similar devices are undertaken as part of a program of repair, the triggering incident and the entire program of repair can be submitted as one report. The agency will require amendments when additional devices, lots, and batches are being added to the same corrections or removal. This approach provides a more efficient and effective procedure for reporting actions that should be considered together. FDA has

added a new § 806.10(d) to provide for the submission of such amendments.

17. One comment states that a ''bug list'' distributed by device manufacturers to customers advising them of problems associated with software equipment used to run work stations could be considered a correction to software.

A manufacturer, importer, or distributor that undertakes a corrective or removal action for computer software that is considered a medical device must submit a report of such action to FDA. If the action is taken to reduce a risk to health or to remedy a violation of the act that could present a risk to health caused by computerized software that comes within the definition of a device, a report must be submitted; however, it is not likely that a ''bug list'' would be considered a removal. A ''bug list'' could be considered a correction if it constitutes relabeling, but again, would only be reportable if it was undertaken to reduce a risk to health or to remedy a violation of the act that could present a risk to health.

18. Some comments stated that the definition of risk to health was too broad; that the definition of ''risk to health'' should not include the terms ''or error in the use of the device''; that the definition of ''risk to health'' should include ''error in the use of the device''; and that to impose these additional documentation and reporting requirements upon manufacturers adds a significant regulatory burden.

FDA agrees that the definition of risk to health in the March 1994 proposed rule is too broad. The agency has revised the definition of ''risk to health'' at § 806.2(j) to mean (1) a reasonable probability that the use of, or exposure to, the product will cause serious adverse health consequences or death, or (2) that use of, or exposure to, the product may cause temporary or medically reversible adverse health consequences, or an outcome where the probability of serious adverse health consequences is remote. The practical effect of adopting this revised definition is to require reports of removals and corrections for those corrective actions that would be classified as class I or class II recalls under § 7.3(m). Moreover, the agency intends for ''serious adverse health consequences'' to have the same meaning as ''serious injury'' under the MDR rule. At § 803.3(aa)(1), the MDR rule defines serious injury to mean an illness or injury that (1) is life-threatening; (2) results in permanent impairment of a body function or permanent damage to a body structure; or (3) necessitates medical or surgical intervention to preclude permanent damage to a body structure.

This definition allows FDA to allocate its resources efficiently and precludes an unnecessary burden on manufacturers of reporting requirements for extremely remote, trivial risks to the public health. However, a correction or removal undertaken to alleviate a risk to health as defined by § 806.2(j) must be reported under this section even if caused by user error. Reports about corrections or removals based on user error are important to FDA's ability to evaluate the problems with devices and to take prompt action against potentially dangerous devices.

19. Comments said that the phrase ''to remedy a violation of the act caused by the device which may present a risk to health'' should be further clarified.

Action taken to remedy a violation of the act means any action taken to bring a device that was not in compliance with any provision of the act into compliance or to prevent a noncompliance before it occurs.

20. Comments said that the definitions of the terms ''correction'' and ''removal'' are overly broad and would require reports to FDA of thousands of service reports when a medical device is repaired. Further, comments said that the definition of routine servicing is extremely vague and open to subjective interpretation, while others said that this definition was overly restricted and unrealistic.

FDA believes that the definitions of the terms ''correction'' and ''removal'' are appropriate in scope. It is important to emphasize that, under the final rule, a report to FDA is required only when a specific action is taken to reduce a risk to health or to remedy a violation of the act that could result in a risk to health. Section 519(f)(3) of the act states that the terms ''correction'' and ''removal'' do not include routine servicing. As defined in § 806.2(k) an action is considered ''routine servicing'' if it is conducted in accordance with a maintenance schedule for a device, or if it is a repair, adjustment, or replacement of parts in response to normal wear and tear of a device. An action is required to be reported only if it is specifically initiated to reduce a risk to health or remedy a violation of the act that could result in a risk to health. Under § 806.1(b)(2), routine servicing is exempt from the reporting requirements of this regulation.

21. Comments said that the definition of consignee is overly broad.

FDA does not agree with these comments. FDA believes that the definition of ''consignee'' should be sufficiently broad to protect the public health. A correction or removal need only reach the level of consignee appropriate for the situation.

22. A comment said that FDA should clarify the definition of ''U.S. designated agent''.

The term ''U.S. designated agent'' was first introduced in the MDR regulation (§ 803.3(n)). In the **Federal Register** of July 23, 1996 (61 FR 38346), FDA stayed the effective date of the U.S. designated agent provisions of the MDR rule and announced that it intended to reconsider reporting by foreign manufacturers and issue a new proposal in the near future. In keeping with that announcement, FDA has deleted the definition of ''U.S. designated agent'' that appeared in the March 1994 proposed rule at § 806.2(g)(4), from the reports of corrections and removals regulation. Foreign firms meeting the definition of ''manufacturer,'' ''distributor,'' or ''importer'' are responsible for submitting their own reports of corrections and removals involving devices imported into the United States. Failure to do so will result in their devices being adulterated under section 502(t) of the act (21 U.S.C. 352(t)) and may cause their devices to be refused admission for import under section 801(a) of the act (21 U.S.C. 381(a)).

23. One comment stated that FDA should make the recordkeeping requirements advisory rather than mandatory. Another comment stated that the preamble is confusing in that it implies without stating that entities must supply justification for when reporting is not required.

FDA disagrees with these comments. Section 519(f) of the act directs FDA to issue regulations to require reporting and recordkeeping of correction and removal actions. Section 519(f)(1) of the act requires manufacturers, distributors, and importers to keep records of those corrections and removals that are not required to be reported to FDA (see S. Rept. 513, 101st Cong., 2d sess. 23 (1990)). Section 806.20(c)(4) requires explicitly that entities include the justification for not reporting a correction or removal in the records required by this rule. These records will be used by FDA to audit the manufacturer's determination that a report of correction or removal was not required. Similarly, § 820.198 requires manufacturers to keep records of evaluations of complaints whether or not they are reportable under the MDR regulation.

24. Several comments stated that the 10-calendar days in § 806.10(b) within which to submit a report of a correction or removal is not enough time. Some

comments stated that the agency should clarify when a correction or removal is considered to be ''initiated''.

FDA agrees with these comments. In order to allow sufficient time for preparation of complete reports, FDA has extended the reporting period to 10-working days. This will allow for a sufficient time for reporting when holidays or weekends intervene. However, the agency recognizes that, on rare occasions, a manufacturer or distributor will not be able to gather all the information required by § 806.10 to complete a report. Therefore, FDA has revised the regulation by including § 806.10(b)(13) to allow manufacturers and distributors to identify information that is not available, provided that they state when it will be available.

Although the SMDA does not specifically define the term ''initiation'' or ''initiating'', FDA believes that the initiation or initiating of a correction or removal is that moment in time when a firm makes the first contact within or outside the firm that begins the correction or removal action.

25. One comment stated that the information manufacturers would be required to report is far in excess of that which FDA needs for a reporting program, especially in light of the many other controls and reporting programs already in effect that require companies to maintain records and/or make reports about the same type of information. Another comment stated that the criteria for submission of reports of corrections and removals are too subjective and may be difficult to apply in actual practice.

FDA agrees with these comments and, as noted above, has narrowed the definition of ''risk to health.'' The final rule, as revised, applies basically the criteria for class I and class II recalls used successfully by FDA for more than 20 years under part 7.

26. One comment stated that a form for reporting corrections and removals would be useful, particularly if it served as a checklist of required information but allowed flexibility in providing the information. The comment also stated that it would be helpful if electronic or disc submissions were possible. One comment stated that a form would be impractical as it would not allow the flexibility necessary to accommodate various needs. One comment developed and submitted a form for use by the agency.

In the March 1994 proposed rule, FDA solicited comments regarding whether it would be desirable to develop a form to collect reports of correction and removal data. FDA has determined that a form is not necessary. FDA believes that industry and the agency have more flexibility without a form without sacrificing good information management practices.

In the **Federal Register** of March 20, 1997 (62 FR 13430), FDA published a final rule that will, under certain circumstances, permit the submission of electronic records, electronic signatures, and handwritten signatures executed to electronic records as generally equivalent to paper records and handwritten signatures executed on paper. The rule will apply to records that are called for in title 21 of the Code of Federal Regulations (CFR) when submitted in electronic form. The intended effect of the March 1994 proposed rule is to permit use of electronic technologies in a manner that is consistent with FDA's overall mission and that preserves the integrity of the agency's enforcement activities.

27. One comment stated that a manufacturer may be admitting product liability if the manufacturer is required to submit a report for a correction or removal of a device when the regulation requiring the report is based upon ''risk to health''. The comment stated that the proposed regulation should be amended to allow a manufacturer to disclaim the admission of risk to health associated with a device by the mere submission of this required report.

In response to the comment, FDA has added § 806.10(e) to the final rule stating that a report of information submitted by a manufacturer, distributor, or importer (and any release by FDA of that report or information) does not necessarily reflect a conclusion by the manufacturer, importer, distributor, or FDA that the report or information constitutes an admission that the device caused or contributed to a death or serious injury. A manufacturer, distributor, or importer need not admit, and may deny, that the report or information submitted under this section constitutes an admission that the device caused or contributed to a death or serious injury.

28. Some comments stated that the term ''complete'' is subjective and should be deleted from § 806.10(c)(7), which required ''A complete description of the event(s) giving rise to the information reported and the corrective or removal actions that have been, and are expected to be, taken'' (emphasis added), and § 806.20(b)(3), which required ''A complete description of the event giving rise to the information reported and the corrective or removal action that has been, and is expected to be taken.''

FDA agrees with these comments. The term ''complete'' has been deleted from these sections of the regulation.

29. One comment stated that the word ''inspection'' should be deleted from the definition of correction. According to this comment, the act of inspecting is not, per se, an event which corrects a device. The comment said that, while an action of correction could result from an inspection event, the process of determining if a correction is warranted should not be a reportable event under part 806.

FDA agrees an inspection that is conducted before a determination that a public health risk exists is not a reportable event. However, FDA believes that an inspection that is initiated as a result of a public health risk is a correction. The term ''inspection (including patient monitoring)'' is included in the definition of ''correction'' in § 7.3. FDA has in the past classified firms' inspections that were conducted to determine which device contained a defective component as recall actions, especially when a firm failed to maintain adequate records to determine which devices were manufactured with a possible defect, or which consignees received defective devices.

30. Some comments stated that the proposed requirement with regard to the number scheme for ''C'' (correction) and ''R'' (removal) type reports is not clear. Another comment stated that FDA has exceeded the scope of its statutory authority in mandating a specific reporting format for reports of corrections and removals. Other comments stated that manufacturers should be provided with the option of designating their own report numbers. Another comment stated that requiring the creation of an 18 character alpha-numeric field for computer data bases to identify, track, and retrieve associated information in the correction or removal report number section adds unnecessary additional requirements to the recordkeeping task for manufacturers, and that perhaps the existing unique sequence number that each manufacturer uses to identify their product complaints should be adequate.

FDA believes that the number scheme for ''C'' (corrections) and ''R'' (removal) type reports should be clarified, and has clarified the numbering system in § 806.10(c)(1). FDA does not believe that it has exceeded its statutory authority. A uniform numbering system for reports of corrections and removals will assist the agency, in filing, organizing, and retrieving reports of corrections and removals. By facilitating the agency's orderly processing of reports, a uniform numbering system will ensure the agency's prompt and efficient attention to the information submitted. Moreover,

as discussed above in response to comment 26, the agency has published a rule that will permit electronic submissions of some reports. A uniform numbering system will greatly simplify the storage and retrieval of electronic reports.

31. One comment stated that the current practice is for manufacturers or distributors reporting a recall action to report to the FDA district office in the area where the manufacturer's or distributor's site conducting the recall is located. The comment stated that a report of correction or removal should be submitted to the FDA district office with jurisdiction over the location of the manufacturer that is conducting the correction/removal action. Some comments stated that the reports of corrections and removals should be submitted to the FDA district office in which the facility coordinating the correction or removal is located. Other comments stated that reports should be made to FDA headquarters rather than to each district office.

FDA believes that reports of corrections and removals should be sent to the district office for the district in which the reporting facility is located, whether it is the distributor's site, manufacturing site, or the corporate office. The district office in the reporting facility's district will have direct contact with the reporting firm, as it does now with recalling firms, and will therefore be able to monitor the firm's actions more easily, and in a timely fashion. Manufacturers, distributors, and importers are expected to follow company policy for submission of reports of actions involving multiple operations. For foreign firms, reports should be made to the district office of the district in which any initial distributor of the device in the United States is located.

32. One comment stated that the March 1994 proposed rule will impose significant costs on manufacturers and distributors of medical devices. Some comments stated that the projection of no more than 800 reports per year grossly underestimates the likely number. Other comments stated that the cost is underestimated.

FDA has revised aspects of the final rule, in particular the definition of ''risk to health,'' as discussed above. FDA believes that these revisions substantially narrow the definition of reportable events. Based on the number of voluntary recalls reported to FDA since 1990 and the number of unreported recalls identified through FDA's investigations, the estimate provided in the March 1994 proposed rule for 800 reports should be adjusted slightly upward to 880. The agency typically uncovers 40 unreported events annually. FDA's estimates are discussed in more detail in sections IV and V of this document. FDA believes that the information it has used to project the number of reports is reliable and that 800 to 880 reports is a rational, well-justified estimate of the number of reports the agency will receive.

33. Some comments expressed concern over confidentiality of the reports of corrections and removals submitted to FDA. For the most part, comments recommended that FDA delete the names, addressees, and telephone numbers of consignees prior to public disclosure of reports of corrections and removals.

FDA is aware of confidentiality concerns. For the most part, FDA is required under the Freedom of Information Act (FOIA) (5 U.S.C. 552), to make reports of corrections and removals publicly available. The public availability of such reports is governed by the FOIA and part 20 (21 CFR part 20). Before a report is made publicly available in accordance with the FOIA and part 20, FDA will delete from the report information whose disclosure would constitute an invasion of personal privacy (see 5 U.S.C. 552(b)(6); § 20.63), or information that constitutes trade secret or confidential commercial or financial information (see 5 U.S.C. 552(b)(4); § 20.61). The public availability of the reports required by this regulation is discussed in § 806.40.

II. Enforcement

Violations of this rule, which is issued under the authority of sections 502, 510, 519, 520, 701, and 704 of the act (21 U.S.C. sections 352, 360, 360i, 360j, 371, and 374), will result in committing one or more of the following violations of section 301 of the act:

1. Section 301(e) of the act (21 U.S.C. 331(e)), which prohibits, among other things, the failure to establish or maintain any record, or make any report, required under section 519 of the act or the refusal to permit officers or employees designated by FDA to have access to or verification or copying of any such required record.

2. Section 301(f) of the act, which prohibits the refusal to permit entry or inspection as authorized by section 704 of the act (21 U.S.C. 374). Section 704(e) of the act requires every person required under section 519 of the act to maintain records and every person who is in charge or custody of such records, upon request of an officer or employee designated by FDA, to permit such officer or employee to have access to, and copy and verify, such records.

3. Section 301(q) of the act, which prohibits, among other things, the failure or refusal to furnish any material or information required by or under section 519 of the act or the submission of such a report that is false or misleading in any respect.

In addition, section 502(t)(2) of the act deems a device to be misbranded if there was a failure or refusal to furnish any material or information required by or under section 519 of the act respecting the device. Section 301(a), (b), (c), (g), and (k) of the act prohibit several actions with respect to misbranded devices. Persons who violate section 301 of the act may be restrained, under section 302 of the act (21 U.S.C. 332), or may be imprisoned or fined under section 303 of the act (21 U.S.C. 333). FDA may also seize misbranded devices under section 304 of the act (21 U.S.C. 334).

The SMDA also added section 303(f) to the act, which provides for the first time that any person who fails to demonstrate substantial compliance with section 519(f) of the act may be subject to civil penalties. These penalties do not apply to any person who commits minor violations of section 519(f) of the act with respect to correction reports, if such person demonstrates substantial compliance with section 519(f). A civil penalty may not exceed $15,000 for a single violation, and may not exceed $1,000,000 for all such violations adjudicated in a single proceeding.

III. Environmental Impact

The agency has determined that this action falls within the category of actions described in 21 CFR 25.24(a)(8) which do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives, and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity. The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. If a rule has a significant

economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of the rule on small entities.

The final rule requires medical device manufacturers, importers, and distributors to report promptly to FDA any correction or removal of a device undertaken to reduce a risk to health posed by the device or to remedy a violation of the act that could present a risk to health caused by the device. FDA currently receives, as voluntary reports under part 7, an estimated 800 reports of corrections and removals each year and typically uncovers an additional 40 unreported events. Factoring in an additional 40 reports that FDA does not uncover, FDA estimates that it will receive about 880 reports of corrections and removals under § 806.10 annually and that entities will be required to keep records of an additional 440 events. There are more than 20,000 manufacturers, importers, and distributors of medical devices subject to this rule. The large majority of entities will not be required to submit any reports in any particular year, and, most likely, only the largest entities would be required to report more than 1 or 2 events in any year. Because of the relatively small incremental increase in reporting and recordkeeping required by this rule and the relatively modest costs attendant upon that increase, the Commissioner of Food and Drugs certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is the estimate that the implementation of the corrections and removals provision will require approximately 880 reports per year and recordkeeping of approximately 440 events. Therefore, under the Regulatory Flexibility Act, no further analysis is required. FDA has sent its certification and the factual basis for it set out above to the Chief Counsel for Advocacy, Small Business Administration.

V. Paperwork Reduction Act of 1995

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

Title: Reports of Corrections and Removals for Manufacturers, Importers, and Distributors of Medical Devices.

Description: This regulation establishes the procedures for implementing the reports of corrections and removals provisions of the SMDA. The purpose of this regulation is to protect the public health by permitting FDA to promptly receive information about devices that have been corrected or removed to avert a risk to health or to remedy a violation of the act that could present a risk to health. The collection of this information is required by section 519(f) of the act.

Description of Respondents: Businesses or other for profit organizations.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
806.10	880	1	880	10	8,800

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
806.20	440	1	440	10	4,400

There are no capital or operating and maintenance costs expected as a result of this final rule.

Although the March 1994 proposed rule provided a 90-day comment period under the Paperwork Reduction Act of 1980, and this final rule is based on comments received, the proposed rule has not been previously available to OMB for review. FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through use of automated collection techniques, when appropriate, and other forms of information technology.

Although the reporting burden estimate in the March 1994 proposed rule was 8,000 hours, based on an evaluation of the agency's recent experience with the voluntary recall rule and the MDR rule, FDA now estimates that the annual reporting burden for respondents in § 806.10 is 8,800 hours. The adjusted total estimated annual recordkeeping burden is now 4,400 hours (Table 1).

Individuals and organizations desiring to submit comments regarding FDA's burden estimates or any aspects of the information collection provisions of the final rule should do so by July 18, 1997. These comments should be directed to FDA's Dockets Management Branch (address above).

At the close of the 60-day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review. FDA will publish a notice in the **Federal Register** when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** of OMB's

decision to approve, modify, or disapprove the information collection provisions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects in 21 CFR Part 806

Corrections and removals, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 806 is added to read as follows:

PART 806—MEDICAL DEVICE CORRECTIONS AND REMOVALS

Subpart A—General Provisions

Sec.
806.1 Scope.
806.2 Definitions.

Subpart B—Reports and Records

806.10 Reports of corrections and removals.
806.20 Records of corrections and removals not required to be reported.
806.30 FDA access to records.
806.40 Public availability of reports.

Authority: Secs. 502, 510, 519, 520, 701, and 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360i, 360j, 371, 374).

Subpart A—General Provisions

§ 806.1 Scope.

(a) This part implements the provisions of section 519(f) of the Federal Food, Drug, and Cosmetic Act (the act) requiring device manufacturers and distributors, including importers, to report promptly to the Food and Drug Administration (FDA) certain actions concerning device corrections and removals, and to maintain records of all corrections and removals regardless of whether such corrections and removals are required to be reported to FDA.

(b) The following actions are exempt from the reporting requirements of this part:

(1) Actions undertaken by device manufacturers and distributors, including importers, to improve the performance or quality of a device but that do not reduce a risk to health posed by the device or remedy a violation of the act caused by the device.

(2) Market withdrawals as defined in § 806.2(h).

(3) Routine servicing as defined in § 806.2(k).

(4) Stock recoveries as defined in § 806.2(l).

§ 806.2 Definitions.

As used in this part:

(a) ''Act'' means the Federal Food, Drug, and Cosmetic Act.

(b) ''Agency'' or ''FDA'' means the Food and Drug Administration.

(c) ''Consignee'' means any person or firm that has received, purchased, or used a device subject to correction or removal.

(d) ''Correction'' means the repair, modification, adjustment, relabeling, destruction, or inspection (including patient monitoring) of a device without its physical removal from its point of use to some other location.

(e) ''Correction or removal report number'' means the number that uniquely identifies each report submitted.

(f) ''Distributor'' means any person, including any person who imports a device into the United States, who furthers the marketing of a device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user, but who does not repackage or otherwise change the container, wrapper, or labeling of the device or device package.

(g) ''Manufacturer'' means any person who manufactures, prepares, propagates, compounds, assembles, or processes a device by chemical, physical, biological, or other procedures. The term includes any person who:

(1) Repackages or otherwise changes the container, wrapper, or labeling of a device in furtherance of the distribution of the device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user or consumer;

(2) Initiates specifications for devices that are manufactured by a second party for subsequent distribution by the person initiating the specifications; or

(3) Manufactures components or accessories which are devices that are ready to be used and are intended to be commercially distributed and are intended to be used as is, or are processed by a licensed practitioner or other qualified person to meet the needs of a particular patient.

(h) ''Market withdrawal'' means a correction or removal of a distributed device that involves a minor violation of the act that would not be subject to legal action by FDA or that involves no violation of the act, e.g., normal stock rotation practices.

(i) ''Removal'' means the physical removal of a device from its point of use to some other location for repair, modification, adjustment, relabeling, destruction, or inspection.

(j) ''Risk to health'' means

(1) A reasonable probability that use of, or exposure to, the product will cause serious adverse health consequences or death; or

(2) That use of, or exposure to, the product may cause temporary or medically reversible adverse health consequences, or an outcome where the probability of serious adverse health consequences is remote.

(k) ''Routine servicing'' means any regularly scheduled maintenance of a device, including the replacement of parts at the end of their normal life expectancy, e.g., calibration, replacement of batteries, and responses to normal wear and tear. Repairs of an unexpected nature, replacement of parts earlier than their normal life expectancy, or identical repairs or replacements of multiple units of a device are not routine servicing.

(l) ''Stock recovery'' means the correction or removal of a device that has not been marketed or that has not left the direct control of the manufacturer, i.e., the device is located on the premises owned, or under the control of, the manufacturer, and no portion of the lot, model, code, or other relevant unit involved in the corrective or removal action has been released for sale or use.

Subpart B—Reports and Records

§ 806.10 Reports of corrections and removals.

(a) Each device manufacturer, importer, or distributor shall submit a written report to FDA of any correction or removal of a device initiated by such manufacturer or distributor if the correction or removal was initiated:

(1) To reduce a risk to health posed by the device; or

(2) To remedy a violation of the act caused by the device which may present a risk to health unless the information has already been provided as set forth in paragraph (f) of this section or the corrective or removal action is exempt from the reporting requirements under § 806.1(b).

(b) The manufacturer, importer, or distributor shall submit any report required by paragraph (a) of this section within 10-working days of initiating such correction or removal. The report shall be submitted to the appropriate FDA district office listed in § 5.115 of this chapter. A foreign manufacturer or owner or operator of devices must submit reports of corrective or removal actions.

(c) The manufacturer, importer, or distributor shall include the following information in the report:

(1) The seven digit registration number of the entity responsible for

submission of the report of corrective or removal action (if applicable), the month, day, and year that the report is made, and a sequence number (i.e., 001 for the first report, 002 for the second report, 003 etc.), and the report type designation ''C'' or ''R''. For example, the complete number for the first correction report submitted on June 1, 1997, will appear as follows for a firm with the registration number 1234567: 1234567–6/1/97–001–C. The second correction report number submitted by the same firm on July 1, 1997, would be 1234567–7/1/97–002–C etc. For removals, the number will appear as follows: 1234567–6/1/97–001–R and 1234567–7/1/97–002–R, etc. Firms that do not have a seven digit registration number may use seven zeros followed by the month, date, year, and sequence number (i.e. 0000000–6/1/97–001–C for corrections and 0000000–7/1/97–001–R for removals). Reports received without a seven digit registration number will be assigned a seven digit central file number by the district office reviewing the reports.

(2) The name, address, and telephone number of the manufacturer, importer, or distributor and the name, title, address, and telephone number of the manufacturer, importer, or distributor's representative responsible for conducting the device correction or removal.

(3) The brand name and the common name, classification name, or usual name of the device and the intended use of the device.

(4) Marketing status of the device, i.e., any applicable premarket notification number, premarket approval number, or indication that the device is a preamendments device, and the device listing number. A manufacturer, importer, or distributor that does not have an FDA establishment registration number shall indicate in the report whether it has ever registered with FDA.

(5) The model, catalog, or code number of the device and the manufacturing lot or serial number of the device or other identification number.

(6) The manufacturer's name, address, telephone number, and contact person if different from that of the person submitting the report.

(7) A description of the event(s) giving rise to the information reported and the corrective or removal actions that have been, and are expected to be taken.

(8) Any illness or injuries that have occurred with use of the device. If applicable, include the medical device report numbers.

(9) The total number of devices manufactured or distributed subject to the correction or removal and the number in the same batch, lot, or equivalent unit of production subject to the correction or removal.

(10) The date of manufacture or distribution and the device's expiration date or expected life.

(11) The names, addresses, and telephone numbers of all domestic and foreign consignees of the device and the dates and number of devices distributed to each such consignee.

(12) A copy of all communications regarding the correction or removal and the names and addresses of all recipients of the communications not provided in accordance with paragraph (c)(11) of this section.

(13) If any required information is not immediately available, a statement as to why it is not available and when it will be submitted.

(d) If, after submitting a report under this part, a manufacturer, distributor, or importer determines that the same correction or removal should be extended to additional lots or batches of the same device, the manufacturer, distributor, or importer shall within 10-working days of initiating the extension of the correction or removal, amend the report by submitting an amendment citing the original report number assigned according to paragraph (c)(1) of this section, all of the information required by paragraph (c)(2), and any information required by paragraphs (c)(3) through (c)(12) of this section that is different from the information submitted in the original report. The manufacturer, distributor, or importer shall also provide a statement in accordance with paragraph (c)(13) of this section for any required information that is not readily available.

(e) A report submitted by a manufacturer, distributor, or importer under this section (and any release by FDA of that report or information) does not necessarily reflect a conclusion by the manufacturer, distributor, importer, or FDA that the report or information constitutes an admission that the device caused or contributed to a death or serious injury. A manufacturer, distributor, or importer need not admit, and may deny, that the report or information submitted under this section constitutes an admission that the device caused or contributed to a death or serious injury.

(f) No report of a correction or removal is required under this part, if a report of the correction or removal is required and has been submitted under parts 803, 804, or 1004 of this chapter.

§ 806.20 Records of corrections and removals not required to be reported.

(a) Each device manufacturer, importer, or distributor who initiates a correction or removal of a device that is not required to be reported to FDA under § 806.10 shall keep a record of such correction or removal.

(b) Records of corrections and removals not required to be reported to FDA under § 806.10 shall contain the following information:

(1) The brand name, common or usual name, classification, name and product code if known, and the intended use of the device.

(2) The model, catalog, or code number of the device and the manufacturing lot or serial number of the device or other identification number.

(3) A description of the event(s) giving rise to the information reported and the corrective or removal action that has been, and is expected to be taken.

(4) Justification for not reporting the correction or removal action to FDA, which shall contain conclusions and any followups, and be reviewed and evaluated by a designated person.

(5) A copy of all communications regarding the correction or removal.

(c) The manufacturer, importer, or distributor shall retain all records required under this section for a period of 2 years beyond the expected life of the device, even if the manufacturer, importer, or distributor has ceased to manufacture, import, or distribute the device. Records required to be maintained under paragraph (b) of this section must be transferred to the new manufacturer, importer, or distributor of the device and maintained for the required period of time.

§ 806.30 FDA access to records.

Each device manufacturer, importer, or distributor required under this part to maintain records concerning corrections or removals and every person who is in charge or custody of such records shall, upon request of an officer or employee designated by FDA and under section 704(e) of the act, permit such officer or employee at all reasonable times to have access to, and to copy and verify, such records and reports.

§ 806.40 Public availability of reports.

(a) Any report submitted under this part is available for public disclosure in accordance with part 20 of this chapter.

(b) Before public disclosure of a report, FDA will delete from the report:

(1) Any information that constitutes trade secret or confidential commercial or financial information under § 20.61 of this chapter; and

(2) Any personnel, medical, or similar information, including the serial numbers of implanted devices, which would constitute a clearly unwarranted invasion of personal privacy under § 20.63 of this chapter or 5 U.S.C. 552(b)(6); provided, that except for the information under § 20.61 of this chapter or 5 U.S.C. 552(b)(4), FDA will disclose to a patient who requests a report all the information in the report concerning that patient.

Dated: May 9, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–13064 Filed 5–16–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1327

[Docket No. 84–02; Notice 11]

RIN 2127–AG21

Procedures for Participating In and Receiving Data From the National Driver Register Problem Driver Pointer System

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

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule amends the agency's National Driver Register (NDR) regulations to implement an amendment made by the Pilot Records Improvement Act of 1996. The amendment authorizes air carriers to receive information from the National Driver Register (NDR) regarding the motor vehicle driving records of individuals who are seeking employment with an air carrier as a pilot. This interim final rule establishes the procedures for those pilots to request, and for those air carriers to receive, NDR information.

DATES: This interim final rule becomes effective on May 19, 1997. Comments on this interim final rule are due no later than July 18, 1997.

ADDRESSES: Written comments should refer to the docket number and the number of this notice and be submitted (preferably in ten copies) to: Docket Section, National Highway Traffic Safety Administration, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. William Holden, Chief, Traffic Records and Driver Register Division, NTS–32, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; telephone (202) 366–4800 or Ms. Heidi L. Coleman, Assistant Chief Counsel for General Law, Office of Chief Counsel, NCC–30, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; telephone (202) 366–1834.

SUPPLEMENTARY INFORMATION: The National Driver Register (NDR) is a central file of information on individuals whose licenses to operate a motor vehicle have been denied, revoked, suspended, or canceled, for cause, or who have been convicted of certain serious traffic-related violations, such as racing on the highways or driving while impaired by alcohol or other drugs.

As provided in the NDR Act of 1982, as amended, 49 U.S.C. 30301, *et seq.*, State chief driver licensing officials are authorized to request and receive information from the NDR for driver licensing and driver improvement purposes. When an individual applies for a driver's license, for example, these State officials are authorized to request and receive NDR information to determine whether the applicant's driver's license has been withdrawn for cause in any other State. Because the NDR is a nationwide index, chief driver licensing officials need to submit only a single inquiry to obtain this information.

State chief driver licensing officials are also authorized under the NDR Act to request NDR information on behalf of other authorized NDR users for transportation safety purposes. The NDR Act authorized the following transportation entities to receive NDR information for limited transportation safety purposes: The National Transportation Safety Board and the Federal Highway Administration for accident investigation purposes; employers and prospective employers of motor vehicle operators; the Federal Aviation Administration (FAA) regarding any individual who has received or applied for an airman's certificate; the Federal Railroad Administration (FRA) and employers or prospective employers of railroad locomotive operators; and the U. S. Coast Guard regarding any individual who holds or who has applied for a license, certificate of registry, or a merchant mariner's document. The Act also provided that individuals could learn whether information about themselves is on the NDR file and could receive any such information.

On October 9, 1996, the Pilot Records Improvement Act of 1996, Pub. L. 104–264, was enacted into law. Section 502 of that Act contained an amendment to the NDR Act of 1982, as amended, 49 U.S.C. 30305, authorizing air carriers to receive NDR information regarding individuals who are seeking employment with an air carrier as a pilot.

Procedures for Requesting and Receiving NDR Information

The procedures that air carriers would use to receive NDR information would be similar to those used by the employers of motor vehicle and railroad locomotive operators, the FAA, the FRA, and the U. S. Coast Guard in checking their applicants for employment or certification.

Air carriers may not initiate a request for NDR information. Rather, the individual seeking employment as a pilot must do so. To initiate a request, the individual must either complete, sign and submit a request for an NDR file search, or authorize the air carrier to request the NDR file search by completing and signing a written consent. The request or written consent must state that NDR records are being requested; state specifically who is authorized to receive the records; be dated and signed by the individual (the pilot); and specifically state that the authorization is valid for only one search of the NDR. It must also specifically state that the NDR identifies ''probable'' matches that require further inquiry for verification, that it is recommended (but not required) that the air carrier verify matches with the state of record, and state that individuals have the right to request NDR records regarding themselves to verify the accuracy of any information on the file pertaining to them.

The Pilot Records Improvement Act provides that an individual, about whom a request has been made, is entitled to receive written notice about the request for records and of the individual's right to receive a copy of any records provided to the prospective employer. Accordingly, the request or written consent that the individual completes must also include this notice.

The Pilot Records Improvement Act also provides that requests for NDR information are to be submitted through State chief driver licensing officials. Such requests may be submitted through the chief driver licensing official of any State that participates in the NDR's Problem Driver Pointer System (PDPS). Currently, 49 States (all States, except for the State of Oregon and the District of Columbia) participate

in the NDR PDPS. The agency recognizes, however, that even participating States will require some time to develop procedures for processing these air carrier requests and to train their personnel in the new procedures. Accordingly, to provide the States with sufficient preparation time, the NDR will accept air carrier requests for NDR information directly for a limited period of time. The regulation provides that such requests may be submitted directly to the NDR for processing until September 30, 1997. After that date, air carrier requests must be submitted through a State chief driver licensing official. The agency believes this period (until September 30, 1997) will provide sufficient planning time for participating States.

The regulation provides that requests submitted through State chief driver licensing officials must follow procedures established by the State and requests submitted directly to the NDR must follow NDR procedures. For example, individuals must verify their identity in accordance with State procedures when they submit requests through a State. When individuals submit requests directly to the NDR, their requests must be notarized.

If a request has been submitted directly to the NDR, the response will be provided from the NDR directly to the air carrier. If a request has been submitted through a State chief driver licensing official, the response will be provided from the NDR to the chief driver licensing official, who in turn will provide it to the air carrier.

The NDR response will indicate whether a match (probable identification) was found and, if so, the response will also identify the State in which the full substantive record can be found (the State of record). The agency encourages air carriers that receive matches to obtain the substantive data relating to the match from the State of record to determine whether the person described in the record is in fact the subject individual before taking further action. Air carriers will not receive information that was entered in the NDR if the information concerns a licensing action that took place more than five years before the date of the request, unless the information concerns a revocation or suspension still in effect on the date of the request.

The Pilot Records Improvement Act of 1996 further provided that air carriers that maintain, or request and receive NDR information about an individual must provide the individual a reasonable opportunity to submit written comments to correct any inaccuracies contained in the records before making a final hiring decision with respect to the individual.

For additional information regarding requests authorized under the Pilot Records Improvement Act of 1996, including sample forms, see FAA Advisory Circular 120–68.

Part 1327 currently provides that a third party may be used by a person authorized to receive NDR information (an authorized user) to forward requests for NDR file searches to the NDR; however, the third party requester may not receive the NDR response since the third party is not authorized by the NDR Act to receive NDR information. Part 1327 provides that both the authorized user and the individual concerned must sign a written consent authorizing the third party to forward requests for NDR file searches to the NDR. This portion of part 1327 has not been changed by this interim final. The authorized users to which this provision applies will expand to include air carriers.

Interim Final Rule

This notice is published as an interim final rule. Accordingly, the changes to part 1327 described above are fully in effect and binding upon the date of the notice's publication. No further regulatory action by NHTSA is necessary to make these changes effective.

Section 502(d) of the Pilot Records Improvement Act of 1996, provides that air carriers hiring individuals as pilots will be authorized to receive NDR information regarding applications first received by the carriers on or after February 6, 1997. In an effort to establish the procedures to permit pilots to submit requests to the NDR and air carriers to receive NDR information as close as possible to the February 6 date, these regulatory changes have been made in an interim final rule, without prior notice and opportunity for comment. In addition, the changes made to the regulation in this interim final rule simply reflect the statutory amendments enacted by the Pilot Records Improvement Act. Further, the procedures that have been established in this interim final rule for requesting that NDR information be provided to air carriers are nearly identical to the procedures already being followed by the States, by airmen and by others in the field of transportation safety. Those procedures were established by a rulemaking process during which notice and an opportunity to comment were provided.

NHTSA requests comments on these regulatory changes. All comments submitted in response to this notice will be considered by the agency. Following the close of the comment period, NHTSA will publish a notice responding to the comments and, if appropriate, will further amend the provisions of part 1327.

Written Comments

Interested persons are invited to comment on this interim final rule. It is requested, but not required, that ten copies be submitted.

All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15-page limit. (49 CFR 553.21.) This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by July 18, 1997. All comments received before the close of business on the comment closing date, will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. Following the close of the comment period, NHTSA will publish a notice responding to the comments and, if appropriate, NHTSA will amend the provisions of this rule. NHTSA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all comments will be placed in Docket 84–02; Notice 11 of the NHTSA Docket Section in Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Regulatory Analyses and Notice

Executive Order 12778 (Civil Justice Reform)

This interim final rule will not have any preemptive or retroactive effect. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

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

The agency has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or Department of Transportation Regulatory Policies and Procedures. The changes in this interim final rule merely reflect amendments contained in Public Law 104–264. Accordingly, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agency has evaluated the effects of this action on small entities. Based on the evaluation, we certify that this action will not have a significant impact on a substantial number of small entities. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

There are reporting requirements contained in the regulation that this rule is amending that are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, these requirements have been submitted previously to and approved by OMB, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). These requirements had been approved through October 31, 1996, under OMB No. 2127–0001. A request for an extension of the OMB approval until the year 2000 is currently pending.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it will not have any significant impact on the quality of the human environment.

Executive Order 12612 (Federalism Assessment)

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

List of Subjects in 23 CFR Part 1327

Driver licensing, Driver records, Highway safety, National Driver Register, Transportation safety.

In consideration of the foregoing, title 23 of the CFR is amended as follows:

PART 1327—PROCEDURES FOR PARTICIPATING IN AND RECEIVING INFORMATION FROM THE NATIONAL DRIVER REGISTER PROBLEM DRIVER POINTER SYSTEM

1. The authority citation for part 1327 will continue to read as follows:

Authority: Pub. L. 97–364, 96 Stat. 1740, as amended (49 U.S.C. 30301, *et seq.*); delegation of authority at 49 CFR 1.50.

§ 1327.6 [Amended]

2. Section 1327.6 is amended by redesignating paragraphs (f) and (g) as paragraphs (g) and (h), and by adding a new paragraph (f) as follows:

* * * * *

(f) *Air carriers.* (1) To initiate an NDR file check, the individual seeking employment as a pilot with an air carrier shall either:

(i) Complete, sign and submit a request for an NDR file check directly to the chief driver licensing official of a participating State in accordance with procedures established by the State for this purpose; or

(ii) Authorize, by completing and signing a written consent, the air carrier with whom the individual is seeking employment to request a file check through the chief driver licensing official of a participating State in accordance with procedures established by that State for this purpose.

(2) Until September 30, 1997, an NDR file check initiated under either paragraph (f)(1)(i) or (f)(1)(ii) of this section may be submitted directly to the NDR in accordance with procedures established by the NDR rather than through the chief driver licensing official of a participating State in accordance with procedures established by that State for this purpose.

(3) The request for an NDR file check or the written consent, whichever is used, must:

(i) State that NDR records are to be released;

(ii) State as specifically as possible who is authorized to receive the records;

(iii) Be dated and signed by the individual (or legal representative as appropriate);

(iv) Specifically state that the authorization is valid for only one search of the NDR;

(v) Specifically state that the NDR identifies probable matches that require further inquiry for verification; that it is recommended, but not required, that the prospective employer verify matches with the State of record; and that individuals have the right to request records regarding themselves from the NDR to verify their accuracy; and

(vi) Specifically state that, pursuant to Section 502 of the Pilot Records Improvement Act of 1996, the request (or written consent) serves as notice of a request for NDR information concerning the individual's motor vehicle driving record and of the individual's right to receive a copy of such information.

(4) Air carriers that maintain, or request and receive NDR information about an individual must provide the individual a reasonable opportunity to submit written comments to correct any inaccuracies contained in the records before making a final hiring decision with respect to the individual.

(5) In the case of a match (probable identification), the air carrier should obtain the substantive data relating to the record from the State of record and verify that the person named on the probable identification is in fact the individual concerned before using the information as a basis for any action against the individual.

* * * * *

Issued on: May 13, 1997.

Ricardo Martinez, M.D.,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 97–12925 Filed 5–16–97; 8:45 am]

BILLING CODE 4910–59–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE–28–1009; FRL–5823–4]

Approval and Promulgation of Air Quality Implementation Plans; State of Delaware; Enhanced Motor Vehicle Inspection and Maintenance Program

ACTION: Final conditional approval.

SUMMARY: EPA is granting conditional approval of a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision establishes and requires the implementation of a low enhanced motor vehicle inspection and maintenance (I/M) program in the counties of Kent and New Castle. The intended effect of this action is to conditionally approve the Delaware enhanced motor vehicle I/M program. EPA is conditionally approving Delaware's SIP revision based on the fact that: Delaware's SIP is deficient in certain aspects with respect to the

requirements of the Act and EPA's I/M program regulations. Delaware has made a commitment in a letter, dated March 6, 1997, to work with EPA to address the noted deficiencies by a date certain within one year from June 18, 1997. This action is taken under section 110 of the 1990 Clean Air Act(CAA).

EFFECTIVE DATE: This final rule is effective on June 18, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the Delaware Department of Natural Resources and Environmental Control, Air Quality Management Section, Division of Air and Waste Management, 89 Kings Highway, P.O. Box 1401, Dover, Delaware, 19903.

FOR FURTHER INFORMATION CONTACT: Paul T. Wentworth, P.E. at 215566–2183 at the EPA Region III address above, or via e-mail at Wentworth.Paul@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On February 5, 1997, (62 FR 5361), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed conditional approval of Delaware's low enhanced inspection and maintenance program, submitted on February 17, 1995 and supplemented on November 30, 1995, by the Delaware Department of Natural Resources and Environmental Control (DNREC). A description of Delaware's submittal and EPA's rationale for its proposed action were presented in the NPR and will not be restated here.

II. Public Comments/Response to Public Comments

There were no comments received during the public comment period on this notice.

III. Conditional Approval

Under the terms of EPA's February 5, 1997 notice of proposed conditional approval rulemaking (62 FR 5361), Delaware was required to make commitments to remedy deficiencies with the I/M program SIP (as specified in the above notice) within twelve months of today's final conditional approval notice. On March 6, 1997, Christophe Tulou, Secretary of the Delaware DNREC, submitted a letter to Michael McCabe, Regional Administrator, EPA Region III, committing to address, by a date certain, all of the deficiencies listed in EPA's February 5, 1997 NPR. EPA has indicated in its acknowledgment letter to Delaware that it interprets this letter as a commitment to remedy all of the deficiencies that are listed in the proposed conditional approval notice 62 FR 5361) by June 18, 1997.

Because Delaware has submitted the commitment letter called for in EPA's February 5, 1997 NPR, EPA is today taking final conditional approval action upon the Delaware I/M SIP, under section 110 of the CAA.

IV. Final Rulemaking Action

EPA is conditionally approving Delaware's low enhanced I/M program as a revision to the Delaware SIP, based upon certain conditions. Should the State fail to fulfill the conditions by the deadline of no more than one year from June 18, 1997, this conditional approval will convert to a disapproval pursuant to CAA section 110(k). In that event, EPA would issue a letter to notify the State that the conditions had not been met, and that the approval had converted to a disapproval.

VI. Administrative Requirements

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 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 section 110 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, EPA certifies 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 CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, 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 requirements nor does it substitute a new federal requirement.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the conditional approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either

State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 18, 1997.

Filing a petition for reconsideration by the Administrator of this final rule to conditionally approve the Delaware enhanced I/M SIP does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Administrative Procedures Act).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Reporting and record keeping requirements.

Dated: April 29, 1997.

W. Wisniewski,

Acting Regional Administrator, Region III.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart I—Delaware

2. Section 52.424 is amended by adding paragraph (b) to read as follows:

§ 52.424 Conditional Approval.

* * * * *

(b) The State of Delaware's February 17, 1995 submittal for an enhanced motor vehicle inspection and maintenance (I/M) program, and the November 30, 1995 submittal of the performance standard evaluation of the low enhanced program, is conditionally approved based on certain contingencies.

The following conditions must be addressed in a revised SIP submission. Along with the conditions listed is a separate detailed I/M checklist explaining what is required to fully remedy the deficiencies found in the proposed notice of conditional approval. This checklist is found in the Technical Support Document (TSD), located in the docket of this rulemaking, that was prepared in support of the proposed conditional I/M rulemaking for Delaware. This checklist and Technical Support document are available at the Air, Radiation, and Toxics Division, 841 Chestnut Bldg., Philadelphia, PA 19107, Telephone (215) 566–2183. By no later than one year from June 18, 1997, Delaware must submit a revised SIP that meets the following conditions for approvability:

(1) Provide a statement from an authorized official that the authority to implement Delaware's I/M program as stated above will continue through the attainment date and provide ZIP code information for the affected counties under the I/M program.

(2) Submit to EPA adopted regulations or procedures that implement an on-road vehicle testing program and remodel its program and demonstrate compliance with the I/M parameter standard so that it meets all the requirements of 40 CFR 51.351.

(3) Submit to EPA a description of the evaluation schedule and protocol, the sampling methodology, the data collection and analysis system, the resources and personnel for evaluation, and related details of the evaluation program, and the legal authority enabling the evaluation program that meet all the requirements of 40 CFR 51.353.

(4) Submit to EPA procedures or regulations that detail the number of personnel and equipment dedicated to the quality assurance program, data collection, data analysis, program administration, enforcement, public education and assistance, on-road testing and other necessary functions that meet all the requirements of 40 CFR 51.354.

(5) Submit to EPA procedures or regulations that meet the requirements of 40 CFR 51.355. This includes a description of the test year selection scheme, and how the test frequency is integrated into the enforcement process. This description must include the legal authority, regulations or contract provisions to implement and enforce the test frequency. The program must be designed to provide convenient service to the motorist by ensuring short wait times, short driving distances and regular testing hours.

(6) Submit to EPA a description of vehicles covered by Delaware's I/M program, broken down by model year, and weight; an accounting for registered vehicles and those required to be registered in order to provide an estimate of unregistered vehicles subject to the I/M program. Delaware also needs to submit provisions in its regulations that provide for fleet testing; testing vehicles registered in other program areas; and provide the legal authority or rules necessary to implement fleet testing. With regard to the fleet inspection program, Delaware needs to develop regulations and procedures that address fleet inspections and account for this in its vehicle coverage and in the modeling of the performance standard. In addition, Delaware must provide information on exempted vehicles regarding number, fleet percentage and account for them in its emissions reduction analysis. This submission must meet the requirements of 40 CFR 51.356.

(7) Submit to EPA procedures or regulations that address the requirements of 40 CFR 51.357.

(8) Submit to EPA regulations or procedures that address the requirements of 40 CFR 51.358.

(9) Submit to EPA regulations or procedures that address the requirements of 40 CFR 51.359, including: a quality control procedures manual or related document; proper calibration measures and associated recordkeeping; preventive maintenance measures/provisions for proper recording of quality control information.

(10) Submit to EPA regulations and/or procedures that address the requirements of 40 CFR 51.360. These include: provisions that implement a consumer price index (CPI) adjusted $450 waiver for Kent and New Castle Counties, where the low enhanced program applies.

(11) Submit to EPA regulations and/or procedures that meet the requirements of 40 CFR 51.361, including providing EPA with the specific details of its Motorist Compliance Enforcement program, providing a commitment to maintain a specified enforcement level to be used for modeling purposes. Also Delaware

must provide regulations and legislation that implement a registration denial system.

(12) Submit to EPA regulations or procedures that meet the requirements of 40 CFR 51.362, including: providing procedures or regulations that detail how the motorist compliance enforcement oversight program will be implemented and a demonstration of the program's functionality.

(13) Submit to EPA regulations or procedures that meet the requirements of 40 CFR 51.363, including: providing procedures or regulations that detail how the quality assurance motorist compliance enforcement oversight program will be implemented and a demonstration of the program's functionality.

(14) Submit to EPA regulations or procedures that meet all the requirements of 40 CFR 51.364, including: providing the legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations; providing quality assurance officials of the state with the authority to temporarily suspend station and/or inspector licenses immediately upon finding a violation that directly affects emissions reduction benefits, or an official opinion explaining any state constitutional impediments to such immediate suspension authority; and providing a description of the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies courts and jurisdictions are involved, who will prosecute and adjudicated cases and the resources and sources of the those resources which will support this function.

(15) Demonstrate that Delaware has existing data procedures that meet the requirements of 40 CFR 51.365; or develop and submit to EPA regulations, or procedures that meet all the requirements of 40 CFR 51.365.

(16) Demonstrate that Delaware has existing data analysis procedures that meet the requirements of 40 CFR 51.366 or develop and submit provisions/ procedures that meet the requirements of 40 CFR 51.366.

(17) Provide to the EPA details of the inspectors training course along with addressing all of the requirements of 40 CFR 51.367.

(18) Provide to the EPA the details of the provisions and/or measures that will implement to protect the consumer and provide for the public awareness as well as address the rest of the requirements of 40 CFR 51.368.

(19) Provide to the EPA the details of the technician training course that it is developing and address the requirements of 40 CFR 51.369.

(20) Provide to the EPA documents and/or provisions that meet the requirements of 40 CFR 51.370, including: providing details of its provisions to ensure that vehicles subject to enhanced I/M and are included in an emission related to recall, receive the required repairs prior to completing the emissions test and or renewing the vehicle registration.

(21) Meet the requirements of 40 CFR 51.371, including: adopting legislation that gives authority to implement an on-road testing program; providing details of an on-road testing program.

[FR Doc. 97–12629 Filed 5–16–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE027–1006; FRL–5823–3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware—15 Percent Rate of Progress Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is conditionally approving a State Implementation Plan (SIP) revision submitted by the State of Delaware to meet the 15 Percent Rate of Progress Plan (RPP) requirements of the Clean Air Act (CAA). EPA is conditionally approving the SIP because the 15 Percent RPP, submitted by Delaware, will result in significant emission reductions in volatile organic compounds (VOCs) from the 1990 baseline and thus, will provide progress toward attainment of the ozone standard. This action is being taken under section 110 of the CAA.

EFFECTIVE DATE: The final rule is effective on June 18, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 566–2182, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: On February 5, 1997 (62 FR 5357), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed conditional approval of Delaware's 15 Percent RPP. The formal SIP revision was submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) on February 17, 1995.

Other specific requirements of the 15 Percent RPP and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received during the comment period on the NPR. On March 6, 1997, EPA received a letter form the Secretary of Delaware DNREC committing to address the deficiencies identified in the proposed I/M SIP by a date certain within 1 year of this final conditional ruling.

Final Action

EPA is conditionally approving the 15 Percent RPP as a revision to the Delaware SIP. As credits from Delaware's enhanced I/M program are part of the 15 Percent RPP, EPA is also, via a separate rulemaking, conditionally approving Delaware's I/M SIP. Once Delaware satisfies the conditions of its I/M rulemaking and receives full approval, EPA will fully approve the 15 Percent RPP. Conversely, if the I/M rulemaking converts to a final disapproval, EPA's conditional approval of the 15 Percent RPP would also convert to a disapproval.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 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 section 110 and subchapter I, part D of the CAAA 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, EPA certifies 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 CAAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v *US EPA*, 427 US 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, 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 requirements nor does it substitute a new federal requirement.

C. Unfunded Mandates

Under Sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the conditional approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action, conditionally approving Delaware 15% Rate of Progress Plan, approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule conditionally approving Delaware's 15% RPP does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to the Delaware 15% RPP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Parts 52

Environmental protection, Air pollution control, Hydrocarbons, Reporting and recordkeeping, Ozone, Volatile organic compounds.

Dated: April 29, 1997.

William T. Wisniewski,

Acting Regional Administrator Region III.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart I—Delaware

2. Section 52.424 is added to read as follows:

§ 52.424 Conditional approval

(a) EPA is conditionally approving as a revision to the Delaware State implementation plan the 15 Percent Rate of Progress Plan and associated contingency measures for the Delaware ozone nonattainment areas classified as severe, namely Kent and New Castle Counties, submitted by the Secretary of Delaware Department of Natural Resources and Environmental Control on February 17, 1995. EPA is also conditionally approving the I/M SIP in a separate rulemaking, as credits from that program are part of the 15 Percent RPP. By no later than one year from June 18, 1997, Delaware must submit a revised I/M SIP that meets the conditions stated in the I/M SIP final rulemaking. Once Delaware satisfies the conditions of its I/M rulemaking and receives full approval, EPA will fully approve the 15 Percent RPP SIP. Conversely, if the I/M rulemaking converts to a final disapproval, EPA's conditional approval of the 15 Percent RPP SIP would also convert to a disapproval.

(b) [Reserved].

[FR Doc. 97–12634 Filed 5–16–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK–12–7100; FRL–5826–8]

Approval and Promulgation of Air Quality Implementation Plans; State of Alaska; Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is granting interim approval of a State Implementation Plan (SIP) revision submitted by Alaska. This revision does not affect or change the currently operating basic inspection and maintenance (I/M) program in the Municipality of Anchorage (MOA) and the Fairbanks North Star Borough (FNSB). The intended effect of this action is to approve the level of effectiveness credit for the state's

existing de-centralized I/M program for an interim period to last 18 months, based upon its good faith estimate of the program's performance. This action is being taken under section 110 of the Clean Air Act and section 348 of the National Highway Systems Designation Act.

EFFECTIVE DATE: This final rule is effective on June 18, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Office of Air Quality, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Ave., Seattle, Washington 98101. They are also available for inspection at the Alaska Department of Environmental Conservation, 410 Willoughby, Suite 105, Juneau, Alaska 99801–1795.

FOR FURTHER INFORMATION CONTACT: Ed Jones, Office of Air Quality (OAQ–107), EPA, Seattle, Washington 98101, (206) 553–1743.

SUPPLEMENTARY INFORMATION:

I. Background
II. Public Comments/Response to Comments
III. Final Rulemaking Action
IV. Requirements for Permanent I/M SIP Approval
V. Administrative Requirements
A. Executive Order 12866
B. Regulatory Flexibility Act
C. Unfunded Mandates Act
D. Submission to Congress and the General Accounting Office
E. Petitions for Judicial Review

I. Background

On October 10, 1996 (61 FR 53163), EPA published a notice of proposed rulemaking (NPR) for the State of Alaska. The NPR proposed interim approval of Alaska's credit claim for its existing de-centralized basic inspection and maintenance program, submitted to satisfy the applicable requirements of both the Clean Air Act (CAA) and the National Highway Safety Designation Act (NHDSA). The formal SIP revision submitted by the Alaska Department of Environmental Conservation was received on March 26, 1996. In that submittal the state proposed a number of modifications to the plan in addition to the request that the current de-centralized I/M program be allotted 85% of the credit of centralized programs. These additional modifications, noted in the NPR, have not been acted upon, and are therefore not approved. They will be acted upon in a future action by EPA.

As described in the earlier notice, the NHSDA directs EPA to grant interim approval for a period of 18 months to approvable I/M submittals under this Act. The NHSDA also directs EPA and the states to review the interim program results at the end of that 18-month period, and to make a determination as to the effectiveness of the interim program. Following this demonstration, EPA will adjust any credit claims made by the state in its good faith effort, to reflect the emissions reductions actually measured by the state during the program evaluation period. The NHSDA is clear that the interim approval shall last for only 18 months, and that the program evaluation is due to EPA at the end of that period. Therefore, EPA believes Congress intended for program evaluations to start up as soon as possible, so that at least six months of operational program data can be collected to evaluate the programs' effectiveness before the end of the interim period.

The program evaluation to be used by the state during the 18-month interim period must be acceptable to EPA. The Environmental Council of States (ECOS) group has developed such a program evaluation process which includes both qualitative and quantitative measures, and this process has been deemed acceptable to EPA. The core requirement for the quantitative measure is that a mass emission transient test (METT) be performed on 0.1% of the subject fleet, as required for enhanced programs by the I/M Rule at 40 CFR 51.353 and 366. EPA believes METT evaluation testing is not precluded by the NHSDA, and, therefore, is still required to be performed by states implementing enhanced I/M programs under the NHSDA and the CAA.

The need for METT testing in states that have basic programs was apparently not included among the ECOS recommendations. The Agency favors the introduction of METT testing for de-centralized basic programs attempting to demonstrate that their programs are more effective than the 50% discount applied by EPA in the past. Since these tests are not required by regulation, however, the Agency can only recommend them as an appropriate tool for evaluating program effectiveness, and ask states who decide to reject the recommendation to design their evaluations in a way that the goals of METT auditing can be met adequately through another means.

Per the NHSDA requirements, this interim rulemaking will expire on November 19, 1998. A full approval of Alaska's final I/M SIP revision (which will include the state's program evaluation and final adopted state regulations) is still necessary under section 110 and under sections 182, 184 or 187 of the CAA. After EPA reviews Alaska's submitted program evaluation and regulations, final rulemaking on the state's SIP revision will occur.

Specific information regarding Alaska's I/M credit claim, the justification presented by the state, the rationale for EPA's proposed action, and the specific proposed SIP revisions acted upon and not acted upon are explained in the October 10, 1996, NPR and will not be restated here.

II. Public Comments/Response to Comments

No comments were submitted to the docket during the comment period for the notice of proposed rulemaking, published in the October 10, 1996, **Federal Register**.

III. Final Rulemaking Action

EPA is granting interim approval of Alaska's claim for decentralized I/M program effectiveness as a revision to the SIP. The approval will cover a period of eighteen months, allowing the state to demonstrate the ''actual'' effectiveness of its program.

IV. Requirements for Permanent I/M SIP Approval

This approval is being granted on an interim basis for a period of 18 months, under the authority of section 348 of the National Highway Systems Designation Act of 1995. At the end of this period, this interim approval will lapse. After Alaska submits a request for approval, EPA will take final rulemaking action on the state's SIP revision, under the authority of section 110 of the Clean Air Act. Final approval of Alaska's plan will be granted based upon the following criteria:

(1) The state has complied with all the conditions of its evaluation commitment to EPA,

(2) EPA's review of the state's program evaluation confirms that the appropriate amount of program credit was claimed by the state and achieved with the interim program,

(3) Final program regulations are submitted to EPA, and

(4) The state's I/M program continues to meet all of the requirements of 40 CFR Part 51, Subpart S.

V. Administrative Requirements

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in

relation to relevant statutory and regulatory requirements.

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 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.

Interim approvals of SIP submittals under section 110 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, 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 CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the interim approval is converted to a disapproval under section 110(k), based on the state's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, 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 requirements nor does it substitute a new federal requirement.

C. Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted on by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 18, 1997.

Filing a petition for reconsideration by the Administrator of this final rule to conditionally approve the Alaska I/M SIP, on an interim basis, does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Administrative Procedures Act).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 2, 1997.

Charles Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 97–13038 Filed 5–16–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 104–4059; FRL–5826–3]

Phase I Finding of Failure to Submit Required State Implementation Plans for the Philadelphia Ozone Nonattainment Area; Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action in making a finding, under the Clean Air Act (ACT), that Pennsylvania failed to make a complete ozone nonattainment submittal required for the Philadelphia nonattainment area under the Act. Under certain provisions of the Act, as implemented consistent with a memorandum issued by EPA Assistant Administrator Mary D. Nichols, on March 2, 1995, Pennsylvania was required to submit SIP measures providing for certain percentage reductions in emissions of ozone precursors, termed ''rate-of-progress'' reductions; as well as SIP commitments to submit SIP measures providing for the remaining required rate-of-progress reductions and any additional emission reductions needed for attainment of the ozone ambient air quality standard in Philadelphia. This action triggers the 18 month time clock for mandatory application of sanctions in Pennsylvania under the Act. This action is consistent with the CAA mechanism for assuring SIP submittals.

EFFECTIVE DATE: This final rule is effective as of May 7, 1997.

FOR FURTHER INFORMATION CONTACT: General questions concerning this document should be addressed to Marcia Spink, Associate Director, Air Programs (3AT00), Air, Toxics and Radiation Division, U.S. EPA Region III,

841 Chestnut Building, Philadelphia, Pennsylvania, 19107, (215) 566–2104.

SUPPLEMENTARY INFORMATION:

I. Background

In 1990, Congress amended the Clean Air Act to address, among other things, continued nonattainment of the ozone national ambient air quality standard (NAAQS). Pub. L. 101–549, 104 Stat.2399, codified at 42 U.S.C., 7401–7671q (1991). The Amendments divide ozone nonattainment areas into, in general, five classifications based on air quality design value; and establish specific requirements, including new attainment dates, for each classification. CAA sections 107(d)(1)(C) and 181.

The 1990 Amendments required states containing the highest classified ozone nonattainment areas—those classified as serious, severe, or extreme—to submit SIPs providing for periodic reductions in ozone precursors of a rate of 9% averaged over every three-year period, beginning after 1996 and ending with the area's attainment date. CAA sections 182(c)(2)(B). This SIP submission may be referred to as the Rate-of-Progress, or ROP, SIP. The 1990 Amendments further required these states to submit a demonstration of attainment (including air quality modeling) for the nonattainment area, as well as SIP measures containing any additional reductions that may be necessary to attain by the attainment date. CAA sections 182(c)(2)(A). This SIP submission is referred to as the Attainment Demonstration. These CAA provisions established November 15, 1994 as the required date for these SIP submittals.

Notwithstanding significant efforts, the states generally were not able to meet this November 15, 1994 deadline for the required SIP submissions.

On March 2, 1995, EPA Assistant Administrator Mary D. Nichols sent a memorandum to EPA Regional Administrators (the March 2, 1995 memorandum, or Memorandum) recognizing the efforts made by states and the remaining difficulties in making the ROP and Attainment Demonstration SIP submittals. The March 2, 1995 memorandum recognized that, in general, many states have been unable to complete these SIP requirements within the deadlines prescribed by the Act due to circumstances beyond their control. These states were hampered by unavoidable delays in developing the underlying technical information needed for the required SIP submittals. The Memorandum recognized that development of the necessary technical information, as well as the control measures necessary to achieve the large level of reductions likely to be required, is particularly difficult for many states affected by ozone transport.

Accordingly, as an administrative remedial matter, the March 2, 1995 memorandum indicated that EPA would establish new timeframes for SIP submittals. The Memorandum called for states seeking to avail themselves of the new policy to submit, by May 1995, a letter committing to the new timeframes.

The Memorandum further indicated that EPA would divide the required SIP submittals into two phases. The Phase I submittals generally consisted of: (i) SIP measures providing for ROP reductions due by the end of 1999 (the first 9% of ROP reductions); (ii) a SIP commitment (sometimes referred to as an enforceable commitment) to submit any remaining required ROP reductions on a specified schedule after 1996 (with submission no later than the end of 1999); and (iii) a SIP commitment to submit the Attainment Demonstration by mid-1997 (with submission by no later than the end of 1999 of any additional rules needed to attain). The Memorandum indicated that EPA would establish the end of 1995 as the due date for the Phase I submittals. States could have proposed a schedule for making submissions in 1996 if necessary due to administrative scheduling imperatives (such as the schedule for legislative sessions).

The Phase II submittals were due at specified times after 1996, and primarily consisted of the remaining ROP SIP measures, the Attainment Demonstration and required additional rules, and any regional controls necessary for attainment by all areas in the region.

By a letter dated May 2, 1996, EPA informed Pennsylvania that it was important that it complete the Phase I submittals as soon as possible, and requested that it provide EPA with a schedule for completing these submittals. This letter cautioned that EPA would, within the near future, evaluate the Commonwealth's schedule; and that if EPA considered the schedule insufficiently expeditious, EPA would consider beginning the process under CAA section 179(a)(1), described below, of sanctioning Pennsylvania for failing to make the required submittals.

The EPA regional offices and state officials discussed the states' progress, and the states developed schedules for completing the Phase I requirements. Although EPA recognizes the continued progress states are making in developing the required SIPs, EPA believes that in most cases, the schedules presented by the states are not sufficiently expeditious for the states to be considered in substantial compliance with the Phase I deadlines.

The 1990 Amendments establish specific consequences if EPA finds that a state has failed to meet certain requirements of the CAA. Of particular relevance here is CAA section 179(a)(1), the mandatory sanctions provision. Section 179(a) sets forth four findings that form the basis for application of a sanction. The first finding, that a state has failed to submit a plan or one or more elements of a plan required under the CAA, is the finding relevant to this rulemaking.

II. Final Action

EPA is finding that Pennsylvania has failed to make the required SIP submissions for the Pennsylvania portion of the Philadelphia severe ozone nonattainment area. The required SIP element that Pennsylvania has failed to submit is the enforceable SIP commitment to adopt any additional rules needed to complete the requirements for ROP reductions after 1999, and until the attainment date.

If Pennsylvania does not make the required complete submittal within 18 months of the effective date of today's rulemaking, pursuant to CAA section 179(b) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b) will be applied in Pennsylvania portion of the Philadelphia nonattainment area. If Pennsylvania has still not made a complete submission 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the Pennsylvania portion of the Philadelphia nonattainment area, in accordance with 40 CFR 52.31. In addition, CAA section 110(c) provides that EPA promulgate a federal implementation plan (FIP) no later than 2 years after a finding under section 179(a).

The 18 month clock will stop and the sanctions will not take effect, if, within, 18 months after the date of the finding, EPA finds that Pennsylvania has made a complete submittal as to each of the SIP elements for which these finding are made. In addition, EPA will not promulgate a FIP if the Pennsylvania makes the required SIP submittal and EPA takes final action to approve the submittal within 2 years of EPA's finding.

At the same time as the signing of this document, the EPA Regional Administrator for Region III is sending a letter to Pennsylvania describing the status of the Commonwealth's effort and this finding in more detail. This letter, and the enclosure, is included in the

docket to this rulemaking. EPA's finding for Pennsylvania is consistent with those findings made for 10 other states and the District of Columbia, described in the July 10, 1996 **Federal Register** (61 FR 36292).

III. Administrative Requirements

A. Rule

EPA is making a finding of Pennsylvania's failure to submit, for the Pennsylvania portion of the Philadelphia ozone nonattainment area, the enforceable commitment to adopt additional rules needed to complete the requirements for ROP reductions after 1999 and until the attainment date.

B. Effective Date Under the Administrative Procedures Act

EPA has issued this action as a rulemaking because EPA has treated this type of action as rulemaking in the past. However, EPA believes that it would have the authority to issue this action as an informal adjudication, and is considering which administrative process—rulemaking or informal adjudication—is appropriate for future actions of this kind. Because EPA is issuing this action as a rulemaking, the Administrative Procedures Act (APA) applies.

Today's action is effective as of May 7, 1997. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if the agency has good cause to mandate an earlier effective date. Today's action concerns SIP submissions that are already overdue; and EPA previously cautioned Pennsylvania that the SIP submissions were overdue and that EPA was considering the action it is taking today. In addition, today's action simply starts a ''clock'' that will not result in sanctions against Pennsylvania for 18 months, and that Pennsylvania may ''turn off'' through the submission of the complete SIP submittal. These reasons support an effective date prior to 30 days after the date of publication.

C. Notice and Comment Under the Administrative Procedures Act

This document is a final agency action, but it is not subject to the notice and comment requirements of the APA, 5 U.S.C. 553(b). EPA believes that because of the limited time provided to make findings of failure to submit and findings of incompleteness regarding SIP submissions or elements of SIP submission requirements, Congress did not intend such findings to be subject to notice and comment rulemaking. However, to the extent such findings are subject to notice and comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). Notice and comment are unnecessary because no EPA judgment is involved in making a non-substantive finding of failure to submit elements of SIP submissions required by the Clean Air Act. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert agency sources from the critical substantive review of complete SIPs. See 58 FR 51270, 51272, n.17 (Oct. 1, 1993); 59 FR 39832, 39853 (Aug. 4, 1994).

D. Executive Order 12866

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

E. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'' or UMRA), signed into law on March 22, 1995, EPA undertakes various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector; or to state, local or tribal governments in the aggregate.

In addition, under the Unfunded Mandates Act, before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must have developed, under section 203 of the UMRA, a small government agency plan.

EPA has determined that today's action is not a Federal mandate. The various CAA provisions discussed in this notice require the states to submit SIPs. This document merely provides a finding that the states have not met those requirements. This document does not, by itself, require any particular action by any state, local or tribal government; or by the private sector. For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

F. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact on small entities of any rule subject to the notice and comment rulemaking requirements. Because this action is exempt from such requirements, as described above, it is not subject to the RFA.

G. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the APA, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted, by the effective date of this rule, a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2), as amended. As noted above, EPA is issuing this action as rulemaking. There is a question as to whether this action is a rule of ''particular applicability'', under 5 U.S.C. 804(3)(A) of APA as amended by SBREFA—and thus exempt from the congressional submission requirements—because this rule applies only to Pennsylvania. In this case, EPA has decided to err on the side of submitting this rule to Congress, but will continue to consider this issue of the scope of the exemption for rules of ''particular applicability.''

H. Paperwork Reduction Act

This rule does not contain any information collection requirements that require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to Pennsylvania's finding of failure to submit the required SIP elements under the March 2, 1995 phased approach, must be filed in the United States Court of Appeals for the appropriate circuit by July 18, 1997.

Dated: May 7, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 97–13039 Filed 5–16–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[WA 63–7138; WA58–7133; OR57–7272; FRL–5824–1]

Approval and Promulgation of State Implementation Plans and Redesignation of Areas for Air Quality; Planning Purposes: States of Washington and Oregon

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is redesignating the Portland/Vancouver (Pdx/Van) interstate nonattainment area to attainment for the ozone (O_3) air quality standard and approving a Maintenance Plan that will insure that the area remains in attainment. Under the Clean Air Act, as amended in 1990 (the CAA), designations can be revised if sufficient data are available to warrant such revisions and the request to redesignate shows that all of the requirements of section 107(d)(E)(3) of the CAA have been met. EPA is approving the Washington and Oregon Maintenance Plans and other redesignation submittals because they meet the Maintenance Plan and redesignation requirements, and will ensure that the area remains in attainment. The approved Maintenance Plans will become a federally enforceable part of the Oregon and Washington State Implementation Plans (SIPs). In this action, EPA is also approving the Washington and Oregon 1990 baseline emission inventories for this area, revisions to the approved Inspection and Maintenance (I/M) SIPs of both States, and a number of other O_3 supporting revisions to both SIPs.

DATES: June 18, 1997.

ADDRESSES: Copies of the States' redesignation requests and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and at the States' offices: Washington Department of Ecology, P.O. Box 47600, Olympia, WA 98504–7600, and Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, OR 97204–1390.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, EPA, 401 M Street, SW, Washington, D.C. 20460, as well as the above addresses.

FOR FURTHER INFORMATION CONTACT: Sue Ennes, Office of Air Quality (OAQ–107), EPA, Seattle, Washington, (206) 553–6249.

SUPPLEMENTARY INFORMATION:

I. Background

The Oregon Department of Environmental Quality (ODEQ) and the Washington Department of Ecology (WDOE) submitted Maintenance Plans and requested redesignation of the Pdx/Van interstate nonattainment area from nonattainment to attainment for O_3. The SIP revision requests were submitted by the WDOE on June 13, 1996, and by ODEQ on August 30, 1996. No tribal lands are within the Maintenance Plan area nor have any tribal lands been identified as being affected by the Maintenance Plans.

The Pdx/Van air quality maintenance area (AQMA) was designated an interstate O_3 nonattainment area in 1978 under the 1977 CAA. On November 15, 1990, the CAA Amendments of 1990 were enacted (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 181(a)(1) of the CAA, the area was further classified as a ''marginal'' O_3 nonattainment area, and an attainment deadline of November 15, 1993, was established. This interstate nonattainment area consists of the southern portion of Clark County, Washington, and portions of Multnomah, Clackamas, and Washington Counties in Oregon.

The AQMA has ambient monitoring data that show no violations of the O_3 national ambient air quality standards (NAAQS) during the period of 1991 to the present. The WDOE and ODEQ provided these monitoring data and modeling and emissions data to support their redesignation request. On March 7, 1997, EPA proposed to approve the WDOE's and ODEQ's requested redesignation. In its notice of proposed approval and redesignation, EPA reviewed in detail the submittals it was considering as the basis for its proposed actions.

II. Response To Comments

The following comments were received during the public comment period ending April 7, 1997. EPA's response follows each comment.

(1) *Comment:* The commenter asserted that, while the Maintenance Plan for Clark County relies heavily on expanding the automobile inspection area, there are no data on hand to support a theory that auto emissions from that expanded area are significant contributors to high ozone events.

Response: EPA has reviewed the Vancouver portion of the Pdx/Van O_3 Redesignation Request/Maintenance Plan and believes that the Southwest Air Pollution Control Authority (SWAPCA) has a reasonable basis for deciding to expand the maintenance area. EPA notes that the expansion of the automobile inspection testing into Northern Clark County is only one of several parts of the Vancouver Maintenance Plan. Emission reductions are also being obtained from the approximately 170,000 vehicles in southern Clark County by: switching to a more sophisticated emission test procedure (known as ASM) (setting ASM standards for exhaust emissions will result in an enhanced ability to identify polluting vehicles); gasoline cap leak checks; stage I and II vapor controls on gasoline vapors; application of the EPA national off-road engine rule; Volatile Organic Compound (VOC) Area Source rules targeting emissions from consumer products, architectural and industrial maintenance coatings, and autobody refinishing; and phase-out of open burning. Also, new industry or existing industry modifications will continue to be subject to Best Available Control Technology (BACT) and will still be subject to these controls under the O_3 Maintenance Plan.

SWAPCA has provided the following Census data to support the expanded boundary portion of the Vancouver Maintenance Plan. The 1990 U.S. Census commuter statistics outlined below demonstrate North Clark County motor vehicles are contributing to the air pollution problem:

—51.9% (5,046 citizens) of Battle Ground zipcode residents who are employed commute to the City of Vancouver and Portland for their work;

—65.3% (1,162 citizens) of Brush Prairie zipcode residents who are employed commute to the City of Vancouver and Portland for their work;

—58.4% (2,816) of Ridgefield zipcode residents who are employed commute to the City of Vancouver and Portland for their work; and

—42.5% (2,185) of La Center zipcode residents who are employed commute to the City of Vancouver and Portland for their work.

EPA also notes that SWAPCA's decision to expand the automobile maintenance area was made after SWAPCA had followed the public participation requirements that are established under State law and meet the requirements of the CAA.

(2) *Comment:* The same commenter on the Vancouver Maintenance Plan wrote that, when the vast amount of naturally occurring VOCs are taken into account, it should be obvious that nitrogen oxides (NO_X) are the critical factor and that the large industrial sources of that compound must be considered. Because the commenter believes it would cost less to equip industrial sources with NO_X controls than to extend the auto test area for an equal O_3 reduction, the commenter believes that the Maintenance Plan is designed to favor industry at public expense.

Response: Information provided by SWAPCA to EPA shows that cars make up about 35% of the VOC emissions and over 50% of the NO_X emissions in the nonattainment area. The portion of vehicle miles travelled (VMT) in the nonattainment area which comes from North Clark County cars is 15%, which is substantial. SWAPCA believes that targeting these emissions with an expansion of the I/M program will reduce emissions by approximately 180 tons/year of VOCs and 150 tons/year of NO_X, and will result in an additional 30,000 vehicles being tested every two years.

The documentation utilized by SWAPCA supports its views that additional NO_X controls on industry are not as cost effective as those being proposed in the Maintenance Plan ($2,500–$7,000/ton for industrial NO_X control versus $100–$2000/ton for a vehicle inspection program.) The CAA also targets larger industrial sources with new permitting requirements. Therefore, industry will still be required to complete BACT for any new sources or modification. Information submitted by SWAPCA also shows that emissions from naturally occurring VOCs were taken into account and that controlling NO_X emissions was considered. SWAPCA anticipates there will be NO_X reductions from the improved vehicle inspection program, from continuance of BACT for industrial sources, and from the EPA non-road engine rule for nonroad sources.

(3) *Comment:* A commenter requested that EPA not approve the Vancouver Maintenance Plan until SWAPCA modifies the emission inventory contained in the plan and EPA revises its guidance dealing with projection inventories contained in Section 3.2.3 of ''Emission Inventory Requirements for Ozone State Implementation Plans.'' This comment concerns SWAPCA's decision to not include future emissions from certain major emitters in the Longview area, although prior correspondence from EPA stated that those sources must be included because they are within 25 miles of the boundary of the nonattainment area. SWAPCA added them to the 1992 base inventory, but the commenter asserts SWAPCA did not include projections of those emissions through the 10 year maintenance period because it is not expressly required by EPA's guidance. The commenter wrote that the Weyerhaueser and Longview Fibre pulp mills in Longview, Washington, are the largest emitters of NOx and VOCs in the area, and their emissions are growing as their new expansions come on stream. In addition, the prevailing winds in the summer blow directly from these plants toward Vancouver. The commenter believes that it is a gross distortion of the projected inventories to exclude them and it has resulted in the application of controls to other much smaller emitters that are not equitable. The commenter also requested that EPA postpone reclassification of the Pdx/Van area until these changes are made.

Response: EPA believes the issue raised in this comment has been appropriately addressed by SWAPCA in the Vancouver portion of the O_3 Maintenance Plan. Furthermore, EPA does not believe there is any basis to delay action on these SIP revisions and reclassification of this area until revision of the applicable guidance.

For reclassification of the Pdx/Van area, a marginal O_3 nonattainment area, EPA requires completion of an emission inventory. The emission inventory approach is defined as calculating the emissions within the nonattainment area plus industrial source emissions (greater than 100 tons per year) that are within a 25 mile radius. The Longview sources were included in the 1992 emission inventory for point sources in Appendix D of the Vancouver portion of the O_3 Maintenance Plan.

EPA also requires that the Maintenance Plan project emissions to demonstrate the NAAQS for O_3 will be maintained for a 10 year period after redesignation. More detailed computer modeling required to justify redesignation decisions in severe O_3 nonattainment areas is not necessary to support redesignation of a marginal area.

In deciding to not include the sources cited by the commenter in the Maintenance Plan projections, SWAPCA reasonably relied on a preliminary screening model to conclude that these sources contribute between 1% to 10% of their emissions to the nonattainment area. SWAPCA decided to wait for the results of ''future studies'' before determining whether additional control measures are needed on these sources to maintain healthy air in Clark County. In reference to the wind direction issue, SWAPCA's information indicates that the closest meteorological station to Vancouver is the Portland International Airport. However, SWAPCA is concerned that the data from the Portland International Airport are not representative of the entire Vancouver area. A review of available windspeed data on high O_3 days by SWAPCA and ODEQ indicates wind speeds are not uniform throughout the day in the Pdx/Van area. Also, winds travel at different speeds and directions at different altitudes. Modeling of air pollution impacts would need to consider these factors as well as the height of the stacks and plumes from point sources. In the fall of 1996, a local meteorological station was installed in Vancouver which will better help SWAPCA to anticipate inversion conditions. In the Pdx/Van Redesignation Request/Maintenance Plan, SWAPCA committed to completing ''future studies'' to estimate the contribution of emissions from these sources to the Pdx/Van O_3 area. Additional O_3 and NOx monitors have been purchased which were to be operational by May 1, 1997. As these data are collected and additional funding is obtained for the modeling efforts, SWAPCA expects it will be possible to address the issue raised by this comment using sound scientific data.

EPA also notes that, if the Weyerhaeuser and Longview Fibre pulp mills in Longview expand, they will undergo Prevention of Significant Deterioration (PSD) review which evaluates BACT and also will conduct an ambient impact analysis to ensure that the NAAQS and PSD increment will not be violated.

EPA will not agree to delay the approval of the Maintenance Plan and the redesignation of this area to attainment. Under Title I of the CAA, Congress established a system of state and federal cooperation. EPA is required to establish the NAAQS, i.e., the level at which air quality is determined to be protective of human health. However, the States take the primary lead in determining the measures necessary to attain and maintain the NAAQS. These measures are incorporated into the SIP. The CAA requires EPA to approve a SIP submission that meets the requirements of the CAA. If the State fulfills its obligations in developing a SIP that meets the requirements of the CAA, EPA has no authority to supplement or revise that plan with a federal implementation plan. Because the States have submitted a Maintenance Plan that complies with the CAA, EPA must approve the

Maintenance Plan under section 110(k)(3). Furthermore, since the States have met the redesignation requirements to demonstrate that the air quality meets the NAAQS, EPA believes the air quality is sufficient to protect the public health and, therefore, EPA cannot reject the redesignation request on this basis. Since the States submitted Maintenance Plans and Redesignation Requests that comply with the Act, and there is no issue about whether the States have the authority to implement the measures included in the submission, EPA has no basis for modifying the State's selection of the measures in the Maintenance Plan.

(4) *Comment:* The United Associated of Fitters and Apprentices, Local #290 objected to the EPA approvals of the revisions to the Oregon SIP because, under Oregon law, Local #290 has no legal standing to represent the rights of their members in judicial proceedings involving ODEQ permits. This comment asserts that EPA's delegation of CAA enforcement, from EPA to Oregon ODEQ, ''is premised on ODEQ's allowing individuals to exercise their constitutionally-granted representational rights, for groups to which they belong, to appeal DEQ's decisions, including but not limited to DEQ permits issued under the Clean Air (and Clean Water) Acts.'' Because Local #290 believes that ODEQ does not allow a group such as Local #290 to seek judicial review of a permit issued by ODEQ, it vehemently objects to EPA granting any further delegated authority to enforce the CAA and Clean Water Act. Furthermore, Local ı290 asks that EPA rescind any existing delegations of CAA enforcement authority, unless and until ODEQ grants groups in Oregon the legal standing to represent the rights of their members in judicial proceedings involving ODEQ permits.

Response: This comment is not relevant to the actions EPA is taking in this notice. Title I of the CAA, which establishes requirements for SIPs and designation actions, contains no provisions governing judicial review of permits issued by a State. EPA finds that ODEQ has met the public participation requirements of Title I of the CAA. Therefore, EPA does not agree to delay its actions on the SIP revisions that are the subject of this notice or to delay its redesignation to attainment of the Pdx/Van O_3 area for the reason cited by the commenter. However, EPA is pursuing the matter of Oregon's judicial review in the context of Title V of the CAA, which requires that a State provide judicial review of its actions. For purposes of ODEQ's Title V program, which EPA has approved, EPA will evaluate whether State law meets the requirements of the CAA.

III. Final Action

EPA is redesignating to attainment the Portland, Oregon; and Vancouver, Washington, interstate O_3 area because ODEQ and WDOE have demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. EPA is approving the Portland and Vancouver O_3 Maintenance Plans as meeting the requirements of the CAA, including the requirements set forth in EPA regulations and guidance.

EPA also is approving the 1990 O_3 Emission Inventories, changes to the New Source Review (NSR) programs, regulations implementing the hybrid low enhanced I/M programs, an expanded vehicle inspection boundary, minor Reasonably Available Control Technology (RACT) rule changes (Vancouver only), Employee Commute Options rule (Portland only), Voluntary Parking Ratio rule (Portland only), Plant Site Emission Limits (PSEL) management rules (Portland only), and local area source supporting rules.

EPA notes that, as part of its SIP submission, Oregon and Washington included adequate backup plans for contingencies to ensure continued attainment of the NAAQS and to meet the emission reduction targets of the submittals approved today. For example, the contingency plans for both states provide assurances that contingency measures will be adopted within 12 months after a violation of the NAAQS occurs and implemented within a specified period of time. Similarly, if Oregon's Voluntary Parking Ratio or the Public Education and Incentive programs fail to achieve emission reductions equal to the target set in the Maintenance Plan, ODEQ has furnished a commitment to adopt backup measures by a date certain. EPA finds that there is adequate assurance that the planned emission reductions will be achieved and they are therefore approved for credit in the Maintenance Plan. Additional regulations specific to Washington only and Oregon only are described below.

Washington

The regulations EPA is approving now for the Vancouver, Washington, portion are found in the following. EPA is approving only those changes to SWAPCA's NSR rules that relate to the new maintenance area NSR provisions and EPA will be taking action on the remaining portions of the December 11, 1996, NSR submittal in a separate action.

—SWAPCA 400 ''General Regulations for Air Pollution Sources'' 400–030 Definitions (except for the second sentence of subsections (14) and (49), and subsection (84)), –101 Sources Exempt from Registration Requirements, –109 Notice of Construction Application (except subsections (3)(b), (3)(c), (3)(g), (3)(h), and (3)(i)), –110 New Source Review, –111 Requirements for Sources in a Maintenance Area, –112 Requirements for new Sources in Nonattainment Areas, –113 Requirements for New Sources in Attainment or Nonclassifiable Areas, –114 Requirements for Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source, –116 Maintenance of Equipment, and –190 Requirements for Nonattainment Areas.

—SWAPCA 490 ''Emission Standards and Controls for Sources Emitting Volatile Organic Compounds'' 490–010 Policy and Purpose, –020 Definitions, –025 General Applicability, –030 Registration and Reporting, –040 Requirements, –080 Exceptions and Alternative Methods, –090 New Source Review, –200 Petroleum Refinery Equipment Leaks, –201 Petroleum Liquid Storage in External Floating Roof Tanks, –202 Leaks from Gasoline Transport Tanks and Vapor Collection Systems, –203 Perchloroethylene Dry Cleaning Systems, –204 Graphic Arts Systems, –205 Surface Coating of Miscellaneous Metal Parts and Products, –207 Surface Coating of Flatwood Paneling, –208 Aerospace Assembly and Component Coating.

—SWAPCA 491 ''Emission Standards and Controls for Sources Emitting Gasoline Vapors'' 491–010 Policy and Purpose, –015 Applicability, –020 Definitions, –030 Registration, –040 Gasoline Vapor Control Requirements (Stage I and II), –050 Failures, Certification, Testing and Recordkeeping, –060 Severability.

—SWAPCA 493 ''VOC Area Source Rules'' 493–100 Consumer Products (Reserved), –200–010 Applicability, –020 Definitions, –030 Spray Paint Standards and Exemptions, –040 Requirements for Manufacture, Sale and Use of Spray Paint, –050 Recordkeeping and Reporting Requirements, –060 Inspection and Testing Requirements, 493–300–010 Applicability, –020 Definitions, –030 Standards, –040 Requirements for Manufacture, Sale and Use of Architectural Coatings, –050 Recordkeeping and Reporting Requirements, –060 Inspection and Testing Requirements, –400–010

Applicability, –020 Definitions, –030 Coating Standards and Exemptions, –040 Requirements for Manufacture and Sale of Coatings, –050 Requirements for Motor Vehicle Refinishing in Vancouver AQMA, –060 Recordkeeping and Reporting Requirments, –070 Inspection and Testing Requirements, –500–010 Applicability, –020 Compliance Extensions, –030 Exemption From Disclosure to the Public, –040 Future Review.

The amendments to SWAPCA 400, 490, and 491 became State-effective on November 21, 1996. The amendments to SWAPCA 493 became State-effective on May 25, 1996.

EPA also approves the Washington I/M SIP revision (WAC 173–422, sections –030, –050, –060, –070, –170, and –190), which was adopted by the State on November 9, 1996.

Oregon

For the Portland, Oregon, portion, EPA approves the following regulations.

—OAR 340–028 ''New Source Review'' 340–020–0047 State of Oregon Clean Air Act Implementation Plan, –028–0110 Definitions, –1900 Applicability, –1910 Procedural Requirements, –1920 Review of New Sources and Modifications for Compliance with Regulations, –1930 Requirements for Sources in Nonattainment Areas, –1935 Requirements for Sources in Maintenance Areas, –1940 Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas, –1960 Baseline for Determining Credit for Offsets, –1970 Requirements for Net Air Quality Benefit, –2000 Visibility Impact, –030–0111 Emissions Offsets. State-effective date November 26, 1996.

—OAR 340–022 ''Stage II Vapor Recovery Regulations'' 022–0400 Purpose, –0401 Definitions, –0402 General Provisions, –0403 Compliance Schedules. State-effective date August 14, 1996.

—OAR 340–022 ''Area Source VOC Regulations'' 022–0700 Motor Vehicle Refinishing Applicability, –0710 Definitions, –0720 Coating Standards and Exemptions, –0730 Requirements for Manufacture and Sale of Coatings, –0740 Requirements for Motor Vehicle Refinishing in Portland AQMA, –0750 Recordkeeping and Reporting Requirements, –0760 Inspection and Testing Requirements, –0800 Consumer Products Applicability, –0810 Definitions, –0820 Consumer Products Standards and Exemptions, –0830 Requirements for Manufacture and Sale of Consumer Products, –0840 Innovative Products, –0850 Recordkeeping and Reporting Requirements, –0860 Inspection and Testing Requirements, –0900 Spray Paint Applicability, –0910 Definitions, –0920 Spray Paint Standards and Exemptions, –0930 Requirements for Manufacture, Sale and Use of Spray Paint, –0940 Recordkeeping and Reporting Requirements, –0950 Inspection and Testing Requirements, –1000 Architectural Coatings Applicability, –1010 Definitions, –1020 Standards, –1030 Requirements for Manufacture, Sale and Use of Architectural Coating, –1040 Recordkeeping and Reporting Requirements, –1050 Inspection and Testing Requirements, –1100 Area Source Common Provisions Applicability, –1110 Compliance Extensions, –1120 Exemption from Disclosure to the Public, –1130 Future Review. State-effective date August 14, 1996.

EPA also approves the Industrial Emissions Management Program Regulations (OAR 340–030–0700 through –340–030–0740); Employee Commute Options Program Regulations (OAR 340–030–0800 through –340–030–1080); Voluntary Maximum Parking Ratios Program Regulations (OAR 340–030–1100 through –340–030–1190). The above three amendments to the OAR became State-effective on August 14, 1996. The following three amendments became State-effective on August 19, 1996: Definitions of Boundaries (OAR 340–031–0500); Nonattainment Areas (OAR 340–031–0520); Maintenance Areas (OAR 340–031–0530).

EPA approves the amendment to Oregon's Motor Vehicle Inspection and Maintenance Area Boundary (OAR 340–024–0301), effective August 12, 1996. EPA approves the Oregon I/M revisions to OAR 340–24–0100, –0300, –0305, –0306, –0307, –0308, –0309, –0312, –0314 (with the exception of all language in (4)(a) referring to a ''sixth hill extrapolation''), –0318, –0320, –0325, –0330, –0332, –0335, –0337, –0340, –0355, –0357, and –0360, State effective on November 26, 1996. EPA also approves the deletion of OAR 340–24–0310, –0315, and –0350, State effective on November 26, 1996.

During EPA's review of a SIP revision involving Oregon's statutory authority, a problem was detected which affected the enforceability of point source permit limitations. Even though the SIP does not contain additional point source controls to attain the standard, existing and federally approved point source emission limitations are relied upon to maintain and demonstrate attainment with the O_3 NAAQS. EPA determined that, because the five-day advance notice provision required by ORS.126(1) (1991) bars civil penalties from being imposed for certain permit violations, ORS 468 fails to provide the adequate enforcement authority the State must demonstrate to obtain SIP approval, as specified in Section 110 of the CAA and 40 CFR 51.230. Accordingly, the requirement to provide such notice would preclude federal approval of a O_3 nonattainment area SIP revision. EPA notified Oregon of the deficiency. To correct the problem, the Governor of Oregon signed into law new legislation amending ORS 468.126 on September 3, 1993. This amendment added paragraph 468.126(2)(e) which provides that the five-day advance notice required by ORS 468.126(1) does not apply if the notice requirement will disqualify the State's program from federal approval or delegation. ODEQ responded to EPA's understanding of the application of 468.126(2)(e) and agreed that, if federal statutory requirements preclude the use of the five-day advance notice provision, no advance notice will be required for violations of SIP requirements contained in permits.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 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.

SIP approvals under section 110 and subchapter I, part D, of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies 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 CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted on by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: April 30, 1997.

Chuck Clarke,

Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(120) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(120) The Oregon Department of Environmental Quality (ODEQ) and the Washington Department of Ecology (WDOE) submitted Maintenance Plans that demonstrate continued attainment of the NAAQS for O_3 and requested redesignation of the Pdx/Van interstate nonattainment area from nonattainment to attainment for O_3. The SIP revision requests were submitted by the WDOE on June 13, 1996, and by ODEQ on August 30, 1996. A number of other O_3 supporting revisions were included in this submittal, such as: the 1990 O_3 Emission Inventories; changes to the NSR programs; regulations implementing the hybrid low enhanced I/M programs; an expanded vehicle inspection boundary; minor RACT rule changes (Vancouver only); Employee Commute Options rule (Portland only); Voluntary Parking Ratio rule (Portland only); PSEL management rules (Portland only); and local area source supporting rules.

(i) Incorporation by reference.

(A) Ozone Maintenance Plan and Redesignation Request for the Portland/Vancouver AQMA (Oregon Portion) effective August 14, 1996.

(B) Oregon Inspection and Maintenance SIP revision to Section 5.4; OAR 340–024–0100, –0300, –0305, –0306, –0307, –0308, –0309, –0312 (with the exception of all language in (4)(a) referring to a ''sixth hill extrapolation''), –0314 , –0318, –0320, –0325, –0330, –0332, –0335, –0337, –0340, –0355, –0357, and –0360, State effective on November 26, 1996.

(C) New Source Review: OAR 340–020–0047; OAR 340–028–0110, 1900 through 1940, 1960, 1970, and 2000; OAR 340–030–0111, State effective on November 26, 1996.

(D) Supporting Regulations approved as part of the Ozone non-attainment redesignation package: OAR 340–022–0400, –0401, –0402, –0403, –0700, –0710, –0720, –0730, –0740, –0750, –0760, –0800, –0810, –0820, –0830, –0840, –0850, –0860, –0900, –0910, –0920, –0930, –0940, –0950, –1000, –1010, –1020, –1030, –1040, –1050, –1100, –1110, –1120, –1130, State effective on 8/14/96; OAR 340–024–0301, State effective on 8/12/96; OAR 340–030–0700, –0710, –0720, –0730, –0740, –0800, –0810, –0820, –0830, –0840, –0850, –0860, –0870, –0880, –0890, –0900, –0910, –0920, –0930, –0940, –0950, –0960, –0970, –0980, –0990, –1000, –1010, –1020, –1030, –1040, –1050, –1060, –1070, –1080, –1100, –1110, –1120, –1130, –1140, –1150, –1160, –1170, –1180, –1190, State effective on 8/14/96; and OAR 340–031–0500, –0520, –0530, State effective on 8/19/96.

Subpart WW—Washington

3. Section 52.2470 is amended by adding paragraph (c) (72) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(73) The Washington Department of Ecology (WDOE) and the Oregon Department of Environmental Quality (ODEQ) submitted Maintenance Plans that demonstrate continued attainment of the NAAQS for O_3 and requested redesignation of the Pdx/Van interstate nonattainment area from nonattainment to attainment for O_3. The SIP revision requests were submitted by the WDOE on June 13, 1996, and by ODEQ on August 30, 1996. A number of other O_3 supporting revisions are included in this submittal they are: the 1990 O_3 Emission Inventories; changes to the NSR programs; regulations implementing the hybrid low enhanced I/M programs; an expanded vehicle inspection boundary; minor RACT rule changes (Vancouver only); Employee Commute Options rule (Portland only); Voluntary Parking Ratio rule (Portland only); PSEL management rules (Portland only); and local area source supporting rules.

(i) Incorporation by reference.

(A) Vancouver, Washington Ozone Maintenance Plan and Redesignation Request—state adopted June, 17, 1996.

(B) Washington Inspection and Maintenance SIP revision WAC 173 422–030, –050, –060, –070, –170, –190—State adopted November 9, 1996.

(C) NSR: SWAPCA 400–030 (except for the second sentence of subsections (14) and (49), and subsection (84)), 101, 109 (except subsections (3)(b), (3)(c), (3)(g), (3)(h), and (3)(i)), 110, 111, 112, 113, 114, 116, and 190, effective November 21, 1996.

(D) Supporting Rules.

(*1*) SWAPCA 491–010, –015, –020, –030, –040, –050, –060,—State-effective on November 1, 1996.

(*2*) SWAPCA 490–010, –020, –025, –030, –040, –080, –090, –200, –201, –202, –203, –204, –205, –207, –208—State effective November 21, 1996.

(*3*) SWAPCA 493–100, 493–200–010, –020, –030, –040, –050, –060, 493–300–010, –020, –030, –040, –050, –060, 493–400–010, –020, –030, –040, –050, –060, –070, 493–500–010, –020, –030, –040,—State effective May 26, 1996.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.338, the table entitled ''Oregon-Ozone'' is amended by revising the entry for the ''Portland-Vancouver AQMA Area'' to read as follows:

§ 81.338 Oregon.

* * * * *

OREGON—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Portland-Vancouver AQMA Area	.....	Attainment	.....	
Air Quality Maintenance Area				
Clackamas County (part)				
Multnomah County (part)				
Washington County (part)				
* * * *	*	*	*	

[1] This date is November 15, 1990, unless otherwise noted.

* * * * * *

3. In § 81.348 the table entitled, ''Washington-Ozone'' is amended by revising the entry for the ''Portland—Vancouver AQMA Area'' to read as follows:

§ 81.348 Washington.

* * * * *

WASHINGTON—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Portland-Vancouver AQMA Area	.....	Attainment	.....	
Clark County (part)				
Air Quality Maintenance Area				
* * * *	*	*	*	

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 97–12919 Filed 5–16–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BPD–788–CN]

RIN 0938–AH12

Medicare Program; Electronic Cost Reporting for Skilled Nursing Facilities and Home Health Agencies; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects the final rule published January 2, 1997 (62 FR 26) that added the requirement that, for cost reporting periods ending on or after February 1, 1997, most skilled nursing facilities and home health agencies must submit cost reports currently required under the Medicare regulations in a standardized electronic format. The final rule also provided for a delay or waiver of this requirement where implementation would result in financial hardship for a provider. This document is necessary to conform the description of the rule in the preamble to the regulations text.

EFFECTIVE DATE: This correction is effective as of May 19, 1997.

FOR FURTHER INFORMATION CONTACT: Tom Talbott, (410) 786–4592.

SUPPLEMENTARY INFORMATION: We are making the following correction to the January 2, 1997 final rule (62 FR 26):

On page 29, in the third column, under the section labeled ''Provisions of the Final Rule'' the phrase ''cost reporting periods beginning on or after February 1, 1997'' is corrected to read ''cost reporting periods ending on or after February 1, 1997''.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance program)

Dated: May 12, 1997.

Thomas F. Joyce,

Acting, Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 97–12960 Filed 5–16–97; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 051397A]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in Bycatch Limitation Zone 1

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in Bycatch Limitation Zone 1 (Zone 1) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1997 bycatch allowance of *C. bairdi* Tanner crab apportioned to the trawl yellowfin sole fishery category in Zone 1 of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 13, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The bycatch allowance of *C. bairdi* Tanner crab for Zone 1 of the BSAI trawl yellowfin sole fishery category, which is defined at § 679.21(e)(3)(iv)(B)(*1*), was established by the Final 1997 Harvest Specifications of Groundfish for the BSAI (62 FR 7168, February 18, 1997) as 368,421 animals. Amendment 41 to the BSAI FMP amended Table 7 of the Final 1997 Harvest Specifications (62 FR 13839, March 24, 1997). The revised bycatch allowance for *C. bairdi* Tanner crab for Zone 1 is 276,316 animals.

In accordance with § 679.21(e)(7)(ii), the Administrator, Alaska Region, NMFS, has determined that the 1997 bycatch allowance of *C. bairdi* Tanner crab apportioned to the trawl yellowfin sole fishery in Zone 1 has been caught. Consequently, NMFS is prohibiting directed fishing for yellowfin sole by vessels using trawl gear in Zone 1 of the BSAI.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

Classification

This action is required by 50 CFR 679.21 and is exempt from review under E.O. 12866.

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

Dated: May 13, 1997.

Bruce C. Morehead,

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

[FR Doc. 97–12987 Filed 5–13–97; 4:46 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 96
Monday, May 19, 1997

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–04–AD]

Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

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 Robinson Helicopter Company (Robinson) Model R22 helicopters with a Lycoming O–360-J2A engine installation. This proposal would require replacing the carburetor and carburetor air temperature (CAT) gage with an improved carburetor that does not require manual leaning of the fuel/air mixture during flight, and a remarked CAT gage; and revising the Rotorcraft Flight Manual to remove the reference to leaning the engine. This proposal is prompted by a report from the Civil Aviation Authority of Great Britain that cautioned that the mixture control could inadvertently be placed in the idle cutoff position during in-flight manual leaning of the fuel/air mixture in the carburetor of the Lycoming O–360–J2A engine. The actions specified by the proposed AD are intended to prevent inadvertent placement of the mixture control to the idle cutoff position during in-flight leaning of the engine, which could result in an engine shutdown and subsequent loss of control of the helicopter.

DATES: Comments must be received by July 18, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–SW–04–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Robinson Helicopter Company, 2901 Airport Drive, Torrance, California 90505. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, Propulsion Branch, 3960 Paramount Boulevard, Lakewood, California 90712, telephone (562) 627–5265, fax (562) 627–5210.

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 No. 97–SW–04–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–SW–04–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This document proposes the adoption of a new AD that is applicable to Robinson Model R22 helicopters, serial numbers (S/N) 2571 through 2664. This proposal would require replacing the MA–4–5 carburetor and CAT gage, part number (P/N) C604–6, with an airworthy MA–4SPA carburetor and CAT gage, P/N A606–2; and mandating the Robinson Model R22 Rotorcraft Flight Manual (RFM) revision dated February 6, 1997 be inserted into the RFM. These revised supplements to the RFM do not provide for leaning of the carburetor mixture. This proposal is prompted by a report from the Civil Aviation Authority of Great Britain that cautioned that the mixture control could inadvertently be placed in the idle cutoff position during in-flight leaning of the O–360–J2A engine. This condition, if not corrected, could result in inadvertent placement of the mixture control to the idle cutoff position during in-flight leaning of the engine, which could result in an engine shutdown during flight and subsequent loss of control of the helicopter.

The FAA has reviewed Robinson Helicopter Company R22 Service Bulletin SB–82, dated March 3, 1997, and Robinson Helicopter Company KI–114 O–360 Engine Carburetor Change Kit instructions, Revision A, dated March 6, 1997, which describe procedures for removing the MA–4–5 carburetor and the CAT gage, P/N C604–6, and replacing them with an airworthy MA–4SPA carburetor and CAT gage, P/N A604–2, and revising the RFM Section 9, Supplements 7 (for Beta II) and 8 (for Mariner II) to eliminate the leaning procedure.

Since an unsafe condition has been identified that is likely to exist or develop on other Robinson Model R22 helicopters of the same type design, the proposed AD would require, within 50 hours time-in-service (TIS) after the effective date of this AD, removing the MA–4–5 carburetor and CAT gage, P/N C604–6, replacing them with an airworthy MA–4SPA carburetor and

CAT gage, P/N A604–2, and revising the RFM. The actions would be required to be accomplished in accordance with the service bulletin compliance procedures and kit instructions described previously.

The FAA estimates that 50 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $3,641 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $197,050.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Robinson Helicopter Company: Docket No. 97–SW–04–AD.

Applicability: Model R22 helicopters, serial numbers (S/N) 2571 through 2664, certificated in any category.

Note 1: This AD applies to each helicopter 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 helicopters 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 (c) 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 helicopter from the applicability of this AD.

Compliance: Required within 50 hours time-in-service after the effective date of this AD, unless accomplished previously.

To prevent inadvertent placement of the mixture control to the idle cutoff position during in-flight leaning of the engine, which could result in an engine shutdown during flight and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove the MA–4–5 carburetor and carburetor air temperature (CAT) gage, part number (P/N) C604–6, and replace them with an airworthy MA–4SPA carburetor and remarked CAT gage, P/N A604–2, in accordance with Robinson Helicopter Company R22 Service Bulletin SB–82, dated March 3, 1997, and Robinson Helicopter Company KI–114 O–360 Engine Carburetor Change Kit instructions, Revision A, dated March 6, 1997.

(b) Upon completion of paragraph (a) of this AD, insert the FAA-approved R22 Pilot's Operating Handbook Section 9, Supplements 7 (R22 Beta II) and 8 (R22 Mariner II), revised February 6, 1997, or a later FAA-approved revision, into the R22 Rotorcraft Flight Manual.

(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, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

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

Issued in Fort Worth, Texas, on May 8, 1997.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–13082 Filed 5–16–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AWP–6]

Proposed Modification to the Saipan Class D Airspace Area; CQ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify the Saipan, CQ, Class D airspace area. Specifically, this action proposes to raise the ceiling of the existing Class D airspace area from 2,500 feet mean sea level (MSL) to 2,700 feet MSL. The FAA proposes this action to enhance safety and better manage air traffic operations into and out of the Saipan International Airport.

DATES: Comments must be received on or before July 7, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP–500, Docket No. 96–AWP–6, Federal Aviation Administration, P. O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 915, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William C. Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AWP–6.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591; or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Saipan Class D airspace area. Specifically, this action would raise the existing ceiling of the Saipan Class D airspace area from 2,500 feet MSL to 2,700 feet MSL. This proposal would provide additional controlled airspace for the instrument approach procedures into Saipan. The FAA is proposing this action to enhance safety and better manage air traffic operations into and out of the Saipan International Airport. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class D airspace area designation listed in this document would be published subsequently in this Order.

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

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the ICAO International Standards and Recommended Practices. Applicability of International Standards and Recommended Practices by the Office of Air Traffic Airspace Management, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promote the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil aircraft operations on international air routes are carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 5000—Class D Airspace Areas

* * * * *

AWP CQ D Saipan, CQ [Revised]

Saipan International Airport (Primary Airport)
(lat. 15°07′08″ N, long. 145°43′46″ E)
Saipan RBN
(lat. 15°06′41″ N, long. 145°42′37″ E)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.3-mile radius of Saipan International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to

Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory, Chart Supplement/Pacific.

* * * * *

Issued in Washington, DC, on May 9, 1997.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–13071 Filed 5–16–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA Number 162C]

Schedules of Controlled Substances: Proposed Removal of Fenfluramine From the Controlled Substances Act; Correction

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to the proposed rule (DEA–162P) which was published Tuesday, May 6, 1997 (62 FR 24620). The proposed rule related to the removal of fenfluramine from the Controlled Substances Act (CSA).

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Background

The proposed regulation that is the subject of this correction makes amendment to Part 1308 of Title 21 of the Code of Federal Regulations to remove the anorectic drug, fenfluramine, including its salts, isomers and salts of isomers from control under the CSA.

Need for Correction

As published, this proposed rule allowed for a 60 day period for comments, objections and requests for a hearing. As stipulated in 21 CFR 1308.44(g), the Administrator may designate in the notice of the proposed rulemaking, the time during which written comments and objections may be filed. However, as stipulated in 21 CFR 1308.45(a), requests for a hearing on a proposed rulemaking must be filed within 30 days after the date of publication of the proposed rulemaking in the **Federal Register**.

Correction of Publication

Accordingly, the publication on May 6, 1997 of the proposed rule (DEA–162P), which was the subject of FR Doc. 97–11689, is corrected as follows:

On page 24620, in the first column, in the **DATES** section, the entry ''Comments, objections, and requests for a hearing must be received on or before July 7, 1997.'' is corrected to read ''Comments and objections must be received on or before July 7, 1997. Requests for a hearing must be received on or before June 5, 1997.

Dated: May 12, 1997.

James Milford,

Acting Deputy Administrator.

[FR Doc. 97–12955 Filed 5–16–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 17, 19, 24, 25, 27, 28, 31, 32, 33, 34, 35, 36, 42, 43, 44, 45, 49, 50, 52, and 53

[FAR Case 97–004 and 95–029]

RINs 9000–AH59 and 9000–AH21

Federal Acquisition Regulation; Reform of Affirmative Action in Federal procurement; and Part 15 Rewrite: Contracting by Negotiation; Competitive Range Determinations; Corrections

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Corrrections to proposed rules.

SUMMARY: The Federal Acquisition Policy Division's FAR Secretariat is issuing a correction to two Federal Acquisition Regulation proposed rules published on Friday, May 9, 1997, at 62 FR 25786, and Wednesday, May 14, 1997, at 62 FR 26640, respectively. Both of those proposed rules need to reflect a revised E-mail address for sending in comments over the Internet.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson at (202) 501–4755, General Services Administration, FAR Secretariat, Washington, DC 20405.

Corrections

1. At 62 FR 25786, in the first column the first sentence of the last paragraph should read: ''E-mail comments submitted over the Internet should be addressed to: farcase.97–004@gsa.gov''.

2. At 62 FR 26640, in the second column, starting in the sixth line, the sentence should read: ''E-mail comments submitted over the Internet should be addressed to: farcase.95–029@gsa.gov''.

Signed: May 14, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 97–13130 Filed 5–16–97; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 120996A]

Magnuson Act Provisions; Essential Fish Habitat; Public Meetings; Extension of Comment Period

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

ACTION: Public meetings; extension of comment period.

SUMMARY: NMFS announces the extension of the public comment period on the proposed regulations containing guidelines for the description and identification of essential fish habitat (EFH) in fishery management plans. The public comment period is hereby extended to June 6, 1997, to give members of the public additional time to review and comment on the proposed regulation. NMFS also announces an additional public meeting to be held in Charleston, SC. This meeting is added to provide an opportunity in the South Atlantic for public comment on the EFH proposed regulations.

DATES: Written comments will be accepted on or before June 6, 1997. The additional public meeting is scheduled to be held on Wednesday, May 28, 1997, at 7 p.m.

ADDRESSES: Requests for special accommodations and comments should be addressed to Office of Habitat Conservation, Attention: EFH, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282; telephone: 301/713-2325. The additional public meeting will be held at Town and Country Inn,

2008 Savannah Highway, Charleston, SC.

FOR FURTHER INFORMATION CONTACT: Lee Crockett, NMFS, 301/713-2325.

SUPPLEMENTARY INFORMATION:

Background

NMFS issued proposed regulations containing guidelines for the description and identification of EFH in fishery management plans, adverse impacts on EFH, and actions to conserve and enhance EFH on April 23, 1997 (62 FR 19723). The regulations would also provide a process for NMFS to coordinate and consult with Federal and state agencies on activities that may adversely affect EFH. The guidelines are required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The purpose of the rule is to assist fishery management councils in fulfilling the requirements set out by the Magnuson-Stevens Act to amend their fishery management plans to describe and identify EFH, minimize adverse effects on EFH, and identify other actions to conserve and enhance EFH. The purpose of the coordination and consultation provisions is to specify procedures for adequate consultation with NMFS on activities that may adversely affect EFH.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Lee Crockett (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: May 13, 1997.

James P. Burgess,

Acting Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 97–13018 Filed 5–16–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 96
Monday, May 19, 1997

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

Agricultural Marketing Service

[Docket No. TB–97–07]

Burley Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

NAME: Burley Tobacco Advisory Committee.

DATE: June 11, 1997.

TIME: 10:00 a.m.

PLACE: Campbell House Inn, South Colonial Hall, 1375 Harrodsburg Road, Lexington, Kentucky 40504.

PURPOSE: To elect officers, recommend opening dates and sales schedules, review the 1997 policies and procedures, and other related matters for the 1997 burley tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Director, Tobacco Division, AMS, U.S. Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090–6456, (202) 205–0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: May 13, 1997.

John P. Duncan III,

Director, Tobacco Division.

[FR Doc. 97–12994 Filed 5–16–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Farm Service Agency's (FSA) intention to request an extension for an information collection currently approved for FSA's regulation governing management advice to individual borrowers and applicants. The regulations concerning this activity are published under the authority of the Consolidated Farm and Rural Development Act, as amended.

DATES: Comments on this notice must be received on or before July 18, 1997 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Steven R. Bazzell, Senior Loan Officer, Farm Loan Programs, Loan Making Division, Farm Service Agency, Stop 0522, Washington, DC 20250–0522. Telephone (202) 720–3889; e-mail sbazzell@wdc.fsa.usda.gov; or facsimile (202) 690–1117.

SUPPLEMENTARY INFORMATION:

Title: Management Advice to Individual Borrowers and Applicants.

Expiration Date of Approval: August 31, 1997.

OMB Number: 0560–0154.

Type of Request: Extension of a currently approved information collection.

Abstract: The information collected under Office of Management and Budget (OMB) Number 0560–0154, as indicated above, is needed to enable FSA to carry out its mission of providing credit counseling and supervision to family-size farmers, who are temporarily unable to secure commercial credit. FSA provides these direct low cost loans to many types of applicants, including beginning and socially disadvantaged farmers, farmers recovering from natural disasters, farmers adopting sustainable agricultural practices, and farmers switching to alternative agricultural enterprises. This regulation outlines the process for assessing each applicant or borrower's farming operation and using that assessment to develop an individualized credit counseling and supervision plan. The type of information collected from applicants is usual and customary to a farming operation and primarily consists of organizational, production and financial data.

Estimate of Burden: Public reporting burden for this collection of information is estimated at 2.26 hours per response.

Respondents: Individuals or households and farms.

Estimated Number of Respondents: 77,000.

Estimated Number of Responses per Respondents: 1.03.

Estimated Total Annual Burden on Respondents: 180,000.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSA, including whether the information will have practical utility; (b) the accuracy of FSA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information. Comments may be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503, and to Steven R. Bazzell. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C., on May 9, 1997.

Bruce R. Weber,

Acting Administrator, Farm Service Agency.

[FR Doc. 97–12997 Filed 5–16–97; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Farm Service Agency (FSA) to request an extension for and revision to an information collection currently approved in support of farm reconstitutions.

DATES: Comments on this notice must be received on or before July 18, 1997 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Loretta Baxa, Agricultural

Program Specialist, Compliance and Production Adjustment Division, USDA/ FSA/CPAD STOP 0517, 1400 Independence Avenue, SW, Washington, D.C. 20250–0517; telephone (202) 720–7602.

SUPPLEMENTARY INFORMATION:

Title: Provisions Applicable to Multiple Programs, Farm Reconstitutions.

OMB Number: 0560–0025.

Expiration Date: August 31, 1997.

Type of Request: Extension of a currently approved information collection.

Abstract: The information collected under Office of Management and Budget (OMB) Number 0560–0025, as identified above, is needed to enable the FSA to effectively administer the programs relating to reconstitution of farms, allotments, quotas, and acreages governed by regulations at 7 CFR part 718.

Form FSA–155 is used as a request for farm reconstitution initiated by the producer who wishes to combine a farm with another farm or divide a farm into multiple farming operations. The reconstitution process is a required procedure when a producer wishes to increase acreage attributed to the farm from leases or change farm acreage records as a result of a sale of any part of a farm. The FSA county committee must act on all proposed farm reconstitutions and issue their approval or disapproval on FSA–155. It is necessary to collect the information recorded on FSA–155 to determine farmland, cropland, agricultural use land, and changes to contract acreages resulting from combination or division of the farming operation.

Respondents: Farm owners and operators.

Estimated Number of Respondents: 359,921.

Estimated Number of Reports Filed per person: 1.

Estimated Average Time to Respond: 15 minutes.

Estimated Total Burden Hours: 89,980 hours.

Proposed topics for comments include: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electric, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D. C. 20503 and to Loretta Baxa, Agricultural Program Specialist, Compliance and Production Adjustment Division, USDA/FSA/CPAD STOP 0517, 1400 Independence Avenue, SW, Washington, D.C. 20250–0517; telephone (202) 720–7602.

Signed at Washington, DC, on May 12, 1997.

Bruce R. Weber,

Acting Administrator, Farm Service Agency.

[FR Doc. 97–12998 Filed 5–16–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 970501104–7104–01]

Census County Division (CCD) Program for Census 2000—Proposed Criteria

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of proposed program revision and request for comments.

SUMMARY: Census county divisions (CCDs) are geographic statistical entities established cooperatively by the Census Bureau and officials of state and local governments in 21 states where minor civil divisions (MCDs) either do not exist or are unsatisfactory for reporting decennial census data. The primary goal of the CCD program is to establish and maintain a set of subcounty units that have stable boundaries and recognizable names. A CCD usually represents one or more communities, trading centers, or, in some instances, major land uses. It usually consists of a single geographic piece that is relatively compact in shape. The geographic ''building blocks'' of CCDs are census tracts, and many CCDs are groupings of several contiguous census tracts.

Since the 1950s, the Census Bureau has worked with state and local officials to create subcounty areas for the collection, presentation, and analysis of census statistics in states where MCDs do not exist, are not well-known locally, or are subject to frequent change. By 1990, 21 states had shifted to CCDs: Alabama, Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Kentucky, Montana, Nevada, New Mexico, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Utah, Washington, and Wyoming. Once a state has replaced its MCDs with CCDs, it usually keeps them throughout subsequent decennial censuses. For Census 2000, all of the above 21 states will retain their CCDs.

To maintain and update the boundaries and names of CCDs for Census 2000, the Census Bureau offers a program for state and local officials to review and update their 1990 CCDs according to criteria developed and promulgated by the Census Bureau. The Census Bureau then reviews their CCD plans for conformance to these criteria.

As the first step in this process, the Census Bureau is requesting comments on the CCD criteria proposed for Census 2000. These criteria will apply only to states with CCDs. The Census Bureau may modify and, if necessary, reject any CCD changes that do not meet its criteria.

Besides the proposed criteria, this notice includes a description of the changes from the criteria used for the 1990 census and a list of definitions of key terms used in the criteria.

DATES: Any suggestions or recommendations concerning the proposed criteria should be submitted in writing by June 18, 1997.

ADDRESSES: Director, Bureau of the Census, Washington, DC 20233–0001.

FOR FURTHER INFORMATION CONTACT: Dr. Joel Morrison, Chief, Geography Division, Bureau of the Census, Washington, DC 20233–7400, telephone (301) 457–1132, or e-mail (jmorrison@geo.census.gov).

SUPPLEMENTARY INFORMATION: The CCD criteria have evolved in response to decennial census practices and the preferences of state and local participants and data users. After each decennial census, the Census Bureau, in consultation with program participants and data users, reviews and revises these criteria. Then, before the next decennial census, the Census Bureau offers participants and data users an opportunity to correct, update, and otherwise improve their CCDs.

In July and August 1995, the Census Bureau issued invitations to state and local groups and agencies to participate in the delineation of statistical geographic areas for Census 2000. These included state and regional planning agencies, councils of governments, and county planning agencies.

In 1997, the Census Bureau will provide materials and detailed guidelines to program participants for the review and delineation of CCDs for Census 2000.

A. Criteria for Delineating CCDs for Census 2000

The Census Bureau requires that CCDs: (1) Have community orientation, (2) have visible, stable boundaries, (3) conform to groupings of census tracts, and (4) have recognizable names.

1. Community Orientation

Each CCD should focus on one or more communities or places and take in the additional surrounding territory that is served by these in some fashion. The definition of community should take into account factors such as production, marketing, consumption, and the integrating factor of local institutions.

The community on which a CCD is centered usually is an incorporated place or a census designated place (CDP). In some cases, the CCD may be centered on a major area of significantly different land use or ownership, such as a large military base or American Indian reservation (AIR). In other situations, a CCD can represent an area that is physiographically different from the rest of the county. A CCD should always consist of a single geographic piece that is relatively compact in shape.

2. Visible, Stable Boundaries

A CCD should have easily locatable boundaries that seldom change. These should be readily discernible in the field and easy to depict on maps. This provision makes the location of boundaries less ambiguous and easier for data users to locate. The following features are acceptable:

- County boundaries (always a CCD boundary).
- Census tract boundaries, which usually follow visible, perennial natural and cultural features such as roads, rivers, canals, railroads, above-ground high-tension power lines, and so forth.
- AIR boundaries.
- Conjoint city limits (in certain situations).

When the above types of features are not available for selection, the Census Bureau may, at its discretion, approve nonstandard visible features such as ridge lines, pipelines, intermittent streams, fence lines, and so forth. The Census Bureau also may accept, on a case-by-case basis, the boundaries of selected nonstandard and potentially nonvisible features such as the boundaries of national parks and forests, cemeteries, or other special land-use properties, the straight-line extensions of visible features, and other lines of sight.

3. Groupings of Census Tracts, CCD Population Size

A CCD should almost always consist of one census tract or a combination of contiguous census tracts. Therefore, CCD boundaries should conform to census tract boundaries. In counties that had block numbering areas (BNAs) in 1990, program participants will be converting the BNAs to census tracts. For these counties, the Census Bureau strongly recommends adjusting the CCDs to conform to groupings of census tracts. As an alternative, program participants may use the CCD framework as a basis for establishing some or all of their census tracts. It is permissible to use both approaches.

In a few exceptional situations, some CCD boundaries may not need to follow census tract boundaries, and there may be two or more 1990 CCDs within one census tract. Usually, such situations are limited to very sparsely populated counties with a large land area.

Population size is not as important a consideration with CCDs as it is with census tracts. Historically, CCDs have ranged from a few hundred people (in selected situations) to more than one million. However, insofar as possible, CCDs that are new for Census 2000 should have a population of at least 1,500 people, the recommended minimum for a census tract.

4. Name Identification

A CCD usually should be named after the largest population center or place within it (Los Angeles). Sometimes a CCD name may represent the two largest centers; for example, Bayard-Santa Rita. In some situations, a CCD may be named after a prominent physical feature (Castle Rock, Lake Mono, Pikes Peak) or a distinctive region within the county (Death Valley, Everglades, Lower Keys, Tellico Plains). In other cases, a CCD name may consist of the county name and a compass direction to indicate the portion of the county in the CCD, or a place name and a compass direction to give the CCD location relative to the place. The directional indicator usually precedes a county name, as in Northwest Union. If a place name is used, the directional indicator follows it; for example, Smithville North. In all cases, the objective is to identify clearly the extent of the CCD by means of an area name; CCD names always should be meaningful to data users.

5. Revisions to Existing CCDs

Some 1990 CCD boundaries have errors. Most of these involve small areas where the CCD boundaries and census tract boundaries were supposed to be conjoint but were not. The Census Bureau will bring these specific situations to the attention of local participants and request that they submit corrections.

The Census Bureau does not encourage state and local officials to make major revisions to their CCDs since the goal of the program is to maintain a set of stable subcounty entities that allows data comparability from census-to-census. However, updates and revisions may be necessary in some instances, such as where there have been county boundary changes, revisions to census tract boundaries, or as part of the initial delineation of census tracts. Additionally, revisions to CCD names may be necessary due to population changes within CCDs.

6. Final Approval of CCDs

The Census Bureau reserves the right to approve all CCD proposals for Census 2000. The Census Bureau will make an effort to reach agreement with local participants, but cannot approve the CCDs submitted if the changes are unwarranted or do not meet Census 2000 criteria. If necessary, the Census Bureau will revise CCDs that do not meet its requirements.

B. Changes to the Criteria for Census 2000

Most provisions of the CCD criteria remain unchanged from those used in conjunction with the 1990 census. The only major change is the shift to census tracts in all counties that had BNAs and the need to adjust the CCDs in those counties to the boundaries of census tracts.

Definitions of Key Terms

American Indian reservation (AIR)—A Federally recognized American Indian entity with boundaries established by treaty, statute, and/or executive or court order and over which American Indians have governmental jurisdiction. Along with reservation, designations such as colonies, communities, pueblos, rancherias, and reserves apply to AIRs.

Block numbering area (BNA)—A small-area, statistical geographic division of a county or statistically equivalent area delineated in 1990 instead of and generally geographically equivalent to a census tract. For Census 2000, the Census Bureau is merging the BNA program with the census tract program and converting all BNAs to census tracts.

Census block—The smallest geographic entity for which the Census Bureau collects and tabulates decennial

census information, bounded on all sides by visible and nonvisible features identified by the Census Bureau in computer files and on maps.

Census designated place (CDP)—A locally recognized, closely settled population center identified by name. The Census Bureau uses CDPs to present data for localities that otherwise would not be identified as places in its data products.

Census tract—A small, relatively permanent statistical geographic subdivision of a county or statistically equivalent area defined for the tabulation of data. For Census 2000, the Census Bureau is replacing BNAs with census tracts.

Conjoint—A description of a boundary shared by two adjacent geographic areas.

Contiguous—A description of geographic areas that are adjacent to one another, sharing either a common boundary or point.

Incorporated place—A type of governmental unit, sanctioned by state law as a city, town (except in New England, New York, and Wisconsin), village, or borough (except in Alaska and New York) having legally prescribed limits, powers, and functions.

Minor civil division (MCD)—The primary governmental or administrative division of a county in 28 States, Puerto Rico, and the Island Areas having legal boundaries, names, and descriptions. MCDs represent many different types of legal entities with a wide variety of characteristics, powers, and functions depending on the State and type of MCD. In some States, some or all of the incorporated places also constitute MCDs.

Nonvisible feature—A map feature that is not visible on the ground such as a city or county boundary through space, a property line, a short line-of-sight extension of a road, or a point-to-point line of sight.

Special place—A specific location requiring special enumeration because the location includes people not in households or the area includes special land use. Special places include facilities with resident population, such as correctional institutions, military installations, college campuses, workers' dormitories, hospitals, nursing homes and group homes and land-use areas such as national parks. A special place includes the entire facility, including nonresidential areas and staff housing units as well as all group quarters population.

Visible feature—A map feature that one can see on the ground such as a road, railroad track, above-ground transmission line, stream, shoreline, fence, sharply defined mountain ridge, or cliff. A nonstandard visible feature is a feature that may not be clearly defined on the ground (such as a ridge), may be seasonal (such as an intermittent stream), or may be relatively impermanent (such as a fence). The Census Bureau generally requests verification that nonstandard features are easily locatable.

Dated: May 1, 1997.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 97–13051 Filed 5–16–97; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–601]

Certain Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 9, 1997, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on certain fresh cut flowers from Mexico. The review covers one manufacturer/exporter and the period April 1, 1995 through March 31, 1996.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have not changed the results from those presented in the preliminary results of this review.

EFFECTIVE DATE: May 19, 1997.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On January 9, 1997, the Department published in the **Federal Register** (62 FR 1318) the preliminary results of its administrative review of the antidumping duty order on fresh cut flowers from Mexico, 52 FR 13491 (April 23, 1987). The Department has now completed this administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by this review are certain fresh cut flowers, defined as standard carnations, standard chrysanthemums, and pompon chrysanthemums. During the period of review, such merchandise was classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS) items 0603.10.7010 (pompon chrysanthemums), 0603.10.7020 (standard chrysanthemums), and 0603.10.7030 (standard carnations). The HTSUS item numbers are provided for convenience and U.S. Customs (Customs) purposes only. The written description of the scope of the order remains dispositive.

This review covers one manufacturer/exporter of fresh cut flowers from Mexico, Rancho Del Pacifico (Pacifico), and the period April 1, 1995 through March 31, 1996.

Duty Absorption

As part of this review, we are considering, in accordance with section 751(a)(4) of the Act, whether Pacifico absorbed antidumping duties. See the preliminary results of this review. For these final results of review, we determine that there is no dumping margin on any of Pacifico's sales during the period of review and, therefore, find that antidumping duties have not been absorbed by Pacifico on its U.S. sales.

Analysis of the Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. We received a case brief from the petitioner, The Floral Trade Council.

Comment 1: Petitioner argues that the Department should revise its cash deposit instructions to Customs from those issued in prior reviews. Petitioner suggests that, in order to discourage circumvention of the antidumping duty

order, the Department instruct Customs to collect cash deposits at the higher of the grower or exporter's rate or, if the exporter has sourced through multiple growers, at the highest of the growers' or exporter's rate. Where the grower is unknown, petitioner contends, the Department should collect cash deposits at the highest rate. In addition, petitioner asserts that the Department should publish the exact language of its cash deposit instructions in its determinations so that interested parties would have an opportunity to comment on those instructions.

Petitioner notes that, for the 1993/1994 administrative review—the most recently completed administrative review involving Pacifico—the Department issued the following cash deposit instructions to Customs that were not included in its published determination:

> If any entries of this merchandise are exported by a firm other than the manufacturer then the following instructions apply: (A) If the exporter of the subject merchandise has its own rate, use the exporter's rate for determining the cash deposit rate; (B) If the exporter of the subject merchandise does not have its own rate, but the manufacturer has its own rate, the cash deposit rate will be the manufacturer's rate; (C) Where neither the exporter nor the manufacturer currently has its own rate, or the manufacturer is unknown, use the ''all others'' rate for establishing the cash deposit rate.

(Petitioner cites to the Cash Deposit Instructions dated September 12, 1996, and *Certain Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 40604 (August 5, 1996).)

Petitioner contends that part A of the cash deposit instructions does not account for the situation in which both producer and exporter have their own rates. Petitioner argues that the name of an exporter stated in part A could merely be the name of a flower grower subject to an antidumping duty rate of zero percent who has exported the flowers of another grower that has a much higher rate.

Petitioner argues that the Department's current cash deposit instructions undermine the remedial purpose of the statute, which is to remedy dumping through the application of antidumping duties. Petitioner contends that, for that reason, the Department has refused to allow exporters that are excluded from an antidumping duty order to export merchandise produced by companies subject to that order. As support for its argument, petitioner cites *Jia Farn Manufacturing Co., Ltd.* v. *United States*, 817 F. Supp. 969 (CIT 1993), where, petitioner asserts, the Department indicated that a company originally excluded from an antidumping duty order would immediately be subject to a cash deposit if it exports merchandise produced by another company subject to the order. Petitioner further cites *Certain Fresh Cut Flowers from Colombia; Final Results of Administrative Review and Notice of Revocation of Order (in Part)*, 59 FR 15159, 15167 (March 1, 1994), where, petitioner notes, the Department states that evidence that revoked companies are serving as conduits for other Colombian flower growers would call for appropriate action, which could include reinstatement of the order and referral to the Customs fraud division.

Petitioner notes that part C of the cash deposit instructions directs Customs to use the ''all others'' rate in cases in which the producers or exporters of the merchandise are unknown. Petitioner maintains that selection of the ''all others'' rate for unknown producers is a clear invitation for a producer with higher dumping margins to route merchandise through growers/exporters that do not have company-specific rates. Petitioner also maintains that the Department's instructions contradict Customs' prior practice of assigning the highest rate whenever entry documentation did not provide the name of grower. In addition, petitioner asserts that Customs has explained that both producer and exporter should be identified on entry documentation, filed electronically and physically, in order to properly collect estimated antidumping duty deposits.

Department's Position: We disagree with the petitioner. Part A of the Department's standard cash deposit instructions does allow for the situation in which both producer and exporter have their own rates; in this situation, the exporter's rate is used as the cash deposit rate. This is because the exporter, who sets the price for the sale to the United States, is the potential price discriminator. The exporter's sales—in this case, Pacifico's sales—form the basis of the margin calculation; therefore, it is appropriate that cash deposits be collected at that margin on an exporter-specific basis. If we receive any evidence that Pacifico is serving as a conduit for other Mexican flower growers, *i.e.*, that Pacifico is exporting merchandise produced and sold for export to the United States on behalf of other growers, we will consider this a case of potential evasion of the antidumping duty order and will take appropriate action. We will also take appropriate action if we receive evidence that an exporter without a company-specific margin is serving as a conduit for a grower/exporter which has a higher, company-specific margin. *See, e.g., Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 10532 (March 7, 1997).

It has been the Department's longstanding practice not to incorporate in **Federal Register** notices a verbatim copy of the cash deposit instructions that it transmits to Customs. However, it is our practice to include in the **Federal Register** a summary of our planned instructions, as we did in the preliminary results of this review. Furthermore, we note that it is evident from this summary that deposits are to be collected on the basis of the exporter's rate, rather than the producer's rate, when the exporter has a rate. Interested parties have an opportunity to comment on that summary of instructions. We find no reason to change our current practice.

Comment 2: Petitioner contends that, for purposes of calculating constructed export price profit, the Department should reallocate Pacifico's costs on the basis of relative cultivation area rather than on bunches of flowers produced per month. Petitioner argues that Pacifico's methodology allocates an equal amount of costs on the basis of quantity produced without taking into consideration that certain flower varieties are more expensive to grow. For example, petitioner maintains, Pacifico's methodology would allocate the same costs to both what would appear to be field crops and greenhouse crops.

Petitioner maintains that cultivation area, not bunches produced, is the method commonly used to allocate flower costs. As support for its argument, petitioner cites *Floral Trade Council* v. *United States*, 822 F. Supp. 766, 772 (*Floral Trade*); *Certain Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 57 FR 19597, 19599 (May 7, 1992); and *Fresh Cut Roses from Colombia; Final Determination of Sales At Less Than Fair Value, and Notice of Revocation of Order (in Part)*, 60 FR 6980, 7010, 7012 (February 6, 1995) (*Colombian Flowers*). Petitioner argues that the statute and the Statement of Administrative Action (SAA) instruct the Department to consider whether a respondent has historically used an allocation methodology in determining whether a cost allocation methodology is acceptable, citing 19 U.S.C. 1677(F)(1)A and the SAA at 835.

Petitioner suggests that the Department should require Pacifico to

explain whether it maintains product-specific cost data such as the ''rose plant'' cost data already reported in its questionnaire response. Petitioner maintains that, unless the respondent uses bunches produced in its ordinary books and records to allocate costs, the Department should require Pacifico to report its costs based on cultivation area.

Department's Position: We disagree with petitioner that Pacifico's costs should be reallocated on the basis of cultivation area. The Court of International Trade in *Floral Trade* states that ''allocation is * * * an inexact science, and is simply a way to *estimate* the costs incurred by the firm to manufacture the product, complete the process, or deliver the service,'' and that ''allocation methods vary even among firms in the same industry.'' *Floral Trade Council* v. *U.S.*, 822 F.Supp. 766, 772 (CIT 1993). The final review results for Mexican flowers cited by petitioner only indicate that in that instance we found the grower's use of cultivation area to be an acceptable allocation basis for certain costs (61 FR 40604). This does not stand for the proposition that relative area is *the* correct method of allocating growing costs.

In the instant proceeding, we find no evidence that Pacifico used cultivation area as a basis of allocation in its books and records, or that flowers produced by Pacifico are field crops. Furthermore, the record does not support petitioner's claim that Pacifico's production cost allocation methodology distorts costs. See *Colombian Flowers* at 7010, where the Department made a similar determination. Therefore, for these final results, we have accepted Pacifico's methodology of allocating costs because Pacifico's allocation is reasonable and there is no evidence that it distorts Pacifico's costs.

Final Results of review

As a result of our review, we have determined that the following weighted-average margin exists:

Manufacturer/exporter	Period of review	Margin (percent)
Rancho Del Pacifico	4/1/95–3/31/96	0.00

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective for all shipments of the subject merchandise that are entered or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company shall be the above rate; (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 shall be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 18.20 percent, the all others rate established in the LTFV investigation (52 FR 6361, March 3, 1987).

These deposit rates shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 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.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 9, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–13058 Filed 5–16–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–912]

Calcium Aluminate Flux from France; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On March 11, 1997, the Department of Commerce (the Department) published the preliminary results of its 1995–96 administrative review of the antidumping duty order on calcium aluminate flux from France (CA flux) (62 FR 11150). The review covers one manufacturer/exporter, Lafarge Aluminates, Inc. (Lafarge), for the period June 1, 1995 through May 31, 1996.

We gave interested parties an opportunity to comment on the preliminary results of review. The Department received no written comments or requests for a hearing. Based on our analysis, these final results of review are unchanged from those presented in our preliminary results of review.

EFFECTIVE DATE: (May 19, 1997).

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or Linda Ludwig, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington,

D.C. 20230; telephone (202) 482–3019 or 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1997, the Department published in the **Federal Register** (62 FR 11150), the preliminary results of the antidumping duty order on CA flux from France (59 FR 30337). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results of review. The Department received no written comments or requests for a hearing. Based on our analysis, these final results of review remain the same as those presented in the preliminary results of review. Therefore, we determine that the following weighted-average margin exists:

Manufacturer/exporter	Period of review	Margin (percent)
Lafarge Aluminates, Inc	06/01/95–05/31/96	7.30

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and normal value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of CA flux from France within the scope of the order entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate list above; (2) for previously reviewed or investigated companies not listed above, the rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate of 37.93 percent, the ''all others'' rate, established in the LTFV investigation, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR § 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation to 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 subsequent assessment of double antidumping duties.

Notification of Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. Timely written notification of the return/destruction of APO materials or converion to judicial protective order is hereby requested.

This administrative review and notice are in accordance with Section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR § 353.22.

Dated: May 9, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–13057 Filed 5–16–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Notice of Final Determination of Sales at Less Than Fair Value: Persulfates From the People's Republic of China

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

EFFECTIVE DATE: May 19, 1997.

FOR FURTHER INFORMATION CONTACT: James Maeder, Barbara Wojcik-Betancourt, or Howard Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3330, (202) 482–0629, or (202) 482–5193, respectively.

THE APPLICABLE STATUTE: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act'') are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act (''URAA'').

FINAL DETERMINATION: We determine that persulfates from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States Sales at Less Than Fair Value (''LTFV''), as provided in section 735 of the Act.

Case History

FMC Corporation (''FMC'') is the petitioner in this investigation. The respondents in this investigation are, Shanghai Ai Jian Import & Export Corporation (''AJ''), Sinochem Jiangsu Wuxi Import & Export Corporation (''Wuxi'') (exporters), Shanghai Ai Jian Reagant Works (''AJ Works'') (producer for AJ and Wuxi), Guangdong Petroleum Chemical Import & Export Trade Corporation (''Guangdong'') (exporter), Guangzhou City Zhujiang Electrochemical Factory (''Zhujiang'') (producer for Guangdong), ICC Chemical Corporation (''ICC'') [1]. Since the preliminary determination in this investigation (*Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Persulfates From the PRC* 61 FR 68232, (December 27, 1996), the following events have occurred:

In December 1996, and January 1997, FMC, AJ Works, AJ and Wuxi alleged that the Department made a ministerial error in its preliminary determination (*see* Comment 8 below). The Department found that there was an error made in the preliminary determination; however, this error did not result in a change of at least five absolute percentage points in, but no less than 25 percent of, the weighted-average dumping margin calculated in the preliminary determination. Accordingly, no revision to the preliminary determination was made. (*see* Ministerial Error Memorandum from the Team to Jeffrey P. Bialos dated January 17, 1997).

On March 25, 1997, petitioner submitted the Chinese Communist Party (''CCP'') Circular and requested that the

[1] ICC is Guangdong's U.S. customer. ICC submitted responses in this investigation because it claimed that U.S. price (''USP'') should be based on its sales to U.S. customers. We have determined that USP should be based on Guangdong's price to ICC (*see* Comment 25).

Department revisit its policy regarding separate rates (*see* Comments 1, 2, and 3 in the *General Comments* section below).

In February and March 1997 we verified the respondents' questionnaire responses. Additional publicly available information on surrogate values was submitted by petitioner and respondents on April 4, 1997. Petitioner and respondents submitted case briefs on April 4, 1997, and rebuttal briefs on April 9, 1997 [2]. A public hearing was held on April 11, 1997.

Scope of the Investigation

The products covered by this investigation are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, $(NH_4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Ammonium and potassium persulfates are currently classified under subheading 2833.40.60 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Sodium persulfate is classified under HTSUS subheading 2833.40.20. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of this investigation (''POI'') comprises each exporter's two most recent fiscal quarters prior to the filing of the petition (*i.e.*, January through June 1996).

Separate Rates

Each of the participating respondent exporters has requested a separate, company-specific antidumping rate. The claimed ownership structure of the respondents is as follows: (1) Wuxi and Guangdong are owned by all the people; (2) AJ is a publicly-held company.

As stated in *Silicon Carbide* and *Furfuryl Alcohol,* ownership of a company by all the people does not require the application of a single rate. Accordingly, all three are eligible for consideration for a separate rate. (*See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''), and *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544 (May 8, 1995) (''*Furfuryl Alcohol*'').

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test stated in of the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*'') and amplified in *Silicon Carbide.* Under the separate rates criteria, the Department assigns separate rates in nonmarket economy cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

Respondents have placed on the administrative record a number of documents to demonstrate absence of *de jure* control. These documents include laws, regulations and provisions enacted by the central government of the PRC, describing the deregulation of Chinese enterprises as well as the deregulation of the Chinese export trade, (but for a list of products that may be subject to central government export constraints which the respondents claim does not involve the subject merchandise). Specifically, the respondents provided English translations of the laws and regulations governing their enterprises (*see* Comment 3). These laws and regulations authorize these companies to make their own operational and managerial decisions.

In prior cases, the Department has analyzed the laws which the respondents have submitted in this record and found that they establish an absence of *de jure* control. (*See Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides With Rollers From the People's Republic of China,* 60 FR 54472 (October 24, 1995) (''*Steel Drawer Slides*''); and *see also Furfuryl Alcohol*). We have no new information in this proceeding which would cause us to reconsider this determination (*see* Comment 1 below).

However, as in previous cases, there is some evidence that the PRC central government enactments have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. (*See Silicon Carbide* and *Furfuryl Alcohol*.) Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices (''EP'') are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Silicon Carbide* and *Furfuryl Alcohol*).

Each company asserted, and we verified, the following: (1) it establishes its own export prices; (2) it negotiates contracts, without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs and has the authority to sell its assets and to obtain loans. In addition, questionnaire responses on the record indicate that pricing was company-specific during the POI, which does not suggest coordination among or common control of exporters. During verification proceedings, Department officials viewed such evidence as sales documents, company correspondence, and bank statements. This information supports a finding that there is a *de facto* absence of governmental control of export functions. We determined that both Wuxi and AJ had autonomy from the central government in making decisions regarding the selection of management. In the case of Wuxi, the general manager was elected by an employee assembly. We found no involvement by any government entity in AJ's selection of management. With respect to Guangdong, we found that the general manager was appointed by the local administering authority, the Guangdong Heavy and Chemical Industrial Bureau (''GHCIB''). While this may indicate that Guangdong is subject to the control of the GHCIB, there is no evidence that any other exporter of the subject merchandise is currently under the control of the GHCIB, which could raise the issue of manipulation of the export function to evade antidumping duties. Therefore, we have concluded that Guangdong is entitled to a separate

[2] Counsel for ICC, Zhujiang, and Guangdong did not submit case briefs, but did submit rebuttal briefs.

rate [3]. This determination is consistent with our recent decision in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results and Partial Termination of Antidumping Duty Administrative Review,* 62 FR 6173, 6174 (February 11, 1997) (''*Tapered Roller Bearings*''). Consequently, we have determined that Wuxi, AJ, and Guangdong have met the criteria for the application of separate rates.

China-Wide Rate

U.S. import statistics indicate that the total quantity and value of U.S. imports of persulfates from the PRC is greater than the total quantity and value of persulfates reported by all PRC companies that submitted responses. Furthermore, after sending antidumping questionnaires to 18 companies identified as potential respondents in the petition, we received responses from only two producers and three exporters. Thus, we have concluded that not all exporters of PRC persulfates responded to our questionnaire. Accordingly, we are applying a single antidumping deposit rate—the China-Wide rate—to all exporters in the PRC, other than Wuxi, AJ and Guangdong (Zhujiang, and AJ Works are producers), based on our presumption that those respondents who failed to respond constitute a single enterprise under the common control of the PRC government. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China,* 61 FR 19026 (April 30, 1996) (''*Bicycles*'').

This China-wide antidumping rate is based on adverse facts available. Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority * * *; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use information that is adverse to the interests of that party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition.

Consistent with section 776(b)(1) of the Act, we have applied, as total facts available, the higher of the average margin from the petition or the highest rate calculated for a respondent in this proceeding. In the present case, based on our comparison of the calculated margins for the respondents in this proceeding to the average margin in the petition, we have concluded that the petition is the most appropriate record information to base the dumping calculations in this investigation. Accordingly, the Department has based the China-wide rate on information in the petition. In this case, the average petition rate is 134.00 percent. Section 776(c) of the Act provides that where the Department relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action (SAA), accompanying the URAA clarifies that the petition is ''secondary information.'' *See* SAA at 870. The SAA also clarifies that ''corroborate'' means to determine that the information used has probative value. *Id.* However, where corroboration is not practicable, the Department may use uncorroborated information.

In accordance with section 776(c) of the Act, we corroborated the margins in the petition to the extent practicable. The petitioner based EPs on price quotes obtained from U.S. importers, reduced by estimated importer mark-ups and movement charges. We compared the starting prices used by petitioner less the importer mark-ups against prices derived from U.S. import statistics and found that the two sets of prices are consistent. We also compared the movement charges used in the petition with the surrogate values used by the Department in its margin calculations and found them to be consistent.

Regarding normal value (''NV''), petitioner used publicly available information from India to value the factors of production. Petitioner based factory overhead, selling, general and administrative (''SG&A'') and profit surrogates on data from an annual report of National Peroxide Limited (''National Peroxide''), an Indian producer of hydrogen peroxide. Based on the information on the record regarding similarities in the production process for hydrogen peroxide and persulfates, we have determined that it is appropriate to base surrogate factory overhead, SG&A and profit on National Peroxide's financial data (*see* Comment 3). Although we found in the preliminary determination that the financial data for Sanderson Industries Ltd. (''Sanderson''), the surrogate company proposed by one respondent, was more consistent with the financial data we obtained for other Indian chemical producers, in the final determination we have concentrated our analysis on product comparability, including similarities in the production process. Based on our analysis, we have accepted the factory overhead, SG&A and profit percentages in the petition for the final determination.

With respect to all other elements of the NV calculation in the petition (*i.e.*, materials, labor, energy and packing), the Department corroborated the values used in the petition by comparing them with values obtained from publicly available information collected in this and previous nonmarket economy investigations.

Accordingly, we have corroborated, to the extent practicable, the data contained in the petition.

Fair Value Comparisons

To determine whether respondents' sales of the subject merchandise to the United States were made at less than fair value, we compared EP to NV, as described in the ''United States Price'' and ''Normal Value'' sections of this notice.

United States Price

We based USP on EP in accordance with section 772(a) of the Act, because the persulfates were sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price methodology was not otherwise indicated by the facts in this case. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide NVs to POI-wide weighted-average EPs.

We corrected the respondents' data for errors and minor omissions submitted to the Department and found at verification. We made company-specific adjustments as follows:

1. Wuxi

We calculated EP in accordance with our preliminary calculations, except

[3] All non-responding exporters are presumed to be under the control of the central government. However, there is no basis on which to conclude that any non-responding exporter is controlled by the GHCIB.

that we corrected inland freight expenses, control numbers in the company's sales listing, and international freight expenses, based on findings at verification.

2. AJ

We calculated EP in accordance with our preliminary calculations except that we corrected inland and international freight expenses, based on findings at verification.

3. Guangdong

We calculated EP based on packed, ex-factory PRC prices to an unaffiliated purchaser in the United States (*see* Comment 25). Insofar as Guangdong claimed that all the movement expenses were paid by the purchaser, we did not make any adjustments to the starting price for such expenses.

Normal Value

Factors of Production

We calculated NV based on factors of production cited in the preliminary determination, making adjustments for specific verification findings *(see Final Valuation Memorandum from the Team to Louis Apple, Acting Office Director* dated May 12, 1997) (''Final Valuation Memorandum''). To calculate NV, the verified amounts for the factors of production were multiplied by the appropriate surrogate values for the different inputs. We have used the same surrogate sources as in the preliminary determination with the exception of the source for overhead, SG&A and profit. For the final determination we based the percentages for overhead, SG&A and profit on the detailed public version of National Peroxide's financial statement that was placed on the record of this investigation by the petitioner.

Because Zhujiang, one of the producers in this investigation, failed to cooperate by not acting to the best of its ability to provide the weight of packing materials, we have used as the weight of each type of packing material the greatest weight reported for the material in the petition or in the public versions of the other respondent producer's submissions in this investigation. Where the weight for a particular type of packing material is not on the record, we have estimated the weight for these materials (*see* Final Valuation Memorandum). Also, because Zhujiang failed to provide supplier distances for packing materials we have used the greatest supplier distance reported by Zhujiang for any material input as the distance between the factory and the supplier of each type of packing material.

In addition, AJ Works, the other producer in this investigation, failed to report certain packing materials. Therefore, we have estimated the weight for these materials in our calculations for the final determination (*see* Final Valuation Memorandum). Also because AJ Works failed to provide supplier distances for the unreported packing materials we have used the greatest supplier distance reported by AJ Works for any packing material as the distance between the factory and the supplier of each type of unreported packing material.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

General Comments

Comment 1: Assigning a Country-Wide Rate to all Respondents

Petitioner alleges that the *Notice of the Communist Party of China Central Committee on Reinforcing and Improving Party Building in State-Owned Enterprises* (''the Circular'') issued by the CCP in January 1997 requires the Department to abandon its entire separate rates analysis and establish an irrebuttable presumption that all exporters of a particular product comprise a single exporter under government control. Petitioner argues that the Circular reasserts complete centralized state control over state-owned enterprises. Petitioner points out that the Circular requires generally that an enterprise's activities should be conducted under the guidance of state planning. Also, petitioner notes that the Circular imposes central control over decisions regarding the selection of management and ''capital utilization.'' Based on this Circular, petitioner argues that the CCP has reasserted both de jure and de facto control over state-owned enterprises and, thus, the Department should not allow any exporter to rebut the presumption of state control.

Respondents claim the Circular is hortatory and aspirational and does not constitute a change either in the legal status or in the de facto operations of companies in China. Furthermore, respondents claim the Circular does not apply to the instant investigation because it was issued six months after the close of the POI. Finally, respondents argue it would be an error for the Department to ignore the company-specific information on the record pertaining to independence and rely on petitioner's speculations regarding the future effect of the Circular.

DOC Position

We have examined the Circular closely and have carefully considered the implications in may have for our separate rates analysis. While we agree with the petitioner that some of the language can be interpreted to indicate heightened government involvement in SOEs, it is not clear that the circular nullifies or amends any laws or regulations that grant operational independence to exporters, or that it will result in de facto government control over export activities of SOEs at some time. Moreover, we note that the Circular was issued on January 14, 1997, and submitted to the Department on March 25, 1997. Thus, it was not before the Department during verification. At verification, we found that the companies subject to investigation operate independently with respect to exports and thus qualified for separate rates. Therefore, on the basis of all of the information in the record, we cannot conclude that the companies are not entitled to separate rates. However, we will continue to closely examine the effect, in fact and in law, of the circular with respect to any reassertion of central government control of export activities of SOEs. If, in any future investigation or review, we find that the new party circular results in government control of export activities, we will not grant companies separate rates.

Comment 2: Assigning a Country-Wide Rate Based on Affiliation

Petitioner argues that if the Department continues its separate rates analysis in nonmarket economy cases despite the Circular, it should assign a single country-wide rate in accordance with its methodology for evaluating whether affiliated parties should be collapsed into one entity. Petitioner notes that the Department considers entities under common control to be affiliated. In such situations, petitioner alleges, if there is a strong possibility of price manipulation, the Department will collapse the entities and assign a single antidumping margin. In light of the Circular reasserting government control over SOEs, petitioner alleges that it is clear the respondents are under common control and that the Chinese government has the authority to control exports and pricing activities. Thus, in accordance with the Department's affiliated parties methodology, all respondents should be collapsed into

one entity and assigned a single country-wide rate.

Respondents claim that Departmental practice shows that the affiliated party methodology does not apply to the issue of separate rates (*see Tapered Roller Bearings*). Also, according to respondents, the Department's proposed regulations state that the affiliated party methodology does not address the issue of whether a producer or exporter in a nonmarket economy country is entitled to an individual antidumping rate (*see* the Department's *Proposed Regulations*, 61 FR 7330 (February 27, 1996)). Therefore, respondents contend the affiliated party methodology should not be used in the instant case.

DOC Position

We agree with respondents. The Department has a long-standing methodology for determining whether companies in a nonmarket economy are entitled to a separate rate. That methodology is separate and distinct from the ''collapsing'' methodology in both focus and function. On the one hand, the separate rates test focuses specifically on whether there is government control of a nonmarket company's export activities. On the other hand, the ''collapsing'' methodology focuses on the relationship between two or more affiliated companies, not their relationship vis-a-vis the government or other entities. There is no basis for applying a ''collapsing'' analysis in this case.

Comment 3: Assigning a Country-Wide Rate Based on De Jure and De Facto Control Wuxi and AJ

Petitioner contends that Wuxi failed to place evidence on the record showing that it was not subject to de jure government control. Although Wuxi placed on the record certain PRC laws stating that the responsibility for managing companies ''owned by all the people'' has been transferred from the government to the companies themselves, it failed, according to petitioner, to provide documentation showing how these laws are implemented in Jiangsu Province, and how Wuxi is affected by them. In addition, petitioner notes that Wuxi failed to provide documentation demonstrating the absence of export controls on subject merchandise. Petitioner also points out that Wuxi's charter states that the company is to carry out the policy of the state and comply with the provisions of an institute that allegedly is an instrument of the Chinese government. Further, petitioner states that Wuxi has failed to demonstrate the absence of de facto government control. Specifically, petitioner contends that Wuxi failed to: (a) show that it independently negotiated and signed business contracts; (b) demonstrate that it had autonomy in selecting management; (c) demonstrate that it had the authority to borrow freely; and (d) show how foreign currency and company profits were used. Thus, petitioner claims Wuxi failed to demonstrate the absence of de facto government control. Therefore, petitioner maintains that the Department should assign Wuxi a country-wide rate.

Petitioner claims AJ failed to provide any evidence to support its assertion that there are no controls on exports of the subject merchandise to the United States. Petitioner notes that AJ's charter states that the company should follow state rules which, when read in conjunction with the Circular, indicates that AJ is subject to de jure government control.

Petitioner contends that AJ did not establish the absence of *de facto* control regarding management selection because the company failed to identify the shareholders of its parent corporation whose board of directors appoints and approves AJ's top managers. Because shareholders of the parent corporation were not identified, petitioner claims the Department has no way of knowing whether a government entity, as a shareholder of the parent corporation, has control over the selection of AJ's top managers. On the basis of *de jure* and *de facto* control over AJ by the PRC government, petitioner maintains the Department should assign AJ a country-wide rate.

Wuxi and AJ maintain that they established the lack of *de jure* government control by submitting copies of various laws and regulations that were used to establish the absence of such control in past cases. Specifically, respondents note that they submitted the April 13, 1988, regulations on industrial enterprises ''owned by all the people,'' the August 23, 1992, regulations regarding deregulation of state-owned industrial enterprises, and the December 29, 1993, law governing publicly held companies. Respondents argue that the implementation of such laws at the provincial level was established by the absence of *de facto* government control. Further, respondents assert that their charter provisions, which require the companies to comply with state policies, simply means that the companies must follow the law. Respondents also assert that the Department found no evidence of export controls during verification. AJ further claims that the lack of *de jure* government control is evidenced by the fact that its parent company is a publicly traded company. According to AJ, the absence of a list of its shareholders does not overcome this finding. Regarding *de facto* control, respondents claim the Department examined the disposition of foreign currency and profits and reviewed documentation relating to sales negotiations, contracts, loans, and management selection, and found no evidence of government control.

Guangdong and ICC

Petitioner argues that the Department should assign, as adverse facts available, a single country-wide antidumping duty rate to Guangdong because Guangdong is owned by the Chinese provincial government and the company failed to provide evidence demonstrating the absence of *de jure* and *de facto* government control. Regarding *de jure* control, petitioner maintains the interim procedures [4] on export licensing that Guangdong placed on the record merely address the issuance of export licenses, not the decentralization of government control of export activities. Petitioner also maintains that Guangdong failed to provide documentation showing how the ''Company Law of the People's Republic of China'' and the ''Temporary Provisions for Administration of Export Commodities'' are implemented in the province where Guangdong is located. Regarding *de facto* control, petitioner claims that the documents Guangdong submitted to prove that it independently sets prices and negotiates contracts are merely correspondence between ICC and ICC (Hong Kong) Ltd. (ICC is a customer of Guangdong) regarding persulfate purchases and do not support a finding that Guangdong acts independently. Petitioner points out that Guangdong has absolutely no autonomy in selecting managers because the Chinese provincial government appoints the general manager who, in turn, selects all the other managers. According to petitioner, the fact that the provincial government selects Guangdong's general manager is enough to require the Department to assign a country-wide antidumping duty rate to Guangdong (*see Notice of Preliminary Determination of Sales at Less Than Fair Value: Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China*, 61 FR 15037, 15038 (April 14, 1996) (''*Natural*

[4] ''Interim Procedures of the State Import-Export Commission and the Ministry of Foreign Trade of the People's Republic of China Concerning the System of Export Licensing''

Bristle Paint Brushes and Brush Heads'')). Finally, petitioner claims Guangdong did not demonstrate its independence from government control with respect to financial management of the company. Petitioner notes that the general manager, who is appointed by the Chinese provincial government, is the only individual who decides how to use company profits and has access to the company's bank account. Hence, petitioner urges the Department to apply a country-wide antidumping duty rate to Guangdong.

ICC and Guangdong maintain that petitioner's arguments for a single antidumping duty rate fail for several reasons. First, according to ICC and Guangdong, the separate rates test does not apply to them because USP should be based on ICC's prices and ICC is an American-owned company located in the United States (*see* Comment 27). Second, even if the Department bases USP on Guangdong's sales to ICC, Guangdong and ICC claim petitioner's argument for a single antidumping duty rate fails because the Department verified the absence of both *de jure* and *de facto* government control of Guangdong. Regarding *de jure* control, Guangdong and ICC maintain that the laws they placed on the record establish the absence of such control. Regarding *de facto* control, respondents contend that the record shows that Guangdong sets prices and negotiates contracts independently of the central and provincial government. While Guangdong and ICC acknowledge that the Chinese provincial government owns Guangdong and appoints the company's top managers, respondents claim the record shows that the provincial government is not involved in the day-to-day management of Guangdong and the government's appointment of top managers did not adversely affect the company's independence in export activities. In addition, respondents maintain that *Natural Bristle Paint Brushes and Brush Heads* did not address the appointment of top management by the provincial government and, thus, the case does not support petitioner's argument for a country-wide rate based on the provincial government's appointment of Guangdong's top managers. Respondents also note that the Department reversed its position in the preliminary determination of *Natural Bristle Paint Brushes and Brush Heads*, cited by petitioner, and found, in the final determination, that a separate rate was appropriate because the general manager was selected through a poll of the employees that was ratified by the provincial government. Thus, that case is not relevant to this determination. Lastly, Guangdong and ICC contend that the question before the Department is whether Guangdong is sufficiently independent from the central government, not the provincial government. According to respondents, the record shows Guangdong operates completely independent of the central government.

DOC Position

AJ and Wuxi

We have found that AJ is a publicly held company and Wuxi is ''owned by all the people.'' AJ and Wuxi submitted to the Department copies of the 1988, 1992, and 1993 laws under which they were organized. Each of these laws establishes the absence of *de jure* control in that they grant these companies the right to negotiate prices and sell products, make production decisions, make investment decisions and form joint ventures. Further, the information on the record relating to provincial and local governments shows that their activities with regard to AJ, Wuxi, and AJ Works are limited to such functions as taxation, business licensing, and the collection of export statistics. During verification, we found no evidence that the government controlled export prices or interfered with other aspects of conducting business with the United States.

We analyze below the issue of de facto control based on the criteria set forth in *Silicon Carbide*.

In the course of verification, we confirmed that AJ's and Wuxi's prices are not set, or subject to approval, by any government authority. This point was supported by the companies' sales documentation and correspondence. Through an examination of sales documents pertaining to U.S. persulfates sales, we noted that both AJ and Wuxi have the authority to negotiate contracts, including price, with its customers without government interference.

We confirmed, through an examination of bank and financial documents, that both AJ and Wuxi have the authority to borrow funds and to distribute the proceeds from the export sales freely, independent of government authority. Further, we have determined that both AJ and Wuxi have autonomy from the central government in making decisions regarding the selection of management.

AJ's general manager is selected by the board of directors of AJ's parent corporation whose shares are publicly traded and widely held. We found no evidence of government involvement in the selection of management.

Based on an analysis of all these factors, we have determined that AJ and Wuxi are not subject to *de facto* control by governmental authorities.

Guangdong

Respondent placed copies of laws on the record that established the absence of *de jure* control by the central government. The general manager is appointed by a bureau of the provincial government, not the central government. As noted above, there are no other exporters under the control of the provincial government. Thus, we have concluded that Guangdong is entitled to a separate rate (*see Silicon Carbide*).

Comment 4: Assigning a Country-Wide Rate to AJ

Petitioner contends the Department should, as adverse facts available, assign AJ a China-wide rate because, during verification, AJ did not provide the Department with copies of the long-term contracts for its sales to the United States. According to petitioner, AJ's failure to provide the contracts prevented the Department from verifying the completeness of the company's sales response. Because the company's failure to cooperate prevented the Department from completing a critical component of the verification, petitioner argues that the Department should apply the China-wide rate to AJ.

AJ maintains that the sales confirmations it provided the Department at verification are the long-term contracts referred to in its questionnaire responses. In addition, AJ maintains the Department compared the total quantity and value of its sales with sales reported in the company's audited financial statement and sales ledger and noted no discrepancies. AJ also maintains that the Department verified that during 1996 there were no more sales or shipments to the United States subsequent to the last reported sale. Thus, AJ claims the Department verified the completeness of AJ's sales response.

DOC Position

We agree with AJ. Although AJ reported that it sold the subject merchandise pursuant to long-term contracts, at verification we found AJ's sales confirmations for each sale to be contracts. To verify sales completeness we examined sales confirmations, traced the reported sales to invoices, sales ledgers, and the audited financial statement, and looked for unreported sales in AJ's 1996 accounting records. We noted no discrepancies. Therefore,

the use of adverse facts available for AJ is not warranted.

Comment 5: Assigning Antidumping Duty Rates to Manufacturers

If the Department assigns separate antidumping duty rates in this investigation, petitioner contends the rates should apply not only to the exporters but also to the manufacturers whose factors of production formed the basis for the separate rate. Petitioner maintains that this approach is appropriate because: (a) it is a logical approach which avoids the inaccurate assessment of cash deposits when the exporter enters subject merchandise into the United States that was produced by other manufacturers; and (b) it prevents other manufacturers from selling subject merchandise through an exporter with a low antidumping duty margin. Although petitioner acknowledges that the Department's recent practice as noted in *Coumarin* and *Lighters* has been to assign antidumping rates only to exporters, petitioner urges the Department to return to its policy outlined in *Sulfur Dyes* (*see Notice of Final Determination of Sales at Less Than Fair Value: Coumarin From the Peoples Republic of China,* 59 FR 66895 (December 28, 1994); *Notice of Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters From the People's Republic of China,* 60 FR 22359 (May 5, 1995); and *Notice of Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes From the People's Republic of China,* 58 FR 7537 (February 8, 1993)). Specifically, petitioner notes that in *Sulfur Dyes* the Department determined that any margin calculated using data from a specific producer and exporter ''would only be representative of transactions involving these two parties and are only to be applied to imports of the listed manufacturer or producer which are exported by the listed exporter.'' Petitioner also notes that in *Certain Cased Pencils* the Department assigned a zero margin only to imports of subject merchandise that are sold by the exporter and manufactured by the producers whose factors formed the basis for the zero margin (*see Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China* 59 FR 55625 (November 8, 1994)). Furthermore, petitioner claims that assigning antidumping duty rates to manufacturers participating in the investigation prevents non-participating manufacturers from selling through exporters with separate rates that are normally lower than the country-wide rates assigned to non-participants. Petitioner argues that administrative reviews do not provide an effective remedy to the problem of manufacturers selling through exporters with a low duty rate because the first administrative review is not concluded until at least two years after the final determination in the investigation. During this time, petitioner contends that the manufacturer can export to the United States using the lowest rate available. In addition, petitioner claims it should not bear the burden of assessing whether an exporter has become a conduit for new manufacturers. Thus, if the Department assigns separate rates, petitioner requests that the Department assign an antidumping rate to both the exporter and the manufacturer.

Respondents contend that the Department should assign antidumping duty rates to the exporters and not the producers in this investigation because the provision for administrative reviews will prevent the exporters from selling the merchandise of producers that may have yielded greater antidumping duty margins than the producers participating in the investigation. Respondents point out that the Department's practice is to assign antidumping duty rates only to exporters.

DOC Position

We agree with respondents. The Department's practice in cases involving NME countries is to assign rates to exporters rather than producers because the exporters actually determine the price at which the subject merchandise is sold to the United States. The Department does not ''pair'' exporters with producers in our instructions to Customs except where a company is excluded from an antidumping order (*see, e.g., Pencils,*[5] *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From the People's Republic of China,* 61 FR 14057 (March 29, 1996) (''*PVA*''), and *Notice of Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China,* 62 FR 9160, (February 28, 1997) (''*Brake Drums*''). Thus, if ''low-margin'' exporters source from less efficient producers and fail to adjust prices accordingly, this will be reflected in the assessment and future cash deposits.

[5] In *Pencils,* the Department did distinguish between suppliers for one exporter, and identified separate pairings of suppliers for that exporter, because the exporter had a zero margin on sales of merchandise from one supplier.

Comment 6: Selecting the Surrogate Producer for Overhead, SG&A and Profit

Because none of the parties in this investigation, nor the Department, could obtain financial data for Indian persulfate producers, petitioner contends the Department should base surrogate factory overhead, SG&A and profit on the financial data of a hydrogen peroxide producer because the production processes for hydrogen peroxide and persulfates are comparable. Specifically, petitioner proposes valuing surrogate overhead, SG&A and profit using the data of the Indian company; National Peroxide.

Petitioner claims that most persulfate producers also manufacture hydrogen peroxide because persulfates are manufactured using the same electrolytic process by which hydrogen peroxide has historically been manufactured. According to petitioner, much of the persulfate production capacity results from conversion of older catalytic hydrogen peroxide production facilities. Thus, petitioner maintains that many of the existing persulfate producers have business units which are organized around peroxygen chemistry and have shared management, sales, and distribution resources dedicated to both hydrogen peroxide and persulfates.

Petitioner notes that ''comparable'' merchandise, as defined by the Department, encompasses a larger set of products than ''such or similar'' merchandise, and in past cases, the Department has identified comparable merchandise on the basis of similarities in production factors (physical and non-physical) and factor intensities. (*See Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium From the People's Republic of China,* 59 Fed. Reg. 55424 (Nov. 7, 1994) (''Pure Magnesium''), and *Bicycles*).

Petitioner argues that none of the production processes used by the surrogate company proposed by respondents (Sanderson) have any similarity to the electrolytic process technology common to hydrogen peroxide and persulfates. According to petitioner, the production processes for the products manufactured by Sanderson involve simple chemical reactions based on the production of sulfuric acid. Further, petitioner maintains that Sanderson's production processes require very little, if any, technical support. On the other hand, petitioner notes that hydrogen peroxide and persulfates have oxidative functions that require application and process

technology support to ensure product safety. Accordingly, petitioner advocates using the data of National Peroxide as a better source of SG&A, overhead and profit.

AJ Works argues that the Department should base surrogate factory overhead, SG&A, and profit on data for the Indian metals and chemicals industry because none of the companies proposed as surrogates actually produce the subject merchandise. Because the proposed surrogate companies do not produce the subject merchandise, AJ Works contends their financial data may not be representative of the industry of which AJ Works is a part. Moreover, AJ Works maintains that recent Departmental practice in PRC cases is to value factory overhead, SG&A, and profit using the metals and chemicals industry data from the *Reserve Bank of India Bulletin* (''RBI''). (*see e.g. Coumarin, Notice of Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China* (''*Saccharin*''), *Notice of Final Determination of Sales at Less Than Fair Value: Sebacic Acid from the People's Republic of China* (''*Sebacic Acid*''), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Paper Clips from the People's Republic of China,* (''*Paper Clips*'')). However, AJ Works argues that if the Department decides to base surrogate overhead, SG&A, and profit rates on the data of a single company, the Department should continue to use Sanderson's financial data, because Sanderson uses a production process similar to the one used to produce persulfates. AJ Works claims there is no justification for using National Peroxide's financial data because there are significant differences between the production process of hydrogen peroxide and persulfates. Zhujiang argues that the Department should continue to base surrogate factory overhead, SG&A, and profit on Sanderson's financial statements rather than National Peroxide's data because Sanderson's and Zhujiang's operations are comparable. Further, Zhujiang contends that its operation is quite lean compared to petitioner's description of persulfate producers with business units organized around peroxygen chemistry and shared management, sales, and distribution resources dedicated to hydrogen peroxide. Therefore, Zhujiang claims it would be inappropriate to base its factory overhead, SG&A and profit on values derived from the National Peroxide hydrogen peroxide. Finally, Zhujiang argues that the Department would double-count SG&A if it bases its SG&A on National Peroxide's financial data because, unlike Zhujiang, National Peroxide has a huge array of sales and distribution staff. Specifically, Zhujiang notes that it relies on ICC for sales and distribution services and the Department has already accounted for ICC's SG&A in its analysis of U.S. price. Hence, Zhujiang argues the Department will double-count SG&A if surrogate values are obtained from a producer that does not conduct business in a manner similar to Zhujiang.

DOC Position

Based on the submitted information, verification findings, and the Department's own research, we agree with petitioner that the financial data from National Peroxide's *Annual Report* for the fiscal year-ending March 31, 1995, is the most appropriate surrogate information available to use for our final determination. The record indicates that the production process for hydrogen peroxide most closely resembles the production process for persulfates. Both products require large capital outlays for production, storage, technical support and special safety requirements. Although we found in the preliminary determination that National Peroxide's financial information, particularly SG&A expenses, were inconsistent with that of certain other Indian chemical producers, we have no information showing that the production processes of those producers resemble the production process for persulfates. Thus, we have determined that inconsistencies between the financial data for National Peroxide and these other Indian producers does not provide a basis for rejecting National Peroxide's financial data. In addition, we have no information showing that National Peroxide's financial data is inconsistent with that of other producers of hydrogen peroxide. Further, because both production processes have similar characteristics (*e.g.,* large capital outlays, special safety requirements) which may impact SG&A, it is reasonable to conclude that National Peroxide's SG&A is comparable to that of a company producing persulfates (see Final Valuation Memorandum for further discussion regarding the similarities of the production process for hydrogen peroxide and persulfates). In addition, the product line of the respondents resembles the product line of National Peroxide. As in the preliminary determination, the Department made an extensive attempt in the final determination to obtain the financial statements for an Indian persulfates producer. However, the only known, existing persulfates producers are privately held. Consequently, they do not issue public financial data about their operations. We did not use data for the Indian metals and chemicals industry from the RBI to value factory overhead and SG&A because the more industry-specific data (*i.e.,* National Peroxide) is preferable to a broad RBI data, which includes metals as well as chemicals producers. Thus, following, the Department's past practice of valuing factory overhead, SG&A and profit using surrogate values for the industry-specific experience closest to that of the subject merchandise, we used National Peroxide's financial data in the final determination because we concluded that National Peroxide's production is closer to that of the subject merchandise than Sanderson's production. *(See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium and Nitrided Vanadium From the Russian Federation,* 60 FR 27957, (May 20, 1995) (''Ferrovanadium''); and *Notice of Final Determination of Sales at Less Than Fair Value: Magnesium from Ukraine* 60 FR 16432, (March 30, 1995) (''Magnesium from Ukraine'')).

Comment 7: Using Skill-Specific Labor Rates

Petitioner maintains that the Department should not have used skill-specific labor rates from *Coumarin* in the preliminary determination because the Department's current practice is to assign to skilled, semi-skilled, and unskilled workers the single labor rate reported in the *Yearbook of Labor Statistics* (''YLS''). Petitioner contends a single labor rate has been used for different skill levels in every PRC investigation and administrative review since *PVA*. Furthermore, petitioner argues for the use of a single labor rate because the two producers in this investigation classified laborers at different skill levels. Petitioner contends this inconsistency between the producers calls into question the skill levels reported by respondents. Thus, petitioner urges the Department to use a single labor rate for all skill levels rather than the separate rates used in the preliminary determination.

Zhujiang, which reported that all its workers were skilled, did not comment on this issue.

AJ Works maintains that it reported different skill levels for its workers and the Department should use this information in its analysis.

DOC Position

We agree with petitioner. Although we used the skill-specific rates derived in *Coumarin* in the preliminary

determination, recent Departmental practice has been to apply the labor rate from the YLS to all reported labor skill levels because skill levels are not identified in the YLS. (*see Brake Drums*). In *Coumarin* the Department followed the methodology adopted in the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers From the People's Republic of China* (''*Helical Spring Lock Washers*'') (58 FR 48833 (September 20, 1993)) . In the *Helical Spring Lock Washers* investigation the parties agreed to treat the labor rate from the YLS as a semi-skilled rate which was then adjusted to derive a skilled and unskilled rates. However, in the instant case there is no agreement among the parties to assume that YLS's labor rate is representative of any particular skill level. Therefore, there is no basis on which to calculate the skilled and unskilled labor rate. Therefore, for the final determination, we have used one labor rate for all reported skill levels.

Comment 8: Additional Packing Materials

AJ

Petitioner requests that the Department include all additional packing material identified at verification in the factors of production for AJ Works.

AJ Works maintains its factors of production should include only the additional packing materials that were identified in the company's revisions presented at verification, not the additional ''unreported'' packing materials identified in the Department's verification report. AJ Works claims it does not use the ''unreported'' packing materials and thus, these materials should not be added to the factors of production.

Zhujiang

Petitioner maintains the factors of production should include the unreported packing material discovered at verification.

Zhujiang did not comment on this issue.

DOC Position

We agree with petitioner. Section D of the Department's questionnaire concerning the factors of production request for information requires the respondent to report ''each type of packing material * * * used to pack the subject merchandise for export to the United States''.

Because AJ Works and Zhujiang failed to report all the packing materials as requested by the Department, for the final determination, we have included the unreported packing material in the factors of production (*see* the Final Valuation Memorandum; also *see* the Memorandum to the File reporting the results of the verification of AJ Works dated March 31, 1997).

Company Specific Comments

AJ Works

Comment 9: Recalculating Factors of Production for Sodium Persulfate

Petitioner asserts that AJ Works' reported incorrect factors of production for sodium persulfate because the reported factors were only for the production of sodium persulfate exported to the United States rather than for the total production of sodium persulfate. Petitioner claims that reporting factors solely for exported subject merchandise is contrary to the instructions in the Department's questionnaire and, in the instant case, has resulted in inaccurate reporting. Specifically, petitioner claims that the Departments' questionnaire contemplates that the supplier will base per-unit factor amounts on total production. Petitioner claims this intent is evidenced by the questionnaire requirement that producers with multiple production facilities must report factors for each facility even if the exported subject merchandise is only produced in one facility.

Petitioner also claims that AJ Works' reporting methodology resulted in inaccuracies because the company reported the factors of production for export grade sodium persulfate without having the capability to ensure that only export grade sodium persulfates were shipped to the United States during the POI. Elaborating on this claim, petitioner notes that AJ Works' export and domestic grade sodium persulfates differ in that AJ Works used internally-produced ammonium persulfate to produce export grade sodium persulfate and purchased ammonium persulfate to produce domestic grade sodium persulfate. Although the Department found that AJ Works' differentiated between export and domestic grade sodium persulfate in its production records, petitioner maintains that the company demonstrated no method for physically distinguishing between export and domestic grade sodium persulfate. In fact, petitioner claims export and domestic grade sodium persulfates were commingled in AJ Works' finished goods warehouse. Because the type of ammonium persulfate used to produce sodium persulfate has a significant impact on margin calculations and AJ Works cannot ensure that only sodium persulfates produced with internally-produced ammonium persulfate were shipped to the United States, petitioner claims that it would be incorrect to base NV for sodium persuflate solely on factors for export grade subject merchandise. Thus, petitioner recommends calculating per-unit factors of production for sodium persulfate using the factor and production quantities for total production.

In calculating NV for sodium persulfate from total production amounts, petitioner recommends, as adverse facts available, that the Department value both purchased and internally-produced ammonium persulfate using the Indian surrogate price. In the alternative, petitioner recommends calculating a weighted-average NV for sodium persulfate based on the percentage of sodium persulfate produced using purchased ammonium persulfate and the percentage produced using internally-produced ammonium persulfate. If the Department uses petitioner's alternative recommendation, petitioner urges the Department to include the factor of production, the packing material, and the labor required to pack and transport internally-produced ammonium persulfates within AJ Work's factory.

AJ Works argues that it maintains an excellent method, which was verified by Department officials, for keeping track of the products produced using internally-produced ammonium persulfate and purchased ammonium persulfate in both its accounting system and at the production site. Further, AJ Works states that because it uses internally-produced ammonium persulfate to produce sodium persulfates for the export market and purchased ammonium persulfate to produce sodium persulfate for the domestic market, it must separately track the amounts produced for each market. Thus, it is not necessary to resort to a surrogate value to value the internally-produced ammonium persulfate used to produce sodium persulfate for export. Rather, the Department should continue to calculate the NV for sodium persulfate based on AJ Works' factors of production for internally-produced ammonium persulfate.

DOC Position

We agree with petitioner and applied the same methodology used in past Department cases (*see e.g., Coumarin*) for the final determination. We determined that the weighted-average cost is more representative of the company's cost of production during the

POI than to assume that it produced all of the input material. Because the reported data for the persulfates sold in the PRC includes inputs which have a different cost than the input for exported subject merchandise, the reported data for the factors of production used to calculate the margin would be skewed if only factors for exported merchandise were used. Further, since AJ Works tracks its use of internally produced ammonium persulfate in its accounting system but not in its production system, there is no way to prove which ammonium persulfate, the internally-produced or purchased, was used in the production of the sodium persulfate exported to the United States.

Accordingly, to calculate the antidumping margin we used the weighted-average cost of factors of production for subject merchandise.

Comment 10: Surrogate value for purchased ammonium persulfate

Petitioner requests that, in order to calculate the NV for subject merchandise, the Department should continue to value purchased ammonium pursulfate using the ammonium persulfate value provided to the Department by the petitioner in its July 11, 1996, submission because it is a publicly available quote of the domestic price from an Indian producer of ammonium persulfate in India (Rajendra Chemicals (P) Ltd.) Insofar as petitioner points out that it did not solicit this price quote, petitioner claims that this source is both reliable and contemporaneous with the POI. (*See Memorandum from Dave Muller, Office of Policy to Louis Apple* dated August 1, 1996).

AJ Works argues that the Department should not use the surrogate value information from India to value a raw material input such as ammonium persulfate used to produce potassium persulfate because the value submitted from the *Chemical Weekly* by petitioner is an export price and is artificially high. AJ Works contends that, according to the Department's past practice, *see, e.g., Furfuryl Alcohol,* and *Coumarin,* the Department's first preference in determining normal value in a nonmarket economy investigation is the calculation of the value of factors of production. Since the Department has verified the actual factor inputs used to produce ammonium persulfates, surrogate values for those inputs is the most accurate way to value ammonium persulfate to calculate normal value for all three products under investigation.

DOC Position

We agree with petitioner. In accordance with the statute's direction to measure and value ''the factors of production utilized in the production of the merchandise'' (*see* Section 773(c)(1) of the Act) and the Department's practice to value inputs which were purchased in a non-market economy using surrogate values from a market economy at a similar stage of development (*see,* e.g., *Coumarin,* and *Brake Drums*), we continued to treat the purchased ammonium persulfate used in the production of potassium persulfates as a completed input and we valued it on the basis of a surrogate. Further, the Department has made significant independent efforts throughout the investigation to obtain publicly available information for ammonium persulfate and was unable to obtain such information. Thus, for both the preliminary and final determinations, our selection of surrogate values was based on the only information on the record, which was a price quote from an Indian producer of persulfates (*see* Final Valuation Memo).

Comment 11: Normal Value for Sodium Persulfate

Petitioner contends that the Department should value sodium persulfate using the constructed value in the petition because Zhujiang failed to demonstrate at verification that it used internally-produced, rather than purchased, ammonium persulfate in the production of sodium persulfate. Because the verifiers noted Chinese-labeled bags of ammonium persulfate at the sodium persulfate production facility, petitioner concludes that some of the ammonium persulfate used to produce sodium persulfate was purchased from other persulfate factories in China. Thus, as adverse facts available, petitioner urges the Department to value sodium persulfate using the constructed value in the petition. However, if the Department uses Zhujiang's factors of production to value sodium persulfate, petitioner requests that the Department include as factors the packing material and labor required to transport ammonium persulfate within Zhujiang's factory.

Zhujiang maintains that there is no record evidence showing it produced sodium persulfate using ammonium persulfate purchased from outside companies. According to Zhujiang, it used Chinese-labeled bags for production that was either consumed within the factory or sold in the domestic market. Thus, Zhujiang states there was no need to label the bags in English. Zhujiang argues that Chinese labels provide no indication that it purchased ammonium persulfate from another factory. Moreover, Zhujiang maintains that the Department thoroughly examined factory records and found no evidence of purchases of ammonium persulfate. Lastly, Zhujiang points out that the petitioner's affidavit, indicating Zhujiang used purchased ammonium persulfate to produce sodium persulfate, referred to production that occurred well before the POI.

DOC Position

We agree with Zhujiang. At verification we found that the labeling on the Chinese-labeled bags in question was the same as the labeling on bags used to pack internally produced ammonium persulfate. Moreover, we found no evidence of ammonium persulfate purchases in Zhujiang's accounting records. Therefore, for the final determination, we valued sodium persulfate using surrogate values.

However, we agree with petitioner that Zhujiang failed to report factors of production for the materials used to pack the internally produced ammonium persulfate used in sodium persulfate production. Therefore, for the final determination, we have included these packing materials in the factors of production for sodium persulfate. We did not include additional factors for the labor required to transport internally produced within Zhujiang's factory because this labor is already included in the reported labor factors.

Comment 12: Average Surrogate Prices

Respondents argue that, in the preliminary determination, the average surrogate values that the Department calculated from Indian prices were simply a function of the *Chemical Weekly* issues the Department happened to have on hand and they did not reflect the average price during the POI. Respondents recommend that the Department calculate average POI surrogate prices by dividing monthly prices for the POI by the number of months in the POI.

Petitioner contends that, contrary to respondents' assertion, in the preliminary determination, the Department correctly derived average surrogate values by dividing monthly prices by the number of months for which the prices were provided. Because this methodology eliminates distortions and is precisely the methodology recommended by respondents, petitioner urges the Department to continue using this methodology in the final determination.

DOC Position

We agree with petitioner. In the preliminary determination the Department calculated average surrogate prices for certain factors using prices from all of the *Chemical Weekly* issues on the record, which were provided by both parties and acquired through the Department's research. Although respondents claim the Department's calculation of average surrogate values is skewed because the *Chemical Weekly* issues used in the average may be issues from months with the highest prices, respondents failed to place *Chemical Weekly* issues on the record which supported their assertion. Further, the average price the respondents calculated from Indian *Chemical Weekly* prices did not differ materially from the prices the Department calculated from information on the record. Therefore, in the final determination, we will rely on the information on the record.

Comment 13: Correction of a ministerial error

AJ requests that, for the final determination, the Department include one U.S. transaction that the Department inadvertently omitted from the calculation of average U.S. price when making its preliminary determination.

Petitioner did not comment on this issue.

DOC Position

We agree with respondent. As noted in the Ministerial Error Memorandum, the Department inadvertently omitted one transaction when calculating the average U.S. price for the preliminary determination. We have corrected for this error in the final determination.

Comment 14: Electricity Consumption

As adverse facts available, petitioner urges the Department to base electricity consumption for AJ Works on amounts contained in the petition rather than the amounts AJ Works reported to the Department because the company failed to support the accuracy of the reported consumption. Petitioner notes that AJ Work's electricity meter readings had to be multiplied by an adjustment factor of either 120, 360, or 30 to derive the actual amount of electricity consumed because the capacity of the meters prevented the full amount of electricity used by the factory to flow through the meters. Petitioner claims AJ Works failed to demonstrate the reasonableness of the adjustment factors and, thus, the Department should base electricity consumption on information contained in the petition.

AJ Works claims the Department should use the reported and verified factors of production to calculate electricity costs. AJ Works points out that it is common practice in the electricity industry to use a multiplier to calculate total electricity consumption from electricity meter readings. Thus, AJ Works maintains the use of the adjustment factor was reasonable, accurate, and resulted in a verified consumption figure.

DOC Position

We agree with respondent. The Department verified the total amount of the electricity consumed. Further, the Department contacted an independent energy specialist, who confirmed that an adjustment factor is commonly used in the electrical industry (*see* Memorandum to the File dated April 18, 1996, for further discussion of this subject). Therefore, in our final determination, we included the verified amount of electricity consumed in the factors of production and used the adjustment factor.

Comment 15: Adjusting Caustic Soda Prices

AJ Works contends that, in the preliminary determination, the Department incorrectly adjusted the surrogate price for caustic soda because it incorrectly assumed that the surrogate price was for a caustic soda solution with a 48 percent concentration. AJ Works contends the surrogate price, which was from India's *Chemical Weekly,* is the price per kilogram of caustic soda, not the price of a caustic soda solution. AJ Works claims that if the price was for a solution, it would be critical for *Chemical Weekly* to identify the concentration of the solution. However, AJ Works notes that the publication did not do so. In keeping with past Departmental practice, AJ Works maintains the Department should not assume the surrogate price was for anything less than a 100 percent concentration (*see* page 2 of the Factor Values Memorandum in Antidumping Investigation of *Polyvinyl Alcohol From China*) (''PVA Factors Values Memorandum''). Thus, AJ Works recommends calculating the surrogate cost for caustic soda by multiplying the surrogate unit price by the reported consumption and the actual concentration used in production.

Petitioner did not comment on this issue.

DOC Position

We agree with respondent. We adjusted the concentration level of the caustic soda priced in *Chemical Weekly* in the preliminary determination calculation. Based on further analysis, and in accordance with Departmental practice, for the final determination we assumed that the chemical concentration is 100 percent, because there is no information on the record specifying the chemical concentration. Therefore, we derived chemical input values by multiplying the surrogate price by the concentration and amount used in production. (*See* PVA Factors Values Memorandum).

Comment 16: Correcting Control Numbers

Wuxi requests that for the final determination, the Department correct control numbers in the company's sales listing, which were inadvertently reversed through its own clerical error.

Petitioner did not comment on this issue.

DOC Position

We agree with respondent. Verification findings confirmed that Wuxi inadvertently reversed control numbers in its sales listing, and we have corrected for this error in the final determination.

AJ

Comment 17: International Freight Expenses

Petitioner maintains that the Department should use, as adverse facts available, the highest international freight expense incurred by AJ during the POI to value international freight expenses for several invoices because AJ was unable to explain the methodology used to determine the freight expenses for those invoices. According to petitioner the Department was unable to verify the international freight expenses for the invoices in question.

Respondents argue that, other than the invoices cited by petitioner, the Department verified international freight expenses for all of the invoices examined. Consequently, the Department should accept the reported international freight amounts for all transactions. Respondents also argue that, even though company officials could not explain how international freight was allocated to the invoices in question, the allocation was performed in the ordinary course of business and, thus, it should be accepted. However, respondents suggest that if the Department rejects the allocation methodology presented during the verification, it has in its verification exhibits the total freight expense and the total tonnage for the invoices in question, which it can use to allocate the international freight expenses

among the invoices on a strict per-ton basis.

DOC Position

We agree with respondents that there is no need to resort to adverse facts available to value international freight for the invoices in question. Section 776(b) of the Act provides that the Department may use an inference that is adverse to the interests of a party in selecting among facts otherwise available if the party failed to cooperate by not acting to the best of its ability to comply with requests for information. In the instant case AJ attempted, to the best of its ability, to explain how international freight was allocated to the invoices in question; however it was unable to support its explanation. Therefore, for the final determination, the Department allocated the freight among the invoices in question on a per-ton basis.

Comment 18: Inland Freight, Brokerage and Handling

Petitioner notes that although Wuxi reported freight and handling charges two days before the preliminary determination, the Department made no adjustments to Wuxi's U.S. sales for those charges. Petitioner contends that although the Department did not adjust U.S. price for those charges in the preliminary determination, the Department should make an adjustment to U.S. price for inland freight and brokerage and handling in the final determination because the Department verified that Wuxi incurred such charges. Petitioner notes that the Department's policy as outlined in *Brake Drums* is to strip all movement charges, including foreign inland freight, from the U.S. price being compared to normal value. In addition, petitioner claims the Department should use adverse facts available to value the charges Wuxi reported for emergency loading, and highway and bridge fees which are separate fees from brokerage and handling charges.

Respondent states that the Department should make adjustments to U.S. price for inland freight and brokerage and handling based on the factors submitted by Wuxi and verified by the Department. Wuxi maintains the use of adverse facts available with regard to emergency loading and highway and bridge fees is not called for because such fees are included in inland freight fees.

DOC Position

We agree with petitioner and respondent, in part. Petitioner is correct that the Department should make an adjustment to U.S. price for inland freight and brokerage and handling. Further, due to the fact that these amounts were reported in PRC currency and were based on an NME service provider, in accordance with the Department practice in an NME case, for the final determination, we used a surrogate value for inland freight transportation and brokerage and handling for certain fees reported by Wuxi. We agree with respondent that the emergency loading expense is included in inland freight fees (*see* Final Valuation Memo).

Comment 19: Value for Ammonia

Petitioner requests that the Department reject the Indian ammonia pricing information submitted to the Department by the respondents ICC, Zhujian and Guangdong in their April 4, 1997, submission. Petitioner points out that this pricing information is not representative of prices during the POI because it only covers three weeks and, as the respondents stated in their April 4, 1997 letter, ammonia prices fluctuate substantially. Thus, as petitioner maintains, given that the price for ammonia fluctuates substantially, three weeks is not an accurate indicator of the average value for ammonia during the six-month POI. Therefore, petitioner requests that the Department use petitioner's information because it's the most representative of prices during the POI.

Respondents did not comment on this issue.

DOC Position

We agree with petitioner. The Department used the Indian values provided by the petitioner because these values are most representative of surrogate prices for ammonia during the POI.

Comment 20: Ammonium Persulfate Spoilage

Petitioner maintains that spoilage of ammonium persulfate used in the production of sodium persulfate should have been included in the reported production factors for sodium persulfate. Petitioner notes that, at verification, the Department identified unreported amounts for ammonium persulfate spoilage in Zhujiang's overhead expense accounts. Because this was spoilage of ammonium persulfate used to produce sodium persulfate, petitioner requests that the Department include the amount of the spoilage in the total amount of ammonium persulfate consumed to produce sodium persulfate.

Respondents did not comment on this issue.

DOC Position

We agree with petitioner. Ammonium persulfate is a direct material used to produce sodium persulfate. Thus, spoilage of this product should be included in the cost of production of sodium persulfate. Hence, for the final determination, we included the amount of ammonium persulfate spoilage in the factors of production for sodium persulfate.

Comment 21: Adjustments for By-Products

According to petitioner, the Department should not adjust persulfate factors of production to account for by-products because the by-products are discarded. Petitioner notes that at verification the Department found that all the by-products generated from producing the subject merchandise are waste that are neither sold nor used in further production. Because the by-products are not sold, petitioner claims that the Department should not adjust the factors of production to account for by-products.

Respondents did not comment on this issue.

DOC Position

We agree with petitioner. The record shows that Zhujiang did not use or sell the by-products it generated from producing persulfates. Thus, there is no economic benefit associated with the by-products. Therefore, in accordance with past practice, for the final determination we did not adjust factors of production for by-products (*see Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Ukraine* 60 FR 16432, 16435 (March 30, 1995), and *Coumarin*).

Comment 22: Sulfuric Acid Used in Sodium Persulfate Production

Petitioner asserts that sulfuric acid should have been reported in Zhujian's response as a factor of production for sodium persulfate because it is an input in the sodium persulfate production process. Petitioner bases its assertion on company officials' statement at verification that sulfuric acid is used to absorb ammonia gas (a by-product) generated from producing sodium persulfate. Thus, petitioner contends sulfuric acid is a material input in the sodium persulfate production process.

Zhujiang claims it reported sulfuric acid as a factor of production and the Department verified the amount reported.

DOC Position

We agree with Zhujiang. Zhujiang reported sulfuric acid as one of the inputs used in sodium persulfate production and we included the amount reported in our NV calculation in the final determination.

Comment 23: Water Used in Sodium and Ammonium Persulfate Production

Petitioner requests that the Department base the quantity of water consumed in production on adverse facts available because Zhujiang failed to report water consumption in its submissions and did not provide water consumption figures in response to Department officials' request at verification.

Zhujiang states that the Department's well-established practice is to consider water consumption part of factory overhead (*see Coumarin* Comment 9 and *Saccharin*). In the instant case, Zhujiang urges the Department not to divert from its normal treatment of water consumption.

DOC Position

The Department's normal practice is to presume, absent evidence to the contrary, that the surrogate value for factory overhead includes water consumption (*see Sulfanilic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review* 61 FR 53711, 53716 (October 15, 1996)). However, in the instant case, the record shows that the cost of water was not included in the expenses used to compute surrogate factory overhead. Therefore, we have included a factor for water in Zhujiang's factors of production. In addition, because Zhujiang failed to provide the requested water consumption figures, and Section 776(b) of the Act provides that adverse inferences may be used against a party that has failed to cooperate, as adverse facts available, we have based the amount of water consumption on the greatest reported POI per-unit water consumption figures in the petition or in the public versions of the other respondent producers submissions in this investigation.

Comment 24: Supplier Distances

According to petitioner, during verification Zhujiang failed to support the percentage of inputs purchased from each supplier. Thus, petitioner argues that the Department cannot use the reported distances between suppliers and the factory because the Department does not know what percentage of the input came from each supplier. Petitioner therefore urges the Department to use as adverse facts available for Zhujiang, the greatest reported distance between the factory and a supplier of an input as the distance between the factory and all suppliers of that input.

Respondents did not comment on this issue.

DOC Position

We agree with petitioner. Section 776(a)(2)(D) of the Act provides that if an interested party provides information that cannot be verified, the Department shall, subject to Section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. In addition, Section 776(b) of the Act provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. Department officials made numerous requests over the course of the verification for documentation supporting the reported percentage of inputs purchased from each supplier. Despite the requests, Zhujiang failed to provide supporting documentation. Therefore, for the final determination, we have used the greatest reported distance between the factory and a supplier of an input as the distance between the factory and all suppliers of that input.

Guangdong

Comment 25: Identifying the Appropriate Sales for USP—Knowledge of Destination

Petitioner claims Guangdong's sales to ICC must serve as the basis for calculating USP because the sales meet the definition of export price sales. Specifically, petitioner notes that the transaction between Guangdong and ICC constitutes the first sale of subject merchandise to an unaffiliated purchaser in the United States. In addition, petitioner notes that most of the persulfates that Guangdong sold to ICC were shipped to the United States entered the customs territory of the United States. According to petitioner, merchandise within the scope of a proceeding that is entered into the customs territory of the United States is subject to antidumping duties. Thus, petitioner asserts that Guangdong cannot claim its sales to ICC are not U.S. sales simply because ICC resold some of the merchandise to customers outside the United States. Moreover, petitioner maintains that the ultimate destination of the merchandise in question is irrelevant in the instant case because the merchandise first entered the customs territory of the United States. Alternatively, petitioner argues that there is ample evidence that Guangdong knew the destination of the merchandise it sold to ICC.

ICC argues that the entry into the customs territory of the United States is not sufficient to create a U.S. sale. ICC argues that it is in the same position as a third-country reseller of merchandise purchased from Guangdong and that the Department's reseller methodology should apply. ICC argues that it imports the merchandise into its warehouse in New Jersey, but then resells the merchandise. It may resell it to a customer in the United States, or it may resell the merchandise to a customer outside the United States. ICC argues that because it functions as a reseller in this manner, the Department should determine who had knowledge that the merchandise was destined for customers in the United States. Because Guangdong had no knowledge of the ultimate destination of the merchandise, ICC asserts, the Department should use ICC's prices to its customers in the United States as the U.S. price.

DOC Position

We disagree with ICC that it is in the same position as a third-country reseller. EP is based on the first sale, prior to importation, to an unaffiliated purchaser in or for exportation to the United States. Because ICC is an unaffiliated purchaser in the United States, whether the merchandise is resold by ICC to a U.S. customer or to a customer outside the United States is immaterial. The Department cannot disregard U.S. sales based on the destination of merchandise after it is sold to an unaffiliated purchaser in the United States. Therefore, we will use as EP the price ICC paid Guangdong for merchandise entering the United States for consumption. Where there is a direct sale to an unaffiliated purchaser in the United States there is no issue of knowledge. Guangdong sold the merchandise directly to an unaffiliated purchaser (ICC) in the United States. Thus we have determined that Guangdong is the appropriate respondent in this investigation. Because sales from Guangdong to ICC are the relevant transactions, we did not summarize or address issues raised regarding ICC's U.S. sales.

We also note that entry into the Customs territory is not sufficient to constitute a U.S. sale; merchandise must be entered for consumption before it may considered a U.S. sale (*see Titanium Metals Corporation* v. *United States*, 901 F. Supp. 362 (CIT 1995). According to ICC, it would have to pay cash deposits when its merchandise enters the United States; under this

condition it is being entered for consumption and being re-exported later.

Comment 26: Adjusting USP for Transportation Expenses

Petitioner contends that the Department should reduce USP by the expenses the Zhujiang factory incurs to transport persulfates from the plant to the factory's warehouse where ICC takes possession of the merchandise. Petitioner claims that reducing USP by these transportation expenses is in accordance with the Department's policy outlined in *Brake Drums*. Because Zhujiang did not submit factors for these expenses, petitioner requests that the Department use, as facts available, the greatest amounts incurred by any respondent in this investigation for inland freight and brokerage and handling.

Respondents argue that USP should not be adjusted by intra-factory transportation expenses because these expenses are part of factory overhead. Respondents maintain that intra-factory transportation costs are inherently part of factory overhead and it would be very unusual for the Department to reduce USP by such costs, particularly without determining whether the costs have been excluded from the surrogate value for factory overhead. Further, respondents claim *Brake Drums* does not support petitioner's position because in that case the Department reduced factory overhead by the surrogate cost of transportation expenses before deducting foreign inland freight costs from USP. Respondents also note that the facts in the instant case are similar to the facts in *Titanium Sponge From Russia* where the Department did not reduce USP by foreign inland freight expenses (*see Titanium Sponge From the Russian Federation: Notice of Final Results of Antidumping Duty Administrative Review* FR 61 58525, 58529 (November 15, 1996) (''*Titanium Sponge From Russia*''). Specifically, respondents note that like the instant case, in *Titanium Sponge From Russia*, the non-market economy producer, who did not know the ultimate destination of the subject merchandise, incurred foreign inland freight expense selling the subject merchandise to a market economy exporter who took physical possession of the merchandise. Thus, respondents contend the Department should not reduce USP by intra-factory transportation expenses.

DOC Position

We agree with respondents that USP should not be reduced by intra-factory transportation expenses. Section 772 (c)(2)(A) of the Act states that USP should be reduced by expenses which are included in USP and ''incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States'' (emphasis added). When a reseller is the exporter rather than the producer, it is the Department's practice to consider the place from which the reseller shipped the merchandise as the ''original place of shipment'' (*see Titanium Sponge From Russia*). Hence, in the instant case the ''original place of shipment'' is Zhujiang's warehouse because the reseller/exporter, Guangdong, shipped the subject merchandise from that point. Thus, transportation costs incurred to bring the merchandise from the plant to the factory's warehouse should not be deducted from USP.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of persulfates from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of our notice of the preliminary determination in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or posting of bond equal to the weighted-average amount by which the NV exceeds EP as indicated in the chart below. This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weight-average margin percentage
Sinochem Jiangsu Wuxi Import & Export Corporation	40.97
Shanghai Ai Jian Import & Export Corporation	42.18
Guangdong Petroleum Chemical Import & Export Trade Corporation	43.93
China-wide Rate	134.00

The China-wide rate applies to all entries of subject merchandise except for entries from exporters that are identified individually above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: May 12, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–13060 Filed 5–16–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil; Extension of Time Limit for Antidumping Duty Administrative Review

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

ACTION: Silicon metal from Brazil; Extension of time limit for antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for its preliminary results in the administrative review of the antidumping order on silicon metal from Brazil. The review covers the period July 1, 1995, through June 30, 1996.

EFFECTIVE DATE: May 19, 1997.

FOR FURTHER INFORMATION CONTACT: Alexander Braier or James C. Doyle, AD/ CVD Enforcement, Group III, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave. N.W., Washington, D.C. 20230; telephone: (202) 482–3818.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the original time limit, the Department is extending the time limit for the completion of the preliminary results to July 31, 1997, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA). (See Memorandum from

Joseph A. Spetrini to Robert S. LaRussa on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce).

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the URAA (19 U.S.C. 1675(a)(3)(A)).

Dated: May 9, 1997.

Roland MacDonald,

Acting Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 97–13059 Filed 5–16–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Certain Stainless Steel Wire Rod From India; Extension of Time Limit of Antidumping Duty Administrative Review

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

ACTION: Notice of extension of time limit of new shipper antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results in the new shipper administrative review of the antidumping duty order on certain stainless steel wire rod from India, covering the period January 1, 1996 through June 30, 1996, because the review is extraordinarily complicated.

EFFECTIVE DATE: May 19, 1997.

FOR FURTHER INFORMATION CONTACT: Donald Little or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On February 11, 1997, the Department published in the **Federal Register** the preliminary results of this review (*see Certain Stainless Steel Wire Rod From India; Preliminary Results of New Shipper Antidumping Duty Administrative Review*, 62 FR 6171). The review covers the period January 1, 1996, through June 30, 1996. We have determined that this review is extraordinarily complicated within the meaning of section 751(a)(2)(B)(iv) of the Act (*see* Memorandum from Joseph A. Spetrini to Robert S. LaRussa, Extension of Time Limits for New Shipper Antidumping Duty Administrative Review of Stainless Steel Wire Rod From India, May 7, 1997). Therefore, in accordance with that section, the Department is extending the time limits for the final results to July 11, 1997. This extension is in accordance with section 751(a)(2)(B)(iv) of the Act.

Dated: May 7, 1997.

Roland L. MacDonald,

Acting Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 97–13056 Filed 5–16–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Duke University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–021. *Applicant:* Duke University, Durham, NC 27708. *Instrument:* ICP Mass Spectrometer, Model PlasmaQuad 3. *Manufacturer:* VG Elemental, United Kingdom. *Intended Use:* See notice at 62 FR 15657, April 2, 1997.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides analysis of trace elements at less than part per trillion abundance levels with a precision of ±2.0%. This capability is pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–13054 Filed 5–16–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Skidmore College; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–026. *Applicant:* Skidmore College, Saratoga Springs, NY 12866. *Instrument:* Electron Microscope with Accessories, Model JEM–1010. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 62 FR 17783, April 11, 1997. *Order Date:* January 31, 1997.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–13053 Filed 5–16–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S.

Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–031. *Applicant:* University of Illinois at Chicago, Research Resources Center, 901 S. Wolcott Avenue, Chicago, IL 60612–7341. *Instrument:* Electron Microscope, Model JEM–1220. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The article is intended to be used for studies of the molecular architecture of tissues, cells and isolated molecules obtained as part of the experimental data derived from biomedical research projects. The experiments conducted will involve determining structural alterations in cells during different physiological activities and in pathological states. In addition, the instrument will be used for training Ph.D. candidates, postdoctoral fellows and staff in the biomedical field.

Application accepted by Commissioner of Customs: April 22, 1997.

Docket Number: 97–032. *Applicant:* University of Illinois at Chicago, Research Resources Center, 901 S. Wolcott Avenue, Chicago, IL 60612–7341. *Instrument:* Electron Microscope, Model JEM–3010. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used for studies of minerals, mineral analogs, materials related to industrial processes, sample interfaces, metals and glass phases of different compounds. *Experiments will include:* (1) Utilizing image processing and electron diffraction patterns to locate electron densities and (2) examining texture, structural alterations, phase transformation, twinning, polytypism, domains, precipitates, exsolution, deformation defects on microstructure and plasticity, and similar phenomena and processes. In addition, the instrument will be used for training Ph.D. candidates and post-doctoral fellows. *Application accepted by Commissioner of Customs:* April 22, 1997.

Docket Number: 97–033. *Applicant:* Lamont-Doherty Earth Observatory of Columbia University, Rte 9W, Palisades, NY 10964. *Instrument:* ICP Mass Spectrometer, Model Plasma 54. *Manufacturer:* VG Elemental, United Kingdom. *Intended Use:* The instrument will be used for studies of the elemental abundance and isotopic composition of naturally occurring samples, including coral, shell sediments, rocks and natural waters in order to precisely determine the age of the material. *Application accepted by Commissioner of Customs:* April 24, 1997.

Docket Number: 97–037. *Applicant:* University of Illinois at Urbana-Champaign, Purchasing Division, 506 South Wright Street, 207 Henry Administration Building, Urbana, IL 61801. *Instrument:* UHV Evaporators, Models EFM3 and EFM4. *Manufacturer:* Focus GmbH, Germany. Intended Use: The article is intended to be used on a growth chamber attached to a Low-Energy Electron Microscope. The completed instrument will be used for a variety of studies on the mechanisms of growth of thin films. In particular, there will be studies of magnetic multilayer materials, of the effect of surface steps on film growth and of a technique called convergent beam diffraction, which has not been applied to low energy electrons in the past. *Application accepted by Commissioner of Customs:* April 30, 1997.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–13052 Filed 5–17–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of California, San Diego, et al., Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Numbers: 96–146 and 97–001. Applicant: University of California, San Diego, San Diego, CA 92121. *Instrument:* (10) Directional Waverider Buoys. *Manufacturer:* Datawell, BV, The Netherlands. *Intended Use:* See notices at 62 FR 6215, February 11, 1997 and 62 FR 8928, February 27, 1997. *Reasons:* The foreign instruments provide: (1) more reliable wave direction estimates at frequencies under 1.0 Hz and over 3.0 Hz with less variability within that range and (2) better wave spread estimates than comparable domestic equipment. Advice received from: Two domestic manufacturers of similar instruments, April 23, 1997.

Docket Number: 97–015. *Applicant:* North Carolina State University, Raleigh, NC 27695–7212. *Instrument:* Photoelectron Emission Microscope. *Manufacturer:* ELMITEC, Germany. *Intended Use:* See notice at 62 FR 10543, March 7, 1997. *Reasons:* The foreign instrument provides a theoretical resolution of 10 nm for photoelectron imaging of crystal growth processes. *Advice received from:* National Institute of Standards and Technology, April 25, 1997.

Docket Number: 97–016. *Applicant:* Duke University, Durham, NC 27708–0319. *Instrument:* Interferometer. *Manufacturer:* SF SDB ''Granat'', C.I.S. *Intended Use:* See notice at 62 CF 13600, March 21, 1997. *Reasons:* The foreign instrument provides: (1) multipass operation for optional filtering and (2) demonstrated quality mirror coatings for use with a free electron laser. *Advice received from:* National Institute of Standards and Technology, April 25, 1997.

Docket Number: 97–023. Applicant: Wayne State University, Detroit, MI 48202. *Instrument:* Optical Biosensor with Accessories, Model BIOS–1. *Manufacturer:* Artificial Sensing Instruments, Switzerland. *Intended Use:* See notice at 62 FR 15657, April 2, 1997. *Reasons:* The foreign instrument provides label-free detection of biomolecular interaction to measure the rate of deposition of protein molecules from a solution onto a solid substrate. *Advice received from:* National Institutes of Health, March 19, 1997.

Docket Number: 97–027. *Applicant:* New Mexico Institute of Mining and Technology, Socorro, NM 87801. *Instrument:* Electron Microprobe, Model SX 100. *Manufacturer:* Cameca, France. *Intended Use:* See notice at 62 FR 15658, April 2, 1997. *Reasons:* The foreign instrument provides characterization of elemental composition and structure in surfaces with resolution down to 1 μm. *Advice received from:* National Institute of Standards and Technology, July 26, 1996 (comparable case).

Docket Number: 97–028. *Applicant:* Rutgers University, Piscataway, NJ 08855–6999. *Instrument:* ICP Mass Spectrometer, Model Element. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 62 FR 15658, April 2, 1997. Reasons: The foreign instrument provides a magnetic sector mass analyzer with a resolution of 7500 to minimize molecular ion and isobaric interference and determination of transition row metals without hindrance from the occurrence of

polyatomic species. Advice received from: National Institutes of Health, March 19, 1997.

Two domestic manufacturers of similar instruments, the National Institute of Standards and Technology and the National Institutes of Health advise in their memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–13055 Filed 5–16–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On May 8, 1997, Cemex, S.A. de C.V. filed a First Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final antidumping determination review made by the International Trade Administration in the administrative review respecting Gray Portland Cement and Clinker from Mexico. This determination was published in the **Federal Register** on April 10, 1997 (62 FR 17581). The NAFTA Secretariat has assigned Case Number USA–97–1904–02 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter will be conducted in accordance with these Rules.

A first Request for Panel Review was field with the U.S. Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on May 8, 1997, requesting panel review of the final antidumping duty administrative review described above.

The Rules provide that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is June 9, 1997);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is June 23, 1997); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: May 13, 1997.

James R. Holbein,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 97–12995 Filed 5–16–97; 8:45 am]

BILLING CODE 3510–GT–M

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On May 6, 1997, Cemez, S.A. de C.V. filed a First Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free-Trade Agreement. Panel review was requested of the final antidumping determination review made by the International Trade Administration in the administrative review respecting Gray Portland Cement and Clinker from Mexico. This determination was published in the **Federal Register** on April 9, 1997 (62 FR 17148). The NAFTA Secretariat has assigned Case Number USA–97–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter will be conducted in accordance with these Rules.

A first Request for Panel Review was filed with the U.S. Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on May 6, 1997,

requesting panel review of the final antidumping duty administrative review described above.

The Rules provide that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is June 5, 1997);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is June 20, 1997); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: May 13, 1997.

James R. Holbein,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 97–12996 Filed 5–16–97; 8:45 am]

BILLING CODE 3510–67–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of an Opportunity to Join a Cooperative Research and Development Consortium for Machine Tool Performance Models and Machine Data Repository

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend a meeting on May 29, 1997, to discuss setting up a cooperative research consortium. The goal of the consortium is to develop machine tool performance models and a machine data repository.

The program will be within the scope and confines of The Federal Technology Transfer Act of 1986 (Pub. L. 99–502, 15 U.S.C. 3710a), which provides federal laboratories including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may contribute personnel, equipment, and facilities—but no funds—to the cooperative research program.

Members will be expected to make a contribution to the consortium's efforts in the form of personnel, data, and/or funds. This is not a grant program.

DATES: The meeting will take place on May 29, 1997. Interested parties should contact NIST to confirm their interest at the address, telephone number or FAX number shown below.

ADDRESSES: Sound Building, Room B102, National Institute of Standards and Technology, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Donald S. Blomquist, Telephone: 301–975–6600; FAX: 301–869–3536.

SUPPLEMENTARY INFORMATION: To reduce costs and respond rapidly to changing customer needs, large companies are relying increasingly on a network of suppliers and outsourcing a significant percentage of their manufacturing needs. This type of geographically and organizationally distributed manufacturing requires better communication and improved coordination and utilization of internal and external manufacturing resources by all the participants.

The goal of the consortium is to develop tools that enable design and manufacturing engineers to predict machine tool performance and to ensure that parts can be machined to specification with a minimum of prototyping. These tools include data structures and low order machine models that represent actual machine behavior; mathematical representation of actual part geometry, including dimension and form errors; virtual machining algorithms; virtual inspection algorithms; standardized data formats; remotely accessible machine data repositories.

Dated: May 9, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–13068 Filed 5–16–97; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF ENERGY

[FE Docket Nos. 85–32–NG, 93–54–NG, 87–72–NG, 86–04–NG, 97–22–NG, 94–23–NG, 97–25–NG, 97–27–NG, 97–26–NG, 95–96–NG, 96–90–NG, 94–35–NG]

Office of Fossil Energy; El Paso Gas Marketing Company, Northstar Energy Inc., Colony Natural Gas Corporation, Gas Ventures, Inc., KCS Energy Marketing, Inc., Global Energy Services, LLC, CMEX Energy, Inc., Colonial Energy, Inc., NESI Energy Marketing, L.L.C., Progas U.S.A., Inc., Rainy River Forest Products Inc., Engage Energy US, L.P., Alberta Resources Inc.; Orders Granting and Vacating Authorizations to Import and/or Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued Orders authorizing and/or vacating various imports and/or exports of natural gas. These Orders are summarized in the attached appendix.

These Orders are available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities, Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on April 29, 1997.

Wayne E. Peters,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

APPENDIX.—BLANKET IMPORT/EXPORT AUTHORIZATIONS GRANTED

[DOE/FE authority]

Order No.	Date issued	Importer/Exporter FE Docket No.	Two-Year Maximum		Comments
			Import volume	Export volume	
116–A	03/07/97	El Paso Gas Marketing Company 85–32–NG.	.....	.....	Vacated.
816–A	03/12/97	Northstar Energy Inc. 93–54–NG	.....	.....	Vacated.

APPENDIX.—BLANKET IMPORT/EXPORT AUTHORIZATIONS GRANTED—Continued

[DOE/FE authority]

Order No.	Date issued	Importer/Exporter FE Docket No.	Two-Year Maximum		Comments
			Import volume	Export volume	
232–A	03/12/97	Colony Natural Gas Corporation 87–72–NG.			Vacated.
110–A	03/12/97	Gas Ventures, Inc. 86–04–NG	Vacated..		
1261	03/13/97	KCS Energy Marketing, Inc. 97–22–NG.	50 Bcf		Import from Canada.
935–A	03/13/97	Global Energy Services, LLC CMEX Energy, Inc 94–23–NG.			Transfer of Authority.
1262	03/14/97	Colonial Energy, Inc. 97–25–NG	200 Bcf		Import/export combined total from and to Canada and Mexico.
1263	03/14/97	NESI Energy Marketing, L.L.C. 97–27–NG.	18.25 Bcf	18.25 Bcf	Import and export from and to Canada.
1264	03/19/97	ProGas U.S.A., Inc. 97–26–NG	800 Bcf	200 Bcf	Import and export from and to Canada.
1265	03/20/97	Rainy River Forest Products Inc. 95–96–NG.			Vacated.
1230–A	03/31/97	Engage Energy US, L.P. (Formerly Newco US, L.P.) 96–90–NG.			Transfer of Authority.
945–A	03/31/97	Alberta Resources Inc. 94–35–NG.			Vacated.

[FR Doc. 97–13031 Filed 5–16–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos.94–32–NG, 97–29–NG, 97–33–NG, 97–30–NG, 97–31–NG, 97–32–NG]

Office of Fossil Energy; Riata Resources Ltd.; Masspower; Dartmouth Power Associates L.P.; Carthage Energy Services, Inc.; Noram Energy Services, Inc.; Pawtucket Power Associates Limited Partnership; Orders Granting and Vacating Blanket Authorizations To Import and/or Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued Orders authorizing and/or vacating various imports and/or exports of natural gas. These Orders are summarized in the attached appendix.

These Orders are available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities, Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on May 13, 1997.

Wayne E. Peters,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

APPENDIX.—BLANKET IMPORT/EXPORT AUTHORIZATIONS GRANTED

[DOE/FE authority]

Order No.	Date issued	Importer/exporter FE docket no.	Two-year maximum		Comments
			Import volume	Export volume	
931–A	04/08/97	Riata Resources Ltd. 94–32–NG			Vacated.
1267	04/17/97	Masspower 97–29–NG	20 Bcf		Import/export combined total from and to Canada.
1268	04/29/97	Dartmouth Power Associates Limited Partnership 97–33–NG.	11.68 Bcf		Import from Canada.
1269	04/29/97	Carthage Energy Services, Inc. 97–30–NG	25 Bcf	25 Bcf	Import/export from and to Canada. Transfer from Arkla Energy Marketing, Inc. To NorAm.
1270	04/29/97	NorAm Energy Services, Inc. 97–31–NG	292 Bcf	292 Bcf	Import/export from and to Canada and Mexico. Transfer from Arkla Energy Marketing, Inc. to NorAm.
1271	04/29/97	Pawtucket Power Associates Limited Partnership 97–32–NG.	10.584 Bcf		Import from Canada.

[FR Doc. 97–13033 Filed 5–16–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 97–35–NG]

Office of Fossil Energy; United States Gypsum Company; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued DOE/FE Order No. 1272 on May 6, 1997, granting United States Gypsum Company a ten-year authorization to import from Canada up to 5,000,000 Mcf per year (approximately 13,600 Mcf per day) of natural gas from November 1, 1998, through November 1, 2008. This natural gas will be purchased from Husky Oil Operations, Ltd., and may be imported at Niagara Falls, New York, Grand Island, New York, or other border points.

This order is available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0350, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., May 13, 1997.

Wayne E. Peters,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

[FR Doc. 97–13032 Filed 5–16–97; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Supplemental Record of Decision; Savannah River Site Waste Management, Savannah River Operations Office, Aiken, South Carolina

AGENCY: U.S. Department of Energy (DOE).

ACTION: Supplemental Record of Decision.

SUMMARY: DOE announces decisions concerning certain activities to be undertaken and facilities to be constructed and operated that further implement the Moderate Treatment Configuration Alternative for mixed low-level radioactive waste and transuranic waste. These decisions are based on the Savannah River Site (SRS) Waste Management Environmental Impact Statement (WMEIS) and are consistent with the completed negotiations between DOE and the State of South Carolina.

FOR FURTHER INFORMATION CONTACT: For further information regarding SRS waste management, write or call: A. R. Grainger, Engineering and Analysis Division, SR NEPA Compliance Officer, Savannah River Operations Office, P.O. Box 5031, Aiken, South Carolina 29804, Phone/FAX: (800) 242–8269, e-mail: nepa@barms036.b-r.com.

For general information on the U.S. Department of Energy National Environmental Policy Act (NEPA) process, write or call: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0119, telephone: (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

In July 1995, DOE issued the SRS WMEIS (DOE/EIS–0217) to evaluate the potential environmental impacts and costs of storing, treating, and/or disposing of certain wastes at SRS. In an October 1995 Record of Decision (ROD) (60 FR 55249, October 30, 1995), DOE announced its intention to implement the Moderate Treatment Configuration Alternative, including continuation of existing activities and operation of existing facilities, waste recycling, operation of the Consolidated Incineration Facility (CIF), low-level radioactive waste volume reduction, and operation of a mobile soil sort facility. The ROD also announced decisions regarding high-and low-level radioactive, hazardous, transuranic and alpha low-level radioactive wastes, and some mixed (radioactive and hazardous) wastes. DOE stated that it would issue additional RODs on mixed low-level radioactive waste and transuranic waste, including mixed transuranic waste, after completing negotiations with the State of South Carolina under the Federal Facility Compliance Act of 1992 (FFCAct).

This ROD supplements the October 1995 ROD by announcing DOE's decision to take additional measures to further implement the Moderate Treatment Configuration Alternative for mixed low-level radioactive waste and transuranic waste. These decisions are based on the SRS WMEIS and are consistent with the completed negotiations between DOE and the State of South Carolina. DOE prepared this ROD pursuant to the regulations of the Council on Environmental Quality for implementing NEPA (Title 40—Code of Federal Regulations (40 CFR parts 1500–1580)) and DOE's NEPA Implementing Procedures (10 CFR part 1021).

SRS occupies approximately 800 square kilometers (300 square miles) adjacent to the Savannah River, principally in Aiken and Barnwell counties of South Carolina, about 40 kilometers (25 miles) southeast of Augusta, Georgia, and about 32 kilometers (20 miles) south of Aiken, South Carolina. DOE's primary mission at SRS from the 1950s until the recent end of the Cold War was the production and processing of nuclear materials to support defense programs. The end of the Cold War has led to a reduction in the size of the United States nuclear arsenal. Many of the facilities that were used to manufacture, assemble, and maintain the arsenal are no longer needed. Some of these facilities can be converted to new uses through decontamination processes; others must be decommissioned. Wastes generated during the Cold War must be cleaned up in a safe and cost-effective manner. In addition, DOE must comply with applicable environmental requirements in managing wastes that may be generated in the future.

Mixed wastes are regulated under both the Atomic Energy Act and the Resource Conservation and Recovery Act (RCRA), as amended by the FFCAct. The FFCAct required DOE to prepare Site Treatment Plans (STP) that identified options for treating mixed wastes currently in storage or that will be generated within the next five years at DOE sites, including SRS. For the SRS, DOE developed a STP that the State of South Carolina reviewed and subsequently approved on September 20, 1995. A Consent Order was executed between DOE and the State of South Carolina on September 29, 1995, specifying implementation requirements for the approved STP. Simultaneous with the development of the SRS STP, the SRS WMEIS evaluated the potential environmental impacts of STP-identified treatment options. Negotiations with the State of South Carolina under the FFCAct were an essential part of the decisionmaking process regarding mixed low-level radioactive waste and transuranic waste management.

This ROD deals, in part, with the characterization and treatment of certain mixed low-level radioactive waste. DOE is in the process of completing additional programmatic analyses

concerning the treatment and disposal of mixed low-level radioactive waste at locations around the United States under the DOE Waste Management Programmatic Environmental Impact Statement, and has agreed to continue negotiations with potentially affected States. After such negotiations are completed and DOE has announced appropriate programmatic decisions, DOE may issue an additional SRS ROD(s) on the treatment and disposal of mixed low-level radioactive waste.

Alternatives Considered

In the SRS WMEIS, DOE analyzed three alternatives, in addition to the no action alternative, for managing mixed low-level radioactive waste and transuranic waste in a manner that would protect human health and the environment, comply with regulatory requirements, and save money. The three treatment alternatives considered in the SRS WMEIS (limited, moderate, and extensive) addressed treatment, storage, or disposal facilities required for three forecasts of potential waste volumes (minimum, expected, and maximum).

The Moderate Treatment Configuration Alternative previously selected by DOE consists of the siting, construction, and operation of facilities and the implementation of management techniques to provide a balanced mix of technologies that include extensive treatment of those waste types that have the greatest potential to adversely affect the public or the environment, because of their mobility or toxicity if left untreated, or that would remain highly radioactive far into the future. This alternative provides less rigorous treatment than the Extensive Treatment Configuration Alternative of wastes that do not pose high potential for harm to humans or the environment or that will not remain highly radioactive far into the future. For each mixed waste stream, the STP identified treatment options and a preferred treatment. The Moderate Treatment Configuration Alternative includes the preferred treatments for mixed waste described in the approved STP and utilizes, to the maximum extent practicable, existing facilities.

Environmentally Preferable Alternative

In DOE's judgment, as identified in the October 1995 ROD, the Extensive Treatment Configuration Alternative is environmentally preferable because it would minimize potential long-term environmental impacts as a result of achieving more stable, migration-resistant waste forms. DOE recognizes, however, that this treatment alternative would result in greater short-term impacts to workers.

Decision

Determination

To further implement the Moderate Treatment Configuration Alternative for mixed low-level radioactive waste and transuranic waste, DOE selects the following actions, which are the preferred options in the SRS STP and were not addressed in the October 1995 ROD:

- Send elemental mercury and other mercury-contaminated low-level radioactive waste offsite for treatment. Residuals will be returned to SRS.
- Vitrify two additional wastes, uranium chromium solutions and waste site soils (spill soils), in the M-Area Vendor Treatment Facility.
- Construct and operate a containment building for the characterization, certification, decontamination, shredding, and macroencapsulation of mixed low-level radioactive waste, including glass, metal, organic, inorganic, and heterogeneous debris, bulk equipment, and lead wastes.
- Construct and operate a transuranic waste characterization/certification facility to characterize, repackage, and certify alpha-contaminated low-level wastes and transuranic wastes.

Reasons for Determination

DOE has reviewed the SRS WMEIS and has determined that the information is current and the analyses remain valid. DOE previously selected the Moderate Treatment Configuration Alternative for SRS to provide adequate protection of human health and the environment, and to be consistent with expected budgetary limitations. These considerations also apply to the mixed waste characterization and treatment technologies under the Moderate Treatment Configuration Alternative. These technologies are consistent with the preferred treatments identified in the approved STP.

Environmental Impacts

DOE has determined that these mixed and transuranic waste decisions would have small impacts within the eight resource categories addressed in the SRS WMEIS (socioeconomic, groundwater, surface water, air, traffic, transportation, occupational health, and public health). These activities constitute only a portion of the activities whose potential impacts were considered under the Moderate Treatment Configuration Alternative, and the total impacts of the Alternative as a whole are expected to be small. Potential impacts on land use and ecological resources are expected to be small because any additional acreage required would be included within the current boundary of the area at SRS designated for waste management activities.

Mitigation

DOE believes that all practicable means to avoid and minimize environmental harm from the Moderate Treatment Configuration Alternative have already been adopted. If archaeological resources are found in the course of implementing the alternative, mitigation—including avoiding the resources if possible—will be conducted in consultation with the South Carolina State Historical Preservation Office.

Conclusion

DOE has selected certain actions for managing some mixed low-level radioactive waste and transuranic waste at SRS to further implement the Moderate Treatment Configuration Alternative. In making this decision, DOE considered beneficial and adverse environmental impacts, monetary costs, and regulatory commitments.

Issued in Washington, DC on May 9, 1997.

Alvin L. Alm,

Assistant Secretary for Environmental Management.

[FR Doc. 97–13030 Filed 5–16–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2756–000]

Arizona Public Service Company; Notice of Filing

May 13, 1997.

Take notice that on April 23, 1997, Arizona Public Service Company (''APS'') tendered for filing an amendment to its Open Access Transmission Tariff to reflect a Joint Trial Stipulation among the participants in the above-referenced proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 28, 1997. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13007 Filed 5–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2219–000]

Canal Electric Company; Notice of Filing

May 13, 1997.

Take notice that on April 10, 1997, Canal Electric Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, Dockets Room, Room 1A, 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, 385.214). All such motions or protests should be filed on or before May 23, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12984 Filed 5–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1523–000 and Docket No. OA97–470–000]

Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, Power Authority of the State of New York, and New York Power Pool; Notice of Filing

May 9, 1997.

Take notice that Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, and Power Authority of the State of New York on May 2, 1997, tendered for filing a Supplemental Filing in the above Dockets. The Supplemental Filing provides additional information on the duties and responsibilities of the New York State Reliability Council (NYSRC). The NYSRC was proposed in the January 31, 1997, filing in the above Dockets to establish reliability rules and to monitor compliance with the rules by the Independent System Operator.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission Rules of Practice and Procedure (18 CFR 285.211 and 18 CFR 385.214). All motions or protests should be filed on or before May 23, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–13010 Filed 5–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2741–000]

The Cincinnati Gas & Electric Company and PSI Energy, Inc.; Notice of Filing

May 13, 1997.

Take notice that on April 30, 1997, PSI Energy, Inc., in compliance with the Commission's orders in the above-captioned proceedings, tendered for filing its third Annual Informational Filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests must be filed on or before May 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13004 Filed 5–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2742–000]

The Cincinnati Gas & Electric Company and PSI Energy, Inc.; Notice of Filing

May 13, 1997.

Take notice that on April 30, 1997, The Cincinnati Gas & Electric Company, in compliance with the Commission's orders in the above-captioned proceedings, tendered for filing its third Annual Informational Filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions

or protests must be filed on or before May 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13005 Filed 5–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–2–000, ER96–2852–000, and ER96–2853–000]

Consolidated Edison Company Of New York, Inc.; Notice of Filing

May 13, 1997.

Take notice that on May 1, 1997, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing amendments in the above-referenced dockets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, Dockets Room, Room 1A, NE., DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 22, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12983 Filed 5–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–199–004

Egan Hub Partners, L.P.; Notice of Petition To Amend

May 13, 1997.

Take notice that on April 25, 1997, Egan Hub Partners, L.P. (Egan Hub) 44084 Riverside Parkway, Suite 340, Leesburg, Virginia 20176, filed, in Docket No. CP96–199–004, a petition to amend the order issued on October 7, 1996 as amended on January 11, 1997,[1] pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations to drill an additional brine disposal well, Well No. 5, at the Egan Hub Salt Dome Storage Facility located in Acadia Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Egan Hub states that it is currently authorized to operate four brine disposal wells, Wells Nos. 1, 1, 3, and 4, and to dispose of up to 4000 gallons of waste brine per minute. Egan Hub further states that due to a blockage in Well No. 2 and to deteriorating brine absorption rates in Well Nos. 1, 3, and 4, Egan Hub is no longer able to achieve necessary brine disposal rates. Therefore, Egan Hub seeks authorization to drill a new brine disposal well, Well No. 5, to restore its disposal capability to the required level, but within the certificated rate of 4000 gallons per minute.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before May 20, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 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.

[1] See 77 61,016 ¶ (1996) and 78 FERC ¶ 62,066 (1997).

Lois D. Cashell,

Secretary.

[FR Doc. 97–12982 Filed 5–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2229–000]

Interstate Power Company; Notice of Filing

May 13, 1997.

Take notice that on April 8, 1997, Interstate Power Company tendered for filing an amendment in the above-referenced docket.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions should be filed on or before May 23, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12985 Filed 5–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2353–000]

New York State Electric & Gas Company; Notice of Filing

May 13, 1997.

Take notice that on April 25, 1997, New York State Electric & Gas Company tendered for filing an amendment in the above-referenced docket.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions should be filed on or before May 23, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–12986 Filed 5–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER96–2206–001 and ER97–2571–000]

New York State Electric & Gas Corporation, Notice of Filing

May 9, 1997.

Take notice that on April 3, 1997, New York State Electric & Gas Corporation tendered for filing a revision to its compliance filing and an amendment to its coordination sales agreement with XENERGY, Inc. Filed in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 20, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–13011 Filed 5–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2757–000]

Southwestern Public Service Company; Notice of Filing

May 13, 1997.

Take notice that on April 29, 1997, Southwestern Public Service Company (''Southwestern'') submitted a Quarterly Report under Southwestern's market-based sales tariff. The report is for the period of January 1, 1997 through March 31, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests must be filed on or before May 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13008 Filed 5–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2744–000]

Tampa Electric Company; Notice of Filing

May 13, 1997.

Take notice that on April 30, 1997, Tampa Electric Company (Tampa Electric), tendered for filing cost support schedules showing an updated daily capacity charge for its scheduled/short-term firm interchange service provided under interchange contracts with Florida Power Corporation, Florida Power & Light Company, Florida Municipal Power Agency, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Kissimmee Utility Authority, Oglethorpe Power Corporation, Orlando Utilities Commission, Reedy Creek, Improvement District, St. Cloud Electric Utilities, Seminole Electric Cooperative, Inc., Utilities Commission of the City of New Smyrna Beach, Utility Board of the City of Key West, and the Cities of Gainesville, Homestead, Lake Worth, Lakeland, Starke, Tallahassee, and Vero Beach, Florida. Tampa Electric also tendered for filing updated caps on the charges for emergency and scheduled/short-term firm interchange transactions under the same contracts.

In addition, Tampa Electric tendered for filing a revised transmission loss factor, and revised open access transmission service tariff sheets on which the transmission loss factor is stated.

Tampa Electric requests that the updated daily capacity charge and caps on charges, and the revised transmission loss factor and tariff sheets, be made effective as of May 1, 1997, and therefore requests wavier of the Commission's notice requirement.

Tampa Electric states that a copy of the filing has been served upon each of the above-named parties to the interchange contracts with Tampa Electric and each party to a service agreement under Tampa Electric's open access tariff, as well as the Florida and Georgia Public Service 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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protest should be filed on or before May 28, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13006 Filed 5–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–71–000 and RP97–312–000]

Transcontinental Gas Pipe Line Company; Notice of Informal Settlement Conference

May 13, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, May 21, 1997, at 1:30 p.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact David R. Cain at (202) 208–0917, Donald A. Heydt at (202) 208–0740 or Paul B. Mohler at (202) 208–1240.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13003 Filed 5–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2737–000, et al.]

Tampa Electric Company, et al.; Electric Rate and Corporate Regulation Filings

May 12, 1997.

Take notice that the following filings have been made with the Commission:

1. Tampa Electric Company

[Docket No. ER97–2737–000]

Take notice that on April 30, 1997, Tampa Electric Company (Tampa Electric), tendered for filing updated transmission service rates under its agreements to provide qualifying facility transmission service for Mulberry Phosphates, Inc. (Mulberry), Cargill Fertilizer, Inc. (Cargill), and Auburndale Power Partners, Limited Partnership (Auburndale).

Tampa Electric proposes that the updated transmission service rates be made effective as of May 1, 1997, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Mulberry, Cargill, Auburndale, and the Florida Public Service Commission.

Comment date: May 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Tampa Electric Company

[Docket No. ER97–2738–000]

Take notice that on April 30, 1997, Tampa Electric Company (Tampa Electric), tendered for filing an updated weekly capacity charge for its short term power service provided under its interchange service contract with Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies). Tampa Electric also tendered for filing updated caps on energy charges for emergency assistance and short term power service under the contract.

Tampa Electric requests that the updated capacity charge and caps on charges be made effective as of May 1, 1997, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that a copy of the filing has been served upon Southern Companies and the Florida Public Service Commission.

Comment date: May 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Great Bay Power Corporation

[Docket No. ER97–2745–000]

Take notice that on April 29, 1997 Great Bay Power Corporation, tendered for filing a summary of activity for the quarter ending March 31, 1997.

Comment date: May 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Utilities Service Company

[Docket No. ER97–2746–000]

Take notice that on April 30, 1997, Northeast Utilities Service Company (NU) notified the Commission that it is terminating the April 24, 1994 Service Agreement for 88 MW of firm transmission service provided by NU to the Long Island Lighting Company.

A copy of this filing has been served on the Long Island Lighting Company.

Comment date: May 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Edison Company

[Docket No. ER97–2747–000]

Take notice that on April 30, 1997, Commonwealth Edison Company (ComEd), submitted for filing two Service Agreements for firm transactions with Enron Power Marketing, Inc. (Enron), and a short-term firm umbrella Service Agreement with Sonat Power Marketing, LP (Sonat), under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests various effective dates, corresponding to the date each service agreement was entered into, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Enron, Sonat, and the Illinois Commerce Commission.

Comment date: May 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Delmarva Power & Light Company

[Docket No. ER97–2748–000]

Take notice that on April 30, 1997, Delmarva Power & Light Company (Delmarva), tendered for filing a summary of short-term transactions made during the first quarter of calendar year 1997 under Delmarva's market rate sales tariff, FERC Electric Tariff, Original Volume No. 14, filed by Delmarva in Docket No. ER96-2571–000.

Comment date: May 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Northern Indiana Public Service Company

[Docket No. ER97–2749–000]

Take notice that on April 30, 1997, Northern Indiana Public Service Company, tendered for filing its Transaction Report for short-term transactions for the first quarter of 1997 pursuant to the Commission's order issued January 10, 1997 in Docket No. ER96–2775–000.

Comment date: May 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket No. ER97–2750–000]

Take notice that on April 30, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and PacifiCorp Power Marketing Inc.

Comment date: May 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket No. ER97–2751–000]

Take notice that on April 30, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Cinergy Services, Inc., acting as agent for Cincinnati Gas & Electric Company and PSI Energy, Inc.

Comment date: May 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Ohio Edison Company

[Docket No. ER97–2752–000]

Take notice that on April 30, 1997, Ohio Edison Company filed pursuant to 205 of the Federal Power Act revisions to its Tariff for Full or Partial Requirements Service with American Municipal Power-Ohio, Inc. (AMP-Ohio) on behalf of twenty-one Ohio municipal electric systems. The effect of the revisions is to lower the annual bill for service to AMP-Ohio. AMP-Ohio concurs in the filing by Ohio Edison Company. An effective date of May 1, 1997 is requested for the filing.

Comment date: May 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Ohio Valley Electric Corporation Indiana-Kentucky Electric Corporation

[Docket No. ER97–2753–000]

Take notice that on April 29, 1997, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC) tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service, dated April 16, 1997 (the Service Agreement) between Coral Power, L.L.C. (Coral Power) and OVEC. OVEC proposes an effective date of April 16, 1997 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to Coral Power.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Order No. 888 compliance filing (Docket No. OA96–190–000).

A copy of this filing was served upon Coral Power.

Comment date: May 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Interstate Power Company

[Docket No. ER97–2754–000]

Take notice that on April 29, 1997, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and MP Energy, Inc. Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to MP Energy, Inc.

Comment date: May 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Wisconsin Public Service Corporation

[Docket No. ER97–2755–000]

Take notice that on April 29, 1997, Wisconsin Public Service Corporation, tendered for filing executed service agreements with AIG Trading Corporation under its CS–1 Coordination Sales Tariff.

Comment date: May 27, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13027 Filed 5–16–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER91–195–028, et al]

Western Systems Power Pool, et al.; Electric Rate and Corporate Regulation Filings

May 9, 1997.

Take notice that the following filings have been made with the Commission:

1. Western Systems Power Pool

[Docket No. ER91–195–028]

Take notice that on April 30, 1997, the Western Systems Power Pool (WSPP) filed certain information as required by Ordering Paragraph (D) of the Commission's June 27, 1991, Order (55 FERC ¶ 61,495) and Ordering Paragraph (C) of the Commission's June 1, 1992 Order On Rehearing Denying Request Not To Submit Information, And Granting In Part And Denying In Part Privileged Treatment. Pursuant to 18 CFR 385.211, WSPP has requested privileged treatment for some of the information filed consistent with the June 1, 1992 order. Copies of WSPP's informational filing are on file with the Commission, and the non-privileged portions are available for public inspection.

2. National Electric Associates Limited Partnership

[Docket No. EC97–33–000]

Take notice that National Electric Associates Limited Partnership (NEALP), a marketer of electric power, filed on May 2, 1997, a request for approval under Section 203 of the Federal Power Act of the purchase of a 75 percent general partnership interest in NEALP by PanCanadian Ventures Inc., a subsidiary of PanCanadian Petroleum Limited. NEALP also requests confirmation that the transfer of its jurisdictional facilities to its affiliate National Gas & Electric L.P. (NG&E) is valid and that NG&E is authorized to sell power under the market-based rate schedule formerly held by NEALP.

Comment date: June 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket Nos. ER96–2751–000 and ER96–2902–000]

On April 18, 1997, Florida Power & Light Company filed requesting that the requested effective dates in Docket Nos. ER96–2751 and ER96–2902 be changed to January 1, 1997. FPL requests that the

filing be made effective on January 1, 1997.

Comment date: May 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Minnesota Power & Light Company

[Docket No. ER97–2133–000]

Take notice that on April 25, 1997, Minnesota Power & Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Electric and Gas Company, PECO Energy Company, Pennsylvania Power & Light Company, Baltimore Gas & Electric Company, Pennsylvania Electric Company, Metropolitan Edison Company, Jersey Central Power & Light Company, Potomac Electric Power Company, Atlantic City Electric Company and Delmarva Power & Light Company (collectively, the PJM Companies)

[Docket No. ER97–2188–000]

Take notice that on March 31, 1997, the PJM Companies filed a revision to the filing in the subject docket regarding certain schedules in the Interconnection Agreement between West Penn Power Company, Potomac Edison Company and Monongahela Power Company and Public Service Electric and Gas Company, PECO energy Company, Pennsylvania Power & Light Company, Baltimore Gas and Electric Company, Pennsylvania Electric Company, Metropolitan Edison Company, Atlantic City Electric Company, Delmarva Power & Light Company, dated April 26, 1965.

Comment date: May 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Electric and Gas Company, PECO Energy Company, Pennsylvania Power & Light Company, Baltimore Gas & Electric Company, Pennsylvania Electric Company, Metropolitan Edison Company, Jersey Central Power & Light Company, Potomac Electric Power Company, Atlantic City Electric Company and Delmarva Power & Light Company (collectively, the PJM Companies)

[Docket No. ER97–2189–000]

Take notice that on March 31, 1997, the PJM Companies filed a revision to the filing in the subject docket regarding certain schedules in the Interconnection Agreement between Virginia Electric and Power Company and Public Service Electric and Gas Company, PECO Energy Company, Pennsylvania Power & Light Company, Baltimore Gas and Electric Company, Pennsylvania Electric Company, Metropolitan Edison Company, Jersey Central Power & Light Company, Potomac Electric Company, Atlantic City Electric Company, Delmarva Power & Light Company, dated September 30, 1965.

Comment date: May 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Tucson Electric Power Company

[Docket No. ER97–2369–000]

Take notice that on April 1, 1997, Tucson Electric Power Company tendered for filing a service agreement for firm transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96–140–000.

Comment date: May 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Southwestern Power Marketers Incorporated

[Docket No. ER97–2529–000]

Take notice that on April 25, 1997, Southwestern Power Marketers Incorporated tendered for filing an amendment in the above-referenced docket.

Comment date: May 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Minnesota Power & Light Company

[Docket No. ER97–2598–000]

Take notice that on April 25, 1997, Minnesota Power & Light Company tendered for filing signed Service Agreements with the following:

Carolina Power & Light Company
Duquesne Light Company
Entergy Power Marketing Corporation
Water Works & Lighting Commission

under its cost-based Wholesale Coordination Sales Tariff WCS–1 to satisfy its filing requirements under this tariff.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Minnesota Power & Light Company

[Docket No. ER97–2599–000]

Take notice that on April 25, 1997, Minnesota Power & Light Company tendered for filing signed Service Agreements with the following:

Carolina Power & Light Company
Duquesne Light Company
Entergy Power Marketing Corporation
Water Works & Lighting Commission

under its market-based Wholesale Coordination Sales Tariff (WCS–2) to satisfy its filing requirements under this tariff.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. New Millennium Energy Corporation

[Docket No. ER97–2681–000]

Take notice that on April 25, 1997, New Millennium Energy Corporation (NMEC) applied to the Commission for acceptance of NMEC Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

NMEC intends to engage in wholesale electric power and energy purchases and sales as a marketer.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Central Hudson Gas & Electric Corporation

[Docket No. ER97–2682–000]

Take notice that Central Hudson Gas & Electric Corporation (CHG&E), on April 25, 1997, tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and CMS Marketing, Services and Trading Company. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff) filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Southern California Edison Company

[Docket No. ER97–2687–000]

Take notice that on April 25, 1997, Southern California Edison Company (Edison) tendered for filing Service Agreements (Service Agreements) with the Bonneville Power Administration, Citizens Lehman Power Sales, City of Vernon, PacifiCorp, and Salt River Project for Point-To-Point Transmission Service under Edison's Open Access Transmission Tariff (Tariff) filed in compliance with FERC Order No. 888, and a Notice of Cancellation of Service Agreement Nos. 82, 83, 84, 85, 86, 87, 88, 90, and 91 under FERC Electric Tariff, Original Volume No. 4.

Edison filed the executed Service Agreements with the Commission in compliance with applicable Commission Regulations. Edison also submitted a revised Sheet No. 152 (Attachment E) to the Tariff, which is an updated list of all current subscribers. Edison requests waiver of the Commission's notice requirement to permit an effective date of April 26, 1997 for Attachment E, and to allow the Service Agreements to become effective and terminate according to their terms.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Allegheny Power Service Corp. on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER97–2688–000]

Take notice that on April 25, 1997, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company (Allegheny Power) filed Supplement No. 23 to add two (2) new Customers to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of April 24, 1997, to Louisville Gas and Electric Company and USGen Power Services, L.P.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Union Electric Company

[Docket No. ER97–2691–000]

Take notice that on April 25, 1997, Union Electric Company (UE), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service dated March 19, 1997 between Delhi Energy Services, Inc. (DES) and UE. UE asserts that the purpose of the Agreement is to permit UE to provide transmission service to DES pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Niagara Mohawk Power Corporation

[Docket No. ER97–2692–000]

Take notice that on April 25, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Washington Electric Cooperative, Inc. This Transmission Service Agreement specifies that Washington Electric Cooperative, Inc. has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Washington Electric Cooperative, Inc. to enter into separately scheduled transactions under which NMPC will provide transmission service for Washington Electric Cooperative, Inc. as the parties may mutually agree.

NMPC requests an effective date of April 22, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Washington Electric Cooperative, Inc.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. South Carolina Electric & Gas Company

[Docket No. ER97–2693–000]

Take notice that on April 25, 1997, South Carolina Electric & Gas Company (SCE&G) submitted a service agreement establishing Delmarva Power & Light Company (DP&L) as a customer under the terms of SCE&G's Negotiated Market Sales Tariff .

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon DP&L and the South Carolina Public Service Commission.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Minnesota Power & Light Company

[Docket No. ER97–2694–000]

Take notice that on April 25, 1997, Minnesota Power & Light Company, tendered for filing signed a Service Agreement with Carolina Power & Light Company under its Non-Firm Point-to-Point Transmission Service to satisfy its filing requirements under this tariff.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Electric Power Company

[Docket No. ER97–2695–000]

Take notice that on April 25, 1997, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement and a Transmission Service Agreement between itself and Atlantic City Electric Company (ACE). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff.

Wisconsin Electric requests an effective date coincident with its filing. Copies of the filing have been served on ACE, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Wisconsin Electric Power Company

[Docket No. ER97–2696–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on April 25, 1997, tendered for filing a Transmission Service Agreement between itself and Carolina Power and Light Company (CP&L). The Transmission Service Agreement allows CP&L to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume No. 7, accepted for filing in Docket No. OA96–196.

Also submitted with the filing were two short term firm transmissions service agreements between Wisconsin Electric and Upper Peninsula Power Company (UPPCO) for service that took place in March. Each agreement provided for energy to be transmitted to UPPCO from Commonwealth Edison Company (ComEd).

For the CP&L agreement, Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear. For the UPPCO agreements, Wisconsin Electric requests an effective date of March 1, coincident with the service provided. Copies of the filing have been served on CP&L, ComEd, UPPCO, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Commonwealth Electric Company Cambridge Electric Light Company

[Docket No. ER97–2697–000]

Take notice that on April 25, 1997, Commonwealth Electric Company

(Commonwealth) and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between the Companies and the following Market-Based Power Sales Customers (collectively referred to herein as the Customers):

Morgan Stanley Capital Group Inc.(Morgan Stanley) The Power Company of America, L.P.(PCA)

These Service Agreements specify that the Customers have signed on to and have agreed to the terms and conditions of the Companies' Market-Based Power Sales Tariffs designated as Commonwealth's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 7) and Cambridge's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 9). These Tariffs, accepted by the FERC on February 27, 1997, and which have an effective date of February 28, 1997, will allow the Companies and the Customers to enter into separately scheduled short-term transactions under which the Companies will sell to the Customers capacity and/or energy as the parties may mutually agree.

The Companies request an effective date as specified on each Service Agreement.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. New York State Electric & Gas Corporation

[Docket No. ER97–2698–000]

Take notice that on April 25, 1997, New York State Electric & Gas Corporation tendered for filing a Notice of Cancellation of NYSEG's Transmission Service Agreement No. 25 under FERC's Electric Tariff, Original Volume No. 1.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Soyland Power Cooperative, Inc.

[Docket No. ER97–2699–000]

Take notice that on April 25, 1997, Soyland Power Cooperative, Inc. (Soyland) tendered for filing with the Federal Energy Regulatory Commission (the Commission) a notice of cancellation of its all-requirements contract with Corn Belt Electric Cooperative Inc. (Corn Belt). Soyland states that Corn Belt, currently a member of Soyland, has given its notice of intent to withdraw from membership in Soyland; upon the consummation of Corn Belt's withdrawal from membership in Soyland, Soyland will no longer provide all-requirements service to Corn Belt.

Soyland states that copies of the filing were served upon Corn Belt Electric Cooperative, Inc.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Kentucky Utilities Company

[Docket No. ER97–2700–000]

Take notice that on April 23, 1997, Kentucky Utilities Company (KU) tendered for filing service agreements with American Electric Power Service Corporation and Coastal Electric Services Company under its Power Services (PS) Tariff. KU also filed a revision to its PS Tariff.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Allegheny Power Service Corporation on behalf of The Potomac Edison Company

[Docket No. ER97–2701–000]

Take notice that on April 25, 1997, Allegheny Power Service Corporation, on behalf of The Potomac Edison Company (PE) filed Supplement No. 1 to PE's FERC Electric Tariff First Revised Volume No. 3, submitting a rate change for Old Dominion Electric Cooperative (ODEC). Allegheny Power Service Corporation requests waiver of notice requirements and asks the Commission to honor the proposed effective date, January 1, 1997, as specified in the negotiated agreement entered into between ODEC and PE.

Copies of the filing have been provided to the Maryland Public Service Commission and the Virginia State Corporation Commission and to all parties of record.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Wisconsin Power and Light Company

[Docket No. ER97–2702–000]

Take notice that on April 25, 1997, Wisconsin Power and Light Company (WP&L) tendered for filing Form of Service Agreements for Customers who have signed WP&L's Final Order pro forma transmission tariff submitted in Docket No. OA96–20–000. The customers are Wisconsin Electric Power Company and Wisconsin Public Service Corporation. The customers previously signed earlier versions of WP&L's transmission tariffs.

WP&L requests an effective date of July 9, 1996, and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Montaup Electric Company

[Docket No. ER97–2703–000]

Take notice that on April 28, 1997 Montaup Electric Company (Montaup), tendered for filing an Interconnection Agreement Between itself and Dighton Power Associates Limited Partnership (DPA). DPA plans to construct and operate an Independent Power Production facility located on property situated behind 1424 Somerset Avenue, Dighton, Massachusetts. The net electric capability of this facility will be approximately 175 megawatts. This Interconnection Agreement is to establish the requirements, terms and conditions for the interconnection of DPA's facilities with the 115 kV transmission system of Montaup. Appendix B of the Agreement provides for a Contribution in Aid of Construction (CIAC). The outside services estimate of $73,500 includes consulting engineering from Stone & Webster for structural analysis of existing lattice towers and upgrades on existing lattice tower footings. The actual CIAC will be based on the formula shown in Appendix B as applied to actual costs. Appendix C of the Agreement shows the procedure for calculating all ongoing operation and maintenance expenses including overheads and real estate and personal property taxes associated with the Interconnection Facilities.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. PECO Energy Company

[Docket No. ER97–2704–000]

Take notice that on April 28, 1997, PECO Energy Company (PECO), filed a summary of transactions made during the first quarter of calendar year 1997 under PECO's Electric Tariff Original Volume No. 1 accepted by the Commission in Docket No. ER95–770, as subsequently amended and accepted by the Commission in Docket No. ER97–316.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Rochester Gas and Electric Corporation

[Docket No. ER97–2709–000]

Take notice that on April 28, 1997 Rochester Gas and Electric Corporation

(RG&E) filed a Service Agreement between RG&E and The Southern Energy Trading and Marketing, Inc. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1279–000, as amended by RG&E's December, 31 1996 filing in Docket No. OA97–243–000 (pending).

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of April 17, 1997 for The Southern Energy Trading and Marketing, Inc. Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Kansas City Power & Light Company

[Docket No. ER97–2710–000]

Take notice that on April 28, 1997, Kansas City Power & Light Company (KCPL) tendered for filing a Service Agreement dated April 4, 1997, between KCPL and ConAgra Energy Services. KCPL proposes an effective date of April 10, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888 in Docket No. OA96–4–000.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Wisconsin Electric Power Company

[Docket No. ER97–2711–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on April 28, 1997, tendered for filing an Electric Service Agreement between itself and CMS Marketing, Service and Trading Company. The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on CMS Marketing, Service and Trading Company, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. New England Power Company

[Docket No. ER97–2712–000]

Take notice that on April 28, 1997, New England Power Company filed a Service Agreement with Vermont Electric Cooperative, Inc. under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Idaho Power Company

[Docket No. ER97–2713–000]

Take notice that on April 28, 1997, Idaho Power Company (IPC) tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company FERC Electric Tariff, Second Revised, Volume No. 1 between Equitable Power Services Company and Idaho Power Company.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Ohio Edison Company, Pennsylvania Power Company

[Docket No. ER97–2714–000]

Take notice that on April 28, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with MidCon Power Services Corp. under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. New England Power Company

[Docket No. ER97–2715–000]

Take notice that on April 28, 1997, New England Power Company filed a Service Agreements and Certificates of Concurrence with Duke/Louis Dreyfus Energy Services (New England) L.L.C. (Louis/Dreyfus) under NEP's FERC Electric Tariff, Original Volumes No. 5 and 6.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. New England Power Pool

[Docket No. ER97–2716–000]

Take notice that on April 29, 1997, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by Sonat Power Marketing L.P. (Sonat). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit Sonat to join the over 100 Participants that already participate in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Sonat a Participant in the Pool. NEPOOL requests an effective date on or before June 1, 1997, or as soon as possible thereafter for commencement of participation in the Pool by Sonat.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. Idaho Power Company

[Docket No. ER97–2717–000]

Take notice that on April 29, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a letter agreement providing for delivery of firm capacity and energy to Portland General Electric commencing July 1, 1997.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. Tucson Electric Power Company

[Docket No. ER97–2718–000]

Take notice that on April 29, 1997, Tucson Electric Power Company (TEP) tendered for filing four (4) service agreements for firm and non-firm point-to-point transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96–140–000. TEP requests waiver of notice to permit the service agreements to become effective as of April 18, 1997. The service agreements are as follows:

(1) Service Agreement For Non-Firm Point-to-Point Transmission Service with Arizona Public Service Company dated April 4, 1997.

(2) Service Agreement For Non-Firm Point-to-Point Transmission Service with Salt River Project dated April 14, 1997.

(3) Service Agreement For Non-Firm Point-to-Point Transmission Service with Delhi Energy Services, Inc. dated April 16, 1997.

(4) Service Agreement For Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc. dated April 17, 1997.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

39. Southern Indiana Gas and Electric Company

[Docket No. ER97–2719–000]

Take notice that on April 29, 1997, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing summary information on transactions that occurred during the period January 1, 1997 through March 31, 1997, pursuant to its Market Based Rate Sales Tariff accepted by the Commission in Docket No. ER96–2734–000.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

40. Duquesne Light Company

[Docket No. ER97–2720–000]

Take notice that on April 29, 1997, Duquesne Light Company (DLC) filed a Service Agreement dated April 24, 1997 with Minnesota Power & Light Company under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds Minnesota Power & Light Company as a customer under the Tariff. DLC requests an effective date of April 24, 1997 for the Service Agreement.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

41. Public Service Company of Colorado

[Docket No. ER97–2721–000]

Take notice that on April 29, 1997 Public Service Company of Colorado tendered for filing a Service Agreement for Non-Firm Transmission Service between Public Service Company of Colorado and Cenerprise, Inc. Public Service states that the purpose of this filing is to provide Non-Firm Transmission Service in accordance with its Open Access Transmission Service Tariff. Public Service requests that this filing be made effective April 7, 1997.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

42. Minnesota Power & Light Company

[Docket No. ER97–2722–000]

Take notice that on April 23, 1997, Minnesota Power & Light Company tendered for filing signed Service Agreements with the following:

Arkansas Electric Cooperative Corporation
Blue Earth Light & Water Department
Equitable Power Services Company

under its market-based Wholesale Coordination Sales Tariff (WCS–2) to satisfy its filing requirements under this tariff.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

43. Minnesota Power & Light Company

[Docket No. ER97–2727–000]

Take notice that on April 23, 1997, Minnesota Power & Light Company tendered for filing signed Service Agreements with the following:

Arkansas Electric Cooperative Corporation
Equitable Power Services Company
Michigan Companies (Consumers Power Company and The Detroit Edison Company)

under its cost-based Wholesale Coordination Sales Tariff WCS–1 to satisfy its filing requirements under this tariff.

Comment date: May 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13012 Filed 5–16–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2105–035]

Pacific Gas and Electric Company; Notice of Availability of Environmental Assessment

May 13, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed an application for approval of change in land rights and removal of lands from the project boundary. Pacific Gas and Electric Company proposes to convey a 29.88-acre parcel to Chester Public Utility District, California, for expansion of its wastewater treatment facility on Lake Almanor.

The staff of OHL's Division of Licensing and Compliance has prepared an Environmental Assessment (EA) for the proposed action. In the EA, staff concludes that approval of the licensee's proposal would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, Room 1C–1, of the Commission's Offices at 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13009 Filed 5–16–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5826–9]

Prevention of Significant Deterioration of Air Quality (PSD); Commonwealth Chesapeake Corporation Accomack County, Virginia

AGENCY: Environmental Protection Agency, Region III (EPA).

ACTION: Notice of order denying review.

SUMMARY: This action announces that the Environmental Appeals Board of the United States Environmental Protection Agency issued an order denying review, pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21 and the procedures for Decisionmaking codified at 40 CFR part 124, regarding Commonwealth Chesapeake Corporation—Accomack County, Virginia.

DATES: The effective date of the Environmental Appeals Board's decision was February 19, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Henry, Chief, Permit Programs Section, Air, Radiation & Toxics Division, U.S. Environmental Protection Agency, Region III, Mail Code 3AT23, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107 at (215) 566–2175, or by e-mail to Henry. Kathleen @epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Four petitions were filed with the Environmental Appeals Board seeking

review of a Prevention of Significant Deterioration (PSD) permit issued to Commonwealth Chesapeake Corporation for construction of a 397.5 MW simple cycle peaker power plant in Accomack County, Virginia. Pursuant to a delegation of authority from EPA, the Virginia Department of Environmental Quality (VDEQ) issued the final permit on May 21, 1996. Because of the delegation, the Virginia permit is considered an EPA-issued permit for purposes of federal law (40 CFR 124.41 (1991)); 45 FR 33413 (May 19, 1980)), and is subject to review by the Agency under 40 CFR 124.19 (1991).

Four private citizens, residents of Accomack county, petitioned the Board for review of the PSD permit. PSD Appeal No. 96–2 was filed by Elizabeth Trader; PSD Appeal No. 96–3 was filed by Dorothy Bonney; PSD Appeal No. 96–4 was filed by Marvel Wimbrow; and PSD Appeal No. 96–5 was filed by William Reese.

The Board issued an Order denying review in the above case on February 19, 1997. The Board held that: (1) One petitioner (Appeal No. 96–5) lacks standing to petition for review of the permit because he failed to participate in the public hearing or provide comments on the draft permit, and therefore that petition must be dismissed; (2) with respect to Appeals No. 96–2, No. 96–3 and No. 96–4, the Board concludes that petitioners have not met their burden of showing that VDEQ's decision should be reviewed.

Anyone wishing to review the permit, petitions, order denying review, or related materials should contact the following offices:

U.S. Environmental Protection Agency, Region III, Air, Radiation and Toxics Division, Permit Programs Section (3AT23), 841 Chestnut Building, Philadelphia, Pennsylvania 19107

or

Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, Virginia 23462.

Dated: May 6, 1997.

Andrew Carlin,

Acting Regional Administrator Region III.

[FR Doc. 97–13037 Filed 5–16–97; 8:45 am]

BILLING CODE 6560–50–P

COUNCIL ON ENVIRONMENTAL QUALITY

American Heritage Rivers Initiative; Proposal With Request for Comments

SUMMARY: In the State of the Union Address, President Clinton announced that he had directed his Cabinet to design an initiative to support communities in their efforts to restore and protect America's rivers. The White House subsequently convened an interagency task force to develop what has come to be known as the American Heritage Rivers initiative. The charger of the interagency task force is to integrate the environmental, historic and economic programs and several federal agencies to benefit communities. The agencies designing this initiative include the Departments of Agriculture, Commerce, Defense, Energy, Interior, Justice, and Housing and Urban Development, the Environmental Protection Agency, Advisory Council on Historic Preservation, Army Corps of Engineers and the National Endowment for the Humanities.

There are many citizens, nongovernmental organizations and local, state and tribal governments working to restore and revitalize their river communities. The Administration is creating the American Heritage Rivers initiative to help these communities restore and protect their river resources in a way that integrates natural resource protection, economic development, and the preservation of historic and cultural values. This initiative proposes to assist these communities through better use of existing programs and resources and coordinating the delivery of those services in a manner designed by the community, or ''bottom-up.''

Under this program, the President will designate ten rivers as American Heritage Rivers in calendar year 1997. These designated rivers will receive special recognition and focused federal support and will serve as models of the most innovative, economically successful and ecologically sustainable approaches to river restoration and protection for communities across the United States. In addition to the ten rivers receiving designation, the initiative will provide improved information and services for all river communities. The initiative will create no new regulatory requirements for individuals or state and local governments.

DATES: Comments must be received by June 9, 1997.

ADDRESSES: Executive Office of the President, Council on Environmental Quality, Old Executive Office Building, Room 360, Washington, D.C. 20501. Fax: 202–456–6546.

FOR FURTHER INFORMATION CONTACT: Karen Hobbs, Agency Representative, Council on Environmental Quality, Old Executive Office Building, Room 360, Washington, D.C. 20501. Phone 202–395–7417; Fax: 202–456–6546.

SUPPLEMENTARY INFORMATION: This notice is available on the American Heritage Rivers Internet Homepage at: http://www.epa.gov/OWOW/heritage/rivers.html. This document is divided into four sections: background on the American Heritage Rivers initiative; overall program design; benefits of designation and the designation process; and services available to all river communities. Comments are sought on the usefulness of the initiative, its design, and ways in which the federal government can support communities.

Background

Rivers have always been an integral part of our Nation's history—providing opportunities for trade and commerce, routes for exploration and discovery, inspiration for ideas and culture, means of recreation, and focal points for community development. Rivers often define the distinctive character of communities. To capture or restore that distinctive character, communities across America are working to revitalize their waterfronts, and to enhance the historic, cultural, recreational, economic, public health, and environmental values of their rivers. Federal and state governments enact laws and impose regulations to clean up pollution and improve water quality. The goal of the American Heritage Rivers initiative is to support communities (hereafter referred to as River Communities), within existing laws and regulations, by providing them with better access to information, tools and resources, and encouraging private funding of local efforts deserving of special recognition.

The development of this initiative has been guided by six principles. The Administration believes that a successful initiative will be community-led, flexible, coordinated, broad, partnership-based, and action-oriented. These principles embody the Administration's effort to reinvent government in accordance with the National Performance Review. The National Performance Review, directed by Vice President Gore, seeks to create a government that works better and costs less through focusing on customer service, developing partnerships and delegating power to the front lines.

Overall Program Design

The initiative will be driven by the needs and desires of communities that wish to participate in the program. Communities already work with the federal government in numerous ways that affect rivers, and this work will

continue. The initiative will make national expertise available to community-based restoration, protection and revitalization efforts, and will simplify community access to existing federal resources. The initiative will actively promote successful models that demonstrate private and public collaboration to preserve the special heritage associated with our rivers, and share this information through a clearinghouse.

The American Heritage Rivers initiative will have two components:

- Enhanced services and program delivery to designated rivers; and
- Improved delivery of services and information.

Part I: Benefits of Designation and the Designation Process

The President will designate, by proclamation, ten rivers in calendar year 1997. These designated rivers will receive focused support in the form of programs and enhanced services, including a ''River Navigator'' (formerly referred to as a ''caseworker'' in public meetings and earlier documents) to work with the community to provide access to the federal agencies and existing programs and to simplify the delivery of these programs. Designated rivers and their communities will also receive a commitment from federal agencies to act as ''Good Neighbors'' in making decisions that affect communities. Each river will become a laboratory for reinvention of federal programs and delivery of services that will support each Community's revitalization efforts.

1. Presidential Proclamation

Communities designated as American Heritage Rivers will receive recognition by proclamation of the President of the United States.

2. ''River Navigator''

Each designated river will be assigned a ''River Navigator'' to help implement the community's vision and provide a single contact/liaison for all federal resources.

3. Coordinated Delivery of Federal Services

Programs exist in numerous federal agencies, including the Departments of Agriculture, Interior, Army, Housing and Urban Development, the Environmental Protection Agency and others to support rivers. An interagency task force, established to oversee the development of the initiative in Washington, D.C., will reduce duplication in and of programs, coordinate and leverage streamlined resources, and pay particular attention to designated rivers.

The interagency task force will work with each River Community as it is designated to identify technical and funding needs. First, a team of planning and technical assistance experts will help each designated River Community assess its strategy and implementation plan to identify technical assistance and funding needs. Then, federal agencies will commit field staff and resources to the teams, which will also include non-federal partners, such as state, local, tribal governments and nongovernmental organizations, as well as other partners. Technical assistance, education, funding and high quality aerial photography and maps will help identify and evaluate historic, environmental and economic resources. Planning assistance and community outreach will ensure a well-defined action strategy and a broad base of support. Training in soil and water quality testing will help communities develop a baseline against which to measure progress and environmental monitoring will help communities develop a report card in river conditions and trends. Economic modeling will help communities assess benefits and costs of proposed river projects. Interpretative techniques will identify the unique aspects of the American settlement of the community. The teams will help to implement the ''Good Neighbor Policy'' (discussed below). Through the establishment of the teams, federal agencies will seek stronger intergovernmental partnerships with state, local and tribal governments to streamline and speed the delivery of services and programs. Individual program services will be simplified and expedited, within existing laws and mandates. For some River Communities, Performance-Based Organizations will be established. A Performance-Based Organization, an idea championed by Vice President Gore and the National Performance Review, is granted flexibility for certain bureaucratic requirements in exchange for a commitment to achieve ambitious performance-based goals. In addition, regional and state personnel of federal agencies will assess their successes and implementation problems associated with the initiative, and make recommendations for improving delivery and accessibility of services and programs.

4. ''Good Neighbor Policy''

Federal agencies will commit to a ''Good Neighbor Policy'' under which they will help ensure that their actions have a positive effect on the natural, historical, economic and cultural resources of American Heritage River communities.

The interagency task force will develop ways to inform communities and federal agencies about American Heritage Rivers goals and objectives to ensure that federal actions are complementary to these goals. The ''Good Neighbor Policy'' will require the federal agencies to identify ways to inform local groups regarding federal actions and will require agencies to consult with American Heritage River communities early in the planning stages of federal actions and take into account the community's goals and objectives.

5. Private Sector Opportunities

The Administration will encourage nongovernmental organizations, businesses and other partners to work with state, tribal and local governments to restore, protect, and revitalize American Heritage Rivers that run through their communities.

How Do River Communities Nominate a River?

Communities wishing to nominate their river must meet basic criteria and complete a nomination form. The nomination will require information from the nominating River Community, such as:

1. A brief description of the proposed American Heritage River area;
2. A brief description of how the proposed American Heritage River meets the qualifying criteria;
3. The names, addresses and phone numbers of sponsors listed separately. Letters of endorsement and support are highly recommended.

Nominations must be no more than 15 pages, 10 point type size or larger with one inch margins. Letters of endorsement and support and maps describing the proposed designated area will not count towards the 15 page limit. Due to the constraints of the review and selection process, additional materials, such as videos, photographs and/or plans, will not be considered. E-mail transmissions of the applications will be accepted.

Information about the American Heritage Rivers initiative is readily available to all River Communities through personal contacts, Internet access, a toll-free phone line and written materials. Federal agency field staff will receive special orientation on the initiative to enable them to answer river community questions. Special emphasis is given to outreach methods for minority and low income communities.

Information about qualifying and selection criteria and the selection process is available to the public and clearly explained in the application package as well as in other information media (such as those listed above).

Who May Put Forward Nominations?

Any River Community working to improve, protect or revitalize a river is eligible to nominate a river area. A River Community is self-defined by the members of the community. It can include private citizens, landowners, educational and arts organizations, community leaders, economic developers, businesses, nonprofit organizations, public and private institutions, local and state government agencies, Indian tribes, elected officials, and/or other parties within and adjacent to the proposed area or areas that support the designation and the goals of American Heritage Rivers.

Scope of Area Covered by Nomination

A River Community will define the area covered by the nomination and should reflect the River Community's capability to implement its plan of action. The length of the area, whether it be an entire watershed, the length of an entire river, or a short stretch of a river, may cross jurisdictional boundaries (if supported by that government and community through letters of support and endorsement).

What Are the Qualifying Criteria?

The qualifying criteria are intended to be broad, flexible and credible. Designation is available both to community-led efforts that are well underway and to communities just beginning. In making a nomination, sponsoring communities or organizations must demonstrate broad community support; notable resource qualities; local and regional partnership agreements; strategies that lead to action; and an ability to achieve measurable results.

1. Broad Community Support

A broad spectrum of private citizens, such as landowners, businesses, educational and arts organizations, community leaders, economic developers, nonprofit organizations, public and private institutions, local and state government agencies, Indian tribes, elected officials, and/or other parties within and adjacent to the proposed area or areas support the designation and the goals of American Heritage Rivers.

2. Notable Resource Qualities

There are within the proposed river area (as defined by the community or organization) a range of natural, economic, scenic, historic, cultural, and/or recreational features that demonstrate distinctive qualities of America's river heritage.

3. Local and Regional Partnership Agreements

The principal party or parties nominating the river and local or regional governmental entities show their willingness and capability to enter into new, or to continue and expand existing, partnership agreements with each other as well as with federal and state agencies, Indian tribes, and/or other parties to implement a plan for the river area.

4. Strategies That Lead to Actions

The principal local sponsoring party or parties has in hand, or is developing, a broad plan of action for the river area. Any actions planned on the designated area should not impact downstream communities. At a minimum, the strategy includes the following components:

- Community vision;
- Operating procedures and policies;
- Description of how the proposal takes into account existing plans for the area;
- Public participation and public education;
- Projects and products (including any anticipated impacts beyond the designated river area);
- Resources committed and anticipated (including means for generating additional and matching support from both public and private sources;
- Schedules of actions;
- What the community expects the federal role to be;
- Obstacles to community action, including those the community believes can be resolved by joint federal, state and local support;
- Measures of success.

5. Measurable Results

Implementation of the community's vision must result in measurable benefits to the river community reflecting the community's goals, including, but not limited to, protection of water resources and/or public health, restoration of rivers, protection and highlighting historic and cultural resources, revitalization of local and regional economies, and/or implementing sustainable development within the river area.

What are the Selection Criteria?

A selection council, convened by the President and discussed below, will, for those nominations meeting the qualifying criteria, also seek to ensure that, individually or as a group, American Heritage Rivers will exemplify America's river heritage at its best, in all its natural, historic, cultural, social, economic, and ecological diversity. The selection council will judge whether the designated rivers will showcase a variety of stream sizes and situations, in urban, rural, and mixed contexts. They will also assess the potential for an American Heritage River to showcase one or more innovative programs in such areas as watershed planning, historic preservation, wildlife management, fisheries restoration, community revitalization, floodplain management and recreation. Applicants should keep in mind the selection criteria in their responses to the qualifying criteria.

In addition, designated rivers will be able to benefit significantly from a broad range of refocused or retargeted federal programs or other assistance and help generate broader public support for the goals and guiding principles of American Heritage Rivers as excellent examples and models for emulation throughout the Nation.

Evidence of Support

The ability of a River Community to achieve its goals of river quality improvement and economic and community revitalization will depend on the cooperation of state, tribal and/or local officials, as well as strong partnerships with nongovernmental and community organizations. If a state, tribal and/or local government(s) nominates a watershed, river or river stretch, letters of support from nongovernmental organizations and community groups are highly recommended. If a nongovernmental organization(s) nominates a watershed, river or river stretch, letters of support from state, tribal and/or local units of government are highly recommended.

Number of Designations

The President will designate ten rivers in calendar year 1997. The experience gained from the designated rivers and the level of community support for the initiative will guide future river designations.

Terms of Designation

Designation will generally be considered permanent, subject to implementation of the community's plan of action. The ''River Navigator'',

however, will be for a term not to exceed five years.

Selection Council

An interagency task force, composed of the heads of federal agencies, will make recommendations to the President regarding designations. The Administration is considering options on how to include the opinions of the public and experts from a variety of fields this decision-making process.

Part II: Services Available to all River Communities

All River Communities will be able to take advantage of improved delivery of existing federal agency services and greater access to information. Federal agencies will use existing staff, resources and programs to assist all River Communities in their river restoration and community revitalization efforts.

1. Improved Delivery of Existing Services and Programs

During the first year, federal agencies will focus on improving service and program delivery to the designated river communities, but will also implement methods to improve information access and service delivery to all river communities. There will be an emphasis on establishing stronger intra-and inter-agency communications systems and incentives and performance measures for field staff to rely more on partnerships with other federal agencies. Special emphasis will be given for outreach to minority and low income communities.

2. Information

A. Internet Services

A ''State of the Rivers'' Home Page will provide information via the Internet on river conditions and demographics of river communities. Visitors to the American Heritage Rivers initiative Home Page will also be able to access Web Pages devoted to the ''State of Your River,'' (modeled on EPA's Surf Your Watershed program) which will in turn link to various sources of information. For example, a person might use a zip code or county name to locate a particular river, and then ''point and click'' for information about that river, such as drinking water sources, land use, or population. From the American Heritage Rivers initiative Home Page, a user will be able to link to the Home Pages to all participating federal agencies to access information on such topics as economic modeling, available grants, teaching guides and where to get aerial photographs and advice from experts.

An American Heritage Rivers Riverfront Internet Page will present users with a broad array of goods and services from which to choose. This electronic tool kit will be customer-driven, so that users can easily scan the tools available and quickly find and obtain those that best fit their community's interests. The Riverfront Internet Page will be divided into the following categories: facts and maps; getting started; assistance yellow pages; local action, building partnerships; and knowing your assets.

B. ''Talent Bank''

A ''talent bank'' will share knowledge and techniques about community river restoration and revitalization efforts. The ''talent bank'' will build on existing expertise and provide access to creative ideas for addressing river goals and needs; real world experience in translating those ideas into practical; workable action; and expertise (professional, technical, organizational, financial or other skills) for helping carry out particular projects or other aspects of community plans. It will be available on both the Internet and in hard copy.

C. Catalog of Federal Support

A catalog of federal support will be developed and made available via the Internet, as well as in hard copy. Whether on the Internet or in hard copy, this information is intended to provide hands-on, step-by-step help to communities that are just beginning to restore and revitalize their rivers. The information will consist of brochures, ''how-to'' pamphlets, a bibliography, and videos.

Next Steps

Specific input is sought on the following:

a. Overall design of the American Heritage Rivers initiative.

b. Qualifying and selection criteria.

c. Nomination and selection process.

d. Types of assistance needed by communities working on rivers, including comments on existing or needed federal programs and services.

During April and May, the interagency team sought ideas from communities and interested parties to establish criteria for river selection, to determine how rivers will be designated, and to propose how the initiative will be implemented. The following cities hosted meetings, with the approximate number of attendees in parentheses:

April 7 Washington, D.C. (100 attendees)
April 14 Washington, D.C. (40 attendees)
April 16 Alburquerque, New Mexico (60 attendees)
April 22 Boston, Massachusetts (40 attendees)
April 25 Philadelphia, Pennsylvania (80 attendees)
April 28 Atlanta, Georgia (40 attendees); Chicago, Illinois (120 attendees); San Francisco, California (30 attendees)
April 29 Los Angeles, California (30 attendees)
April 30 Seattle, Washington (40 attendees)
May 1 Asheville, North Carolina (60 attendees)
May 7 Denver, Colorado (50 attendees)

The schedule for subsequent action is as follows:

May/June: **Federal Register** Notice of Draft Program Design, with Comment Period
June: Cabinet Recommends Initiative Design to President
June: **Federal Register** Notice of Final Program, Open Nominations
August: Applications Due to Be Considered For the First Round Of Designated Rivers
Fall/Winter: Designated Rivers Announced & Applications Due To Be Considered for the Second Round

After comments from the **Federal Register** notice have closed, the Cabinet will incorporate changes and suggestions into the design of the American Heritage Rivers initiative before forwarding it to the President for approval. If the President approves the initiative design, it is expected that the President will direct his Cabinet to implement the American Heritage Rivers initiative.

Dated: May 15, 1997.

Kathleen A. McGinty,

Chair, Council on Environmental Quality.

[FR Doc. 97–13210 Filed 5–16–97; 8:45 am]

BILLING CODE 3125–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

May 13, 1997.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as

required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 18, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commissions, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0016.

Title: Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator or TV Booster Station.

Form No.: FCC Form 346.

Type of Review: Extension of a Currently Approved Collection.

Respondents: Individuals or households; business or other for-profit; and state, local or tribal government(s).

Number of Respondents: 1,050.

Estimated Hour Per Response: 25 hours (9 hours applicant; 16 hours contract time).

Frequency of Response: On Occasion Reporting Requirement.

Total Annual Burden: 9,450 hours.

Needs and Uses: The FCC Form 346 is used by licensees/permittees/ applicants when applying for authority to construct or make changes in a Low Power Television, TV Translator, or TV Booster broadcast station. This form will be revised to add the new requirements regarding antenna tower registration. This unique antenna registration number identifies an antenna structure and must be used on all filings related to the antenna structure.

Several questions will be added to the engineering portion of the FCC Form 346 to collect this information. This requirement was approved by OMB under OMB control number 3060–0714. The data is used by FCC staff to determine if the applicant is qualified, meets basis statutory and treaty requirements and will not cause interference to other authorized broadcast services.

OMB Approval No.: 3060–0066.

Title: Application for Renewal of Instructional Television Fixed Station and /or Response Stations(s) and Low Power Relay Station(s) License.

Form No.: FCC Form 330-R.

Type of Review: Revision of a Currently Approved Collection.

Respondents: Not-for-profit institutions; and state, local or tribal government(s).

Number of Respondents: 250.

Estimate Hour Per Response: 3 hours.

Frequency of Response: Reporting Requirement for License Renewal.

Total Annual Burden: 750 hours.

Needs and Uses: The FCC Form 330-R is used by licensees of Instructional Television Fixed (ITFS), Response, and Low Power Relay Stations to file for renewal for this licenses. On 6/9/94, the Commission adopted a Report and Order in MM Docket No. 93–106, Amendment of Part 74 of the Commission's Rules Governing Use of the Frequencies in the Instructional Television Fixed Service. Among other things, this Report and Order amended Section 74.931 to allow an ITFS licensee to shift its requisite ITFS programming onto fewer than its authorized number of channels, via channel mapping technology or channel loading. An ITFS licensee can lease its full-time channel capacity to a wireless cable operator, subject to the condition that it provide a total average of at least 20 hours per channel per week of ITFS programming on its authorized channels. A licensee may provide the requisite ITFS programming on each of its authorized channels or it may now shift that programming onto fewer than its authorized number of channels, via channel mapping technology or channel loading. The form will be revised to add a question on channel mapping/loading with an increase in burden of 30 minutes per form. The data is used by FCC staff to ensure that the licensee continues to meet basis Commission policies and rules, as well as statutory requirements to remain a licensee of an ITFS station. The information submitted on channel mapping/loading will permit the Commission to verify that programming aired outside the traditional school day is in fact directed to legitimate educational needs.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–12958 Filed 5–16–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1175–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota, (FEMA–1175–DR), dated April 8, 1997, and related determinations.

EFFECTIVE DATE: May 1, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 8, 1997:

Hubbard County for Categories A and B under the Public Assistance program and Hazard Mitigation.

Lyon County for Categories A and B under the Public Assistance program, Individual Assistance, and Hazard Mitigation.

Becker, Clay, Clearwater, Goodhue, Kittson, Lake of the Woods, Lincoln, Mahnomen, Marshall, Mcleod, Morrison, Otter Tail, Pennington, Red Lake, Roseau, Scott, Wabasha, and Washington Counties for Categories C through G under the Public Assistance program (already designated for Categories A and B under the Public Assistance program, Individual Assistance, and Hazard Mitigation).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–13040 Filed 5–16–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1175–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–1175–DR), dated April 8, 1997, and related determinations.

EFFECTIVE DATE: April 30, 1997.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3630.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as authorized by the President in a letter dated April 22, 1997, FEMA is extending the time period for Direct Federal assistance at 100 percent Federal funding for eligible emergency work approved by FEMA through May 10, 1997 for the State of Minnesota.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–13041 Filed 5–16–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1174–DR]

North Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota (FEMA–1174-DR), dated April 7, 1997, and related determinations.

EFFECTIVE DATE: April 30, 1997.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3630.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as authorized by the President in a letter dated April 22, 1997, FEMA is extending the time period for Direct Federal assistance at 100 percent Federal funding for eligible emergency work approved by FEMA through May 10, 1997 for the State of North Dakota.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–13042 Filed 5–16–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1173–DR]

South Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Dakota (FEMA–1173–DR), dated April 7, 1997, and related determinations.

EFFECTIVE DATE: April 30, 1997.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3630.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as authorized by the President in a letter dated April 22, 1997, FEMA is extending the time period for Direct Federal assistance at 100 percent Federal funding for eligible emergency work approved by FEMA through May 10, 1997 for the State of South Dakota.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–13043 Filed 5–16–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1172–DR]

Washington; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington, (FEMA–1172–DR), dated April 2, 1997, and related determinations.

EFFECTIVE DATE: May 5, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Washington, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 2, 1997:

King and Kitsap Counties for Public Assistance (already designated for Individual Assistance and Hazard Mitigation).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–13044 Filed 5–16–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Horizon Trading Company, Inc., 1510 H Street, N.W., Suite 500, Washington, D.C. 20005

Officers:

J. Browning Rockwell, President

Diane Craine, Vice President

Cargotech, Inc., 326 Smith Street, Keasbey, NJ 08832

Officers:

Paul J. Harnett, President

Richard W. Robinson, Vice President

AOE International, Inc., 39 Harriet Place, Lynbrook, NY 11563

Officers:

Joseph A. Costanzo, President

Andrew J. D'Angelo, Secretary

Dated: May 12, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–12981 Filed 5–16–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 2, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Ronald Hollis Hyder, and Garry Wayne McNabb, both of Livingston, Tennessee; to collectively retain, as co-trustees of the Melissa Lynn Oakley 1996 Trust, 27.06 percent of the voting shares of First Holding Company, Inc., Livingston, Tennessee, and thereby indirectly retain First National Bank of the Cumberlands, Livingston, Tennessee.

2. Leonard P. Mauldin, Town Creek, Alabama, Macke B. Mauldin, Sheffield, Alabama, and E. Fennel Mauldin, Jr., Sheffield, Alabama, as the MPEFM, II Limited Partnership; to acquire 24.0, 24.5 and 24.6 percent, respectively, for a collectively total of 30.8 percent, of the voting shares of BancIndependent, Inc., Sheffield, Alabama, and thereby indirectly acquire Bank Independent, Sheffield, Alabama.

Board of Governors of the Federal Reserve System, May 13, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–12992 Filed 5–16–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 12, 1997.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. FBA Bancorp, Inc., Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Interim First Bank, S.B., Chicago, Illinois a *de novo* bank, that will acquire First Bank of the Americas, SSB, Chicago, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Peoples-Marion Bancorp, Inc., Marion, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The Peoples Bank, Marion, Kentucky.

In connection with this application, The Peoples Bank Employee Stock Ownership Trust, Marion, Kentucky, also has applied to acquire 47.45 percent of the voting shares of Peoples-Marion, Bancorp, Inc.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Fannin Bancorp, Inc., Employee Stock Ownership Plan and Trust, Windom, Texas; to become a bank holding company by acquiring an additional 0.71 percent, for a total of 25.09 percent, of the voting shares of Fannin Bancorp, Inc., Windom, Texas, and thereby indirectly acquire Fannin Bank, Windom, Texas.

2. Mansfield Bancshares, Inc., Mansfield, Louisiana; to acquire 100 percent of the voting shares of Riverside Bancshares, Inc., Logansport, Louisiana, and thereby indirectly acquire Bank of Logansport, Logansport, Louisiana.

Board of Governors of the Federal Reserve System, May 13, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–12993 Filed 5–16–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. 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 on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 12, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. 1st United Bancorp, Boca Raton, Florida; to acquire Seaboard Savings Bank, F.S.B., Stuart, Florida, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y. The proposed activities will

conducted throughout the State of Florida.

Board of Governors of the Federal Reserve System, May 13, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–12991 Filed 5–16–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities: Submission for Office of Management and Budget (OMB) Review; Comment Request

Title: Performance (Progress) Reports for Title IV Training, Research, and Discretionary Projects and Programs Grantees

Description: Project performance reports provide an understanding of how projects funded by Title IV of the Older Americans Act are being administered by grantees, in conformance with legislative requirements, pertinent federal regulations, and other applicable instructions and guidelines issued by the Administration on Aging (AoA). This information will be used for federal oversight of the Title IV Training, Research, and Discretionary Projects and Programs.

Respondents: Applicants who have been awarded Title IV grants.

Annual Burden Estimates:

Instrument	Number of respondents	Average number of responses per respondent	Average burden hours per response	Total burden hours
Performance Report for Title IV Grantees	75	2	16	2400

Additional Information: Copies of the collection may be obtained by writing to the Administration on Aging, Office of the Executive Secretariat, 330 Independence Avenue, S.W., Washington, DC 20201, Attn.: AoA Reports Clearance Officer.

OMB Comment: OMB is required to make a decision, concerning the collection of information, between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 60 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, DC 20503, Attn.: Ms. Wendy Taylor.

Dated: May 8, 1997.

William F. Benson,

Acting Principal Deputy, Assistant Secretary for Aging.

[FR Doc. 97–10384 Filed 5–16–97; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M–0185]

ELA Medical, Inc.; Premarket Approval of Chorus RM Model 7034 DDDR Pacemaker System and Opus RM Model 4534 SSIR Pacemaker System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application submitted by ELA Medical, Inc., Plymouth, MN, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Chorus RM Model 7034 DDDR Pacemaker System and Opus RM Model 4534 SSIR Pacemaker System. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of March 10, 1997, of the approval of the application.

DATES: Petitions for administrative review by June 18, 1997.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marian Kroen, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8517.

SUPPLEMENTARY INFORMATION: On January 18, 1996, ELA Medical, Inc., Plymouth, MN 55441, submitted to CDRH an application for premarket approval of Chorus RM Model 7034 DDDR Pacemaker System and Opus RM Model 4534 SSIR Pacemaker System which includes an IBM compatible microcomputer which has been configured and furnished by ELA Medical, Inc., with CSO 2.46 programming software and is connected to a CPR1 programming lead. These devices are implantable cardiac pacemakers and are indicated for: (1) Rate adaptive pacing in patients who may benefit from increased pacing rates concurrent with increases in minute ventilation; (2) The generally accepted patient conditions warranting chronic cardiac pacing which include:

- Symptomatic paroxysmal or permanent second or third-degree AV block;
- Symptomatic bilateral bundle branch block;
- Symptomatic paroxysmal or transient sinus node dysfunctions with or without associated AV conduction disorders;
- Bradycardia-tachycardia syndrome to prevent symptomatic bradycardia or some forms of symptomatic tachyarrhythmias; and
- Vaso-vagal syndromes or hypersensitive carotid sinus syndromes.

The Chorus RM is also indicated for dual-chamber and atrial tracking modes in patients who may benefit from maintenance of AV synchrony. Dual-chamber modes are specifically indicated for treatment of conduction disorders that require restoration of both rate and AV synchrony which include:

- Various degrees of AV block to maintain the atrial contribution to cardiac output; and
- VVI intolerance (e.g., pacemaker syndrome) in the presence of persistent sinus rhythm.

In accordance with the provisions of section 515(c)(2) of the act as amended by the Safe Medical Devices Act of 1990, this PMA was not referred to the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially

duplicates information previously reviewed by this panel.

On March 10, 1997, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity For Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 18, 1997, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 22, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–13023 Filed 5–16–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on June 19, 1997, 9 a.m. to 2:30 p.m., and June 20, 1997, 8:30 a.m. to 1:30 p.m.

Location: Quality Suites Hotel, Potomac Ballrooms I, II, and III, Three Research Ct., Rockville, MD.

Contact Person: Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3514, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12388. Please call the Information Line for up-to-date information on this meeting.

Agenda: On June 19, 1997, the committee will sit as a Medical Device Panel to review agency recommendations for the following reclassification changes under 21 CFR part 860, subpart C: (1) Inclusion of automated infectious disease test systems used for donor screening, and (2) reclassification of class I medical devices used in collection and processing of blood. On June 20, 1997, the committee will hear discussion and provide recommendations regarding inadvertent contamination of plasma used for fractionation.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 13, 1997. Oral presentations from the public will be scheduled between approximately 10:30 a.m. to 11:30 a.m. Time allotted for each presentation may be limited. Those desiring to make formal presentations should notify the contact person before June 13, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 13, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–13020 Filed 5–16–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Antiviral Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on July 14 and 15, 1997, 8:30 a.m. to 5 p.m..

Location: Armory Place, rm. 204, 925 Wayne Ave., Silver Spring, MD.

Contact Person: Rhonda W. Stover or John B. Schupp, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12531. Please call the Information Line for up-to-date information on this meeting.

Agenda: On July 14 and 15, 1997, the committee will discuss the utility of plasma human immunodeficiency virus (HIV) RNA measurement as an endpoint in clinical trials for drugs to treat HIV infection. In light of the rapid changes

in knowledge about the pathophysiology of HIV infection, the advances in the technologies to quantify HIV in plasma and the evolution of antiviral therapy, FDA is soliciting opinions and advice from the advisory committee on this topic.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 7, 1997. Oral presentations from the public will be scheduled on July 14, 1997, between approximately 11 a.m. to 12 m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 7, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 13, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–13022 Filed 5–16–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0192]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Application to Market a New Drug, Biologic, or an Antibiotic Drug for Human Use; Use of Form FDA 356h'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Margaret R. Wolff, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 13, 1997 (62 FR 11899), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). OMB has now approved the information collection and has assigned OMB control number 0910–0338. The approval expires on April 30, 2000. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Dated: May 13, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–13021 Filed 5–16–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HSQ–242–N]

Approval of the Commission on Office Laboratory Accreditation for Immunohematology.

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the approval of the Commission on Office Laboratory Accreditation (COLA), which is an accrediting organization for clinical laboratories under the Clinical Laboratory Improvement Amendments (CLIA) program, for the addition of the full specialty of immunohematology. This approval adds immunohematology to the specialties and subspecialties approved by HCFA in a notice published in the **Federal Register** on December 23, 1993 (58 FR 68148). We have found that the accreditation process of this organization provides reasonable assurance that the laboratories accredited by it for immunohematology meet the conditions required by Federal law and regulations. Consequently, laboratories that voluntarily become accredited by COLA for the specialty of immunohematology in lieu of receiving direct Federal oversight and continue to meet COLA requirements would meet the CLIA immunohematology condition level requirements for laboratories. These laboratories performing immunohematology testing are not subject to routine inspection by State survey agencies to determine their compliance with applicable Federal requirements. They are, however, subject to validation and complaint investigation surveys.

EFFECTIVE DATE: This notice is effective for the period May 19, 1997 through November 1, 1997.

FOR FURTHER INFORMATION CONTACT: Valerie Coppola, (410) 786–3354.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

On October 31, 1988, the Congress enacted the Clinical Laboratory Improvement Amendments of 1988 (CLIA), Pub. L. 100–578. CLIA replaced in its entirety section 353 of the Public Health Service Act (PHSA), as enacted by the Clinical Laboratories Improvement Act of 1967, and made every laboratory in the United States and its territories that tests human specimens for health reasons subject to the requirements established by HHS and Federal regulation whether or not it participates in the Medicare or Medicaid program and whether or not it tests specimens in interstate commerce. New section 353 requires HHS to establish certification requirements for any laboratory that performs tests on human specimens and certify through issuance of a certificate that those laboratories meet the certificate requirements established by HHS.

Section 6141 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239, amended the Social Security Act (the Act) to require that laboratories participating in the Medicare program meet the certificate requirements of section 353 of the PHSA. Subject to specified exceptions, laboratories must have a current unrevoked and unsuspended certificate to be eligible for reimbursement in the Medicare or Medicaid programs, or both. Laboratories that are accredited by an accreditation organization approved under section 353 of the PHSA will automatically be eligible for Medicare and Medicaid participation as long as they meet applicable state requirements.

On February 28, 1992, we published several final rules in the **Federal Register** (57 FR 7002) that implemented the amendments to section 353 of the PHSA. The technical and scientific portions of these rules were drafted by the Centers for Disease Control and Prevention (CDC) of the Public Health Service (PHS).

We established regulations at 42 CFR part 493 that—

- Require laboratories to pay fees for issuance of registration certificates, certificates of waiver, certificates of accreditation, or other applicable certificates and to fund activities to

determine compliance with our performance requirements;

- Specify the performance requirements that apply to laboratories subject to CLIA and list requirements for laboratories performing certain limited testing to be eligible for a certificate of waiver; and
- Set forth the rules for the enforcement of CLIA requirements on laboratories that are found not to meet Federal requirements.

On July 31, 1992, we issued additional final rules (57 FR 33992), under authority found in section 353(e)(2) of the PHSA, that establish that we may approve a private, nonprofit organization as an accreditation organization for clinical laboratories under the CLIA program if that organization's requirements for its accredited laboratories are equal to or more stringent than the applicable CLIA program requirements of part 493 of our regulations. Therefore, a laboratory accredited by an approved organization that meets and continues to meet all of the accreditation organization's requirements would meet CLIA condition level requirements if it were inspected against CLIA regulations. The regulations listed in subpart E of part 493 specify the requirements an accreditation organization must meet in order to be approved. We may approve an accreditation organization under § 493.501(d) of our regulations for a period not to exceed six years.

In general, the accreditation organization must—

- Use inspectors qualified to evaluate laboratory performance and agree to inspect laboratories with the frequency determined by HCFA;
- Apply standards and criteria that are equal to or more stringent than those condition level requirements established by HHS when taken as a whole;
- Provide reasonable assurance that these standards and criteria are continually met by its accredited laboratories;
- Provide HCFA, within 30 days of the event, with the name of any laboratory that has had its accreditation denied, suspended, withdrawn, limited, or revoked;
- Notify HCFA at least 30 days prior to changing its standards; and
- If HCFA withdraws its approval, notify its accredited laboratories of the withdrawal within ten days of the withdrawal.

A laboratory can be accredited if it meets the standards of an approved accreditation body and authorizes the accreditation body to submit to HCFA records and other information HCFA may require.

Along with requiring the promulgation of criteria for approving an accreditation body and for withdrawing such approval, CLIA requires HCFA to perform an annual evaluation by inspecting a sufficient number of laboratories accredited by an approved accreditation organization as well as by any other means that HCFA determines appropriate. Under section 353(o) of the PHSA, the Secretary may, by agreement, use the services or facilities of any other Federal, State or local public agency, or nonprofit private organization to conduct inspections of laboratories performing clinical testing on human specimens in the United States and its territories for the purpose of determining compliance with CLIA requirements.

II. Notice of Approval of COLA as an Accrediting Organization for the Specialty of Immunohematology

In this notice, we approve COLA as an organization that may accredit laboratories for purposes of establishing their compliance with CLIA requirements for the specialty of immunohematology. HCFA and the CDC have examined the COLA application and all subsequent submissions against the requirements under subpart E of part 493 that an accreditation organization must meet in order to be granted approved status under CLIA for immunohematology. We have determined that COLA has complied with the applicable CLIA requirements as of May 19, 1997 and grant HCFA approval to COLA as an accreditation organization under this subpart through November 1, 1997, for the specialty of immunohematology.

As a result of this determination, any laboratory that is accredited by COLA during this time period for the specialty of immunohematology meets the CLIA requirements for laboratories found in part 493 of our regulations and, therefore, is not subject to routine inspection by a State survey agency to determine its compliance with CLIA requirements. The accredited laboratory performing immunohematology testing, however, is subject to validation and complaint investigation surveys performed by HCFA, or by any other Federal, State or local public agency, or nonprofit private organization which acts in conformance to an agreement with the Secretary.

III. Evaluation of COLA

The following describes the process we used to find that COLA, as a private, nonprofit organization, provides reasonable assurance that those laboratories it accredits for the specialty of immunohematology will meet the applicable requirements of Federal law and regulations.

A. Requirements for Approving an Accreditation Organization Under CLIA

To determine whether we should grant approval to COLA as a private, nonprofit organization for accrediting laboratories under CLIA for the immunohematology specialty of human specimen testing it requested, we conducted a detailed and in-depth comparison of COLA's requirements for its laboratories to those of CLIA. We evaluated whether COLA's standards are at least as stringent as the applicable requirements of 42 CFR part 493 when taken as a whole. In summary, we evaluated whether COLA—

- Provides reasonable assurance to us that it requires the laboratories it accredits to meet requirements that are equal to or more stringent than the CLIA condition level requirements for the requested specialty and would, therefore, meet the condition level requirements of CLIA if those laboratories had not been granted deemed status and had been inspected against condition level requirements; and
- Meets the requirements of § 493.506, which specifies the Federal review and approval requirements of private, nonprofit accreditation organizations.

As specified in the regulations at § 493.506, our review of a private, nonprofit accreditation organization seeking approved status under CLIA includes, but is not limited to, an evaluation of—

- Whether the organization's requirements for immunohematology for its accredited laboratories are equal to or more stringent than the applicable condition level requirements of the CLIA regulations;
- The organization's inspection process to determine:

—The composition of the inspection teams, qualifications of the inspectors, and the ability of the organization to provide continuing education and training to all of its inspectors;

—The comparability of the organization's full inspection and complaint inspection requirements to those of HCFA, including, but not limited to, inspection frequency, and the ability to investigate and respond to complaints against its accredited laboratories;

—The organization's procedures for monitoring laboratories that it has

found to be out of compliance with its requirements;
—The ability of the organization to provide HCFA with electronic data and reports that are necessary for effective validation and assessment of the organization's inspection process;
—The ability of the organization to provide HCFA with electronic data, related to the adverse actions resulting from unsuccessful proficiency testing (PT) participation in HHS approved PT programs, as well as data related to the PT failures, within 30 days of the initiation of the action;
—The ability of the organization to provide HCFA with electronic data for all its accredited laboratories;
—The adequacy of numbers of staff and other resources; and
—The organization's ability to provide adequate funding for performing the required inspections.

- The organization's agreement with HCFA that requires it to—

—Notify HCFA of any laboratory that has had its accreditation denied, limited, suspended, withdrawn, or revoked by the accreditation organization, or that has had any other adverse action taken against it by the accreditation organization within 30 days of the action taken;
—Notify HCFA within ten days of a deficiency identified in an accredited laboratory where the deficiency poses an immediate jeopardy to the laboratory's patients or a hazard to the general public;
—Notify HCFA of all newly accredited laboratories, or laboratories whose areas of specialty or subspecialty are revised, within 30 days;
—Notify each laboratory accredited by the organization within ten days of HCFA's withdrawal of recognition of the organization's deeming authority;
—Provide HCFA with inspection schedules, as requested, for the purpose of conducting onsite validation inspections;
—Provide HCFA, the State survey agency, or other HCFA agent with any facility-specific data that includes, but is not limited to, PT results that constitute unsuccessful participation in an approved PT program and notification of the adverse actions or corrective actions imposed by the accreditation organization as a result of unsuccessful PT participation;
—Provide HCFA with written notification at least 30 days in advance of the effective date of any proposed changes in its requirements; and
—Make available, on a reasonable basis, any laboratory's PT results upon request by any person, with such explanatory information needed to assist in the interpretation of the results.

- Laboratories that are accredited by an accreditation organization must—

—Authorize the organization to release to HCFA all records and information required by HCFA as required by § 493.501;
—Permit inspections as required by the CLIA regulations at part 493, subpart Q;
—Obtain a certificate of accreditation as required by § 493.632; and
—Pay the applicable fees as required by §§ 493.638 and 493.645.

B. Evaluation of the COLA Request for Approval

COLA has formally applied to HCFA for approval as an accreditation organization for the specialty of immunohematology which would be an addition to the specialties and subspecialties approved by HCFA in a notice published in the **Federal Register** on December 23, 1993 (58 FR 68148). We have evaluated the COLA application to determine equivalency with our implementing regulations and the deeming/exemption requirements of the CLIA rules. We also verified the organization's assurance that it requires the laboratories it accredits to be, and that the organization is, in compliance with the following subparts of 42 CFR part 493 as explained below:

Subpart E—Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program

COLA has submitted a request for HCFA approval for the specialty of immunohematology to be added to the specialties and subspecialties for which it received approval in December, 1993. COLA had previously submitted a comparison of individual accreditation and condition level requirements, a description of its inspection process, PT monitoring process, and its data management and analysis system. In addition, it had submitted a listing of the size, composition, education and experience of its inspection teams, its investigative and complaint response procedures, its notification agreements with HCFA, its removal or withdrawal of laboratory accreditation procedures, its current list of accredited laboratories, and its announced or unannounced inspection process. We have determined that COLA has complied with the general requirements under § 493.501, the applicable parts of § 493.506, and the CLIA requirements for approval as an accreditation organization under various subparts of part 493 for the additional specialty.

Subpart H—Participation in Proficiency Testing for Laboratories Performing Tests of Moderate or High Complexity, or Both

COLA's requirements for PT are equal to those of CLIA. All of COLA's accredited laboratories are required to participate in a HCFA approved PT program for all tests that are not waived. CLIA, however, requires laboratories that perform any of the tests listed in subpart I to participate in a HCFA approved PT program for those tests only, rather than all of the tests they may perform. COLA also encourages its accredited laboratories to participate in PT for tests that are waived under CLIA.

Subpart J—Patient Test Management for Moderate or High Complexity Testing, or Both

COLA requirements are equal to the CLIA requirements at §§ 493.1101 through 493.1111 on an overall basis for the specialty of immunohematology.

Subpart K—Quality Control for Tests of Moderate or High Complexity, or Both

The quality control requirements of COLA have been evaluated against the applicable requirements of the CLIA regulations for immunohematology. We have determined that COLA's requirements, when taken as a whole, are equal to or more stringent than the CLIA requirements. The specific areas that are more stringent are—

- Safety requirements for moderate and high complexity testing;
- Calibration/recalibration requirements for moderate complexity testing;
- A requirement that the laboratory director sign, review, and approve the procedure manual annually; and
- The use of a negative control for ABO antisera is required.

COLA recognizes the categorization of tests for quality control purposes.

Subpart M—Personnel for Moderate and High Complexity Testing

COLA states, as general policy under its personnel standards, that the laboratory director and laboratory personnel must meet all Federal and State educational and experience requirements necessary to perform their assigned tasks. It has adopted the Federal personnel requirements for education, training, and experience, and recognizes the various positions and the responsibilities of each of the positions cited in the CLIA regulations.

All COLA accredited laboratories are currently required to meet these CLIA standards. We have, therefore, found the COLA personnel requirements to be equal to the CLIA personnel requirements.

Subpart P—Quality Assurance for Moderate or High Complexity Testing or Both

We have determined that COLA's requirements for immunohematology are equal to the CLIA requirements of this subpart. COLA also makes educational materials available to its accredited laboratories, which provide further information on quality assurance in the office laboratory.

Subpart Q—Inspections

The COLA inspection process, which is announced and performed on-site on a biennial basis, is equal to the applicable CLIA requirements at §§ 493.1777. Therefore, we have determined that COLA's requirements are equal to the requirements of this subpart.

Subpart R—Enforcement Procedures for Laboratories

COLA meets the requirements of subpart R to the extent it applies to accreditation organizations. COLA policy stipulates the action it takes when laboratories it accredits do not comply with its essential standards pertaining to immunohematology. When appropriate, COLA will deny accreditation to a laboratory and report the denial to HCFA within 30 days. COLA also provides an appeals process for laboratories that have had accreditation denied.

We have determined that COLA's laboratory enforcement and appeal policies are essentially equivalent to the requirements of this subpart as they apply to accreditation organizations.

IV. Federal Validation Inspections and Continuing Oversight

The Federal validation inspections of COLA accredited laboratories, as specified in § 493.507, may be conducted on a representative sample basis or in response to substantial allegations of noncompliance, ''complaint inspections''. The outcome of those validation inspections, performed by HCFA, the State survey agency, or a HCFA agent, will be HCFA's principal means for verifying that the laboratories accredited by COLA remain in compliance with CLIA requirements. This Federal monitoring is an on-going process.

V. Removal of Approval as an Accrediting Organization

Our regulations at § 493.511 provide that the approval of an accreditation organization, such as that of COLA, may be removed by HCFA for cause, prior to the end of the effective date of approval. If validation inspection outcomes and the comparability or validation review produce findings as described at § 493.509(a), HCFA will conduct a review of the accreditation organization's program. A review is also conducted when the validation review findings, irrespective of the rate of disparity (as defined in § 493.2), indicate widespread or systematic problems in the organization's processes. These findings provide evidence that the organization's requirements are no longer equivalent to the CLIA requirements.

If it is determined that COLA has failed to adopt requirements that are equal to or more stringent than the CLIA requirements, or widespread systemic problems exist in its inspection process, a probationary period, not to exceed one year, may be given to allow COLA to adopt comparable requirements. Based on an evaluation of any of the items stipulated at § 493.511(d), a determination will be made as to whether or not COLA retains its approved status as an accreditation organization under CLIA. If approved status is denied, an accreditation organization such as COLA may resubmit its application when it: (1) Has revised its program to address the rationale for the denial; (2) demonstrated that it can reasonably assure that its accredited laboratories meet CLIA condition level requirements; and (3) resubmits its application for approval as an accreditation organization in its entirety. If, however, an accrediting organization requests reconsideration of an adverse determination in accordance with subpart D of part 488 of our regulations, it may not submit a new application until a final reconsideration determination is issued.

Should circumstances result in COLA having its approval withdrawn, we will publish a notice in the **Federal Register** explaining the basis for removing its approval.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Section 353 of the Public Health Service Act (42 U.S.C. 263a).

Dated: March 16, 1997.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 97–12959 Filed 5–16–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting of the Advisory Committee to the Director, NIH

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, June 5, 1997, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. to adjournment. The topics proposed for discussion may include (1) the future of research careers in biology and medicine; (2) clinical research; (3) further implementation of the recommendations of the Report of the NIH AIDS Research Program Evaluation Task Force, particularly in regard to the development of an HIV vaccine; (4) activities related to research misconduct; and (5) infectious diseases in Africa. Attendance by the public will be limited to space available.

Ms. Janice Ramsden, Program Specialist, Office of the Deputy Director, National Institutes of Health, 1 Center Drive MSC 0159, Bethesda, Maryland 20892–0159, telephone (301) 496–0959, fax (301) 496–7451, will furnish the meeting agenda, roster of committee members, and substantive program information upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Ramsden no later than May 30, 1997.

Dated: May 14, 1997.

LaVeen Ponds,

Acting Committee Management Officer, NIH.

[FR Doc. 97–13061 Filed 5–16–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute on Drug Abuse

(NIDA) Initial Review Group and Special Emphasis Panel meetings.

Purpose/Agenda: To review and evaluate grant applications and contract proposals.

Name of Committee: NIDA Special Emphasis Panel (Contract Review).

Date: May 29, 1997.

Time: 9:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Mr. Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–1644.

Name of Committee: Molecular, Cellular and Chemical Neurobiology Research Subcommittee.

Date: June 3–5, 1997.

Time: 8:30 a.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20818.

Contact Person: Rita Liu, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: NIDA Special Emphasis Panel (Molecular, Cellular and Chemical Neurobiology).

Date: June 5, 1997.

Time: 1:00 p.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20818.

Contact Person: Khursheed Asghar, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–2620.

This notice is being published less than 15 days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of Committee: Neuropharmacology Research Subcommittee.

Date: June 9–10, 1997.

Time: 8:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Syed Husain, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: Basic Behavioral Science Research Subcommittee.

Date: June 9–11, 1997.

Time: 8:30 a.m.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

Contact Person: William C. Grace, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–2755.

Name of Committee: Neurophysiology and Neuroanatomy Research Subcommittee.

Date: June 9–11, 1997.

Time: 8:30 a.m.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 2209.

Contact Person: Gamil Debbas, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: NIDA Special Emphasis Panel (Human Development).

Date: June 10, 1997.

Time: 1:00 p.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gamil Debbas, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: Human Development Research Subcommittee.

Date: June 10–11, 1997.

Time: 8:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Kesinee Nimit, M.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: Epidemiology and Prevention Research Subcommittee.

Date: June 10–12, 1997.

Time: 8:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Raquel Crider, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: NIDA Special Emphasis Panel (Contract Review).

Date: June 24, 1997.

Time: 9:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Mr. Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–1644.

Name of Committee: NIDA Special Emphasis Panel (Clinical Neuroscience).

Date: July 1, 1997.

Time: 9:00 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: William C. Grace, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–2755.

Name of Committee: Health Service Research Subcommittee.

Date: July 8–9, 1997.

Time: 8:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Raquel Crider, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: Treatment Research Subcommittee.

Date: July 8–10, 1997.

Time: 8:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Kesinee Nimit, M.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: NIDA special Emphasis Panel (Treatment).

Date: July 9, 1997.

Time: 8:00 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Rita Liu, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

Name of Committee: NIDA Special Emphasis Panel (Centers).

Date: July 14–15, 1997.

Time: 12:00 p.m.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Mary C. Custer, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: AIDS Behavioral Research Subcommittee.

Date: July 15–16, 1997.

Time: 8:30 a.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20818.

Contact Person: William C. Grace, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Telephone (301) 443–2755.

Name of Committee: AIDS Biomedical and Clinical Research Subcommittee.

Date: July 15–16, 1997.

Time: 8:30 a.m.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Gamil Debbas, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: NIDA Special Emphasis Panel (RFA DA–97–003—Request of Pharmacotherapies for Cocaine Dependence).

Date: July 24–25, 1997.

Time: 8:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Kesinee Nimit, M.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.

The meetings will be closed in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and

Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs.)

Dated: May 14, 1997.

LaVeen Ponds,

Acting Committee Management Officer, NIH.

[FR Doc. 97–13062 Filed 5–16–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4200–N–64]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: July 18, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451—7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Servicing Division (HSIS), Telephone number (202) 708–1672 (this is not a toll-free number) for copies of the proposed form and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Reporting Requirements Associated with 24 CFR 203.508b and 235.1001—Providing Information.

OMB Control Number: 2502–0235.

Description of the need for the information and the proposed use: This notice requests to extend the use of 24 CFR 203.508b and 24 CFR 203.1001. 24 CFR 203.508b outlines the requirements and the means for mortgagors to provide needed information to lenders regarding their mortgages. 24 CFR 203.1001 outlines the criteria for mortgages to use in providing interest and/or tax information to mortgagors so that program funds are accounted for properly.

Agency form numbers: N/A.

Members of affected public: Not-for-profit institutions.

Public reporting burden for this collection of information is estimated to average 0.25 hours per response, the number of respondents is 12,000, frequency of response is annually and the total hours is 3,000.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 13, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 97–13050 Filed 5–16–97; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. FR–4200–N–63]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: June 18, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 9, 1997.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Housing Opportunities for Persons with AIDS (HOPWA) Program.

Office: Community Planning and Development.

OMB Approval Number: 2506–0133.

Description of the need for the Information and its Proposed Use: The HOPWA program provides entitlement and competitive grants to States and units of local government for housing assistance and supportive services for persons with AIDS for which applications, certifications, waivers, and annual reports will be filed.

Form Number: SF–424 and Certifications, HUD–40110–B, and HUD–40110–C.

Respondents: State, Local, or Tribal Government and Not-For-Profit Institutions.

Frequency of Submission: Recordkeeping and Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Applications	150		1		44		6,600
Recordkeeping	75		1		45		3,375
Progress Reports	75		1		24.7		1,851

Total Estimated Burden Hours: 11,826.

Status: Extension, without changes.

David Vos, HUD (202) 708–1934, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 9, 1997.

[FR Doc. 97–13049 Filed 5–16–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: David Hancock, Hancock Wildlife Research Center, Blaine WA. The applicant wishes to establish a cooperative breeding program for ten species of tauracos and three species of plantain-eaters. Mr. Hancock wishes to be an active participant in this program with two other private individuals. The Hancock Wildlife Research Center has assumed the responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: May 13, 1997.

Susan Lieberman,

Chief, Branch of Operations, Office of Management Authority.

[FR Doc. 97–13029 Filed 5–16–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–2–4710–02–24 1A]

Reinstatement of Expired Information Collection, OMB Number 1004–0132

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, The Bureau of Land Management (BLM) announces its intention to request reinstatement of expired approval to collect certain information from all entities interested in the development of geothermal steam resources on lands managed by BLM. The information to be collected concerns data submitted by geothermal lessees and operators issued for agency approval of specific or additional operations on a well and to report the completion or progress of the additional work.

DATES: BLM must receive comments on the proposed information collection by July 18, 1997 to assure their consideration.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, D.C. 20240. You may also comment via the internet to WOComment@wo.blm.gov. Please submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''attn: 1004–0132'' and your name and return address in your internet message. If you do not receive a confirmation from the system that we have received your internet message, contact us directly at (202) 452–5030.

Finally, you may hand-deliver comments to BLM at 1620 L Street, N.W., Room 401, Washington, D.C. Comments, including names and street addresses of respondents, will be available for public review at this address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality, which BLM will consider on a case-by-case basis. If you wish to request that BLM consider withholding your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Chris Fontecchio, BLM Regulatory Affairs Office, at (202) 452–5012.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), BLM is required to provide notice in the **Federal Register** concerning a collection of information contained in BLM forms numbered 3260–2, 3260–3, 3260–4, and 3260–5, under the regulations at 43 CFR part 3200. This is done so that we may solicit comments on (a) whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collecting information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the Office of Management and Budget (OMB) under 44 U.S.C. § 3501, *et seq.*

Following is a description of each of the forms which would be covered by this information collection reinstatement, including how BLM uses each form and an estimate of the consequences if BLM did not collect this information:

* Form 3260–2, Geothermal Drilling Permit: This is a permit to drill, redrill, deepen or plug-back a well on Federal lands. This form, when approved, gives permission to begin these operations. The information provided gives an estimate of the well's feasibility and aids in determining whether the application should be approved or not.

* Form 3260–3, Geothermal Sundry Notice: BLM uses this form to obtain information on planned well work, road site and facilities construction and other miscellaneous activities related to other previously approved operations. Without this information there could be no adequate evaluation of the feasibility and environmental impacts of the proposed activity.

* Form 3260–4, Geothermal Well Completion Report: BLM uses this form to obtain information on a complete and accurate log and history, in chronological order, of all operations conducted on the well. The purpose of the form is to facilitate future operations, protect water supplies and federal geothermal resources and to allow accurate appraisal of down-hole conditions.

* Form 3260–5, Monthly Report of Geothermal Operations: This form is needed to obtain information for monthly production for royalty reporting and production verification from geothermal wells. BLM uses this report to monitor the technical parameters of drilling, production and injection activities for each well.

Based on BLM's experience administering the activities above, the public reporting burden for the information collected is estimated as follows:

Form No.	Form description	Hours per response	Frequency
3260–2	Geothermal Drilling Permit	10 hours	Nonrecurring.
3260–3	Geothermal Sundry Notice	1 hour	On occasion.
3260–4	Geo. Well Completion Report	2–6 hours	On occasion.
3260–5	Monthly Report of Geo. Operations	1 hour	Monthly.

The respondents are lessees and operators of Federal geothermal leases and Indian geothermal contracts subject to BLM oversight. The number of responses per year is estimated to total 760. The estimated total burden on new respondents is 1700 hours. BLM is specifically requesting your comments on its estimate of the amount of time that it takes to prepare a response.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record, subject to the exceptions in the **ADDRESSES** section above.

Dated: May 13, 1997.

Carole J. Smith,

Information Collection Officer.

[FR Doc. 97–13036 Filed 5–16–97; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–07–1320–01–P; NDM 86641]

Notice of Invitation—Coal Exploration License Application NDM 86641

AGENCY: Bureau of Land Management, Montana State Office, Interior.

SUMMARY: Members of the public are hereby invited to participate with Knife River Corporation in a program for the exploration of coal deposits owned by the United States of America in the following-described lands located in Mercer County, North Dakota:

T. 143 N., R. 88 W., 5th P.M.
Sec. 24: NW¼NW¼, S½NW¼, SW¼, S½SE¼
360.00 acres.

SUPPLEMENTARY INFORMATION: Any party electing to participate in this exploration program shall notify, *in writing,* both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107–6800; and Knife River Corporation, 1915 North Kavaney Drive, Bismarck, North Dakota 58501-1698. Such written notice must refer to serial number NDM 86641, and be received no later than 30 days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of this Notice in the Beulah Beacon, whichever is later. This Notice will be published once a week for two (2) consecutive weeks in the Beulah Beacon, Beulah, North Dakota.

The Proposed exploration program is fully described, and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. The exploration plan, as submitted by Knife River Corporation, is 2 available for public inspection at the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana, during regular business hours (9 a.m. to 4 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Steve Van Matre, Mining Engineer, or Bettie Schaff, Land Law Examiner, Branch of Solid Minerals (MT–921), Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, Montana 59107–6800, telephone (406) 255–2818 or (406) 255–2832, respectively (commercial or FTS).

Dated: May 8, 1997.

Randy D. Heuscher,

Chief, Branch of Solid Minerals.

[FR Doc. 97–12964 Filed 5–16–97; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–030–07–1820–00–1784]

Southwest Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Resource Advisory Council meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 USC), notice is hereby given that the Southwest Resource Advisory Council (Southwest RAC) will meet on Thursday, June 12, 1997, at the Gunnison County Fairgrounds, 275 South Spruce, Gunnison, Colorado.

DATES: The meeting will be held on Thursday, June 12, 1997.

ADDRESSES: For additional information, contact Roger Alexander, Bureau of Land Management, Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401; telephone 970–240–5335; TDD 970–240–5366; e-mail r2alexan@co.blm.gov.

SUPPLEMENTARY INFORMATION: The June 12, 1997, meeting will begin at 9:00 a.m. in the downstairs conference room at the Gunnison County Fairgrounds multi-purpose building, 275 South Spruce, Gunnison, Colorado. The morning agenda will include a presentation on the plan developed by the Gunnison Sage Grouse Working Group. The afternoon agenda will include discussions on travel management in the Gunnison Basin and a field trip to various sites where travel management is an issue. The public is invited to accompany the Council on the field trip, but must provide their own transportation. Time will be provided during the morning session for public comments.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. If necessary, a per-person time limit may be established by the Montrose District Manager.

Summary minutes for Council meetings are maintained in the Montrose District Office (and on the Internet at http://coweb.co.blm.gov/mdo/mdo__sw__rac.htm) and are available for public inspection and reproduction within thirty (30) days following each meeting.

Dated: May 9, 1997.

Jamie E. Connell,

Associate District Manager.

[FR Doc. 97–12961 Filed 5–16–97; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–350–1020–00]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Susanville Resource Advisory Council, Susanville, California.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management's Susanville Resource Advisory Council will hold a business meeting and field tour Friday and Saturday, June 13 and 14, 1997, in Cedarville, California. The June 13 meeting begins at 10 a.m. in the meeting room of the Cedarville Community Church, corner of Bonner and Center Streets. Items on the agenda include a discussion about recreation user fees, an update on the California Draft Environmental Impact Statement on Standards for Healthy Rangelands and Guidelines for Livestock Grazing, discussion about the proposed Black Rock/High Rock Emigrant Trails National Conservation Area, and a final report on the Tuledad Grazing Allotment. Public comments will be taken at 1 p.m. Depending on the number of people wishing to speak, a time limit could be imposed. On June 14 the council will convene at the BLM Office, 602 Cressler St., Cedarville at 7 a.m. and depart immediately for a field tour to High Rock Canyon. Members of the public are welcome on the field tour, but they must provide their own high clearance four wheel drive transportation, lunch and water.

FOR MORE INFORMATION: Contact Jeff Fontana (916) 257–5381.

John Bosworth,

Acting Area Manager.

[FR Doc. 97–13016 Filed 5–16–97; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–066–5440–J068;UTU–74312]

Notice of Realty Action; Non-Competitive Sale of Public Land; Carbon County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, sale of public land in Carbon County, Utah.

SUMMARY: The following described parcel of public land had been examined and found suitable for disposal by sale utilizing non-competitive sales procedures (43 CFR 2711.3–3), at no less than the fair market value. Authority for the sale is section 203 of the Federal Land Policy and Management Act of 1976 (90 stat. 2750; 43 U.S.C. 1713).

Salt Lake Meridian, Utah

T. 14 S., R. 10 E.,
Section 13, W½SW¼SE¼,E¼SE¼SW¼
(portions thereof-Metes & Bounds)
Containing 28.212 acres more or less.

The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**. This land is being offered as a direct non-competitive sale to Carbon County. The parcel is not required for any Federal purpose or program. Sale of the parcel is consistent with current BLM land use planning and would be in the public interest.

The Terms and Conditions Applicable to the Sale Are

1. All valid existing rights documented on the official public land records at the time of conveyance issuance.

2. A reservation to the United States of all mineral deposits, together with the right to prospect for, mine, and remove such deposits under applicable law and such regulations as the Secretary of the Interior may prescribe.

3. A reservation to the United States for rights-of-way for ditches and canals under the Act of August 20, 1890 (26 Stat. 391; 43 U.S.C. 945).

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws including the mining laws, except the mineral leasing laws. The segregative effect will end upon issuance of a patent or other document of conveyance, or two hundred seventy (270) days from the date of this publication, whichever occurs first.

Comments: For a period of forty-five (45) days from the date of publication of

this notice in the **Federal Register**, interested parties may submit comments to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information concerning the proposed action, and the terms and conditions of the sale may be obtained from Joan Hubert, Area Realty Specialist, Price River/San Rafael Resource Area, 125 South 600 West, Price, Utah 84501, (801) 636–3600.

Dated: May 5, 1997.

Katherine Kitchell,

District Manager.

[FR Doc. 97–13017 Filed 5–16–97; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

Title: Cooperative Agreements, OMB Control Number 1010–0087.

Comments: This collection of information has been submitted to the Office of Management and Budget for approval. In compliance with the Paperwork Reduction Act of 1995, Section 3506 (c)(2)(A), each agency shall provide notice and otherwise consult with members of the public and affected agencies concerning this collection of information in order to solicit comment to (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility, (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, c) enhance the quality, utility, and clarity of the information to be collected, and (d) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments should be made directly to the Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395–7340. Comments should also be directed to the agency. The U.S. Postal Service address is Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3101, Denver, Colorado, 80225–0165; the courier address is Building 85, Room A–212, Denver Federal Center, Denver, Colorado 80225; and the e:mail address is David_Guzy@smtp.mms.gov. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration.

Copies of the proposed information collection and related explanatory material may be obtained by contacting Dennis C. Jones, Rules and Publications Staff, telephone (303) 231–3046, FAX (303) 231–3194, e-mail Dennis__C__Jones@smtp.mms.gov.

DATES: Written comments should be received on or before June 18, 1997.

SUMMARY: The Secretary of the Interior is authorized by the Federal Oil and Gas Royalty Management Act of 1982 at 30 U.S.C. 1732 to enter into cooperative agreements utilizing the capabilities of States and Tribes to carry out royalty audits and related investigation and enforcement activities. Cooperative agreements benefit both the Minerals Management Service (MMS) and the State or Tribe involved by helping to ensure proper product valuation, correct and timely production reporting, and correct and timely royalty payment through the application of an aggressive and comprehensive audit program. To be considered for a cooperative agreement States and Indian Tribes must comply with the regulations at 30 CFR 228 by submitting a request to the Director of MMS and preparing an application detailing the work to be done. While working under a cooperative agreement, the State or Tribe must submit quarterly vouchers to claim reimbursement for the cost of eligible activities.

Description of Respondents: States and Tribes

Frequency: When States and Tribes request to enter into Cooperative Agreements and annually and quarterly thereafter.

Number of Respondents: 17.

Annual Responses: 85.

Estimated Reporting and Recordkeeping Burden: 72 hours (160 hours during the initial application year).

Annual Burden Hours: 1,224 hours.

Bureau Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: May 2, 1997.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 97–12957 Filed 5–16–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

30 Day Notice of Submission to OMB, Opportunity for Public Comment

AGENCY: National Park Service; Colonial National Historical Park, Frederick Douglass National Historical Site, Glen Canyon National Recreation Area, Golden Gate National Recreation Area, Grand Canyon National Park, Sleeping Bear Dunes National Lakeshore, Yellowstone National Park, Yosemite National Park, Department of the Interior.

ACTION: Notice of submission to OMB and request for comments.

ABSTRACT: The National Park Service and eight units of the National Park System (Colonial National Historical Park, Frederick Douglass National Historic Site, Glenn Canyon National Recreation Area, Golden Gate National Recreation Area, Grand Canyon National Park, Sleeping Bear Dunes National Lakeshore, Yellowstone National Park, and Yosemite National Park) propose to conduct visitor surveys to assess visitor reactions to new, demonstration visitor fee programs. The results will be used by the National Park Service, Department of the Interior, and the Congress to evaluate the trial fee programs. A Paperwork Reduction Act Submission that includes the proposed survey questionnaire for these surveys has been submitted to the Office of Management and budget for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the National Park Service invites public comments on the proposed information collection request (ICR). Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including use of automated collection techniques or other forms of information technology.

The purpose of the ICR is to obtain in eight national park units information about visitors and their reactions to new

visitor fee programs being conducted on a trial basis in many units of the National Park System of the United States. The eight national park units will represent a cross section of the parks in the National Park System. Results of this survey will be used by the National Park Service, the Department of the Interior, and the Congress to evaluate the trial fee programs.

There were no public comments received as a result of publishing in the **Federal Register** a 60 day notice of intention to request clearance for this ICR.

DATES: Public comments will be accepted on or before June 18, 1997.

SEND COMMENTS TO: Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for the Interior Department, Office of Management and Budget, Washington, DC 20503; and also to: David W. Lime, Ph.D., Senior Research Associate, Cooperative Park Studies Unit, Department of Forest Resources, University of Minnesota, 115 Green Hall 1530 N. Cleveland Ave., St. Paul, MN 55108.

FOR FURTHER INFORMATION OR A COPY OF THE ICR SUBMITTED TO OMB, CONTACT:

Dave Lime, 612–624–2250.

SUPPLEMENTARY INFORMATION:

Title: Monitoring Public Reactions to Trial Fee Programs Being Tested During 1997 in the National Park System.

Form: None.

OMB Number: To be assigned.

Expiration date: To be assigned.

Type of request: Request for new clearance.

Description of need: The National Park Service needs information about visitors and their reactions to new visitor fee programs being conducted on a trial basis in many units of the National Park System of the United States. The results of this eight national park unit survey will be used by the National Park Service, the Department of the Interior, and the Congress to evaluate the trial fee programs.

Description of respondents: A sample of individuals who visit each of the eight parks.

Estimated annual reporting burden: 96 burden hours.

Estimated average burden hours per response: 6 minutes.

Estimated average number of respondents: 960 total (120 respondents in each of the 8 parks).

Estimated frequency of response: Once.

Diane M. Cooke,

Information Collection Clearance Officer, Accountability and Audits Team, National Park Service.

[FR Doc. 97–13073 Filed 5–16–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Environmental Impact Statement, The Flagstaff Areas (Wupatki, Sunset Crater Volcano, and Walnut Canyon National Monuments), Coconino County, Arizona

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the General Management Plan for Wupatki, Sunset Crater Volcano, and Walnut Canyon National Monuments.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for the General Management Plan for Wupatki, Sunset Crater Volcano, and Walnut Canyon National Monuments.

The effort will result in a comprehensive general management plan that encompasses preservation of natural and cultural resources, visitor use and interpretation, roads, and facilities. The planning process will be coordinated with the United States Forest Service (Coconino National Forest), the Arizona Land Department, the Babbitt Ranches (CO Bar Ranch), the Hopi and Navajo Nations, the Museum of Northern Arizona, Northern Arizona University, Coconino County, and the City of Flagstaff. Attention will also be given to resources outside the boundaries that affect the integrity of these units. Alternatives to be considered include no-action, the preferred alternative, and others to be developed through this planning effort.

Major issues include boundary expansions legislated in 1996 at Walnut Canyon and Wupatki National Monuments, the preparation of an Openspace/Greenway Plan by the City of Flagstaff, Navajo residence and Navajo livestock grazing within Wupatki National Monument, the lack of information relative to human impacts on back country resources at Wupatki, and self-government issues raised by the Navajo Nation.

A scoping brochure has been prepared that details the issues identified to date. Copies of that and other information regarding the General Management Plan and Environmental Impact Statement can be obtained from the Superintendent, Flagstaff Areas, 2818 North Steves Blvd. #3, Flagstaff, Arizona 86004, telephone (520) 556–7134.

Dated: May 15, 1997.

John E. Cook,

Regional Director, Intermountain Region.

[FR Doc. 97–13074 Filed 5–16–97; 8:45 am]

BILLING CODE 4310–40–U

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Region; National Capital Memorial Commission; Notice of Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Tuesday, June 10, 1997, at 1 p.m., at the National Building Museum, Room 312, 5th and F Streets, NW.

The Commission was established by Public Law 99–652, the Commemorative Works Act, for the purpose of preparing and recommending to the Secretary of the Interior; Administrator, General Services Administration; and Members of Congress broad criteria, guidelines, and policies for memorializing persons and events on Federal lands in the National Capital Region (as defined in the National Capital Planning Act of 1952, as amended), through the media of monuments, memorials and statues. It is to examine each memorial proposal for adequacy and appropriateness, make recommendations to the Secretary and Administrator, and to serve as information focal point for those persons seeking to erect memorials on Federal land in the National Capital Region.

The members of the Commission are as follows: Director, National Park Service; Chairman, National Capital Planning Commission; The Architect of the Capitol; Chairman, American Battle Monuments Commission; Chairman, Commission of Fine Arts; Mayor of the District of Columbia; Administrator, General Services Administration; Secretary of Defense.

The purpose of the meeting will be to discuss currently authorized and proposed memorials in the District of Columbia and environs.

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or

who want further information concerning the meeting may contact the Commission at (202) 619–7097. Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the Office of Stewardship and Partnerships, National Capital Support Office, 1100 Ohio Drive, SW., Room 220, Washington, D.C., 20242.

Dated: May 6, 1997.

Terry R. Carlstrom,

Acting Regional Director, National Capital Region.

[FR Doc. 97–13077 Filed 5–16–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Park System Advisory Board; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1994), that a meeting of the National Park System Advisory Board will be held on June 9–10, 1997, at the U.S. Department of the Interior, 1849 C Street, NW, Washington, DC, in the Large Buffet Room of the Department of the Interior Cafeteria. June 9, 1997, will be a meeting day for the committees of the Board. The Committee on Use, Recreation and Tourism will meet in room 7000B. The Committee on Criteria and Standards will meet in room 7116. The Committee on Humanities, Science and Education will meet in room 7112. All committee meetings will begin at 10:00 am and will adjourn at 4:00 pm on June 9. The full Board will meet June 10, 1997. The full Board meeting will begin at 8:00 am and will adjourn at about 5:00 pm.

On June 10, after remarks from the Chairman, the Board will be addressed by National Park Service officials on the status of the committees and their structure, as well as other pertinent NPS issues. The Board will vote on National Historic Landmark nominations in the afternoon.

The Board may be addressed at various times by other officials of the National Park Service and the Department of the Interior; and other miscellaneous topics and reports may be covered. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The Board meeting will be open to the public. Space and facilities to accommodate the public are limited and persons will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Loran Fraser, Office of Policy, National Park Service, Post Office Box 37127, Washington, DC, 20013–7127 (telephone 202–208–7456).

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 2414, Main Interior Building, 1849 C Street, NW., Washington, DC.

Dated: May 14, 1997.

Denis Galvin,

Acting Deputy Director, National Park Service.

[FR Doc. 97–13076 Filed 5–16–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 10, 1997. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by June 3, 1997.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Drew County

Tillar, Frank, Memorial Methodist Episcopal Church, South, W. Railroad St., N. of AR 277, Tillar, 97000525

FLORIDA

Palm Beach County

West Palm Beach Stub Canal and Turning Basin, Northern 1.3 mi. of Stub Canal and turning basin, roughly bounded by Belvedere Rd. and FL 704, West Palm Beach, 97000526

GEORGIA

Barrow County

Auburn Historic District, Roughly bounded by 3rd Ave., 6th St., 6th Ave., and Main St., Auburn, 97000527

IOWA

Lee County

Keokuk National Cemetery (Civil War Era National Cemeteries), 1701 J St., Keokuk, 97000528

MASSACHUSETTS

Norfolk County

Hagerty, Josephine M., House, 357 Atlantic Ave., Cohasset, 97000529

NEW YORK

Dutchess County

Building at 73 Mansion St. (Poughkeepsie MPS), 73 Mansion St., Poughkeepsie, 97000531

Otsego County

Church Street Historic District, Roughly bounded by Church, Sylvan, Gould, and Warren Sts., Richfield Springs, 97000532

Saratoga County

Vischer Ferry Historic District (Boundary Increase), Along Riverview Rd., from Old Ferry Rd. to hydroelectric plant, from Van Vranken Rd. to jct. of Mohawk R. and Erie Canal, Vischer Ferry vicinity, 97000530

NORTH CAROLINA

Halifax County

Church of the Immaculate Conception and the Michael Ferrall Family Cemetery, 145 S. King St., Halifax, 97000533

SOUTH CAROLINA

Aiken County

Crossways (Aiken Winter Colony TR), 450 E. Boundary St., Aiken, 97000536

Mims, Britton, House, 229 Edgefield Rd., North Augusta, 97000539

Darlington County

Hartsville Community Center—Hartsville Community Market (Hartsville MPS), Fifth St. between College and Homes Ave.; and 106 W. College Ave., Hartsville, 97000538

Hartsville Post Office (Hartsville MPS), Jct. of Home Ave. and Fifth St., Hartsville, 97000537

Marlboro County

Manship Farmstead, 2601 Manship Rd., Tatum vicinity, 97000540

Sumter County

Pinewood Depot, Jct. of East Ave. and Clarke St., Pinewood, 97000535

Williamsburg County

Pressley, Colonel John Gotea, House (Kingstree MPS), 216 N. Academy St., Kingstree, 97000534

TEXAS

Harris County

Cyrus, Ben C. and Jenetter, House (Independence Heights MPS), 325 E. 35th St., Houston, 97000548
Cyrus, Ben C. and Jenetter, House (Independence Heights MPS), 325 E. 25th St., Houston, 97000549
General Mercantile Store (Independence Heights MPS), 7322 N. Main St., Houston, 97000545
Independence Heights Residential Historic District (Independence Heights MPS), Roughly bounded by N. Yale and E. 34th Sts., and I–610, Houston, 97000542
Independence Park (Independence Heights MPS), Roughly bounded by 1000 Blk. of E. 40th St., Houston, 97000544
Johnson, Charles, House (Independence Heights MPS), 301 E. 35th St., Houston, 97000550
Johnson, Morris and Mary, House, 3818 Spencer St., Houston, 97000541
Lewis, Ella, Store and Rental Houses (Independence Heights MPS), 3404—3406—3408 Courtland St., Houston, 97000543
Lindsay, Oscar, House (Independence Heights MPS), 7415 N. Main St., Houston, 97000546
Mackey, William, House (Independence Heights MPS), 313 E. 37th St., Houston, 97000547

WASHINGTON

Whatcom County

MV PLOVER (ferry), 245 Marine Dr.; Blaine Harbor Berth A–11, Blaine, 97000551

WISCONSIN

Dane County

Mansion Hill Historic District, Roughly bounded by E. Dayton, E. Johnson, E. Gorham, N. Butler, Langdon, and W. Gilman Sts., and Lake Mendota, Madison, 97000552

[FR Doc. 97–13024 Filed 5–16–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Region; Superintendents, et al.; Delegation of Authority (Order No. 5, Amendment 2), Delegation of Authority (Order No. 5, Amendment 3)

Delegation of Authority (Order No. 5, Amendment 2)

Order No. 5, approved September 14, 1977, and published in the **Federal Register** of September 30, 1977, (42 FR 52499), set forth certain authority to officers and employees. This amendment changes the titles of certain offices and employees as set forth below and rescinds the authority of Field Land Acquisition Officers: Section 5, strike ''Associate Regional Director, Cooperative Activities,'' and replace with ''Associate Superintendent, Office of Stewardship and Partnerships.''

Delegation of Authority (Order No. 5, Amendment 3)

Order No. 5, Amendment 1, approved September 22, 1989, and published in the **Federal Register** of October 26, 1989, set forth certain authority to the Chief, Land Resources Division, Mid-Atlantic Region. This amendment rescinds the authority of the Realty Officer, Land Resources Program Center, Northeast Region (formerly the Chief, Land Resources Division, Mid-Atlantic Region) and further changes Section 6 to read as follows: ''Section 6. The Chief, Land Resources Program Center, National Capital Region, is authorized to execute the land acquisition program within the National Capital Region, including contracting for acquisition of lands and related properties, and acceptance of offers to sell to, or exchanges with the United States, lands or interests in lands, and to execute all necessary agreements and conveyances incidental thereto; to accept deeds conveying to the United States land or interests in lands; to approve on behalf of the National Park Service offers of settlement in condemnation cases; to provide relocation assistance; and to approve claims for reimbursement under Public Law 91–646, as amended.

The Chief, Appalachian Trail Land Acquisition Field Office, is authorized to execute the land acquisition program for the Chesapeake and Ohio Canal National Historical Park, including contracting for acquisition of lands and related properties, and acceptance of offers to sell to, or exchanges with the United States, lands or interests in lands, and to execute all necessary agreements and conveyances incidental thereto; to accept deeds conveying to the United States land or interests in lands; to approve on behalf of the National Park Service offers of settlement in condemnation cases; to provide relocation assistance; and to approve claims for reimbursement under Public Law 91–646, as amended.

Dated: May 6, 1997.

Terry R. Carlstrom,

Acting Regional Director, National Capital Region.

[FR Doc. 97–13075 Filed 5–16–97; 8:45 am]

BILLING CODE 4310–70–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Guidelines for Internal Transport, Storage and Handling (ITSH) of P.L. 480 Title II Commodities

Notice

Pursuant to the Agricultural Market and Transition Act of 1996, notice is hereby given that the Title II Final Draft Guidelines for Internal Transport, Storage and Handling (ITSH) of Title II commodities being used for urgent and extraordinary relief requests are being made available to interested parties for the required thirty (30) day comment period.

Individuals who wish to receive a copy of the draft guidelines should contact: Office of Food for Peace, Agency for International Development, Washington, D.C. 20523–0809. Contact person: Brenda Lowdermilk, (703) 351–0108, fax (703) 351–0164. Individuals who have questions or comments on the draft guidelines should contact David Hagen at (703) 351–0166 or (dhagen@usaid.gov).

The Thirty day comment period will begin on June 18, 1997.

Dated: May 2, 1997.

William T. Oliver,

Director, Office of Food for Peace Bureau for Humanitarian Response.

[FR Doc. 97–12962 Filed 5–16–97; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *American National Can Company, et al.*, No. CIV F–97–5402–REC–SMS (E.D. Cal), was lodged on April 23, 1997, with the United States District Court for the Eastern District of California. The consent decree resolves claims under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9606 and 9607, as amended, brought against defendants American National Can Company, Crown Beverage Packaging, Inc., NL Industries, Inc., and Tri-Valley Growers for injunctive relief and response costs incurred and to be incurred by the United States Environmental Protection Agency in connection with responding to the release and threatened release of hazardous substances at the Industrial

Waste Processing Site (''Site'') in Pinedale, California.

The proposed consent decree provides that to resolve their liability to the United States for injunctive relief and response costs as described above, the aforementioned entities will collectively (1) pay $50,000 in past response costs incurred by the United States in connection with the Site; (2) perform a removal action at an estimated cost of $655,969 to address contaminated soils at the Site; and (3) pay any future oversight costs incurred by the United States in connection with the removal action (to the extent that such costs exceed $163,924). The proposed consent decree includes a covenant not to sue by the United States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9606 and 9607.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *American National Can Company, et al.,* No. CIV F–5402–REC–SMS (E.D. Cal), DOJ Ref. #90–11–3–797A.

The proposed consent decree may be examined at the office of the United States Attorney, Eastern District of California, 1130 O Street, Room 3654, Fresno, CA 93721; the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005.

In requesting copies please refer to the referenced case and enclose a check in the amount of $18.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–12966 Filed 5–16–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act and the Emergency Planning and Community Right-to-Know Act

In accordance with the policy of the Department of Justice, 18 U.S.C. § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *American National Can Co.,* Civ. No. 2–95–CV–71–RL, was lodged with the United States District Court for the Northern District of Indiana, on April 30, 1997. That action sought civil penalties and injunctive relief for violations of Subchapter III of the Resource Conservation and Recovery Act, as amended (''RCRA''), 42 U.S.C. § 6921 *et seq.,* and its implementing hazardous management regulations at 40 CFR part 260 *et seq.,* and civil penalties for violations of the Emergency Planning and Community Right-To-Know Act (''EPCRA''), 42 U.S.C. § 11001 *et seq.,* and its implementing regulations at 40 CFR part 372, at defendant's former Hammond, Indiana facility. The decree requires American National Can Co. to pay $400,000 in civil penalties to the United States and certify that it has fully transferred its ownership interest in its Hammond, Indiana facility. Since American National Can Co. sold its Hammond, Indiana Facility in 1995, the consent decree does not require injunctive relief.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resource Division, Department of Justice, Washington, D.C. 20530. All comments should refer to *United States* v. *American National Can Co.,* D.J. Ref. 90–7–1–751.

The proposed consent decree may be examined at the office of the United States Attorney for the Northern District of Indiana, 1001 Main Street, Suite A, Dyer, Indiana 46311, at the Region V office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, and at the Consent Decree Library, 1120 G Street, N.W., 4th floor, Washington, D.C. 20005, telephone no. (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $3.75 for the decree (25 cents per page reproduction costs) payable to the Consent Decree Library. When requesting a copy, please refer to *United States* v. *American National Can Co.,* D.J. Ref. 90–7–1–751.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–12967 Filed 5–16–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d), notice is hereby given that a proposed consent decree in *United States* v. *Central Quality Services Corp., et al.,* Civil Action No. 1:95 CV 272, was lodged with the United States District Court for the Western District of Michigan on May 5, 1997. The proposed consent decree resolves the United States' claims against Central Quality Services Corp. and Iceless Co. brought under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9607, for response costs incurred at the Grand Traverse Overall Supply Company Site in Greilickville, Michigan. The proposed consent decree obligates defendants to reimburse the United States for $460,000 of the response costs incurred at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Central Quality Services Corp., et al.,* Civil Action No. 1:95 CV addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Central Quality Services Corp., et al.,* Civil Action No. 1:95 CV 272, and the Department of Justice Reference No. 90–11–2–1053.

The proposed consent decree may be examined at the Office of the United States Attorney, Western District of Michigan, 330 Ionia Avenue N.W., Fifth Floor, Grand Rapids, Michigan, 49503; the Region 5 Office of the

Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–12980 Filed 5–16–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Relating to the Lemberger Superfund Sites in Manitowoc County, Wisconsin, Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *Red Arrow Products Company, a Wisconsin Partnership, et al.* Civil Action No. 96–C–0699, was lodged with the United States District Court for the Eastern District of Wisconsin, on May 6, 1996. This action was commenced pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9601, *et seq.* in connection with the Lemberger Landfill Superfund Site (#5–3E), and the Lemberger Transport & Recycling Superfund Site (#5–J4), (See the National Priorities List in 40 CFR Part 300, Appendix B) which are located near the intersection of Hempton Lake and Sunnyslope Roads, near the town of Whitelaw, in Manitowoc County, Wisconsin.

The Operable Unit 1 and Operable Unit 2 remedial and removal actions at the two Lemberger Sites are being performed by a group of potentially responsible parties (the Lemberger Sites Remediation Group or the ''LSRG'') who signed a Consent Decree in 1992 and an Administrative Order in 1993 with the United States. The Red Arrow consent decree was signed by the United States, the State of Wisconsin, Red Arrow Partnership, the trustees for twelve trusts that form the Red Arrow Partnership, and Red Arrow Products Company, a Wisconsin Corporation (collectively ''the Red Arrow Defendants). In the decree, the Red Arrow Defendants have agreed to reimburse the United States $1,425,000 in past response costs, and Red Arrow Products Company has agreed to continue performing the Operable Units 1 and 2 remedial and removal actions for the two Lemberger Sites, as a member of the Lemberger Sites Remediation Group.

The Department of Justice will receive comments relating to the proposed consent decrees for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530. All comments should refer to ''United States v. *Red Arrow Products Company, a Wisconsin Partnership, et al.,* (Lemberger Superfund Sites), DJ #90–11–2–712A.

The proposed consent decree may be examined at the Office of the United States Attorney for the Eastern District of Wisconsin, 517 E. Wisconsin Ave, Room 530, Milwaukee, WI 53202 (c/o William Lipscomb); the Region V Office of the U.S. Environmental Protection Agency, 77 West Jackson Street, Seventh Floor, Chicago, Illinois 60604; or at the Department of Justice Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Department of Justice Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the above-referenced DJ numbers, and enclose a check in the amount of $8.00 (twenty-five cents per page reproduction costs) for the consent decree (32 pages), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–12979 Filed 5–16–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Somerset Refinery Inc.,* Civil Action No. 93–186, was lodged on April 28, 1997 with the United States Court for the Eastern District of Kentucky. The second amended complaint was brought pursuant to Sections 3005, 3008, and 9006 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6925, 6928 and 6991e against Somerset Refinery, Inc. and Somerset Oil, Inc. (Somerset). The second amended complaint sought civil penalties and injunctive relief. Somerset owns and operates a small petroleum refinery located in Somerset, Kentucky. The second amended complaint alleged numerous RCRA violations based on the unpermitted treatment, storage, and disposal of various hazardous wastes at Somerset's refining facility. Most of these violations relate to the facility's petroleum wastewater treatment system. In addition, Somerset owns and operates approximately 250 underground storage tanks for gasoline, diesel, and other petroleum products at service stations throughout eastern Kentucky. The second amended complaint alleged numerous violations of the RCRA petroleum underground storage tank (UST) regulations, 40 CFR part 280.

Under the terms of the consent decree, Somerset will be required to perform corrective action pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), at the Somerset refinery, which EPA has estimated will cost in excess of $4 million. Somerset will also pay a civil penalty in the amount of $200,000 and will perform a Supplemental Environmental Project involving remediation of abandoned USTs in eastern Kentucky.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Somerset Refinery, Inc.,* DOJ Ref. #90–7–1–714.

The proposed consent decree may be examined at the office of the United States Attorney, Eastern District of Kentucky, 110 West Vine Street, Suite 400, Lexington, Kentucky 40507; the Region 4 Office of the Environmental Protection Agency, 100 Alabama Street, S.W., Atlanta, Georgia 30303; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $6.25 (25 cents

per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–12978 Filed 5–16–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Chromatic Research, Inc.

Notice is hereby given that, on March 21, 1997, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Chromatic Research, Inc., (''Chromatic'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to (b) of the Act, the identities of the parties are: Chromatic Research, Inc., Sunnyvale, CA; and Toshiba Corporation, Tokyo, JAPAN.

Chromatic's area of planned activity is the design, development, and testing of microprocessors and related software that provide superior multimedia functionality.

Chromatic will file additional written notifications disclosing all changes in membership.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–12971 Filed 5–16–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the Frame Relay Forum

Notice is hereby given that, on April 11, 1997, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Frame Relay Forum (''Forum'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following have joined the Forum as new members: ADC Kentrox, Portland, OR; Ardent Communications, Ltd., London, ENGLAND; Conklin Instrument Corporation, Norcross, GA; Fluke Corporation, Armonk, NY; GST DataNet, Vancouver, WA; Institute ERIS, Les Ulis, FRANCE; ORION Atlantic, London, ENGLAND; Teldat, S.A., Madrid, SPAIN; United Information Highway Co., Ltd., Bangkok, THAILAND; and Visual Networks, Rockville, MD. The following member has changed its name: Cadia Networks is now Fore Systems.

The following have withdrawn their membership from the Forum: Dynatech Communications, Woodbridge, VA; Gandalf Data Ltd., Delran, NJ; Global One, Reston, VA; Indiana University, Wrubel Computing Center, Bloomington, IL; Netlink, Inc., Framingham, MA; Network Systems, Highland, UT; and Novadyne, Reston, VA.

No other changes have been made in either the membership or planned activity of the Forum. Membership remains open and the Forum intends to file additional written notifications disclosing all membership changes.

On April 10, 1992, the Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 2, 1992 (57 FR 29537). The last notification was filed on December 26, 1996. A notice was published in the **Federal Register** on March 7, 1997 (62 FR 10584).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 97–12974 Filed 5–16–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Large-Area Thin Film Imagers Joint Venture

Notice is hereby given that, on April 18, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Xerox Corporation filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the Large-Area Thin Film Imagers Joint Venture. The notifications were filed for the purpose of invoking the Act's provisions limiting recovery of plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Xerox Corporation, Palo Alto, CA; Thermotrex Corporation, San Diego, CA; and TPL, Inc., Albuquerque, NM.

The purpose of this Joint Venture is to develop and demonstrate further development of large-area thin film imagers. The activities of this Joint Venture project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–12969 Filed 5–16–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Microelectronics and Computer Technology Corporation

Notice is hereby given that, on April 10, 1997, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Microelectronics and Computer Technology Corporation (''MCC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the changes are as follows: Composite Health Care Systems II, Navy Executive Agency, Falls Church, VA; NASA–AMES Research Center, Moffett Field, CA; and Nokia Research Center, Helsinki, FINLAND have joined MCC as Associate Members. Harris Corporation has withdrawn its membership from MCC.

Other changes within the membership are as follows: NASA-AMES Research Center and Nokia Research Center are committed to joining the MCC Study Pool; Hewlett-Packard, Motorola, Nokia Research Center and Nortel have joined the Low Cost Portables project; Tandem Computers, Inc., has joined the Server and Network Technology project; Hughes Electronics Company and

Raytheon have joined the HRM project; Lockheed Martin has joined the Object Infrastructure project; TRW has joined the Collaboration Management project; and Eastman Kodak is reactivating its shareholder status.

No other changes have been made in either the membership or planned activity of MCC. Membership remains open and MCC intends to file additional written notifications disclosing all membership changes.

On December 21, 1984, MCC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985 (50 FR 2633). The last notification was filed with the Department on December 18, 1996 and appeared in the **Federal Register** on March 7, 1997 (62 FR 10585).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–12975 Filed 5–16–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Message Oriented Middleware Association (''MOMA'')

Notice is hereby given that, on April 25, 1997, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Message Oriented Middleware Association (''MOMA'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following organizations have joined MOMA: ATB Associates, Wellesley, MA; Bank of America, Fremont, CA; Barclays Network Service, Knutsford, Chesire, ENGLAND; Boole & Babbage, San Jose, CA; BRAID, Inc., Stamford, CT; Hurwitz Consulting, Inc., Newton, MA; Information Builders, Inc., New York, NY; Lockheed Martin, San Jose, CA; NEON Software, Englewood, CO; Precise Software, Braintree, MA; Sony Corporation of America, Milpitas, CA; Southwestern Bell, St. Louis, MO; The Standish Group, Dennis, MA; Suite Software, Anaheim, CA; Sun Microsystems, Menlo Park, CA; Talarian Corporation, Mountain View, CA; Thompson Electronic Information Resources, Herndon, VA; Veri-Q, San Francisco, CA; and The Yankee Group, Boston, MA. AT&T GIS has changed its name to NCR Corporation.

The following organizations have withdrawn their membership from MOMA: Computer Associates International, Inc.; Compuware; Covia Technologies; National Securities Clearing Corporation; Novell, Inc.; and SunSoft, Inc.

No other changes have been made in either the membership or planned activities of MOMA. Membership remains open and MOMA intends to file additional written notifications disclosing all changes in membership.

On May 15, 1995, MOMA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 13, 1995 (60 FR 57022).

The last notification was filed with the Department on March 6, 1996. A notice was published in the **Federal Register** on June 3, 1996 (61 FR 27936).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–12971 Filed 5–16–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Productions Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on February 26, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the National Center for Manufacturing Sciences, Inc. (''NCMS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following companies have joined NCMS: Adept Technology, Inc., San Jose, CA; Dresser Instrument Division of Dresser Industries, Inc., Milford, CT; New Jersey Institute of Technology, Newark, NJ; SDL, Inc., San Jose, CA; Boeing Company, Kent, WA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on February 4, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 4, 1997 (62 FR 9812).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 97–12977 Filed 5–16–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corporation (''POSC'')

Notice is hereby given that, on April 22, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petrotechnical Open Software Corporation (''POSC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following additional parties have become new non-voting members of POSC: Logica UK Ltd. London, UK; Information Center for Petroleum and Production, Tokyo, JAPAN; Stephenson & Associates, Soyans, FRANCE; Brookeswood Computer Consultants Ltd. Oxfordshire, UK; and ISI A/S, Sandnes, NORWAY.

No other changes have been made in either the membership or planned activity of POSC.

On January 14, 1991, POSC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 7, 1991 (56 FR 5021).

The last notification was filed with the Department on January 29, 1997 A

notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 27, 1997 (62 FR 8993).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–12973 Filed 5–16–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the Salutation Consortium, Inc.

Notice is hereby given that, on April 9, 1997, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Salutation Consortium, Inc. (''Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Cisco Systems, Inc., San Jose, CA has joined the Consortium.

No other changes have been made in the membership or the planned activity of the Consortium. Membership remains open and the Consortium intends to file additional written notifications disclosing all changes in membership.

On March 30, 1995, the Consortium filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 27, 1995 (60 FR 33233). The last notification was filed on January 9, 1997. The Department of Justice published a notice in the **Federal Register** on March 7, 1997 (62 FR 10585).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–12972 Filed 5–16–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Sun Company, Inc. (R&M)-Rohm and Haas Company Joint Venture

Notice is hereby given that, on April 23, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* (''the Act''), Sun Company, Inc. (R&M) has filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identifies of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the current parties in the joint venture are: Sun Company, Inc. (R&M), Philadelphia, PA; and Rohm and Haas Company, Philadelphia, PA.

The nature and objective of this cooperative research and production venture performed in accordance with a Cooperative Agreement is to conduct research concerning breakthrough catalyst and related process technology for the oxidation of alkanes. The activities of this project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, U.S. Department of Commerce.

Information regarding this joint venture may be obtained from Dr. Allen W. Hancock, Sun Company, Inc. (R&M), Philadelphia, PA.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–12976 Filed 5–16–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on March 21, 1997, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the VSI Alliance (''VSI'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following organizations have joined VSI: Actel Corporation, Sunnyvale, CA; Adaptec, Inc., Milpitas, CA; Advancel Logic Corporation, San Jose, CA; ADVANTEST Corporation, Gunma, JAPAN; Advanced Hardware Architectures, Inc., Pullman, WA; Alcatel Mietec, Brussels, BELGIUM; Altera Corporation, San Jose, CA; American Microsystems, Inc., Pocatello, ID; Ando Electric Co., Ltd., Tokyo, JAPAN; Aptix Corporation, San Jose, CA; Aristo Technology, Cupertino, CA; Asahi Kasei Microsystems Co., Ltd., Kanagawa, JAPAN; ASPEC Technology, Inc., Sunnyvale, CA; Beijing Intelligent Electronics Co., Ltd., Beijing, CHINA; CAE Plus, Inc., Austin, TX; Caesium, Inc., Santa Clara, CA; Cast, Inc., Pomona, NY; CAD Framework Initiative, Inc., Austin, TX; Chip Express Corporation, Santa Clara, CA; Chronology Corp., Redmond, WA; Cirrus Logic, Inc., Fremont, CA; COMPASS Design Automation, Inc., San Jose, CA; CompCore Multimedia, Inc., Santa Clara, CA; CoWare, Inc., Palo Alto, CA; Cygnus Solutions, Mountain View, CA; Cypress Semiconductor, Inc., Bloomington, MN; Diagonal Systems, Mountain View, CA; DSP Group, Inc., Santa Clara, CA; Duet Technologies, Inc., San Jose, CA; Easics, NV, Leuven, BELGIUM; ECSI—European CAD Standardization, Gieres, FRANCE; Hewlett-Packard, HPPEsof Division, Santa Rosa, CA; Escalade, Inc., Santa Clara, CA; Excellent Design, Inc., Kanagawa, JAPAN; Exemplar Logic, Inc., Alameda, CA; Fuji Facom Corp., Tokyo, JAPAN; GEC Plessey Semiconductors, Plymouth, ENGLAND; GigaLex Co., Ltd., Osaka, JAPAN; Hitachi Ltd., Semiconductor & IC Division, Tokyo, JAPAN; Hyundai Electronics Industries Co., Ltd., Ichon, KOREA; IK Technology Co., Ltd., Tokyo, JAPAN; Ikos Systems, Inc., Cupertino, CA; Integrated Silicon Systems, Ltd., Belfast, NORTHERN IRELAND; iReady Corporation; San Jose, CA; Innovative Semiconductors, Inc., Mountain View, CA; Kawasaki Steel Corporation; Chiba, JAPAN; LG Semicon Co., Ltd., San Jose, CA; Lockheed Martin Advanced Technology, Camden, NJ; Logic Research Corporation, Fukuoka, JAPAN; LogicVision, Inc., San Jose, CA; LSI Systems, Inc., Kanagawa, JAPAN; LTX Corporation, Westwood, MA; Matsushita Electric Industrial Co., Ltd., Osaka, JAPAN; MIPS Technologies, Inc., Mountain View, CA; Mitsubishi Electric Corp., Hyogo, JAPAN; National Semiconductor Corporation, Santa Clara, CA; NEC Corporation, Kanagawa, JAPAN; Neuw Intellectual Property Corporation, Oldham, ENGLAND; Nippon Telegraph and Telephone Corp., Kanagawa, JAPAN; NKK Corporation, Kanagawa, JAPAN; Nordic VLSI ASA, Tiller, NORWAY; Nortel

Semiconductors, Ottawa, Ontario, CANADA; OKI Electric Industry Co., Ltd., LSI CAD, Tokyo, JAPAN; OKI Electric Industry Co., Ltd., Telecom, Tokyo, JAPAN; Olympus Optical Co., Ltd., Tokyo, JAPAN; The Open Microprocessor Systems Init, Brussels, BELGIUM; PALMCHIP Corporation, San Jose, CA; Philips Semiconductors, ASIC Design, Sunnyvale, CA; Phoenix Technologies, Ltd., San Jose CA; PrarieComm, Inc., Arlington Heights, IL; Quickturn Design Systems, Inc., Mountain View, CA; ROHM Co., Ltd., Kyoto, JAPAN; Samsung Electronics Co., Ltd., Kyunggi-do, KOREA; SanCraft, Inc., Santa Clara, CA; SAND Microelectronics, Inc., Santa Clara, CA; SANYO Electric Corp., Ltd., Semiconductor, Gunma, JAPAN; Sebring Systems, San Jose, CA; Seiko Espson Corporation, Nagano-ken, JAPAN; SGS Thomson Microelectronics, Bristol, ENGLAND; Sharp Corporation, Nara, JAPAN; SICAN GmbH, Hannover, GERMANY; Siemens AG, Munich, GERMANY; Sierra Research & Technology, Inc., Westlake Village, CA; Silicon & Software Systems, Dublin, IRELAND; SIS Microelectronics, Inc., Longmont, CO; Smartech Oy, Tampere, FINLAND; Spinnaker Systems, Inc., Tokyo, JAPAN; Summit Design, Inc., Beaverton, OR; Symbios Logic, Inc., Fort Collins, CO; Synchronicity, Inc., Boston, MA; Technical Data Freeway, Inc., Concord, MA; Thine Microsystems, Inc., Tokyo, JAPAN; Texas Instruments, Inc., Semiconductor, Waltham, MA; Tower Semiconductor, Ltd., San Jose, CA; Trimble Navigation Limited, Sunnyvale, CA; Taiwan Semiconductor Manufacturing, Hsin-Chu, TAIWAN; Vantis, Sunnyvale, CA; Victor Co., of Japan, Ltd., Yokohama, JAPAN; Viewlogic Systems, Inc., Rockville, MD; VLSI Technology, Inc., Tempe, AZ; VLSI Libraries, Inc., San Jose, CA; The Western Design Center, Inc., Mesa, AZ; Xilinx, Inc., San Jose, CA; Yokogawa Electric Corporation, Tokyo, JAPAN; and Zycad Corporation, Gatefield Division, Fremont, CA.

No other changes have been made in either the membership or planned activities of VSI. Membership remains open and VSI intends to file additional notifications disclosing all changes in membership.

On November 29, 1996, VSI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 4, 1997 (62 FR 9812).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–12968 Filed 5–16–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated January 27, 1997, and published in the **Federal Register** on February 13, 1997, (62 FR 6802), Isotec, Inc., 3858 Benner Road, Miamisburg, Ohio 45342, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxy-methamphetamine (7405).	I
4-Methoxypamphetamine (7411)	I
Psiolocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Acetylmethadol (9601)	I
Alphacetylmethadol Except Levo-Alphacetylmethadol (9603).	I
Normethadone (9635)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexane-carbonitrile (8603).	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Levo-Alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Isotec, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 CFR §§ 0.100 and 0.104, the Acting Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 6, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–13078 Filed 5–16–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 6, 1997, and published in the **Federal Register** on February 21, 1997, (62 FR 8041), Noramco of Delaware, Inc., Division of McNeilab, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Noramco of Delaware, Inc. to manufacture the listed controlled

substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 23 CFR §§ 0.100 and 0.104, the Acting Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 6, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–13079 Filed 5–16–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Important of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the important of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on April 18, 1997, Radian International LLC, 8501 North Mopac Blvd., P.O. Box 201088, Austin, Texas 78720, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
Ibogaine (7260)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2, 5-dimethoxy-amphetamine (7391).	I
4-Bromo-2, 5-dimethoxy-pehenethylamine (7392).	I
4-Methyl-2, 5-dimethoxy-amphetamine (7395).	I
2, 5-Dimethoxy-amphetamine (7396).	I
3, 4-Methylenedioxyamphetamine (7400).	I
3, 4-Methylenedioxy-N-ethylamphetamine (7404).	I
3, 4-Methylenedioxy-methamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Etorphine (except HC1) (9056)	I
Heroin (9200)	I
Pholcodine (9314)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzolecgonine (9180)	II
Ethylmorphine (9190)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II

The firm plans to manufacture small quantities of the listed controlled substances for the manufacture of analytical reference standards.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedure described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 6, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–13088 Filed 5–16–97; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (97–062)]

Notice of Agency Report Forms Under OMB Review

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)). Reports are required to comply with statutes and implementing regulations.

DATES: All comments should be submitted on or before July 18, 1997.

ADDRESSES: All comments should be addressed to Mr. Richard Kall, Code HK National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, NASA Reports Officer, (202) 358–1223.

Title: Patents.

OMB Number: 2700–0048.

Type of review: Extension.

Need and Uses: The information is needed to ensure the proper disposition of rights to inventions made in the course of NASA funded research.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Number of Respondents: 7,487.

Responses Per Respondent: 1.

Annual Responses: 7,487.

Hours Per Request: 30 min. to 10 hrs.

Annual Burden Hours: 17,870.

Frequency of Report: Annually.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 97–13045 Filed 5–16–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral & Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–

463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Social, Behavioral & Economic Sciences (1171).

Date and Time: June 2–3, 1997; 9:00 a.m. to 5 p.m.

Place: Room 365, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Jonathan W. Leland, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1757.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Decision, Risk, and Management Science Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposals actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: May 13, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–13013 Filed 5–16–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket 70–7001]

Amendment to Certificate of Compliance GDP–1 for the U.S. Enrichment Corporation, Paducah Gaseous Diffusion Plant, Paducah, KY

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination the staff concluded that: (1) there is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendment request is shown below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Paducah Gaseous Diffusion Plant. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see (1) the application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

Date of amendment request: March 31, 1997.

Brief description of amendment: The amendment proposes to broaden the applicability statement for the Technical Safety Requirement (TSR) on the sprinkler system and to correct an editorial error in the TSR on the cylinder scale cart movement prevention system.

Basis for Finding of No Significance

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The proposed change to the TSR on the C–310 and C–315 building sprinkler system changes the applicability statement such that the system must be operable at all times, except when the lube oil has been valved off or removed from the equipment. This change is consistent with the accident analysis. The proposed change to the TSR on the cylinder scale cart movement prevention system corrects one word and does not change the intent of the TSR (withdrawal is changed to receiving). These proposed changes will not affect the effluent.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed changes do not relate to controls used to minimize occupational radiation exposures, therefore, the changes will not increase exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed changes will not result in any construction, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The change to the sprinkler system applicability is consistent with the accident analysis assumptions. The

editorial change to the scale cart system maintains the intent of the TSR. The proposed changes do no affect the potential for or radiological or chemical consequences from previously evaluated accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The proposed changes would not create new operating conditions or new plant configuration that could lead to a new or different type of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

The proposed change to the applicability statement for the sprinkler system is consistent with the accident analysis. The other change is an editorial change. These changes do not decrease the margins of safety and in fact may increase the margin by eliminating potential misunderstandings about TSR requirements.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

Implementation of the proposed changes do not change the safety, safeguards, or security programs. Therefore, the effectiveness of the safety, safeguards, and security programs is not decreased.

Effective date: June 18, 1997.

Certificate of Compliance No. GDP–1: Amendment will revise Technical Safety Requirements for the fire protection system and the cylinder scale cart movement prevention system.

Local Public Document Room location: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003.

Dated at Rockville, MD., this 9th day of May 1997.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–13025 Filed 5–16–97; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Requests Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: The Associate Director for Management invites comments on information collection requests as required pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35). This notice announces that the Peace Corps has submitted to the Office of Management and Budget a request for emergency approval of the Peace Corps Television Program Concept Survey. A copy of the information collection may be obtained from Stephen Maroon, Office of Communications, Marketing Department, United States PEACE CORPS, 1990 K Street, NW, Washington, DC 20526. Mr. Maroon may be contacted by telephone at (202) 606–4469. Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. Comments on these forms should be addressed to Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: Peace Corps Television Program Concept Survey.

Need for and Use of This Information: Peace Corps needs this information in order to develop informational television programs. The information is used to determine what programming and media format is required by local television stations.

Respondents: Television station managers/executives.

Respondents Obligation to Reply: Voluntary.

Burden on the Public:

a. Annual reporting burden:	125 hrs.
b. Annual recordkeeping burden.	0 hrs.
c. Estimated average burden per response.	5 min.
d. Frequency of response	One time.
e. Estimated number of likely respondents.	1500.
f. Estimated cost to respondents	$1.32.

This notice is issued in Washington, DC on May 15, 1997.

Stanley D. Suyat,

Associate Director for Management.

[FR Doc. 97–13072 Filed 5–16–97; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38619; File No. SR–CBOE–97–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to a Minor Rule Violation Plan Amendment With Respect to Position Limit Fines

May 13, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 8, 1997, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 CBOE.[2] 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 text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

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 CBOE 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 CBOE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. § 78s(b)(1)(1988).

[2] The proposed rule change was originally filed on March 28, 1997. The CBOE submitted Amendment No. 1 to the proposed rule change to revise the review period for multiple position limit violations under CBOE Rule 17.50(g)(1)(b) to a rolling twelve month review period, instead of a calendar year review period. The CBOE has requested that the rolling year review period not become effective until three months after SR–CBOE–97–19 is approved so that CBOE members who may be affected by the change will have a notice period prior to the revision. Letter from Margaret G. Abrams, Senior Attorney, CBOE, to Katherine England, Esq., Assistant Director, Division of Market Regulation—Office of Market Supervision, dated May 8, 1997.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CBOE proposes to revise the position limit summary fine schedule applied to CBOE members and the period of review for multiple position limit violations in subsection (g)(1)(b) of Exchange Rule 17.50, its minor rule violation plan (and for other accounts not qualifying as non-member customer accounts under subsection (g)(1)(a)). CBOE also proposes to amend Interpretation and Policy .01 to Rule 17.50 to conform to the proposed amendments to the fine schedule. The revisions result from an Exchange review of existing position limit sanction levels at other exchanges to ensure comparative equality of sanction levels between option exchanges and to ensure that sanction levels appropriately fit the violative behavior.[3]

CBOE proposes to change its review period for multiple member position limit violations under CBOE Rule 17.50(g)(1)(b) to a rolling 12 month period, rather than a calendar year period, to more effectively deter repeat violators.

CBOE also proposes to revise its fining method for member position limit summary fines so that the first three position limit violations within any twelve month period be redefined in Rule 17.50(g)(1)(b) to include either a single trade date occurrence or a two consecutive trade date occurrence. For the first three violations only, CBOE will treat a member with two consecutive trade dates of position limit overage in the same manner as a member with a single trade date overage. CBOE believes that such treatment is appropriate for initial violations, in that a member with a two consecutive trade date overage may unintentionally violate the position limit on the first trade date and, upon becoming aware of the overage, begin to take action to reduce the position. Market conditions and the size of the overage may then prevent the member from reducing the overage until the end of the second trade date.

CBOE notes that a member will not be extended comparable treatment between a single trade date occurrence and two consecutive trade date occurrences after the first three violations. For the fourth and succeeding violations in any twelve month period, CBOE will treat a two consecutive trade date occurrence as two separate violations. CBOE believes that the issuance of letters of caution and/or a staff interview during the initial three violations should educate a member to avoid future violations. Therefore, the treatment of two consecutive trade date occurrences as one violation is not warranted for the fourth and succeeding violations.

The first three member violations will continue to result in non-disciplinary letters of caution from Exchange staff in lieu of a fine, so long as the overage does not exceed 5% of the applicable limit. CBOE proposes that Exchange staff, in its discretion, for the third violation, may meet with the member during a non-disciplinary staff interview, in lieu of issuing a letter of caution. The staff interview, which is conducted in person and at length, may be a useful tool to prevent future position limit violations.

CBOE does not propose to change the $1.00 per contract position limit summary fine currently in effect for the fourth through sixth member violations, and also for the first through third violations when the overage exceeds 5% of the applicable limit. However, CBOE proposes to establish fine levels of $2.50 per contract for the seventh through ninth position limit violations, and $5.00 per contract for the tenth and succeeding violations. Under the existing fine schedule, a fine of $5.00 per contract is imposed for the seventh and succeeding violations. By creating another fining tier between the $1.00 and $5.00 per contract levels, the Exchange will utilize a more graduated calculation of position limit summary fines.

CBOE believes that all of the above changes in the fining method for member violations will continue to deter multiple violations and will improve the minor rule violation plan process, while resulting in position limit summary fines that are in proportion to other fines imposed by the Business Conduct Committee for comparable rule violations.[4] The proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act in that it is designed to refine and enhance the Exchange's minor rule violation plan as applied to position limit violations, thereby removing impediments to a free and open market and protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Completion

The CBOE does not believe that the proposed rule change will impose any 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 solicited or received with respect to the proposed rule change.

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 CBOE 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 person 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 Room. Copies of such filing will also be available for inspection and copying at

[3] A subgroup was formed by the Exchange's Business Conduct Committee (''BCC'') to review position limit sanctions. The subgroup included the BCC chairman, vice chairman, another BBC member, a member firm representative, and five other Exchange committee chairmen. The subgroup met during September through November 1996. The subgroup's recommendations were approved by the full BCC in November 1996, and by the Exchange's Board of Directors in December 1996.

[4] In combination with CBOE's proposal in File No. SR–CBOE–96–57 to amend Rule 17.50 so that a member may make a settlement offer if the summary fine is over $2,500 per day (and not more than $5,000 per day), or if the member had 5 or more consecutive trade date summary fines aggregation to over $10,000 (and not more than $5,000 per day), the changes proposed herein are designed to bring position limit summary fines to a level in line with fines for other rule violations. Together, the proposals should remedy the situation where a member currently may pay a disproportionately large position limit summary fine due to a fixed calculation that does not account for market conditions.

the principal office of CBOE. All submissions should refer to File No. CBOE–97–19 and should be submitted by June 9, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–12965 Filed 5–16–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38622; File No. SR–NSCC–97–04]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Extending Temporary Approval on an Accelerated Basis of a Proposed Rule Change that Establishes Additional Procedures for Class A Surveillance of Certain Settling Members and Permits the Collection of Clearing Fund and Other Collateral Deposits From These Settling Members

May 13, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 27, 1997, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–NSCC–97–04) as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to extend on an accelerated basis temporary approval of the proposed rule change through May 31, 1998.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks to extend the temporary approval of additional procedures which govern the placement of NSCC members on Class A surveillance and the clearing fund deposit and other collateral requirements for such members.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC seeks to extend the temporary approval of a rule change governing the application of Class A surveillance procedures[4] and the additional collateralization requirements to settling members that engage in certain over-the-counter (''OTC'') market making activities.[5] To decrease the risks associated with OTC market makers, NSCC has added Addendum O to its rules and procedures. Addendum O permits NSCC to place settling members on Class A surveillance if they clear for or are themselves OTC market makers and (1) they do not have sufficient capital or access to capital to support either potential increases in market making activity in dominated issues or (2) any additional risk factors are present.[6]

To further reduce its potential exposure to OTC market making activities, NSCC also has adopted an interim collateralization policy which permits NSCC in its discretion to require settling members placed on Class A surveillance that clear for or are themselves OTC market makers to deposit special collateral in amounts based upon the settling member's OTC activities relative to its amount of excess net capital.[7] The special collateralization requirements are interim measures for settling members on Class A surveillance to be in effect until NSCC has gained enough experience in surveillance of OTC market maker trading activities to impose permanent special collateralization requirements.

Because NSCC believes that its settling members on Class A surveillance present a higher than normal risk of default and insolvency, NSCC now bases such settling members' clearing fund deposits on the close-out risk presented by their unsettled positions in NSCC's systems. Under the temporary rule change, NSCC has the discretion to compute the Continuous Net Settlement (''CNS'') component of the clearing fund requirements for any settling member on Class A surveillance according to an alternative formula based upon such close-out risk.[8]

The Commission approved the proposed rule change on a temporary basis so that NSCC could gain additional experience in the surveillance of OTC market makers and the risks posed by clearing such activity. The Commission also noted in its May approval order that NSCC would be able to gain experience with the additional collateralization requirements and alternative clearing fund formula for settling members subject to Class A surveillance. NSCC believes that additional experience with respect to these matters is desirable before seeking permanent approval of these requirements.

NSCC believes that the proposed rule change is consistent with the

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[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 37202 (May 10, 1996), 61 FR 24993 [File No. SR–NSCC–95–17] (temporary approval of proposed rule change) (''May approval order'').

[3] The Commission has modified the text of the summaries submitted by NSCC.

[4] Class A surveillance permits NSCC, among other things, to increase a settling member's clearing fund requirement by an amount equal to (i) up to 5% of the settling member's CNS long fail positions plus (ii) up to 5% of the settling member's short fail positions plus (iii) 2.5% or at NSCC's discretion up to 5% of the settling member's average non-CNS and non-mutual fund service credits. NSCC Rules and Procedures, Addendum B, IV (C).

[5] NSCC's Board of Directors has determined that under certain circumstances settling members which clear securities transactions for OTC market makers or which themselves engage in OTC market making, can have their financial viability materially impacted by such business (*e.g.*, if a market maker takes net positions that are a disproportionately large percentage of one side of the market (*i.e.*, dominates the issue)). Furthermore, if these market makers have insufficient capital or insufficient access to capital and engage in market domination with regard to a particular issue either directly by participating in OTC market making or indirectly by clearing transactions for OTC market makers, NSCC believes that the risk of default by the settling member increases. In turn, this could potentially increase NSCC's exposure because NSCC is obligated to complete defaulting settling members' unsettled trades once NSCC's trade guarantee attaches.

[6] These risk factors include, without limitation:

(1) concentrated short selling in dominated issues;

(2) undue concentration of securities held in inventory by market maker(s) for dominated issues;

(3) dominated issues also being IPOs less than six months past initial issuance particularly when the current value of the issue is significantly different from its initial sales price or there is undue concentration of inventory in the managing underwriter(s); and

(4) clearing positions of market makers in dominated issues away from their primary clearing brokers.

[7] For a complete description of the special collateralization requirements, refer to the May approval order, *supra* note 2.

[8] For a complete description of the alternative CNS clearing fund formula, refer to the May approval order, *supra* note 2.

requirements of Section 17A(b)(3)(F)[9] of the Act and the rules and regulations thereunder since it will facilitate the prompt and accurate clearance and settlement of securities transactions and, in general, will protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a 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 relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F)[10] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency and generally to protect investors and the public interest. The Commission believes the proposed rule change is consistent with NSCC's obligations under the Act because it will allow NSCC to take particular action to protect itself, its members, and investors in situations where settling members pose an increased risk because of their involvement in OTC market making.

Under the proposal, NSCC will continue to have the authority with respect to settling members which participate in OTC market making activities or clear for correspondents that engage in such activity (1) to place such members on Class A surveillance, (2) to require such members to post additional collateral with NSCC, and (3) to calculate an alternative clearing fund requirement for such members when additional risk factors are present. Collectively, the higher level of surveillance, the additional level of collateralization, and the alternative clearing fund requirements should help to ameliorate NSCC's exposure which in turn should assist NSCC in fulfilling its obligations under the Act to safeguard securities and funds for which it has control of or is responsible for and to protect investors and the public interest.

At NSCC's request, the Commission is extending temporary approval of the proposed rule change through May 31, 1998, so that NSCC can gain additional experience in the surveillance of OTC market makers and the risks posed by clearing such activity prior to permanent imposition of the new Class A surveillance procedures, collateralization requirements, and alternative clearing fund formula. Temporary approval also will allow both the Commission and NSCC to continue to observe whether the additional collateralization and alternative clearing fund requirements adequately protect NSCC, its members, and investors from the expected risks of participating in and clearing OTC market maker activity and whether adjustments to the procedures are necessary.[11]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because accelerated approval will allow NSCC to continue to utilize its Class A surveillance procedures, the interim collateralization policy, and the alternative clearing fund formula without interruption and therefore to continue to protect itself, its participants, and investors in general from the potential risks of OTC market making activities.

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 Room, 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 NSCC. All submissions should refer to the file number SR–NSCC–97–04 and should be submitted by June 9, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–97–04) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–17034 Filed 5–16–97; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] *Id.*

[11] As noted in the May approval order, prior to filing a proposed rule change seeking permanent approval of the procedures set forth in this temporary approval order, NSCC shall present to the Commission a more detailed report on its findings regarding the adequacy of the controls and discussing any changes to be made to the procedures. During the temporary approval period, NSCC will continue to apprise the Commission from time to time on the operation of the Class A surveillance procedures, additional collateralization requirements, and alternative clearing fund formula to enable the Commission to monitor the implementation of such requirements.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38624; File No. SR–NSCC–96–20]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change to Revise Rules Relating to Clearing Agency Cross-Guaranty Agreements

May 13, 1997.

On November 14, 1996, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–NSCC–96–20) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on March 6, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The purpose of the proposed rule change is to modify the definition of ''Clearing Agency Cross-Guaranty Agreement.'' In 1993, the Commission approved a proposed rule change filed by NSCC to establish a Netting Contract and Limited Cross-Guaranty Agreement between it and the Depository Trust

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38350 (February 27, 1997), 62 FR 10601.

Company (''DTC'').[3] In connection with the implementation of the NSCC–DTC Agreement, a definition of a ''Clearing Agency Cross-Guaranty Agreement'' was added to NSCC's rules. The definition was limited to registered clearing agencies because NSCC believed that only registered clearing agencies would enter into such arrangements.

In 1995, the Commission approved a proposed rule change filed by NSCC to establish the Collateral Management Service (''CMS'').[4] In order to provide their participants with a more accurate and broader picture of the aggregate amount of their clearing fund deposits and collateral, NSCC and other participating clearing entities recognized that other types of clearing entities should be included in the CMS. This broad category of participating entities is reflected in Rule 53 (CMS Rule) of NSCC's rules which includes clearing organizations affiliated with or designated by contract markets trading specific futures products under the oversight of the Commodity Futures Trading Commission. The proposed rule change modifies the definition of clearing agency cross-guaranty agreement to permit NSCC to enter into limited cross guaranty agreements with the same broad category of clearing entities as provided in the CMS.

II. Discussion

Section 17A(b)(3)(F)[5] provides that the rules of a clearing agency must be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which is responsible. The Commission believes that cross-guaranty agreements can serve as a method for further reducing clearing agencies' risk of loss due to common participant's default. Consequently, cross-guaranty agreements should assist clearing agencies in assuring the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–96–20) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13035 Filed 5–16–97; 8:45 am]

BILLING CODE 8010–01–M

[3] Securities Exchange Act Release No. 33145 (November 3, 1993), 58 FR 59766 [File No. SR–NSCC–93–07] (order approving proposed rule change relating to a netting contract and limited cross guaranty agreement) (''NSCC–DTC Agreement'').

[4] Securities Exchange Act Release No. 35809 (June 5, 1995), 60 FR 30912 [File No. SR–NSCC–95–06] (order approving proposed rule change establishing CMS).

[5] 15 U.S.C. 78q-1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Agio Capital Partners I, L.P.; Notice of Issuance of a Small Business Investment Company License

[License No. 05/75–0224]

On February 28, 1996, an application was filed by Agio Capital Partners I, L.P., 601 Second Avenue South, First Bank Place, Suite 4600 Minneapolis, Minnesota, with the Small Business Administration (SBA) in accordance with Section 107.300 of the Regulations governing small business investment companies (13 C.F.R. 107.300 1996) for a license to operate as a small business investment company. Notice is hereby given that, pursuant to Section 301 (c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/75–0224 on January 10, 1997 to Agio Capital Partners I, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 13, 1997.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–13026 Filed 5–16–97; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by P.L. 104–13; Submission for OMB Review; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Submission for OMB review; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 C.F.R. Section 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Acting Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (WR 4Q), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to OMB Office of Information and Regulatory Affairs, Attention: Desk Officer for Tennessee Valley Authority no later than June 18, 1997.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission, proposal to extend with minor revisions a currently approved collection of information (OMB control number 3316–0062).

Title of Information Collection: TVA Procurement Documents, including Invitation to Bid, Request for Proposal, Request for Quotation, and other related Procurement or Sales Documents.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations.

Small Business or Organizations Affected: Yes.

Federal Budget Functional Category Code: 999.

Estimated Number of Annual Responses: 71,500.

Estimated Total Annual Burden Hours: 68,000.

Estimated Average Burden Hours Per Request:. 1.78

Need For and Use of Information: TVA procures good and services to fulfill its statutory obligations and sells surplus items to recover a portion of its investment costs. This activity must be conducted in compliance with a variety of applicable laws, regulations, and Executive Orders. Vendors and purchasers who voluntarily seek to contract with TVA are affected.

William S. Moore,

Senior Manager, Administrative Services.

[FR Doc. 97–12963 Filed 5–16–97; 8:45 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee for Electronics and Instrumentation (ISAC 5)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee for Electronics and Instrumentation (ISAC 5) will hold a meeting on June 17, 1997 from 9:00 a.m. to 2:00 p.m. The meeting will be open to the public from 9:30 a.m. to 10:00 a.m. and closed to the public from 9:00 a.m. to 9:30 a.m. and 10:30 a.m. to 2:00 p.m.

DATES: The meeting is scheduled for June 17, 1997, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce in Room 1859, located at 14th Street and Constitution Avenue, N.W., Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Duaine Priestly, Department of Commerce, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230, (202) 482–2410 or Suzanna Kang, Office of the United States Trade Representative, 600 17th St. N.W., Washington, D.C. 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The ISAC 5 will hold a meeting on June 17, 1997 from 9:00 a.m. to 2:00 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion of such matters, the meeting will be closed to the public from 9:00 a.m. to 9:30 a.m. and 10:30 a.m. to 2:00 p.m. The meeting will be open to the public and press from 9:30 a.m. to 10:00 a.m. when other trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

Phyllis Shearer Jones,

Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 97–12989 Filed 5–16–97; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee for Small and Minority Business (ISAC 14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee for Small and Minority Business (ISAC 14) will hold a meeting on June 2, 1997 from 9:45 a.m. to 4:00 p.m. The meeting will be open to the public from 9:45 a.m. to 1:00 p.m. and closed to the public from 1:00 p.m. to 4:00 p.m.

DATES: The meeting is scheduled for June 2, 1997, unless otherwise notified.

ADDRESSES: The meeting will be held at the White House Conference Center in the Truman Room, located at 726 Jackson Place, N.W., Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Millie Sjoberg, Department of Commerce, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230, (202) 482–4792 or Suzanna Kang, Office of the United States Trade Representative, 600 17th St. N.W., Washington, D.C. 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The ISAC 14 will hold a meeting on June 2, 1997 from 9:45 a.m. to 4:00 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion of such matters, the meeting will be closed to the public from 1:00 p.m. to 4:00 p.m. The meeting will be open to the public and press from 9:45 a.m. to 1:00 p.m. when other trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

Phyllis Shearer Jones,

Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 97–12990 Filed 5–16–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation (DOT) intention to request seven extensions for currently approved information collections coming up for renewal and one reinstatement, without change, of a previously approved collection for which approval has expired. DOT is soliciting comments on the collections described below. The eight Information Collection Requests (ICRs) submitted for renewal are: (1) Request for Designation and Exemption of Oceanographic Vessels; (2) Station Bill For Manned Outer Continental Shelf (OCS) Facilities; (3) Merchant Mariner License, Certificate & Document Application; National Driver Register; Criminal Record Review and Five Year Terms of Validity; (4) Self-Inspection of Fixed Outer Continental Shelf (OCS) Facilities; (5) Labeling Requirements in 33 CFR, Parts 181 and 183; (6) Boat Owner's Report, Possible Safety Defect; (7) Alteration of Obstructive Bridges; and (8) Customer Satisfaction Surveys.

The Federal Register Notice with a 60-day comment period soliciting comments on seven of the following collections of information was published in 62 FR 9479, March 3, 1997; the 60 day **Federal Register** Notice for Customer Satisfaction Surveys was published in 61 FR 25261, May 20, 1996, under 2115-New.

DATES: Comments must be received on or before June 18, 1997.

ADDRESSES: U.S. Coast Guard Headquarters, Room 6106 (Attn: Barbara Davis), 2100 Second St., SW., Washington, DC 20593–0001, telephone number (202) 267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, U.S. Coast Guard, Office of Information Management, telephone (202) 267–2326.

SUPPLEMENTARY INFORMATION:

U.S. Coast Guard

Interested persons can receive copies of the complete ICR by contacting Ms. Davis where indicated under **ADDRESSES.**

1. Title: Request for Designation and Exemption of Oceanographic Vessels.

OMB No: 2115–0053.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Affected Public: Respondents: Owners, operators and agents of oceanographic research vessels.

Abstract: The collection of information requires a written request to the Coast Guard from a master, owner, or agent of an oceanographic research vessel to be exempt from certain requirements governing the shipment, discharge, payment and personal outfitting of merchant seamen.

Need: Title 46 U.S.C. 2113, authorizes the Coast Guard to determine if certain oceanographic research vessels should be exempt from specific regulatory requirements concerning maritime safety and seamen's welfare laws.

Annual Burden Estimate: The estimated burden is 10 hours annually.

2. Title: Station Bill For Manned Outer Continental Shelf (OCS) Facilities.

OMB No.: 2115–0542.

Type Request: Extension of a currently approved collection.

Affected Public: Persons in charge of manned OCS Facilities.

Abstract: The collection of information requires persons in charge of manned OCS facilities to be responsible for preparing and posting station bills, which provide information to all personnel as to their duties, duty station, and signals that should be used in an emergency and during drills.

Need: Under Title 33 U.S.C., Section 146.130, manned OCS facilities are required to have posted in conspicuous locations, information and special duties and duty stations of each member in case of an emergency.

Annual Burden Estimate: The estimated burden is 1,834 hours annually.

3. Title: Merchant Mariner License, Certificate & Document Application; National Driver Register; Criminal Record Review and Five Year Terms of Validity.

OMB No: 2115–0514.

Type Request: Revision of a Currently Approved Collection.

Form(s): CG–719K, CG–4509, CG–719B, CG–719A, CG–5206, CG–887, CG–3750, CG–2987, CG–2849, CG–5205, FBI (FO–258)

Affected Public: Merchant Mariners.

Abstract: The collection of information requires merchant mariners seeking to obtain or renew their merchant marine credentials to fill out and submit to the Coast Guard several application forms, along with a consent form to have their driving record sent to the Coast Guard to be reviewed for certain driving offenses.

Need: Titles 46 U.S.C. 7101, 7302 and 7109, give Coast Guard the authority to maintain records of all merchant mariner credentials, to review the National Driver Register reports for certain driving offenses of the applicant and to perform a criminal record review of the applicant.

Annual Burden Estimate: The estimated burden is 83,328 hours annually.

4. Title: Self-Inspection of Fixed Outer Continental Shelf (OCS) Facilities.

OMB No.: 2115–0569.

Type Request: Extension of a Currently Approved Collection.

Form(s): CG–5432

Affected Public: Owners and operators of fixed OCS facilities.

Abstract: The collection of information requires an owner or operator of a fixed OCS facility to conduct annual self inspections of the facility using a check-off list and reporting form that has been developed and furnished by the U.S. Coast Guard.

Need: Under 43 U.S.C. 1333(d) and 43 U.S.C. 1348(c), the Coast Guard has the authority to promulgate regulations to provide for scheduled onsite inspection, at least once a year, of each facility on the OCS. The inspection shall include all safety equipment designed to prevent blowouts, fires, spills, or other major accidents.

Annual Burden Estimate: The estimated burden is 9,939 hours annually.

5. Title: Labeling Requirements in 33 CFR Parts 181 and 183.

OMB No.: 2115–0573.

Type Request: Extension of a Currently Approved Collection.

Affected Public: Manufacturers and importers of Recreational Boats.

Abstract: The collection of information requires manufacturers and importers of recreational boats to apply for serial numbers from the Coast Guard and to display various labels on these boats.

Need: Under Title 33 CFR, Parts 182 and 183, manufacturer or importers of recreational boats are required to obtain from the Coast Guard, a manufacturer identification code for each boat and must display various labels on these boats which provide safety information to the boating public.

Annual Burden Estimate: The estimated burden is 377,979 hours annually.

6. Title: Boat Owner's Report, Possible Safety Defect.

OMB No.: 2115–0611.

Type Request: Extension of a Currently Approved Collection.

Form(s): CG–5578

Affected Public: Owners and Manufacturers of recreational boats.

Abstract: The collection of information requires owners of recreational boats or engines who believe their product contains a defect or fails to comply with safety standards, to report the problem by phone, send a written complaint or fill out a Boat Owner's Report form.

Need: Title 46 U.S.C. 4310(f) gives the Coast Guard the authority to require manufacturers of recreational boats and associated equipment to notify owners and to replace or repair their boats and associated equipment which fail to comply with safety standards or are found to contain defects related to safety discovered in their products.

Annual Burden Estimate: The estimated burden is 80 hours annually.

7. Title: Alteration of Obstructive Bridges.

OMB No.: 2115–0614.

Type Request: Extension of a Currently Approved Collection.

Affected Public: Bridge owners.

Abstract: The collection of information requires a bridge owner, whose bridge has been found to be an unreasonable obstruction to navigation, to prepare and submit to the Coast Guard, general plans and specifications of that bridge.

Need: Under 33 U.S.C. 494, 502, 511, and 513, the Coast Guard is authorized to determine if a bridge is an unreasonable obstruction to navigation and can require the bridge owner to submit information to determine the apportionment of cost between the U.S. and the bridge owner for alteration of that bridge.

Annual Burden Estimate: The estimated burden is 40 hours annually.

8. Title: Customer Satisfaction Surveys

OMB Control Number: 2115–0625

Type Request: Revision of a Currently Approved Collection.

Affected Public: Maritime Industry and recreational boating public.

Abstract: Customer satisfaction surveys are required by Executive Order 12862, Setting Customer Service Standards, to ensure the USCG provides the highest quality service to its customers. Steps will be taken to assure anonymity of respondents in each activity covered under this request.

Need for Information: Executive Order 12862, Setting Customer Standards, directs USCG to conduct surveys to determine the kind and quality of services the Marine industry and the recreational boating public wants and expects.

Proposed use of Information: This information will be used by the Coast Guard to improve service delivery and determine whether additional services are needed.

Annual Burden Estimates: The annual burden estimate is 4,711 hours.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention USCG Desk Officer.

Issued in Washington, DC on May 13, 1997.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–13001 Filed 5–16–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. M–035]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before July 18, 1997.

FOR FURTHER INFORMATION CONTACT: Edmond J. Fitzgerald, Director, Office of Subsidy and Insurance, MAR–570, Room 8117, 400 Seventh Street, S.W., Washington, DC 20590. Telephone 202–366–2400 or fax 202–366–7901. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Seamen's Claims; Administrative Action and Litigation.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0522.

Form Number: None.

Expiration Date of Approval: August 31, 1997.

Summary of Collection of Information: Collects information from claimants for death, injury or illness suffered while serving as officers or members of a crew employed on vessels as employees of the United States through the National Shipping Authority, Maritime Administration (MARAD), or successor.

Need and Use of the Information: The information collected is evaluated by MARAD to determine if the claim is fair and reasonable. If the claim is allowed, it is settled, a release is obtained from the claimant verifying consummation of the settlement, and payment is made to the claimant.

Description of Respondents: Officers or members of a crew (or their surviving dependents or beneficiaries, or by their legal representatives) who suffered death, injury, or illness while employed on vessels as employees of the United States through the National Shipping Authority, Maritime Administration (MARAD), or successor.

Annual Responses: 250.

Annual Burden: 750 hours.

Comments: Send all comments regarding this information collection to Joel C. Richard, Department of Transportation, Maritime Administration, MAR–120, Room 7210, 400 Seventh Street, S.W., Washington, DC 20590. Send comments regarding whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected.

By Order of the Maritime Administrator.

Dated: May 14, 1997.

Joel C. Richard,

Secretary.

[FR Doc. 97–13046 Filed 5–16–97; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 97–24; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1993 Jeep Wrangler Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1993 Jeep Wrangler multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1993 Jeep Wrangler manufactured for the Middle Eastern and other foreign markets that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) It is substantially similar to a vehicle that was originally manufactured for sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is June 18, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally

manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc., of Houston, Texas (''Wallace'') (Registered Importer 90–005) has petitioned NHTSA to decide whether 1993 Jeep Wrangler MPVs manufactured for the Middle Eastern and other foreign markets are eligible for importation into the United States. The vehicle which Wallace believes is substantially similar is the 1993 Jeep Wrangler that was manufactured for sale in the United States and certified by its manufacturer, Chrysler Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1993 Jeep Wrangler to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Wallace submitted information with its petition intended to demonstrate that the non-U.S. certified 1993 Jeep Wrangler, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1993 Jeep Wrangler is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 101 *Controls and Displays,* 102 *Transmission Shift Lever Sequence.* * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 108 *Lamps, Reflective Devices and Associated Equipment,* 111 *Rearview Mirrors,* 113 *Hood Latch Systems,* 114 *Theft Protection,* 116 *Brake Fluid,* 119 *New Pneumatic Tires,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver From the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 208 *Occupant Crash Protection,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 120 *Tire Selection and Rims:* installation of a tire information placard.

Additionally, the petitioner states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 13, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–13002 Filed 5–16–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Certificate by owner of United States Registered Securities Concerning Forged Requests for Payment or Assignments.

DATES: Written comments should be received on or before July 21, 1997, to be assured of consideration.

ADDRESSESES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Certificate By Owner Of United States Registered Securities Concerning Forged Requests For Payment or Assignments.

OMB Number: 1535–0067.

Form Number: PD F 0974.

Abstract: The information is requested to establish whether the registered owner signed the request for payment or if the signature was a forgery.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 750.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB

approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 13, 1997.

Vicki S. Thorpe.

Manager, Graphics, Printing, and Records Branch.

[FR Doc. 97–13014 Filed 5–16–97; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Description of Registered Securities.

DATES: Written comments should be received on or before July 21, 1997, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Description of Registered Securities.

OMB Number: 1535–0101.

Form Number: PD F 0345.

Abstract: The information is requested to identify an owner's Registered Securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,250.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 13, 1997.

Vicki S. Thorpe,

Manager, Graphics, Printing, and Records Branch.

[FR Doc. 97–13015 Filed 5–16–97; 8:45 am]

BILLING CODE 4810–39–P

UNITED STATES ENRICHMENT CORPORATION

Sunshine Act Meeting

AGENCY: United States Enrichment Corporation, Board of Directors.

TIME AND DATE: 8:00 a.m., Wednesday, May 21, 1997.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: One part of this meeting will be open to the public. The balance of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion Open to the Public

- NRC Regulatory Process.

Portions Closed to the Public

- Consideration of commercial and financial issues of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Barbara Arnold 301–564–3354.

Dated: May 14, 1997.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 97–13143 Filed 5–15–97; 9:48 am]

BILLING CODE 8720–01–M

Corrections

Federal Register

Vol. 62, No. 96

Monday, May 19, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040497A]

Small Takes of Marine Mammals Incidental to Specified Activities; Offshore Seismic Activities in the Beaufort Sea

Correction

In notice document 97–10254 beginning on page 19553 in the issue of Tuesday, April 22, 1997 make the following corrections:

1. On page 19554, in the first column, beginning in the 14th line, ''Description of Habitat and Marine Mammal Affected by the Activity'' should have appeared as a bold face heading:

''Description of Habitat and Marine Mammal Affected by the Activity''

2. On the same page, the same column, the second full paragraph, the 16th line, ''Potential Effects of Seismic Surveys on Marine Mammals'' should have appeared as a bold face heading:

''Potential Effects of Seismic Surveys on Marine Mammals''

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D-0148]

International Conference on Harmonisation; Draft Guideline on Impurities: Residual Solvents; Availability

Correction

In notice document 97–11439 beginning on page 24302 in the issue of Friday, May 2, 1997 make the following correction:

On page 24308, the third equation is corrected to read:

$$\text{PDE}=\frac{50.7\ \text{mg kg}^{-1}\ \text{day}^{-1}\times 50\ \text{kg}}{12\times 10\times 5\times 1\times 1}=4.22\ \text{mg day}^{-1}$$

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

RIN 3150-AE87

Standard Design Certification for the U.S. Advanced Boiling Water Reactor Design

Correction

In rule document 97–11968 beginning on page 25800 in the issue of Monday, May 12, 1997 make the following correction:

Appendix A to Part 52 [Corrected]

On page 25829, in the second column, under section *''VII. Duration of This Appendix''*, in the second line, ''July 11, 1997'' should read ''June 11, 1997''.

BILLING CODE 1505-01-D

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Rectifications to the NAFTA Rules of Origin Set Forth in the Harmonized Tariff Schedule of the United States

Correction

In notice document 97–10954 beginning on page 22990 in the issue of Monday, April 28, 1997 make the following correction:

On page 22991, in the second column, in item 7, the third line, ''8428.12.62'' should read ''8528.12.62.''.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-NM-73-AD; Amendment 39-10002; AD 97-09-06]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes

Correction

In rule document 97–10661 beginning on page 20098 in the issue of Friday, April 25, 1997, make the following correction:

On page 20098, in the second column, in the **DATES** section, the effective date ''May 15, 1997'' is corrected to read ''May 12, 1997''.

BILLING CODE 1505-01-D

Federal Register

Monday
May 19, 1997

Part II

Department of Commerce

International Trade Administration

19 CFR Part 351 et al.

Antidumping Duties; Countervailing Duties; Final rule

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Parts 351, 353, and 355

[Docket No. 950306068–6361–04]

RIN 0625–AA45

Antidumping Duties; Countervailing Duties

AGENCY: International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce (''the Department'') hereby revises its regulations on antidumping and countervailing duty proceedings to conform the Department's existing regulations to the Uruguay Round Agreements Act, which implemented the results of the Uruguay Round multilateral trade negotiations. In addition to conforming changes, in these regulations the Department has sought to: where appropriate and feasible, translate the principles of the implementing legislation into specific and predictable rules, thereby facilitating the administration of these laws and providing greater predictability for private parties affected by these laws; simplify and streamline the Department's administration of antidumping and countervailing duty proceedings in a manner consistent with the purpose of the statute and the President's regulatory principles; and codify certain administrative practices determined to be appropriate under the new statute and under the President's Regulatory Reform Initiative.

DATES: The effective date of this final rule is June 18, 1997. See § 351.701 for applicability dates.

FOR FURTHER INFORMATION CONTACT: Michael Rill (202) 482–3058. For information concerning matters relating to the scope of orders or changed circumstances reviews, contact the Office of Policy (202) 482–4412.

SUPPLEMENTARY INFORMATION:

Background

The publication of this notice of final rules completes a significant portion of the process of developing regulations under the Uruguay Round Agreements Act (''URAA''). This process began when the Department took the unusual step of requesting advance public comments in order to ensure that, at the earliest possible stage, we could consider and take into account the views of the private sector entities that are affected by the antidumping (''AD'') and countervailing duty (''CVD'') laws. On February 27, 1996, the Department published proposed rules dealing with AD and CVD procedures and AD methodology (''AD Proposed Regulations''). The Department received over five hundred written public comments regarding the AD Proposed Regulations. On June 7, 1996, the Department held a public hearing, and, thereafter, received over one hundred additional post-hearing written public comments on the AD Proposed Regulations.[1]

In drafting these final rules, the Department has carefully reviewed and considered each of the hundreds of comments it received. While we have not always adopted suggestions made by commenters, we found the comments to be extremely useful in helping us to work our way through the legal and policy thickets created by the massive rewriting of our operating statute. Therefore, we are extremely grateful to those who took the time and trouble to express their views regarding how the Department should administer the AD and CVD laws in the future.

In addition, in these final rules, the Department has continued to be guided by the objectives described in the AD Proposed Regulations. Specifically, these objectives are: (1) Conformity with the statutory amendments made by the URAA; (2) the elaboration through regulation of certain statements contained in the Statement of Administrative Action (''SAA'');[2] and (3) consistency with President Clinton's Regulatory Reform Initiative and his directive to identify and eliminate obsolete and burdensome regulations.

Explanation of the Final Rules

General Background

Consolidation of Antidumping and Countervailing Duty Regulations

As described in the AD Proposed Regulations, in response to the President's Regulatory Reform Initiative and to reduce the amount of duplicative material in the regulations, the Department proposed to consolidate the AD and CVD regulations into a new part 351, and to remove parts 353 and 355. The Department did not receive any comments concerning the consolidation of the regulations, and, upon further review, we believe that the consolidation reduces duplication and makes the AD/CVD regulations easier to use. Accordingly, we are promulgating a single part 351, and are removing parts 353 and 355.

The structure of part 351 is as follows. Subpart A (Scope and Definitions) is based on former subpart A of parts 353 and 355. Among other things, the regulations contained in subpart A deal with general definitions applicable to AD/CVD proceedings, the record for such proceedings, *de minimis* standards for countervailable subsidies and dumping margins, and the rates to be applied in the case of nonproducing exporters or AD proceedings involving nonmarket economy countries.

Subpart B (Antidumping and Countervailing Duty Procedures) is based on former subpart B of parts 353 and 355. As indicated by the title, subpart B deals with procedural aspects of AD and CVD proceedings. Where the procedures for AD and CVD proceedings are different, the regulations in subpart B so specify.

Subpart C (Information and Argument) is based on former subpart C of parts 353 and 355. Subpart C establishes rules for AD/CVD proceedings regarding such matters as the submission of information, the treatment of business proprietary information, the verification of information, and determinations based on the facts available. Certain portions of subpart C dealing with the treatment of business proprietary information and administrative protective order procedures were the subject of a separate notice of proposed rulemaking

[1] The prior notices published by the Department as part of its URAA rulemaking activity are: (1) Advance Notice of Proposed Rulemaking and Request for Public Comments (*Antidumping Duties; Countervailing Duties; Article 1904 of the North American Free Trade Agreement*), 60 FR 80 (Jan. 3, 1995); (2) Advance Notice of Proposed Rulemaking: Extension of Comment Period (*Antidumping Duties; Countervailing Duties; Article 1904 of the North American Free Trade Agreement*), 60 FR 9802 (Feb. 22, 1995); (3) Interim Regulations; Request for Comments (*Antidumping and Countervailing Duties*), 60 FR 25130 (May 11, 1995); (4) Proposed Rule; Request for Comments (*Antidumping and Countervailing Duty Proceedings; Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order*), 61 FR 4826 (Feb. 8, 1996); (5) Notice of Proposed Rulemaking and Request for Public Comments (*Antidumping Duties; Countervailing Duties*), 61 FR 7308 (Feb. 27, 1996); (6) Extension of Deadline to File Public Comments on Proposed Antidumping and Countervailing Duty Regulations and Announcement of Public Hearing (*Antidumping Duties; Countervailing Duties*), 61 FR 18122 (April 24, 1996); (7) Announcement of Opportunity to File Public Comments on the Public Hearing of Proposed Antidumping and Countervailing Duty Regulations (*Antidumping Duties; Countervailing Duties*), 61 FR 28821 (June 6, 1996); (8) Notice of Proposed Rulemaking and Request for Public Comments (*Countervailing Duties*), 62 FR 8818 (Feb. 26, 1997); and (9) Extension of Deadline to File Public Comments on Proposed Countervailing Duty Regulations (*Countervailing Duties*), 62 FR 19719 (April 23, 1997).

[2] *Statement of Administrative Action Accompanying H.R. 5110*, H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994).

and request for public comments on February 8, 1996. 61 FR 4826. A separate notice of final regulations will be published for these portions of subpart C.

Subpart D (Calculation of Export Price, Constructed Export Price, Fair Value, and Normal Value) is based on former subpart D of part 353. Subpart D deals with methodologies for identifying and measuring dumping.

Subpart E is designated ''[Reserved].'' Proposed rules to be included in subpart E were published in a separate notice of proposed rulemaking and request for public comments on February 26, 1997. 62 FR 8818. The Department will publish a separate notice of final regulations after reviewing and considering public comments submitted in connection with proposed subpart E.

Subpart F (Cheese Subject to In-Quota Rate of Duty) is based on subpart D of former part 355, and implements section 702 of the Trade Agreements Act of 1979, as amended by the URAA.

Comments on Overall Drafting Approach

The Department received a few comments regarding the overall drafting approach used in the AD Proposed Regulations. One commenter complimented the Department on its use of introductory paragraphs before each regulation, but noted that in several instances the language of the introductory paragraph did not accurately reflect the content of the regulation itself. In addition, this same commenter noted that in several instances, the Department's use of the citation signal ''See'' to a particular statutory provision was ambiguous. We have taken this commenter's suggestions to heart, and in drafting these final regulations we have reviewed the introductory paragraphs and our citation signals in order to improve the clarity and precision of these regulations.

A different commenter noted that in the AD Proposed Regulations, when the Department referred to a particular section of the statute, it referenced only the Tariff Act of 1930 (the ''Act'') itself, not the section of the U.S. Code where the section is codified. This commenter suggested that to make the regulations more ''user friendly,'' the Department should refer to the relevant U.S. Code section of the Act or to both the U.S. Code and the Act.

While we appreciate the spirit in which this suggestion was made, we have not adopted it in drafting these final regulations. For years, the Department generally has referenced sections of the Act in its regulations, and we are not aware of any objections having been raised regarding this drafting practice (other than the instant comment). The absence of objections to this practice, as well as the absence of any other comments endorsing the use of U.S. Code citations, suggests to us that those who use these laws are comfortable with our practice of referencing sections of the Act. As for the suggestion that we reference both the Act and U.S. Code sections, given the numerous statutory references in these final regulations, the adoption of this suggestion would add considerably to the overall length of the regulations without, in our view, contributing significantly to their ease of use.

Explanation of Particular Provisions

In drafting these final regulations, the Department carefully considered each of the comments received. In addition, we conducted our own independent review of those provisions of the AD Proposed Regulations that were not the subject of public comments. The following sections contain a summary of the comments we received and the Department's responses to those comments. In addition, these sections contain an explanation of any changes the Department has made to the AD Proposed Regulations either in response to comments or on its own initiative. The following sections do not contain a discussion of those provisions that remain unchanged from the AD Proposed Regulations and that were not the subject of any public comments.

Subpart A—Scope and Definitions

Subpart A of part 351 sets forth the scope of part 351, definitions, and other general matters applicable to AD/CVD proceedings.

Section 351.102

Section 351.102 sets forth definitions of terms that are used throughout part 351. With respect to most of the definitions contained in § 351.102, we received no comments. Definitions that we have added or revised, or on which we received comments, are discussed below.

We received one general comment suggesting that we number each of the definitions contained in § 351.102(b) as a separate numbered paragraph. According to the commenter, the absence of subparagraph numbering will make shorthand references to a particular definition impossible and will render definitions difficult to locate.

We have not adopted this suggestion, because we have followed the guidelines set forth in the *Document Drafting Handbook* 1991 ed. (Office of the Federal Register), which states, at page 21, that ''paragraph designations are not required for the terms being defined, if the terms are listed in alphabetical order,'' as is the case with respect to § 351.102(b). Because the definitions in § 102(b) are listed in alphabetical order, we do not believe that it will be difficult to locate a particular definition. In addition, we do not believe that the format we have used precludes shorthand references.

Affiliated persons; affiliated parties: Many commenters claimed that because the statute and the SAA do not provide sufficient guidance as to when the Department will consider an affiliation to exist by virtue of ''control,'' the Department should provide clearer guidance in the regulations. In this regard, we received a number of specific suggestions relating to the issue of ''control,'' many of which had been submitted previously.

As a general observation, the Department appreciates the desire for additional detail regarding the concept of affiliation. To the extent possible, we have attempted to provide additional guidance in this explanatory material. However, we continue to believe that it would be premature to codify much guidance in the form of a regulation. As explained in the AD Proposed Regulations, 61 FR at 7310, we believe that it is more appropriate to develop our practice regarding affiliation through the adjudication of actual cases.

Turning to specific suggestions, several commenters suggested that the definition should state that in order for control to exist within the meaning of section 771(33) of the Act, a relationship must affect the subject merchandise or foreign like product. These commenters argued that the purpose of such a requirement would be to winnow out those relationships that, while unquestionably close enough to constitute control in the abstract, do not affect the production or sale of the product that the Department is examining. According to these commenters, this approach is in line with the statement in the AD Proposed Regulations, 61 FR at 7310, that the Department would look at the ability to impact production, pricing, or cost, an analysis which, they claimed, must be directed at the product under investigation or review.

In general we agree with the suggestion that we focus on relationships that have the potential to impact decisions concerning production, pricing or cost. This does not mean however, that proof is required that a relationship in fact has

had such an impact. In this regard, section 771(33), which refers to a person being ''in a position to exercise restraint or direction,'' properly focuses the Department on the ability to exercise ''control'' rather than the actuality of control over specific decisions. Therefore, we will consider the full range of criteria identified in the SAA, at 838, in determining whether ''control'' exists. Moreover, we do not believe that we should ignore situations in which a control relationship, while relating directly to another product or another type of commercial activity, could affect decisions involving the production, pricing or cost of the merchandise under consideration. Therefore, in these types of situations, where a control relationship exists, the respondent will have to demonstrate that the relationship does not have the potential to affect the subject merchandise or foreign like product.

Several commenters suggested that the Department reconsider the statement in the preamble to the AD Proposed Regulations, 61 FR at 7310, that ''temporary market power, created by variations in supply and demand conditions, would not suffice [as evidence of control].'' With respect to this comment, we continue to believe that temporary market power generally would not constitute sufficient evidence of control. However, where the issue arises, the Department will conduct a case-by-case examination to determine whether market power is truly ''temporary.''

Another commenter suggested that the regulations state that in analyzing control, the Department will focus on long-term, rather than short-term, relationships. With respect to this suggestion, the Department normally will not consider firms to be affiliated where the evidence of ''control'' is limited, for example, to a two-month contract. On the other hand, the Department cannot rule out the possibility that a short-term relationship could result in control. Therefore, the Department will consider the temporal aspect of a relationship as one factor to consider in determining whether control exists. In this regard, we also should note that we do not intend to ignore a control relationship that happens to terminate at the beginning (or comes into existence at the end) of a period of investigation or review.

A number of commenters asked that the Department refrain from finding an affiliation in situations where the applicable national law prevents one firm from exercising control over another. With respect to this suggestion, the Department will take national laws into account in examining the existence of control. However, the Department also will consider whether, national laws notwithstanding, there is any *de facto* control.

Many commenters requested that the Department establish (1) rebuttable presumptions for when control does or does not exist; (2) bright-line thresholds establishing when control does not exist; and (3) specific examples in the regulations of relationships that do or do not constitute control. We have not adopted these suggestions, because they require the type of fact-specific determinations that the Department is not prepared to make at this time. As discussed above, the Department intends to establish guidelines concerning affiliation gradually as we gain experience through the resolution of issues in actual cases.

One commenter suggested that the Department should find control to exist only if a relationship resulted in an impact on prices or other significant terms of sale. The Department has not adopted this suggestion, because we do not agree that it is appropriate to require evidence regarding the actual impact of a relationship. Because section 771(33) refers to a person being ''in a position to exercise restraint or direction,'' we are required to examine the ability to control, not the actual exercise of control.

Another commenter suggested that the Department should not consider ''normal commercial relationships'' as giving rise to control. We have not adopted this suggestion, because ''normal'' is a subjective term that lacks any clear definition. In our view, a standard of ''normality'' would be subject to substantial confusion, argument, and litigation. More importantly, there is nothing in the statute or the legislative history that suggests that ''normal commercial relationships'' cannot give rise to control. To the contrary, the SAA at 838 states: ''A company may be in a position to exercise restraint or direction, for example, through corporate or family groupings, franchises or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other.'' Each of the relationships described in this passage can be characterized as ''normal'' in the sense that they are commercial relationships commonly entered into by firms. Nevertheless, notwithstanding the ''normality'' of these commercial relationships, the SAA indicates that they can give rise to control.

One commenter suggested that the Department clarify that the provision of a loan by one firm to another on terms consistent with commercial considerations will not constitute control. The Department has not adopted this suggestion, because we do not believe that the fact that a loan is provided on terms consistent with commercial considerations is necessarily dispositive with respect to the issue of control. For example, in situations where the supply of credit is limited, the availability of a loan, regardless of the loan's terms, may allow the lender to exercise control over the recipient of the loan.

Several commenters suggested that the Department should define legal or operational control as the ''enforceable ability to compel or restrain commercial actions.'' As a further refinement of this suggestion, one commenter suggested that the Department should find control only if one firm is capable of forcing another firm to act against its own interests.

The Department has not adopted these suggestions, because we do not believe that ''enforceability'' is a requisite factor under section 771(33). In addition, in the case of the second suggestion, we believe that focusing on the speculative question of what is or is not in a firm's interests would render our analysis of affiliation less, rather than more, predictable.

Aggregate basis: We received one comment concerning the definition of the term ''aggregate basis,'' a term that describes CVD proceedings in which the Department, under section 777A(e)(2)(B) of the Act, determines a single country-wide subsidy rate applicable to all exporters and producers. The commenter suggested that we substitute the word ''principally'' for ''solely'' so that the definition would read: '''Aggregate basis' means the calculation of a country-wide subsidy rate based principally on information provided by the foreign government.'' According to the commenter, the purpose of the modification would be to avoid confusion when the Department conducts a CVD investigation or review on an aggregate basis, but one or more producers request an individual review or exclusion.

We have adopted this suggestion, although not for the reason suggested. Although section 777A(e) of the Act establishes a preference for individual countervailable subsidy rates, section 777A(e)(2) provides for alternative methods where there are a large number of exporters or producers involved in an investigation or review. Under section 777A(e)(2)(B), one of these alternatives is to determine a single country-wide subsidy rate. Should the Department

have to use the country-wide rate method of section 777A(e)(2)(B), the Department will not review firms individually, although, where practicable, the Department will consider requests for an individual zero rate in an administrative review under § 351.213(k). In addition, while the Department will consider requests for exclusions from firms that claim to have received no countervailable subsidies, the Department will not calculate subsidy rates to be applied to merchandise produced or exported by such firms. Instead, the Department merely will determine whether or not a firm requesting exclusion receives countervailable subsidies in more than *de minimis* amounts. If the firm does not, the Department will exclude the firm. If the firm does receive more than *de minimis* countervailable subsidies, the Department will not exclude the firm, and will apply to that firm the country-wide subsidy rate.

Thus, the definition of ''aggregate basis'' is not inaccurate insofar as it relates to the calculation of individual rates and the granting of exclusions. On the other hand, the definition, as drafted, fails to reflect the fact that even in a CVD proceeding in which the Department calculates a single country-wide rate, it may have to obtain information from one or more firms with respect to certain types of subsidies, such as equity infusions. Therefore, we have substituted the word ''principally'' for ''solely'' to reflect this fact.

Country-wide subsidy rate: One commenter suggested that we add to § 351.102(b) a definition of ''country-wide subsidy rate.'' The proposed definition included a statement that the Secretary shall use ''the smallest applicable and feasible jurisdictional unit consistent with'' the definition of ''country'' in section 771(3) of the Act. The thrust of the comment was that the Department should calculate separate ''country-wide subsidy rates'' for individual subnational jurisdictions, such as provinces or states. A different commenter opposed this suggestion.

We have not adopted this suggestion, because the statute does not require the Department to calculate state- or province-specific subsidy rates. The Department rejected province-specific rates in *Certain Softwood Lumber Products from Canada*, 57 FR 22570, 22578–80 (1992), and the Department's position was sustained in *Certain Softwood Lumber Products from Canada*, No. USA–92–1904–01, Slip op. 139–43 (FTA Panel May 6, 1993). We do not believe that any of the statutory amendments made by the URAA warrants a different outcome. Moreover, there is no indication in the legislative history that Congress intended any change to the Department's practice in this regard.

Ordinary course of trade: We received several comments concerning the Department's proposed definition of the term ''ordinary course of trade.'' Some of these comments dealt with the definition in general, while other comments focussed on particular aspects of the definition.

The definition in general: One commenter stated that the definition should establish a presumption that sales are in the ordinary course of trade until a party demonstrates otherwise on a sale-by-sale basis (with the exception of home-market sales at prices below cost of production). This commenter also argued that the standards for making such a claim should be exacting, and that no general unsupported conclusions should suffice to exclude selected transactions. This commenter also urged the Department to omit from the regulation examples of sales that might be outside the ordinary course of trade, stating that each case should turn on its facts.

We have adopted this suggestion in part. We have not adopted the suggestion regarding the establishment of a presumption, because we believe that judicial precedent is sufficiently clear that the party making the claim bears the burden of proving that sales are outside the ordinary course of trade. *See, e.g., Koyo Seiko Co., Ltd.* v. *United States*, Slip op. 96–101 (Ct. Int'l Trade June 19, 1996), pp. 22–25, and cases cited therein. In addition, we have not adopted the suggestion that we delete references to particular types of sales that might be considered as outside the ordinary course of trade. Given the illustrative examples of such sales in the SAA, we believe that it is appropriate to provide guidance to parties by describing certain types of transactions that, depending on the facts, might be deemed to be outside the ordinary course of trade.

However, we have modified the definition so as to emphasize the fact-specific nature of ordinary course of trade analyses. As revised, the definition states that, as required by judicial precedent, the Secretary will evaluate ''all the circumstances particular to the sales in question.''

Another commenter expressed satisfaction with the proposed definition, but suggested that the Department's placement of the closed parenthesis in the definition was incorrect. We agree that we misplaced the closed parenthesis. However, we have corrected the error by restating the parenthetical as a separate sentence.

Abnormally high profits: Several commenters objected to the reference in the proposed definition to ''merchandise sold * * * with abnormally high profits.'' According to one commenter, neither the statute nor the SAA refers to ''abnormally high profits'' as a factor in considering whether merchandise is sold in the ordinary course of trade. In addition, this commenter asserted that the inclusion of this factor in the definition would invite respondents to argue for the exclusion of allegedly overly profitable sales.

Another commenter acknowledged that the SAA does discuss sales with ''abnormally high profits'' as being outside the ordinary course of trade, but that it does so in the context of constructed value profit. This same commenter also argued that the proposed definition is overtly biased in favor of respondents, because it does not provide for the exclusion of sales with abnormally ''low'' profits as being outside the ordinary course of trade. A third commenter, also noting that the proposed definition does not refer to sales with abnormally ''low'' profits, requested that the Department either delete the reference to abnormally high profits or revise the definition to refer to ''merchandise sold at aberrational prices or profits.''

We have not adopted these suggestions. With respect to the propriety of including in the definition any reference to sales with abnormally high profits, we believe that the SAA warrants such a reference. As acknowledged by one of the commenters, the SAA at 839–40 does refer to sales with abnormally high profits as being outside the ordinary course of trade. Although this reference is made in the context of constructed value profit, we believe that it applies in other contexts, as well. The SAA at 839 itself notes that ''constructed value serves as a proxy for a sales price.'' Thus, where normal value is based on constructed value, the constructed value is supposed to approximate what a price-based normal value would be if there were usable sales. Because, according to the SAA, a constructed value that included a profit element based on sales with abnormally high prices would not constitute an acceptable normal value, it follows that it would be improper to use sales with abnormally high profits as a basis for a price-based normal value.

With respect to the suggestion that the Department will be overwhelmed with arguments from respondents claiming

that particular sales have abnormally high profits, as discussed above, the burden of establishing that a particular sale is outside the ordinary course of trade rests on the party making the claim. Over time, we believe that this evidentiary burden will ensure that only serious claims are presented to the Department.

Finally, we do not believe that the proposed definition favors respondents. When one considers the proposed definition in light of the entire statute and the SAA, it is apparent that the Department may exclude sales with both abnormally low (*i.e.,* negative) and abnormally high profits from a dumping analysis. The only difference is that the Department considers sales with abnormally low profits under the rubric of ''sales below cost of production'' and section 773(b) of the Act. However, as section 771(15)(A) of the Act makes clear, sales that are disregarded under section 773(b)(1) as being below cost are considered to be outside the ordinary course of trade.

Off-quality merchandise: One commenter requested that the Department delete the reference in the proposed definition to ''off-quality merchandise.'' According to this commenter, neither the statute nor the SAA mentions ''off-quality merchandise,'' and such merchandise may be in the ordinary course of trade in certain industries and markets.

We have not adopted this suggestion. Contrary to the comment, the SAA at 839 does refer to ''off-quality merchandise,'' albeit in the context of constructed value profit. For the reasons set forth above in connection with the issue of ''abnormally high profits,'' we believe that this reference is relevant to the general definition of ''ordinary course of trade.'' As for the argument that sales of ''off-quality merchandise'' may be in the ordinary course of trade in certain industries and markets, the inclusion of the reference to ''off-quality merchandise'' does not mean that sales of such merchandise are automatically outside the ordinary course of trade. As discussed above, and as the revised definition now makes clear, the Secretary will conclude that particular sales are outside the ordinary course of trade only after an evaluation of all of the circumstances.

Samples and Prototypes: One commenter suggested that the Department should consider sales of sample and prototype merchandise to be outside the ordinary course of trade, and should exclude such sales from its calculations of dumping margins. We have not adopted this suggestion for several reasons. First, there needs to be some limit on the number of items included in a non-exhaustive list of examples. While we do not disagree that there may be instances in which the Department might consider sales of samples or prototypes to be outside the ordinary course of trade, the commenter acknowledged that such sales already may be embraced by the regulatory reference to merchandise ''sold pursuant to unusual terms of sale.'' Second, the commenter requested that sales of samples or prototypes be excluded from the dumping margin calculation altogether. However, as both the Department and the courts have made clear on numerous occasions, the statutory exclusion for sales outside the ordinary course of trade applies only to sales used to determine foreign market value (now normal value), not sales used to determine U.S. price (now export price or constructed export price). Thus, the courts have sustained the inclusion of all United States sales whether in or out of the ordinary course of trade. *See, e.g., Bowe Passat Reinigungs-Und Wäschereitechnik GMBH* v. *United States,* 926 F. Supp. 1138, 1147–49 (Ct. Int'l Trade 1996), and cases cited therein.

Price adjustment: We have added to § 351.102(b) a definition of the term ''price adjustment.'' This term is intended to describe a category of changes to a price, such as discounts, rebates and post-sale price adjustments, that affect the net outlay of funds by the purchaser. As discussed in connection with § 351.401, below, such price changes are not ''expenses'' as the Department usually uses that term, but rather are changes that the Department must take into account in identifying the actual starting price. Numerous commenters requested clarification on whether price adjustments would be treated as direct or indirect expenses. As discussed more fully below, price adjustments are neither direct nor indirect expenses, although they impact price as additions or deductions.

Sale or likely sale: The proposed definition of ''likely sale,'' which was based on 19 CFR §§ 353.2(t) and 355.2(p), defined this term as meaning ''a person's irrevocable offer to sell.'' One commenter suggested that the Department liberalize this definition to encompass something less than an irrevocable offer to sell.

Although the Department has not adopted this particular suggestion, we have taken another look at the ''irrevocable offer'' standard. Because most AD/CVD petitions are based on sales, rather than likely sales, the Department rarely has applied this standard. However, in one case where the use of the irrevocable offer standard was at issue, the court criticized the standard. *Kerr-McGee Chemical Corp.* v. *United States,* 765 F. Supp. 1576 (Ct. Int'l Trade 1991). Therefore, the Department has decided to eliminate the definition of ''likely sale'' in § 351.102(b). Should the meaning of this term become an issue in future cases, we will interpret the term in light of the statute and the legislative history.

Segment of the proceeding: One commenter suggested that paragraph (2) of the definition of ''segment of the proceeding'' include a reference to scope inquiries, because such inquiries are separately reviewable under section 516A of the Act. We have adopted this suggestion, and have revised paragraph (2) of the definition accordingly.

Another commenter did not object to the definition itself, but stated that the Department should treat each whole review as a separate proceeding, and should rely upon the record from each proceeding only in connection with that particular proceeding. Because this commenter did not propose any revisions to the definition, we have not made any changes to the definition based on this comment.

Suspension of liquidation: One commenter suggested that in order to eliminate confusion created by ''suspensions'' ordered by agencies other than the Department, such as the Customs Service, the Department should add to § 351.102 a definition of ''suspension of liquidation.'' The commenter included a proposed definition that, in general, defined ''suspension of liquidation'' as a suspension of liquidation specifically ordered by the Department under the authority of title VII or title X of the Tariff Act, or by the courts in litigation involving antidumping or countervailing duties. No commenter opposed this suggestion.

We have adopted the suggestion, and have added to § 351.102(b) a definition of ''suspension of liquidation'' along the lines suggested by the commenter. However, we have modified the language proposed by the commenter in order to make the definition more accurate with respect to suspensions of liquidation ordered by courts.

Section 351.104

Section 351.104 defines what constitutes the official and public records of an AD/CVD proceeding, and prohibits the removal of a record or any portion thereof unless ordered by the Secretary or required by law.

In connection with § 351.104(a)(1) and its list of examples of materials that will be included in the official record,

one commenter suggested that the Department add to this list ''changes to the electronic database that are made by Commerce (or by respondents)'' and ''computer programs.'' Although the material described by the commenter is, as a matter of practice, included in the official record, we have not adopted this suggestion. As the commenter acknowledged, paragraph (a)(1) merely contains examples of material that will be included in the record, and is not itself an exhaustive list. The commenter did not indicate that the absence of a reference in the former regulations to computer programs or changes to the electronic database gave rise to difficulties in actual cases. In the absence of such difficulties, we see no need to revise this regulation.

One commenter supported § 351.104(a)(2)(ii), which deals with the inclusion in the official record of documents returned to the submitter. The commenter requested that this provision remain unchanged. The Department has not revised this provision.

Section 351.105

Section 351.105 defines the four categories of information applicable to AD/CVD proceedings: public, business proprietary, privileged, and classified. After a review of proposed § 351.105 and the comments submitted pertaining to that section, we have left § 351.105 unchanged, but for some stylistic changes involving the substitution of ''that'' for ''which.''

One commenter suggested that the proposed definition of ''public information'' in § 351.105(b) is too narrow, because it excludes business information claimed by the submitter to be business proprietary unless the submitter has published the information or otherwise made it public. According to this commenter, the definition should include all non-classified information that a party learns through any lawful means outside the context of disclosure under an administrative protective order (''APO''). The commenter cited, for example, information acquired through market research that may not have been published or made generally available to the public at large. In addition, this commenter proposed that the definition of ''business proprietary information'' contained in § 351.105(c) expressly exclude all ''public information'' as the commenter would define ''public information.''

For the following reasons, the Department has not adopted this suggestion. The Department places a high priority on the safeguarding of business proprietary information. The definition of ''public information'' in § 351.105(b) is identical to the definition of that term in former 19 CFR §§ 353.4(a) and 355.4(a). Absent some evidence that the definition interferes with a party's ability to defend its interests in an AD/CVD proceeding, we are reluctant to transform what heretofore has been considered as business proprietary information into public information. However, the commenter did not offer any evidence that the Department's longstanding definition of ''public information'' has had this effect. Instead, the commenter merely asserted that it is not the Department's role ''to regulate lawfully acquired commercial information.''

The same commenter suggested that the Department should amend § 351.105(b) so as to add the following additional category of information normally considered as public: ''descriptions of reporting methodologies, such as allocation methods.'' We have not adopted this suggestion, because here, too, there is no indication that the absence of a reference in § 351.105(b) to this type of information has interfered with a party's ability to defend its interests in an AD/CVD proceeding.

We should note, however, that the former regulations did not, and these regulations will not, preclude a party from arguing in a given case that business proprietary treatment should not be accorded to particular information. In this regard, § 351.104(b)(3) continues to treat as ''public information'' information ''that the Secretary determines is not properly designated as business proprietary.'' However, we should emphasize here that where a party seeks to challenge the business proprietary status of certain information, it should take care to ensure that in submitting its challenge to the Secretary, it does not inadvertently disclose the information in dispute.

Finally, we received two comments that essentially suggested that the Department delete proposed § 351.105(c)(10), which provides for business proprietary treatment of the position of a domestic producer or workers regarding a petition. According to one commenter, § 351.105(c)(10) would effectively preclude industrial users and consumers from commenting on the issue of industry support for a petition, because users and consumers would not be eligible to obtain this information under APO. In addition, both commenters were skeptical regarding the ability of the Department to grant APO access to this information in a timely manner so that ''interested parties'' will be able to comment on the issue of industry support within the 20-day statutory deadline. A third commenter, however, opposed deleting paragraph (c)(10), although it agreed that the Department should expedite the APO process.

We have not adopted this suggestion for several reasons. As we stated in the AD Proposed Regulations, 61 FR at 7314, several commenters indicated that, due to concerns regarding commercial retaliation, business proprietary treatment may be necessary in order to encourage domestic producers and workers to present their candid views regarding a petition. The instant commenters did not challenge the validity of these concerns. As for APO disclosure, the Department is aware of the need for expedited disclosure with respect to information concerning industry support, and is confident that it will be able to process APO requests in a timely manner that allows interested parties to exercise their right to comment on the existence of industry support for a petition.

Section 351.106

Section 351.106 deals with the *de minimis* standard, and implements section 703(b)(4) and section 733(b)(3) of the Act. After reviewing proposed § 351.106 and the comments pertaining to that section, we have left § 351.106 unchanged.

One commenter objected to the fact that the *de minimis* standard for reviews remained at 0.5 percent, and suggested that this was inconsistent with the spirit, if not the letter, of the AD Agreement. We have left the *de minimis* standard for reviews at 0.5 percent, because, as stated in the AD Proposed Regulations, 61 FR at 7312, this result is required by the statute and is consistent with both the AD Agreement and the SCM Agreement.

As discussed above in connection with § 351.102(b), one commenter suggested a definition of ''country-wide subsidy rate'' that would have provided for the application of country-wide subsidy rates on a state-or province-specific basis. This same commenter, assuming the adoption of its prior suggestion, proposed that we add a paragraph to § 351.106 that would have applied the *de minimis* standard to country-wide rates on a state-or province-specific basis. The same commenter that opposed the prior suggestion also opposed the instant suggestion concerning the *de minimis* standard. Because we have not adopted the prior suggestion, we are not adopting the corresponding suggestion regarding the *de minimis* standard; *i.e.*,

we will not apply the *de minimis* standard on a subnational level.

We have left unchanged proposed § 351.106(c)(2), which applies the *de minimis* standard to the assessment of antidumping duties. Applying the *de minimis* standard to assessments on an importer-specific basis resolves the inconsistency between the treatment of cash deposits and assessments. If a *de minimis* amount of estimated duties is not worth collecting, then there is no reason to believe that a *de minimis* level of definitively determined duties is worth assessing and collecting either. Paragraph (c)(2) also avoids an inconsistency between the administration of the AD and CVD laws, something that the Department has expressed as one of its goals.

One commenter contended that the Department should not apply the *de minimis* standard to the assessment of antidumping duties, because such a policy does not result in any reduction in the Department's administrative burden, is contrary to the SAA, and is not allowed by the statute. This commenter cited the statutory requirement that antidumping duties be imposed ''in an amount equal to the amount by which the normal value exceeds the export price (or the constructed export price) for the merchandise'' for the proposition that the Department never may decline to assess antidumping duties, regardless of how small such duties may be. With regard to the SAA, this commenter contended that the SAA expressly limits the application of the *de minimis* standard to the collection of deposits only by stating: ''Commerce will continue its present practice in reviews of waiving the collection of estimated cash deposits if the deposit rate is below 0.5 percent *ad valorem,* the existing regulatory standard for *de minimis.*''

As noted above, the Department will apply the *de minimis* standard to the assessment of antidumping duties on an importer-specific basis. Regarding the commenter's statutory arguments, we believe that the statute is silent on the issue. Although the statutory provisions cited provide that the Department must assess duties, as the courts have recognized, these provisions do not specify any particular assessment methodology. *See, e.g., FAG Kugelfischer Georg Schafer KGaA* v. *United States,* Slip Op. 95–158, 1995 Ct. Int'l. Trade LEXIS 209 (1996), *aff'd,* No. 96–1074 (Fed. Cir. May 20, 1996). Significantly, the statutory provisions cited by the commenter do not address how the Department should apply the *de minimis* standards in reviews. Instead, the only mention of such standards applying in reviews is contained in the SAA. However, the SAA statement cited by the commenter (that the Department will continue its practice of waiving cash deposits below 0.5 percent in reviews) does not address the assessment issue at all. Read in context, the statement refers to the fact that the *de minimis* standard in reviews will continue to be 0.5 percent, as opposed to the new 2 percent standard for AD investigations. This statement does not address the issue of whether the application of the 0.5 percent standard is limited to the collection of cash deposits of estimated duties. As the Department noted in the AD Proposed Regulations, 61 FR at 7312, the only statement addressing that issue in the SAA is the general statement that ''*de minimis* margins are regarded as zero margins.'' The commenter offers no policy arguments for adopting an approach that would limit the application of the *de minimis* standard to the deposit of estimated duties.

Another commenter agreed with the Department's proposal to apply the *de minimis* standard to the assessment of antidumping duties. In addition, this commenter proposed that the Department clarify that where an importer purchases from more than one exporter, the importer will receive producer-specific assessment rates, and that no duties will be assessed for individual *de minimis* rates.

In general, we agree with this comment, although we do not believe that revisions to the regulations are necessary. As discussed below, under § 351.212(b)(1), the Department, as it has in many previous cases, will calculate importer-specific assessment rates for each producer or exporter reviewed. Thus, if one importer purchases from several producers or exporters, the Department will assign that importer an assessment rate for each producer or exporter. The Department will apply the *de minimis* standard to these individual assessment rates.

Proposed paragraph (c)(2) provided that the Secretary will instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise for which the Secretary calculates an assessment rate that is *de minimis* (*i.e.,* less than 0.5 percent *ad valorem*. Two commenters noted that the proposed regulations did not indicate which entries will be subject to paragraph (c)(2) if it is issued in final form. According to the commenters, paragraph (c)(2) should apply to all entries that are unliquidated as of the date of issuance of the final regulations.

The Department recognizes the need for guidance on this issue, but has not adopted the solution proposed. Instead, the Department will apply paragraph (c)(2) to all liquidations done pursuant to final results in reviews that the Department initiates after the effective date of these regulations. This approach is consistent with the applicability date set forth in § 351.701. In addition, this approach is necessary in order to avoid the extreme administrative burden the Department would face if it applied paragraph (c)(2) retroactively, in which case the Department would have to amend the numerous liquidation instructions that it has sent to the Customs Service over the years. Normally, the Customs Service liquidates entries soon after the Department issues liquidation instructions. However, the Department has no way to determine whether the Customs Service has liquidated all entries subject to liquidation instructions, because liquidation may have been delayed for reasons unrelated to the existence of an AD order. Therefore, to implement the commenters' proposal, the Department would have to amend all of its previously issued liquidation instructions.

One commenter expressed concern that the Department will apply paragraph (c)(2) based upon *de minimis* weighted-average dumping margins. With respect to this comment, we note that Department usually uses the term ''weighted-average dumping margin'' to refer to an exporter-or producer-specific margin that the Department uses for cash deposit purposes. As discussed above, the Department normally will apply paragraph (c)(2) on the basis of *importer-specific* assessment rates. However, although the Department has been calculating importer-specific assessment rates for some time, there are some cases that are held up in litigation. In these cases, we may not be able to calculate importer-specific assessment rates, because the record does not contain the necessary information. In such situations, where the Department issues assessment instructions at the conclusion of the litigation, we will apply the *de minimis* rule on the basis of the weighted-average dumping margin calculated for the exporter or producer.

Section 351.107

We have added a new § 351.107 that deals with (1) the establishment of deposit rates in situations involving a nonproducing exporter, (2) the selection of the appropriate deposit rate where entry documents do not identify the

producer of subject merchandise, and (3) the calculation of rates in AD proceedings involving nonmarket economy countries.

Nonproducing exporters: In the AD Proposed Regulations, 61 FR at 7311, the Department requested additional public comment on the issue of whether to promulgate special rules regarding the rates applicable to exporters that are not also producers, such as trading companies. We noted that one alternative would be to calculate a separate rate for each exporter/producer combination.

One commenter suggested that the Department should apply this approach in all instances. Other commenters argued that the Department should not codify an across-the-board rule, but instead should establish rates for exporter/producer combinations on a case-by-case basis. Another commented that it would be inappropriate to determine rates solely on the basis of exporter/producer combinations, and that normally the Department should base deposits of estimated duties on the rate calculated for the producer.

The Department agrees with the comments suggesting that it is appropriate in some instances to establish rates for exporter/producer combinations. Therefore, in paragraph (b)(1)(i), we have provided for the establishment of such ''combination rates.''

We believe that combination rates are appropriate, because, in an AD proceeding, the Department usually investigates or reviews sales by a nonproducing exporter only if that exporter's supplier sold the subject merchandise to the exporter without knowledge that the merchandise would be exported to the United States. While we agree with one commenter that in these instances the producer's pricing is not at issue, we are concerned about the proper application of any deposit rate determined on the basis of the exporter's pricing. Establishing a deposit rate for an exporter and, without regard to the identity of the supplier, applying that rate to all future exports by that exporter could lead to the application of that rate even if other suppliers sold to the exporter with knowledge of exportation to the United States. This would enable a producer with a relatively high deposit rate to avoid the application of its own rate by selling to the United States through an exporter with a low rate. Therefore, in order to ensure the proper application of deposit rates, the Department believes that it should establish, where appropriate, individual rates for nonproducing exporters in combination with the particular supplier or suppliers from whom the exporter purchased the subject merchandise.

On the other hand, the Department believes that there are situations where it may be inappropriate and/or impractical to establish combination rates. For example, it may not be necessary to establish combination rates when investigating or reviewing nonproducing exporters that are not trading companies, such as original equipment manufacturers. In addition, it may not be practicable to establish combination rates when there are a large number of producers, such as in certain agricultural cases. The Department will make such exceptions to combination rates on a case-by-case basis.

Another instance in which the Department assigns rates to exporters is in AD investigations and reviews of imports from nonmarket economies (NMEs). In those cases, if sales to the United States are made through an NME trading company, we assign a noncombination rate to the trading company regardless of whether the NME producer supplying the trading company has knowledge of the destination of the merchandise. One exception to this NME practice occurs where we find no dumping and exclude an exporter from an AD order. Where exclusions are involved, we publish a combination rate to address the same concerns described above regarding redirection of exports through an excluded trading company. Nothing in § 351.107(b)(1) is intended to change our policy for assigning rates in NME proceedings.

The Department also believes it is not appropriate to establish combination rates in an AD investigation or review of a producer; *i.e.*, where a producer sells to an exporter with knowledge of exportation to the United States. In these situations, the establishment of separate rates for a producer in combination with each of the exporters through which it sells to the United States could lead to manipulation by the producer. Furthermore, the Department recognizes that in many industries it is not uncommon for a producer to sell some amount of merchandise purchased from other producers. In such situations, the Department generally intends to establish a single rate for such a respondent based on its status as a producer, although unusual circumstances may warrant the application of a combination rate.

The Department also generally agrees with the comment that, in AD cases, if an exporter changes its supplier, the supplier's rate should be applied for deposit purposes rather than the ''all-others'' rate. Therefore, paragraph (b)(2) provides that for purposes of deposits, the Department will apply the producer's rate to entries if the Department has not established previously a deposit rate for the particular exporter/producer combination or the exporter alone. If the Department has not calculated an individual rate for the producer, the Department will apply the ''all-others'' rate. Again, nothing in this section is intended to change our practice regarding the rates assigned to NME exporters. In particular, an ''all-others'' rate may not be calculated in an NME proceeding or, if it is, it may not apply to the new shippers covered in this section.

In the case of CVD proceedings, subject merchandise may be subsidized by means of subsidies provided to both the producer and the exporter. In the Department's view, all subsidies conferred on the production of subject merchandise benefit that merchandise, even if it is exported to the United States by a reseller rather than the producer itself. Therefore, the Department calculates countervailable subsidy rates on the basis of any subsidies provided to the producer, as well as those provided to the exporter in any investigation or review involving exports by a nonproducing exporter. As a result, rates established for particular combinations of exporters and producers are the most accurate rates. Moreover, as in an AD proceeding, combination rates help to ensure the proper application of combination rates when other producers sell through the same exporter.

As in AD proceedings, in CVD proceedings there may be situations in which it is not appropriate or practicable to establish combination rates. In such situations, the Department will make exceptions to its combination rate approach on a case-by-case basis. In addition, for a new combination of exporter and producer, the Department believes that it should apply the supplier's rate, rather than the ''all-others'' rate, for deposit purposes. Therefore, under paragraph (b)(2), in a CVD proceeding the Department intends to apply the producer's rate to entries for deposit purposes if the Department has not established a rate for the particular exporter/producer combination or the exporter alone. If the producer's rate is applicable, but the Department has not established a rate for that producer, the Department will apply the ''all-others'' rate.

In this regard, however, in a CVD proceeding, the Department intends to establish a deposit rate for each

producer that it investigates or reviews, even if during the period of investigation or review the producer happened to be selling to the United States through a reseller. The purpose of this approach is to ensure that if the producer subsequently begins to export to the United States directly, the Department will be able to apply a deposit rate based on the producer's own level of subsidization, as opposed to the ''all-others'' rate.

The proper application of rates to entries for deposit purposes generally requires that the producer of the merchandise be identified. Accordingly, under paragraph (c), if an entry does not identify the producer (or the exporter's supplier if the exporter is not the producer), the Department will instruct the Customs Service to use the higher of: (1) the highest of any combination rate involving that exporter, (2) the highest rate for any producer other than a producer for which the Secretary has established a combination rate involving the exporter in question, or (3) the ''all-others'' rate. The objective of paragraph (c) is to prevent an exporter from obtaining a lower deposit rate by means of withholding the identity of its supplier from the Customs Service.

As an example of how paragraph (c) would operate, assume that in an AD proceeding the existing rates are: Exporter A/Producer 1—5 percent; Exporter B/Producer 2—20 percent; Producer 1—18 percent; Producer 2—15 percent; and All Others—10 percent. If an entry did not identify the producer of subject merchandise exported by Exporter A, the Department would instruct the Customs Service to apply Producer 2's deposit rate of 15 percent. 15 percent would be the appropriate rate if Producer 2 were the supplier, and it also is the highest of the possible rates applicable had the producer been identified (those rates being 5, 10, and 15 percent in this example). Producer 1's rate of 18 percent would not be appropriate, because the Department already would have established that, when Producer 1 exports through Exporter A, the appropriate rate is 5 percent.

Nonmarket economy cases: The second sentence of the definition of ''rates'' in proposed § 351.102(b) provided the Department with the authority to apply a single AD margin to all producers and exporters from a nonmarket economy (''NME'') country. We have moved that sentence to paragraph (d) of § 351.107.

As explained in the AD Proposed Regulations, 61 FR at 7311, the Department elected not to codify its current presumption that a single rate will be applied in NME cases. We received several comments on this issue.

Four commenters suggested that the Department codify its current presumption of a single rate. Three of these commenters viewed the presumption as correct, because the fact that a country is an NME carries with it an assumption that the government controls all exporters. Moreover, these commenters asserted that NME governments, due to their control, can funnel sales of the subject merchandise through, or transfer production of the subject merchandise to, the entity that receives the most favorable dumping margin. These commenters further urged the Department to extend the presumption of control beyond the central NME government to provincial and municipal governments, as well. One commenter that urged the Department to codify the presumption of a single rate also argued that the presumption is consistent with the statute, because all NME companies are under common ownership and, hence, comprise a single exporter. Consequently, in this commenter's view, the Department should calculate a single dumping margin just as it would calculate a single dumping margin in situations where the Department ''collapses'' market economy producers under common ownership. This same commenter urged the Department to make clear that the NME-wide rate calculated as a consequence of the presumption is different from the ''all-others'' rate described in section 735(c)(1)(B)(i)(II) of the Act.

One commenter opposed the presumption. In discussing the People's Republic of China (''PRC''), this commenter pointed to the reforms that have been instituted in the PRC economy, claiming that the underlying premise of the presumption—that the central government controls exporters—is erroneous. According to the commenter, the Department's experience in administering the presumption confirms this conclusion, because in virtually every case since the Department instituted the presumption, individual PRC producers have been able to demonstrate that they are entitled to their own rates. Consequently, this commenter argued, the Department should abandon the presumption of a single NME-wide rate, and non-investigated exporters in an NME should receive an all-others rate. Another commenter asked that even if the Department does not codify the presumption, the Department should clarify that it will continue to calculate separate rates in appropriate cases.

Several commenters went on to make specific suggestions for amending the so-called ''separate rates test''; *i.e.*, the conditions that must be met for rebutting the presumption. One commenter urged the Department to incorporate into the separate rates test the affiliated party criteria from section 771(33) of the Act and §§ 351.102(b) and 351.401(f) of the regulations. In this commenter's view, the affiliated party criteria provide appropriate guidance on when parties under common ownership should be subject to a single AD rate. A second commenter recommended amending the test to include an assessment of possible central government influence in the future. Also, in this commenter's view, the NME exporter seeking a separate rate should be required to present affirmative evidence that the government is not involved in the exporter's pricing decision. In other words, this commenter claimed, an absence of evidence of control should not be sufficient to rebut the presumption. Finally, this commenter suggested that, because of the potential for circumvention, the Department should calculate individual rates only for manufacturers, and not for export trading companies.

Another commenter pointed to the unfairness of having to prove the negative; *i.e.*, the absence of control. This commenter also suggested that the Department should focus on events during the period of investigation and not speculate about events that might occur in the future. Two commenters urged the Department to provide an opportunity for firms to receive separate rates in those situations where the Department chooses not to investigate all exporters. In their view, instead of using the punitive NME-wide rate, the Department should assign these non-investigated exporters an average dumping margin calculated on the basis of investigated firms receiving separate rates.

As in the proposed regulations, we have refrained from codifying the presumption of a single rate in NME AD cases. Nor have we adopted a modified version of the presumption. We appreciate the many thoughtful comments that we received on this topic. However, because of the changing conditions in those NME countries most frequently subject to AD proceedings, we do not believe it is appropriate to promulgate the presumption or the separate rates test in these regulations. Instead, we intend to continue developing our policy in this area, and the comments that were submitted will help us in that process. We would like

to clarify, however, that we do intend to grant separate rates in appropriate circumstances, and that our decision not to codify the presumption or the separate rates test should not be seen, as one commenter suggested, as a decision not to grant separate rates. Also, as discussed above in connection with § 351.107(b)(1), we intend to continue calculating AD rates for NME export trading companies, and not the manufacturers supplying the trading companies.

Subpart B—Antidumping Duty and Countervailing Duty Procedures

Subpart B deals with AD/CVD procedures, and is based on subpart B of part 353 and part 355 of the Department's former regulations.

Section 351.202

Section 351.202 deals with the contents of, and filing requirements for, AD/CVD petitions. We received several comments regarding proposed § 351.202.

Contents of petitions: Proposed § 351.202(b), consistent with the statute, provided that a petition must contain specified information ''to the extent reasonably available to the petitioner.'' One commenter suggested that the Department revise § 351.202(b) so as to make clear that the ''reasonably available'' standard is flexible, and that, in particular, the Department expressly acknowledge in the regulation that cost is a relevant consideration in determining what is ''reasonably available.''

We have not adopted this suggestion. While we do not disagree with the proposition that the ''reasonably available'' standard is flexible, we believe that the word ''reasonably'' makes this flexibility manifest. In addition, while we also do not disagree with the notion that cost to a petitioner is a factor in determining what is reasonably available, it is only one of many possible factors. To identify in the regulation one factor to the exclusion of others might result in undue emphasis being placed on the factor of cost. The ''reasonably available'' standard has been in the statute for many years, and we believe that it provides sufficient guidance to petitioners as to the efforts they must undertake in providing information to the Department.

The same commenter objected to the requirement in proposed § 351.202(b)(3) that a petitioner provide production data for each domestic producer identified by the petitioner. This commenter argued that Article 5.2 of the AD Agreement and Article 11.2 of the SCM Agreement merely require that a petitioner provide aggregate production data for all known domestic producers. A second commenter supported proposed § 351.202(b)(3) as drafted, arguing that the SAA at 861 clearly requires producer-specific production data.

We do not agree with the first commenter's interpretation of articles 5.2 and 11.2. However, even if that interpretation were correct, it is the U.S. statute that controls. The SAA clearly requires that a petitioner provide producer-specific production data, subject, of course, to the proviso that such information is reasonably available to the petitioner. This information is necessary in order to enable the Department to determine whether an adequate portion of domestic producers support a petition, an inquiry which is based on production volumes of domestic producers. Therefore, we have left § 351.202(b)(3) unchanged.

Two commenters suggested that the Department coordinate with the Commission with respect to regulations dealing with the contents of petitions, and that the Department incorporate into § 351.202(b) the specific requirements contained in the Commission's corresponding regulation. In addition, these commenters suggested that, in light of the Commission's proposed § 207.11(b)(2)(iv), the Department should revise its own proposed § 351.202(b)(8) so as to require volume and value information regarding the subject merchandise for the most recent three-year period, as opposed to a two-year period.

We have adopted these suggestions in part. The Commission completed its rulemaking activity and issued final rules on July 22, 1996. *See* 61 FR 3818. These final rules contain a revised 19 CFR § 207.11 that deals with the contents of AD/CVD petitions. We have incorporated elements of the Commission's regulations into § 351.202(b) where the information identified in § 207.11 is of the same general type as that sought by the Department. With respect to the identity of importers, we have revised proposed § 351.202(b)(9) so as to require telephone numbers for each importer identified, to the extent such information is reasonably available to the petitioner. On the other hand, we have not incorporated elements of § 207.11 where the information identified in that regulation is not of the same general type as that sought by the Department. For example, we have not included the requirement of § 207.11(b)(2)(iv) that a petitioner identify each product for which the petitioner requests the Commission to seek pricing information in its questionnaires. Finally, we have added a sentence to paragraph (a) that advises petitioners to refer to the Commission's regulations concerning petition contents.

With respect to the suggestion that we require three, rather than two, years of volume and value information, as required by proposed § 207.11(b)(2)(iv), we note that the Commission deleted this provision in its final rule. Therefore, we are not adopting this suggestion for purposes of § 351.202(b).

Amendments to petitions: One commenter objected to the substitution of ''may'' for ''will'' in proposed § 351.202(e) (''The Secretary may allow timely amendment of the petition''). The commenter argued that the substitution is improper, because it confers on the Department more discretion than is allowed by section 732(b)(1) of the Act. We have retained the language of the proposed rule. In our view, the statute, by permitting the Secretary to establish on a case-by-case basis the timing and conditions for any amendments to a petition, confers considerable discretion. We continue to believe that the word ''may'' more accurately reflects this discretionary authority than does the word ''will.''

Pre-initiation communications: Commenting on proposed § 351.202(i), one commenter suggested that because the statutory limitation on pre-initiation communications is limited to comments that are *unsolicited* by the Department, the Department should revise § 351.202(i) so as to clarify that the Department retains the discretion to ''solicit'' comments on its own initiative. According to this commenter, the Department's interpretation of the SAA in the AD Proposed Regulations is incorrect. *See* 61 FR at 7313. The commenter argued that while the SAA limits the pre-initiation *right of parties* to comment to the issue of industry support, Congress deliberately used the word ''unsolicited'' in sections 702(b)(4)(B) and 732(b)(3)(B) of the Act in order to provide the Department with the discretion to solicit comments on any issue where necessary. Two other commenters submitted similar comments.

Three commenters, however, opposed the suggestion described in the preceding paragraph. In addition, these commenters proposed that the Department revise the proposed regulations so as to expressly state that the Department will *not* solicit information from sources other than domestic interested parties.

We have not adopted either of these competing suggestions. As noted above,

in drafting these regulations, the Department has sought to avoid repeating the statute to the extent possible. Consistent with this objective, in proposed § 351.202(i), the Department sought to do no more than clarify that the filing of a notice of appearance would not constitute a ''communication'' within the meaning of the statute. The Department referred in paragraph (i) to sections 702(b)(4)(B) and 732(b)(3)(B) merely to provide a context for this clarification. As for the Department's discussion of the SAA mentioned by the first commenter, this discussion was in response to suggestions that the Department should solicit comments regarding a petition, an activity clearly not contemplated by the statute or the SAA.

Each group of commenters is asking the Department to place a different gloss on the statute. At this time, we do not believe that either gloss is necessary or appropriate. However, in view of the fact that both groups of commenters apparently misinterpreted the Department's intent in drafting proposed § 351.202(i), we have revised that paragraph to clarify that it deals only with the treatment of notices of appearance.

We should note that the Department has no intention of soliciting comments concerning the adequacy and accuracy of a petition. In this regard, the Department intends to follow the general rule articulated by the Federal Circuit in *United States* v. *Roses, Inc.*, 706 F.2d 1563 (1983), that, in order to determine whether a petition is adequate under the law, the Department should look only within the four corners of the petition. This general principle is now incorporated in sections 702(b)(4)(B) and 732(b)(3)(B) of the Act.

The three exceptions to this rule are those specified in the Act and the SAA: for comments concerning industry support for the petition; for inquiries concerning the status of the Department's consideration of the petition; and for government-to-government consultations in CVD investigations. With respect to industry support, the statutory exception is necessary in part because the issue of industry support cannot be revisited after initiation. The SAA at 194 makes clear that the Department is to construe this exception narrowly. The Department may accept and answer inquiries concerning the status of the Department's consideration of a petition, because such inquiries do not constitute comments on the accuracy and adequacy of the petition itself. In the case of CVD investigations, section 702(b)(4)(B) expressly directs the Department to provide the government of the exporting country with an opportunity for consultations on the petition. This requirement implements Section 13.1 of the SCM Agreement. The Department will determine what weight to give to any information received during the course of such consultations on a case-by-case basis.

Other comments: One commenter argued that it was improper for a Department official to counsel a petitioner in preparing a petition and then, after the petition is formally filed, participate in an analysis of the adequacy of the petition. According to this commenter, such activity gives rise to an appearance of impropriety and violates the Department's own rules on ethical conduct. The commenter proposed a revision to § 351.202 which would have (1) required the Department to disclose publicly the names of all Department personnel who assisted in the preparation of a petition; and (2) precluded any such official from participating in the relevant AD/CVD proceeding once the petition was filed.

We have not adopted this comment, and we disagree strongly with its underlying premise. We do not believe that Department personnel lose their objectivity or impartiality regarding the merits of a petition when they have provided advice to a petitioner in the preparation of a petition. In addition, we do not believe that there is an appearance of impropriety or a violation of the Department's rules of ethical conduct when such personnel participate in an AD/CVD proceeding triggered by the filing of a petition with respect to which they may have offered pre-filing advice.

The same commenter also suggested that the Department revise proposed § 351.202(i)(2), which provides that, in the case of a CVD petition, the Department will invite the government of the exporting country involved for consultations under Article 13.1 of the SCM Agreement. Consistent with other comments made by this commenter based on its analysis of the statutory term ''country,'' the commenter suggested that the Department modify paragraph (i)(2) to provide that the Department also will invite for consultations the government of any political subdivision of a named country.

We have not adopted this suggestion. Although there certainly are situations in which the statute treats political subdivisions as ''countries,'' this is not one of those situations. Section 702(b)(4)(A)(ii) of the Act refers to consultations with a ''Subsidies Agreement country.'' In our view, a state or provincial government does not meet the definition of ''Subsidies Agreement country'' in section 702(b) of the Act.

Moreover, under Article 13.1, the obligation of the United States is to consult with ''Members'' of the WTO, a term that excludes subnational governments, such as states and provinces. While the central government of a WTO Member may choose to be accompanied at consultations by representatives of subnational levels of government, the Department will not embroil itself in the internal politics of another country by inviting such representatives to participate in Article 13.1 consultations.

Finally, one commenter proposed that the following sentence be added to proposed § 351.202(c): ''Other filing requirements are set forth in § 351.303.'' The purpose of this addition would be to put petitioners on notice as to the existence and location of distinct filing requirements. The Department agrees with this suggestion, and we have revised paragraph (c) accordingly.

Other changes: In light of the recent reorganization of Import Administration, we have revised § 351.202(h)(2) to provide that persons seeking information concerning petitions should contact Import Administration's Director for Policy and Analysis.

Section 351.203

Section 351.203 deals with determinations regarding the sufficiency of an AD or CVD petition, and implements sections 702(c) and 732(c) of the Act. We received several comments regarding § 351.203.

Adequacy of allegations: Three commenters made suggestions relating to proposed § 351.203(b)(1), which provides that ''the Secretary, on the basis of sources readily available to the Secretary, will examine the accuracy and adequacy of the evidence provided in the petition and determine whether to initiate an investigation.'' While these commenters agreed that proposed § 351.203(b)(1) was consistent with the statute, they were concerned that the Department's commentary in the AD Proposed Regulations and/or the Department's practice was not. In the commentary, we described our prior practice in reviewing a petition and stated that this practice was consistent with the type of review contemplated by the new statute. In particular, we noted that it was the Department's practice to seek additional information when a particular allegation lacked sufficient support or appeared aberrational, even though the allegation was supported by some documentation. 61 FR at 7313.

One of the three commenters, however, stated that the practice described amounted to the weighing of evidence, and that this practice is inconsistent with the legislative history of the Trade Agreements Act of 1979, a legislative history that the SAA endorsed. This commenter proposed that the 1979 legislative history be incorporated into § 351.203(b)(1).

The second of the three commenters also complained that the Department's commentary suggested the weighing of evidence, and disagreed that the Department's proposal was consistent with past practice. Asserting that the statute and legislative history do not envision an adversarial pre-initiation proceeding, this commenter proposed that the Department clarify that (1) it will not allow respondents to bring public information to the Department's attention for purposes of assessing the sufficiency of a petition; and (2) that the new regulations are not intended to increase the burden on petitioners for initiating investigations.

The third of the three commenters agreed with proposed § 351.203(b)(1) and the accompanying commentary, but alleged that over time, the Department has been subjecting petitioners to substantially increased demands for additional factual support. Therefore, while not suggesting any changes to § 351.203(b)(1) or the commentary, this commenter suggested that the Department review its practice to ensure that that practice is consistent with the regulation and the commentary.

We agree that the pre-initiation process should not become an adversarial process between the petitioner and potential respondents. On the other hand, however, the Department has a statutory obligation to examine the accuracy and adequacy of the evidence provided in the petition, an exercise which necessarily entails making some judgments regarding the quantity and quality of the information contained in a petition. Whether or not such an examination constitutes the ''weighing of evidence'' is, in our view, largely a question of semantics. However, we believe that the practice described in the commentary accompanying proposed § 351.203(b)(1) does not result in an adversarial process and that this practice is consistent with the legislative history of the 1979 Act. That legislative history states, *inter alia*, that a petition must be ''*reasonably* supported by the facts alleged.'' H.R. Rep. No. 317, 96th Cong., 1st Sess. 51 (1979) (emphasis added). In our view, this means that the mere provision of *any* documentation is not necessarily sufficient, and the Department, where appropriate, should be able to seek additional information where support for a particular allegation is weak or information appears aberrational.

Therefore, we have not changed proposed § 351.203(b)(1) in light of these comments. However, we wish to reiterate what we said in the commentary accompanying proposed § 351.203(b)(1); namely, that we do ''not believe that the new statutory standard constitutes a significant departure from past Department practice.'' 61 FR at 7313.

Sources readily available: Commenting on proposed § 351.203(b)(1), one commenter suggested that the regulations make clear that ''sources readily available'' to the Department include any information that is relevant to its evaluation of a petition and that is submitted by an interested person further to the Department's request. We have not adopted this suggestion, because we prefer to develop our interpretation of this new statutory term on a case-by-case basis.

The same commenter urged the Department to refrain from allowing a petitioner to comment on any pre-initiation submissions that a respondent interested party makes in response to a Department request. Presumably, this commenter was referring to the following statement in the preamble to the AD Proposed Regulations: ''The Department will give the petitioner an opportunity to comment on any such information acquired by the Department.'' 61 FR at 7313. We have not adopted this suggestion either, because we continue to believe that it is appropriate to provide a petitioner with an opportunity to comment on information collected during the pre-initiation process.

Also in connection with proposed § 351.203(b)(1), another commenter proposed that after the phrase ''sources readily available to the Secretary,'' the Department should add the following clause: ''including information provided to the Department by foreign governments during the consultations required under 19 U.S.C. § 1671a(b)(4)(A)(ii). * * *'' This commenter was referring to the pre-initiation consultations provided for in Article 13.1 of the SCM Agreement and referred to in section 702(b)(4)(A)(ii) of the Act. According to the commenter, the ''right to consult is meaningless if the Department were not to consider information provided in the consultations in making its decision whether to initiate an investigation and, if so, on what programs.'' Another commenter, however, opposed this suggestion, arguing that neither the statute nor the Department's practice concerning CVD petitions allows the Department to transform Article 13.1 consultations into pre-initiation litigation.

While we have not adopted the suggestion, we do not disagree with the thrust of the first commenter's position. Under Article 13.1 of the SCM Agreement, foreign governments have a right to consultations prior to the initiation of an investigation. The purpose of these consultations is to clarify the matters referred to in a petition. The right to consultations is specifically provided for in § 702(b)(4)(A)(ii) of the Act. We note that under § 702(b)(4)(B), the Department is prohibited from accepting any unsolicited oral or written communication from potential respondents, except as provided for under the aforementioned provision of the Act requiring that foreign governments be given an opportunity for consultations. Therefore, we believe that the Department may consider relevant information provided by a foreign government prior to the initiation of an investigation. The use of such information and the weight given to it, either prior to the initiation decision or during an investigation, will be determined by the Department on a case-by-case basis.

Industry support: Commenting on proposed § 351.203(e)(1), one commenter suggested that when measuring domestic production as an index of industry support for a petition, the Department (1) never should measure production over a period of less than twelve months; and (2) should retain the flexibility to examine a period greater than twelve months in appropriate circumstances. A second commenter endorsed proposed § 351.203(e)(1), arguing that the use of the word ''normally'' in that provision provided the Department with the necessary flexibility to use periods greater or lesser than twelve months when appropriate.

We have left § 351.203(e)(1) unchanged. Because the statutory standard for determining industry support is new, we are reluctant to adopt a regulation that would preclude, in all cases, the use of a period shorter than twelve months. As observed by the second commenter, there may well be industries for which use of a shorter period is appropriate. While we expect that in most cases the Department will use a twelve-month period, use of the word ''normally'' provides us with sufficient flexibility to use longer or shorter periods when appropriate.

One commenter suggested that the Department revise proposed § 351.203(e)(3) to provide that: (1) the Department may base the position of workers on a statistically valid sampling of the views of individual workers; and (2) the views of workers and management be recorded in writing and certified in accordance with § 351.303(g). A second commenter objected to these suggestions, arguing that (1) the first commenter's notion of sampling effectively would rewrite the statute; and (2) a separate certification requirement is unnecessary, because § 351.303(g) already requires certification of submissions containing factual information.

We have not adopted the first commenter's suggestions. With respect to sampling of individual workers, this suggestion would require a level of regulatory detail greater than what we consider to be appropriate at this time. The statute does provide for the use of statistically valid sampling methods to determine industry support, but only when there are a large number of producers in the relevant industry. In the AD Proposed Regulations, we deliberately refrained from elaborating on what is, for the Department, a new and untried method for determining industry support. For purposes of these final regulations, we continue to believe that we should develop this method on a case-by-case basis. With respect to the first commenter's suggestion regarding filing requirements for industry positions, we agree with the second commenter that the changes proposed are redundant and unnecessary.

Another commenter sought clarification with respect to proposed § 351.203(e)(3), a provision that states that the Secretary will accord equal weight to the positions of management and workers regarding a petition. The commenter stated that the 25 percent threshold for determining industry support should not be subject to § 351.203(e)(3), apparently based on the commenter's belief that this provision somehow undermines the 25 percent threshold. A second commenter offered an interpretation of the first commenter's comment, and suggested, based on its interpretation, that the commenter's ''complaint should be dismissed.''

The first commenter did not seek a change to the regulation, and we do not believe that a change is necessary. However, the Department wishes to confirm that in situations where the views of the management and workers of a firm negate each other, the production of the firm in question will be included as part of the total production of the domestic like product for purposes of applying the 25 percent threshold in sections 702(c)(4)(A)(i) and 732(c)(4)(A)(i) of the Act.

The same commenter also sought clarification that all interested parties would be given access to non-confidential information related to the positions of domestic producers and workers. With respect to this comment, the Department can confirm that public information (*e.g.*, non-business proprietary information) concerning the positions of producers and workers will be included in the public record of an AD/CVD proceeding. Under § 351.104(b), the public record will be available to the public, including interested parties, for inspection and copying in Import Administration's Central Records Unit.

Another commenter made some suggestions regarding proposed § 351.203(e)(5), which deals with determinations of industry support in cases where the petitioner alleges the existence of a regional industry. This commenter proposed that in regional industry cases, the Department should (1) determine the position of all members of the national industry regarding the petition, initiate based upon support within the alleged region, but terminate the investigation for lack of interest if there is insufficient support from producers within the region or nation, as determined by the Commission in its preliminary determination; and (2) consult extensively with the Commission prior to initiation regarding the adequacy of the regional industry allegation and, if the Commission's advice is that the alleged region is questionable, advise the petitioner to withdraw the petition and refile it as a national case or with a more properly defined region. According to the commenter, such an approach is necessary (1) to address the ''anomaly'' in the statute that arises when the Commission rejects a regional industry alleged in a petition; and (2) to ensure that allegations of regional industry in a petition are not used to circumvent the industry support requirements.

A second commenter opposed these suggestions. First, this commenter noted, the statute addresses this very situation, because the statute expressly states that (1) the Department shall determine industry support based on production in the region alleged in the petition, and (2) the Department shall not reconsider a determination of industry support once it is made. Second, there is no ''anomaly'' limited to regional industry cases, because in any case, including a case in which the petitioner alleges a national industry, the Commission may define the relevant product in such a way that the scope of the relevant industry analyzed for injury purposes differs from the scope of the industry analyzed for purposes of determining industry support. Third, there is no basis for the Department to revisit its industry support determination based on the Commission's preliminary determination, because in its final determination the Commission may change the definition of the industry at issue yet again, or even revert back to the definition originally alleged in the petition. Finally, the second commenter suggested that the first commenter's concerns about circumvention were overblown, stating that the first commenter did not understand the difficulties involved in bringing a regional industry case.

In light of these comments, and because the SAA is clear on this point, we have deleted paragraph (e)(5).

Other comments: One commenter submitted a comment concerning proposed § 351.203(c)(2), which requires that, after initiation of an investigation, the Secretary provide a public version of the petition to all known exporters who sell for export to the United States. Section 351.203(c)(2) makes an exception for situations where the number of exporters is ''particularly large.'' The commenter suggested that the Department should invoke the exception only in situations where the number of exporters is ''exceptionally large.'' We have not adopted this suggestion, because the phrase ''particularly large'' tracks the language of the SAA and the relevant provisions of the AD Agreement and the SCM Agreement.

The same commenter also suggested that § 351.203(c)(2) provide that, upon request, any exporter, producer, or importer of subject merchandise be provided, free of charge, with a public version of the petition. We have not adopted this suggestion, because § 351.104(b) adequately deals with matters relating to access to the public record, including the public version of a petition.

Section 351.204

Section 351.204 deals with issues relating to the time period and persons to be examined in an investigation, voluntary respondents, and exclusions. In the section title, we have substituted ''Time periods'' for ''Transactions'' to reflect more accurately the contents of § 351.204.

Period of investigation in AD investigations: In proposed

§ 351.204(b)(1), the Department revised the period of investigation (''POI'') for antidumping investigations. In the past, the Department normally used a six-month POI that ended with the month in which the petition was filed. 19 CFR § 353.42(b)(1) (1995). In § 351.204(b)(1), the Department expanded the POI from six months to four fiscal quarters (twelve months), with the exception of nonmarket economy cases. In addition, the Department provided that the POI would consist of the four most recently completed fiscal quarters as of the month *preceding*, instead of including, the month in which the petition was filed or in which the Secretary self-initiated an investigation. Finally, the Department preserved its discretion to use a different POI in appropriate circumstances.

We received several comments concerning this change in the standard AD POI. One commenter, while approving the expansion of the POI to twelve months, objected to reliance upon fiscal quarters completed as of the month preceding the month in which a petition was filed. According to this commenter, domestic industries are badly buffeted by dumped imports at least up to the date of the filing of a petition. If the Department relied on completed fiscal quarters, however, it would ignore at least two months worth of dumping activity, activity that was automatically covered by the Department's former POI. In addition, this commenter asserted, the use of months, rather than fiscal quarters, ''has worked well generally in the past and has not demonstrably been an impediment to verification.'' Therefore, this commenter proposed that the standard AD POI be the twelve-month period ending in the month of filing or self-initiation, and that respondents should have the burden of proving that a different POI is appropriate.

A second commenter, on the other hand, generally supported the use of fiscal quarters, but believed that the Department should rely on completed quarters as of the end of the month of filing or self-initiation. In addition, this commenter objected to the expansion of the POI from six months to twelve months, arguing that the Department had not explained the reasons for this expansion and that it appeared to be inconsistent with the Department's stated goal of easing reporting requirements and permitting more efficient verification.

With respect to the expansion of the POI to twelve months, we believe that this expansion is required by Article 2.2.1, note 4 of the AD Agreement. Note 4 states: ''The extended period of time should normally be one year but shall in no case be less than six months.'' Although this statement is made in the context of analyzing sales below the cost of production, implicit in the statement is the assumption that the POI in an AD investigation normally will be one year. Therefore, we have not adopted the suggestion of the second commenter that we revert to a normal POI of six months.

With respect to the use of completed fiscal quarters rather than months, while we do not dispute the first commenter's assertion that domestic industries may be buffeted by dumped imports in the months immediately preceding the filing of a petition, these imports would not be subject to antidumping duties, regardless of whether they were covered by the POI. Moreover, the timing of a petition filing often can address such concerns. In addition, we continue to believe that defining the POI in terms of completed fiscal quarters, rather than calendar months running from the date of filing, will generate considerable savings in time and money for both the Department and the parties involved in AD proceedings. Our experience is that a considerable amount of time is spent in reconciling AD submissions (that until now have been based on calendar months) to a firm's accounting records (that typically are based on fiscal quarters). However, we should emphasize that § 204(b)(1) refers to the POI that the Secretary ''normally'' will use. Therefore, the Department retains the discretion to depart from its standard POI where warranted by the circumstances of a case.

Finally, we are not adopting the suggestion that we base our POI on completed fiscal quarters as of the end of the month of filing or self-initiation. In general, we believe that it is more appropriate to investigate only sales made prior to the filing of a petition to alleviate concerns about the effect of the petition on pricing practices.

Period of investigation in CVD investigations: One commenter suggested that we retain the modifier ''normally'' in the second sentence of proposed § 351.204(b)(2). According to this commenter, the Department should retain the flexibility to adopt as the POI the fiscal year of the foreign government or the main responding company.

We have retained the word ''normally'' in the second sentence. However, we have changed the second sentence of § 351.204(b)(2). Originally, this sentence would have required the Secretary to set the POI as the most recently completed calendar year, if the fiscal years of the *government* and the exporters or producers differed. This language did not correctly reflect our past practice, a practice that we do not wish to change. The new language simply deletes the reference to the government's fiscal year. Thus, the Department normally will set the POI according to the fiscal year of the individual exporters or producers. Only if the fiscal years of the exporters or producers differ, will the POI be the most recently completed calendar year. In the case of investigations conducted on an aggregate basis, the Department's normal POI will continue to be based on the most recently completed fiscal year for the government in question.

Acceptance of voluntary respondents: Two commenters submitted virtually identical comments objecting to the requirement in proposed § 351.204(d)(2) that a voluntary respondent submit a questionnaire response before the Department decides whether to examine the voluntary respondent individually. Citing the Department's AD investigation on *Pasta from Italy*, these commenters claimed that an exporter will not be willing to expend the time and financial resources required to prepare a questionnaire response without some prior assurance by the Department that it will conduct an individual examination of the firm. Therefore, they concluded, this requirement discourages voluntary responses and, thus, violates Article 6.10.2 of the AD Agreement.

To remedy this alleged violation of international law, the commenters proposed that the Department require only that any exporter not selected as a mandatory respondent submit a letter if it is interested in submitting a voluntary response. Based on these letters, the Department would decide which, if any, voluntary respondents it would examine. Only after being selected would voluntary respondents be required to submit questionnaire responses.

We have not adopted this suggestion, because the approach that the commenters objected to is made necessary by the requirements of sections 777A(c)(2)(B) and 782(a) of the Act. Where the Department does not examine all known producers and exporters, it often selects for examination all producers or exporters ''that can be reasonably examined'' in accordance with the requirements of section 777A(c)(2)(B) of the Act. The selected producers and exporters in this group normally represent the largest number of respondents the Department believes it can examine at that time. The Department normally will decide the number of selected respondents very early in the proceeding; *i.e.*, before it

issues questionnaires to the selected respondents. Therefore, it frequently is the case that the Department cannot make a determination as to whether additional voluntary respondents can be reasonably examined until after the deadline for questionnaire responses has passed (*e.g.*, one or more selected respondents have not responded). If the additional voluntary respondents did not begin to prepare their questionnaire responses until after the Department received questionnaire responses from the selected respondents, the Department would not be able to complete the investigation or review within the statutory deadlines. Therefore, additional voluntary respondents must submit the complete questionnaire response by the deadlines in accordance with section 782(a) of the Act. In addition, we do not believe that section 782(a) ''discourages'' voluntary responses within the meaning of Article 6.10.2. Instead, it simply recognizes the constraints on the Department's resources that must be taken into account in determining whether we can accept a voluntary response. In order to help potential voluntary respondents decide, prior to acceptance as a respondent, whether to submit a questionnaire response, we intend to accept voluntary responses based on the order in which written requests to be accepted as voluntary respondents are submitted. In those instances where we can make earlier determinations to accept voluntary responses, we will do so.

One commenter submitted a comment suggesting that § 351.204 be amended to incorporate requests by voluntary respondents to be included in the pool of companies investigated in cases conducted on an ''aggregate'' basis. We have not adopted this suggestion, because under the statute, only CVD investigations are to be conducted on an ''aggregate basis,'' and it is clear from the comment that the commenter was addressing AD investigations.

Voluntary respondents and the all-others rate: Proposed § 351.204(d)(3) provided that in calculating an all-others rate, the Secretary will exclude weighted-average dumping margins or countervailable subsidy rates calculated for voluntary respondents. In the preamble to the AD Proposed Regulations, the Department explained that the purpose of this provision was to prevent manipulation and to maintain the integrity of the all-others rate. One commenter argued that this provision is inconsistent with the statute and should be deleted.

We do not agree with this comment, and have retained the rule as drafted. The statute does not define the term ''investigated'' and does not directly address the question of whether voluntary respondents should be considered to be part of the Department's investigation. Because the statute does not resolve the issue, we look to the AD Agreement for guidance as to the best interpretation of the Act, in keeping with the requirement that, to the extent possible, a statute be interpreted in a manner consistent with the international obligations of the United States.

Article 9.4 of the AD Agreement provides that the duties applied to ''exporters or producers not included in the examination'' (*i.e.*, ''all-others'') may not exceed the weighted-average margin for the ''selected exporters or producers.'' This implies that those exporters or producers not ''selected'' are not considered to be included in the ''examination.'' Therefore, the better interpretation of section 735(c)(5) is that producers who are not ''selected'' by the Department (*i.e.*, voluntary respondents) are not considered to have been ''examined'' (*i.e.*, investigated), so that their margins should not contribute to the ''all-others'' rate. In effect, the Department conducts parallel proceedings for voluntary respondents.

As we noted in the preamble to the AD Proposed Regulations, exclusion of voluntary respondents from the determination of the all-others rate serves the obvious purpose of preventing distortion or outright manipulation of the all-others rate. The producers or exporters most likely to submit voluntary responses are those with reason to believe that they will obtain a lower margin by volunteering than they would obtain by being subject to the all-others rate. Inclusion of rates determined for voluntary respondents thus would be expected to distort the weighted-average for the respondents selected by the Department on a neutral basis.

Exclusions: In the AD Proposed Regulations, 61 FR at 7315, the Department requested additional public comment on the issue of whether there should be special exclusion rules for firms, such as trading companies, that export, but do not produce, subject merchandise. We noted that one alternative would be to limit the exclusion of a nonproducing exporter to the subject merchandise produced by those producers that supplied the exporter during the period of investigation. Several commenters supported this approach, citing the potential for other producers to avoid the imposition of duties by selling through an excluded exporter. Other commenters argued that if an exporter is excluded, the exclusion should apply to all exports by that exporter, regardless of the producer.

The Department agrees with the first group of commenters that normally the exclusion of a nonproducing exporter should be limited. Therefore, we have added a new paragraph (e)(3) to provide that the exclusion of a nonproducing exporter normally will be limited to subject merchandise produced or supplied by those companies that supplied the exporter during the period of investigation.

In an AD investigation, the Secretary may grant an exclusion to a nonproducing exporter if the Secretary investigates the exporter's sales and determines that the dumping margins on those sales are not greater than *de minimis*. However, to prevent other producers from selling through an excluded exporter in order to avoid the imposition of duties, the Secretary normally will apply the exclusion only to the exporter's exports of subject merchandise purchased from those producer(s) found by the Secretary to lack knowledge of the exportation of the merchandise to the United States. This limitation is appropriate, because the lack of knowledge by these producers provided the basis for investigating and establishing a rate for the exporter.

In a CVD investigation, the basis for the exclusion of a nonproducing exporter is that neither the exporter nor the producers or suppliers of subject merchandise sold by the exporter received more than *de minimis* net countervailable subsidies. Therefore, it is appropriate to limit the exclusion to merchandise purchased from the same suppliers and producers.

With respect to requests for exclusion in a CVD investigation conducted on an aggregate basis, we have renumbered paragraph (e)(3) as paragraph (e)(4), and we have revised paragraph (e)(4)(iv) to clarify that in the case of a non-producing exporter, the foreign government must certify that neither the exporter nor the exporter's supplier received more than *de minimis* countervailable subsidies during the review period.

One commenter proposed that (1) the regulations make clear that the Department has the authority to ''bring back'' under an order an excluded company if the Department subsequently finds in a review that the company is dumping, and (2) the regulations retain the requirements of §§ 353.14 and 355.14 of the Department's prior regulations. According to the commenter, the Department required a company with a

zero or *de minimis* dumping margin or CVD rate to certify that the company would not dump or receive countervailable subsidies in the future. The commenter contended that this certification authorized the Department to review excluded firms to confirm that they were acting in a manner consistent with the certification. In addition, this commenter claimed that because AD/CVD orders apply to countries, rather than to individual companies, the Department has the authority to review excluded companies.

We have not adopted these suggestions. With respect to the notion of ''bringing back'' excluded companies, as a matter of administrative practice, the Department never has reviewed sales of excluded companies, with the exception of situations in which nonexcluded companies attempt to funnel their ''non-excluded'' merchandise through an excluded company. There is no indication in either the statute or the SAA that Congress intended the Department to make such a radical departure from its prior practice concerning exclusions. Moreover, we believe that the ''inclusion'' of an excluded company would be inconsistent with Article 5.8 of the AD Agreement and Article 11.9 of the SCM Agreement (both of which require termination where the amount of dumping or subsidization is *de minimis*).

As for former §§ 353.14 and 355.14, with the exception of CVD investigations conducted on an aggregate basis, these provisions are no longer necessary in light of the amendments to the statute made by the URAA, and, in any event, never functioned in the manner suggested by the commenter. These provisions, notwithstanding their titles, functioned as a mechanism for considering requests by voluntary respondents to be investigated. As stated by the Department when it adopted § 351.14:

> If the Department includes a producer or reseller in its investigation and determines that the producer or reseller had no dumping margin during the period of investigation, the Department would automatically exclude that producer or reseller from the antidumping duty order, even if the producer or reseller did not request exclusion under the procedures described in [§ 353.14]. The purpose of this section merely is to provide an opportunity for producers and resellers that the Department might not otherwise include in its investigation to request that the Department specifically include and investigate them.

Final Rule (Antidumping Duties), 54 FR 12742, 12748 (1989). The Department made a virtually identical statement with respect to § 355.14. *Final Rule (Countervailing Duties),* 53 FR 53206, 52316 (1988).

Given their original purpose, §§ 353.14 and 355.14 have become superfluous in light of section 782(a) of the Act and § 351.204(d) (which establish new procedures for dealing with voluntary respondents) and § 351.204(e)(3) (which deals with exclusion requests in CVD investigations conducted on an aggregate basis). Under these provisions, decisions on exclusions will be based on a firm's actual behavior, as opposed to assertions regarding its possible future behavior.

Other comments: One commenter suggested that § 351.204 be modified to state explicitly that the Department retains the right to seek and obtain information from importers in the United States of subject merchandise. We have not adopted this suggestion. While we do not disagree with the proposition that the Department may seek information from importers, we also do not believe that there is any doubt concerning the Department's authority to seek such information. Therefore, we do not feel that the suggested modification is necessary.

Section 351.205

Section 351.205 deals with preliminary AD and CVD determinations. Two commenters noted that, in connection with proposed § 351.205(c), the Department deleted (1) the requirement that a preliminary determination include the factual and legal conclusions for the Department's determination, and (2) the requirement that the Department notify the parties to the proceeding. They suggested that paragraph (c) be revised so as to include these requirements.

While we do not disagree with the substance of the comments, we do not believe that a revision to paragraph (c) is appropriate. Section 777(i) of the Act requires the Department to include its factual and legal conclusions in a preliminary determination, and sections 703(f) and 733(f) of the Act require the Department to notify the petitioner and other parties to an investigation. Therefore, given our overall approach of avoiding repetitions of the statute, we have not made the revisions suggested.

Section 351.206

Section 351.206 deals with critical circumstances findings. In connection with § 351.206, one commenter sought clarification that provisional measures would not be imposed on merchandise imported prior to the date of initiation of an AD or CVD investigation. We can confirm that provisional measures will not be imposed on merchandise entered prior to the date of initiation. Section 351.206(d), which deals with retroactive suspension of liquidation, refers to sections 703(e)(2) and 733(e)(2) of the Act. These sections provide that suspension of liquidation may not apply to merchandise entered prior to the date on which notice of the determination to initiate is published in the **Federal Register**. *See also* SAA at 878.

Section 351.207

Section 351.207 deals with the termination of investigations. We received several comments regarding § 351.207 from one commenter.

First, the commenter objected to the proviso in § 351.207(b)(1) that the Secretary may terminate an investigation if ''the Secretary concludes that termination is in the public interest.'' The commenter argued that because the relevant provisions of the statute do not require a public interest finding, the regulations should not enlarge upon the statutory criteria.

We have not adopted this suggestion, because the legislative history of the Trade Agreements Act of 1979 indicates that Congress intended that the Secretary make a public interest finding before terminating a self-initiated investigation or an investigation in which a petition is withdrawn. *See, e.g., Trade Agreements Act of 1979 Statements of Administrative Action,* H.R. Doc. No. 153, Pt. II, 96th Cong., 1st Sess. 400, 418 (1979); and S. Rep. No. 249, 96th Cong., 1st Sess. 54, 70–71 (1979). We believe that this legislative history remains relevant in interpreting the post-URAA version of the Act. Moreover, there is no indication in the legislative history of the URAA that Congress intended that the Department abandon the requirement of a public interest finding.

Second, in connection with § 351.207(c), the commenter suggested that the Department clarify that its authority to terminate an investigation due to lack of interest is unaffected by those statutory provisions prohibiting the post-initiation reconsideration of industry support for a petition. We have not adopted this suggestion, because, as the Department stated in the AD Proposed Regulations, 61 FR at 7315, the SAA is clear on this point.

Finally, in connection with § 351.207(b)(2), the commenter suggested that in light of the prohibition against voluntary export restraints found in the WTO Agreement on Safeguards, the Department should exercise sparingly its discretion to terminate an investigation based on a

foreign government's agreement to limit the volume of imports of subject merchandise into the United States. The commenter did not suggest any modifications to § 351.207(b)(2), and we have left that provision unchanged.

Section 351.208

Section 351.208 deals with suspension agreements and suspended investigations. Most of the comments we received regarding § 351.208 dealt with our proposed deadlines for initialing and signing suspension agreements.

Deadlines: In proposed § 351.208(f)(1)(i), we advanced the deadline for submitting a proposed suspension agreement to 15 days after a preliminary determination in an AD investigation and 5 days after a preliminary determination in a CVD investigation. As explained in the AD Proposed Regulations, the purpose of this change was to reduce burdens on all parties and Department staff. 61 FR at 7316. Public reaction to this change in deadlines was mixed, cutting across respondent/domestic industry lines.

On the domestic industry side, one commenter strongly supported the change, while another commenter thought the AD deadline too short. On the respondent side, one commenter supported the change, but three commenters considered the revised deadline to be too short.

After careful consideration of these comments, we have left the deadlines as set forth in proposed § 351.208(f)(1)(i). Several of the commenters seeking a longer deadline argued that exporters are not in a position to consider whether or not they desire to propose a suspension agreement until the preliminary determination has been issued. We can understand why respondent interested parties might wish to see the results of a preliminary determination before formally submitting a proposed suspension agreement. However, in our view, a respondent interested party that is entertaining a suspension agreement as an option may begin its deliberations as soon as the Department initiates an investigation instead of waiting until the Department issues a preliminary determination. If a respondent interested party begins its deliberations early, we believe that the deadlines set forth in § 351.208(f)(1)(i) provide sufficient time in which to digest the results of a preliminary determination.

We received other comments regarding deadlines, in addition to those described above. One commenter suggested that the Department give itself authority to extend the deadlines where necessary. We agree with this suggestion, but note that it already is addressed by § 351.302(b), which provides the Secretary with authority to extend, for good cause, any time limit established by part 351.

Another commenter suggested that in order to provide the Department with more flexibility, the deadlines should run from the date of publication of a preliminary determination instead of the date of issuance. We have not adopted this suggestion. In order to accomplish our objective of reducing burdens, we deliberately chose the date of issuance, because one week can elapse between the date of issuance and the date of publication in the **Federal Register**. However, we believe that § 351.302(b), discussed in the preceding paragraph, addresses the commenter's concerns, because it permits the Secretary to extend a deadline for good cause.

Another commenter suggested that if the deadline for submitting proposed suspension agreements in CVD investigations remains at 5 days from the preliminary determination, the timeframe should be modified to 5 *business* days, excluding applicable foreign holidays. We have adopted this suggestion in part by changing the deadline from 5 days to 7 days. However, we have not adopted the suggestion concerning the exclusion of foreign holidays. If, in a particular case, the occurrence of a foreign holiday should make this deadline unworkable, this is something that the Secretary could consider under the extension authority of § 351.302(b).

Suspension agreement procedures: We received several comments concerning the procedures to be followed in entering into a suspension agreement. One commenter, arguing that current procedures deprive petitioners of meaningful input, suggested that the Department amend § 351.208(f)(1) to: (1) require the foreign exporters or foreign government to serve a copy of the proposed suspension agreement on the petitioner at the same time that it is submitted to the Department; (2) require the Department thereafter to consult with all parties and to request written comments from all parties regarding the terms of the agreement and whether the agreement is in the public interest; and (3) require the Department to consider domestic industry opposition to a suspension agreement as a strong indicator that the agreement is not in the public interest.

Before addressing the specific suggestions, we should note at the outset that, in our view, the Department's existing procedures have not denied petitioners meaningful input regarding decisions to enter into suspension agreements. Department precedents offer numerous examples of revisions to proposed suspension agreements that the Department has made in response to petitioners' comments. While the Department may not always agree with all of a petitioner's comments, this does not mean that the Department has not carefully considered those comments.

As for the specific suggestions, we have not adopted them for the following reasons. With respect to the suggestion that the party proposing a suspension agreement serve a copy on the petitioner, we note that sections 704(e) and 734(e) of the Act contemplate that the Department will notify the petitioner of a proposed suspension agreement and provide the petitioner with a copy of the proposed agreement at the time of notification. In our experience, this process has worked well in the past and there is no need to change it at this time. With respect to the suggestion that the Department consult with, and request written comments from, all parties, sections 704(e)(1) and 734(e)(1) require the Department to consult only with the petitioner, a requirement reflected in § 351.208(f)(2)(iii). Other parties have a right to comment on a proposed suspension agreement, however, and we do not believe it is necessary or appropriate to impose an additional consultation requirement on Department staff. With respect to written comments, sections 704(e)(3) and 734(e)(3) permit all interested parties to submit comments and information, a right that is already reflected in § 351.208(f)(3). Finally, with respect to the suggestion concerning the significance of domestic industry opposition, this is something to which the Department would accord considerable weight when assessing the public interest. However, the Department must assess the public interest based on all the facts, and we do not believe it appropriate to issue a regulation that singles out one factor to the exclusion of others.

Another commenter suggested that before entering into a suspension agreement, the Department should consult potentially affected consuming industries and potentially affected producers and workers in the domestic industry, including producers and workers not party to the investigation. As discussed above, we do not believe it is necessary or appropriate to expand the consultation requirements beyond those set forth in the statute. However, we have revised paragraph (f)(3) so as to

expressly permit industrial users and consumers to submit written argument and factual information concerning a proposed suspension agreement.

Regional industry cases: One commenter stated that the Department should clarify § 351.208, in accordance with the new statutory language, to make it clear that (1) it is not easier for respondents to obtain a suspension agreement in a regional industry investigation, and (2) the Department has no more obligation to accept a suspension agreement in a regional industry investigation than in any other investigation. We agree that a suspension agreement in a regional industry investigation is subject to the same requirements as a suspension agreement in a national industry investigation (including the public interest requirement), and that the Department need not accept an agreement in a regional industry investigation if those requirements are not met. However, because the SAA at 859 makes this clear, we do not think that additional clarification is necessary.

Revision to paragraph (f)(1): Although not the subject of public comments, we have made certain stylistic revisions to paragraph (f)(1) in order to make this provision accurate and more readable.

Section 351.209

Section 351.209 deals with the violation of suspension agreements. Of the comments we received regarding this section, most related to proposed § 351.209(b)(2), which deals with the resumption of suspended investigations that had not been completed under sections 704(g) or 734(g) of the Act. Proposed § 351.209(b)(2) provided that the Secretary may ''update previously submitted information where the Secretary deems it appropriate to do so.''

Although one commenter supported the use of updated information, three commenters opposed the use of updated information. Each of the latter commenters argued that the use of updated information constitutes poor policy, because it effectively rewards parties that violate or take advantage of a suspension agreement. In addition, two of the commenters referred to sections 704(j) and 734(j) of the Act, which provide that in making a final determination the Secretary ''shall consider all of the subject merchandise, without regard to the effect of any [suspension] agreement. . . .'' According to one of the two commenters, these two statutory provisions preclude the use of updated information. According to the second of the two commenters, these provisions preclude the use of updated information except in the unusual case where the Department is able to account for the effect of the terminated suspension agreement.

While we do not believe that sections 704(j) and 734(j) necessarily preclude the use of updated information, we have concluded that, in light of the Department's limited experience with resumed investigations, it would be premature at this time to resolve this issue in the regulations. Therefore, we have revised paragraph (b)(2) by deleting the phrase dealing with updated information.

One commenter also questioned whether § 351.209(b) was intended to broaden the circumstances under which it can be determined that a suspension agreement has been violated. In this regard, our intent was neither to broaden nor to narrow these circumstances.

Section 351.210

We received two comments concerning § 351.210, which deals with final determinations in investigations. As it did with respect to proposed § 351.205(c), one commenter objected to the deletion of (1) the requirement that the Department include in a final determination its factual and legal conclusions; and (2) the requirement that the Department notify parties of a final determination. As we stated above in connection with § 351.205(c), because the Act clearly imposes these requirements on the Department, these requirements need not be reiterated in the regulations.

Another commenter suggested that the Department codify its practice of treating a request for a postponement of a final determination as a request for the extension of provisional measures. We agree with this suggestion. However, instead of assuming that a request for postponement includes an implied request for an extension of provisional measures, we prefer to rely on the Department's discretionary authority to deny requests for postponements of final determinations. More specifically, the absence of a request to extend provisional measures would constitute a compelling reason, within the meaning of § 351.210(e)(1), for denying a request to postpone a final determination. Therefore, we have revised § 351.210(e) so as to provide that in the case of a request for postponement made by exporters, the Secretary will not grant the request unless it is accompanied by a request for an extension of provisional measures to not more than 6 months.

Section 351.211

Section 351.211 deals with the issuance of AD and CVD orders. We received several suggestions concerning proposed § 351.211(c), which established special procedures concerning the assessment of duties in proceedings in which the Commission identified a regional industry. Based on our own review of paragraph (c) and these suggestions, we have deleted paragraph (c) and substituted in its place a new § 351.212(f). A discussion of the suggestions and this new provision appears below under ''Section 351.212.''

Section 351.212

Section 351.212 deals with matters related to the assessment of antidumping and countervailing duties. We received several comments relating to automatic assessment of duties and the calculation of assessment rates.

Automatic assessment: Under the former regulations, if the Department did not receive a request for the review of particular entries of subject merchandise, the Department would instruct the Customs Service to liquidate those entries and assess duties at the cash deposit rate applied to those entries at the time of entry. In proposed § 351.212(c), the Department proposed to assess duties on entries for which there was no review request ''at rates equal to the rates determined in the most recently completed segment of the proceeding. . . .'' The Department believed that by relying on more current rates as the basis for the assessment of duties, the number of requests for reviews would decline.

Several commenters opposed this change, some describing their opposition as ''strong.'' They argued that the proposed change would create an undue element of uncertainty, because at the time when a party would have to decide whether to request a review, it would not know the rate that would be applied to its entries if it did not request a review. This would force parties to request reviews solely to protect their interests, thereby defeating the purpose of the proposal. They also argued that the proposal would result in more work for the Customs Service, a point the Department recognized in 1989. Finally, even those who did not oppose the change argued that proposed § 351.212(c) needed additional refinements in order to provide some minimum degree of certainty.

In light of the comments received, the Department has decided to continue its current practice with respect to automatic assessment; *i.e.*, if an entry is

not subject to a request for a review, the Department will instruct the Customs Service to liquidate that entry and assess duties at the rate in effect at the time of entry. We have made the appropriate revisions to paragraph (c).

Antidumping duty assessment rates: Proposed § 351.212(b)(1) dealt with the method that the Department will use to assess antidumping duties upon completion of a review. In proposed paragraph (b)(1), the Department provided that it normally will calculate an ''assessment rate'' for each importer by dividing the absolute dumping margin found on merchandise reviewed by the entered value of that merchandise. As such, paragraph (b)(1) merely codified an assessment method that the Department has come to use more and more frequently in recent years.

Historically, the Department (and, before it, the Department of the Treasury) used the so-called ''master list'' (entry-by-entry) assessment method. Under the master list method, the Department would list the appropriate amount of duties to assess for each entry of subject merchandise separately in its instructions to the Customs Service. However, in recent years, the master list method has fallen into disuse for two principal reasons. First, in most cases, respondents have not been able to link specific entries to specific sales, particularly in CEP situations in which there is a delay between the importation of merchandise and its resale to an unaffiliated customers. Absent an ability to link entries to sales, the Department cannot apply the master list method. Second, even when respondents are able to link entries to sales, there are practical difficulties in creating and using a master list if the number of entries covered by a review is large. Preparing a master list that covers hundreds or thousands of entries is a time-consuming process, and one that is prone to errors by Department and/or Customs Service staff. Therefore, as the Department explained in the AD Proposed Regulations, 61 FR at 7317, the Department would consider using the master list method of assessment only in situations where there are few entries during a review period and the Department can tie those entries to particular sales.

Several commenters suggested that the Department clarify that it will apply the master list method if the importer can demonstrate that the assessment rate approach would distort the amount of duty assessed as compared to the amount assessed under the master list method. In addition, one of these commenters urged the Department to clarify that, regardless of the assessment method used, the Department will not consider merchandise entered prior to the suspension of liquidation to be ''subject merchandise'' under section 771(25) of the Act. Finally, one commenter supported proposed paragraph (b)(1), and urged the Department to apply the assessment rate method to all outstanding unliquidated entries, regardless of whether the Department conducted the applicable review under the pre-or post-URAA version of the Act.

The Department has adopted proposed paragraph (b)(1) without change. As noted above, and as recognized by most of the commenters, to a large extent, paragraph (b)(1) simply codifies the Department's current practice.

With respect to the suggestions that the Department continue to apply the master list method on a case-by-case basis, in our view, the fact that a respondent is able to link its sales to entries, in itself, constitutes an insufficient basis for using the master list method. As discussed above, there are practical problems inherent in the use of the master list method wholly apart from the linkage problem.

Thus, based on the results of each review, the Department generally will assess duties on entries made during the review period and will use assessment rates to effect those assessments. However, on a case-by-case basis, the Department may consider whether the ability to link sales with entries should cause the Department to base a review on sales of merchandise entered during the period of review, rather than on sales that occurred during the period of review. These two approaches differ, because, in the case of CEP sales, the delay between importation and resale to an unaffiliated customer means that merchandise entered during the review period often is different from the merchandise sold during that period. Because of the inability to tie entries to sales, the Department normally must base its review on sales made during the period of review. Where a respondent *can* tie its entries to its sales, we potentially can trace each entry of subject merchandise made during a review period to the particular sale or sales of that same merchandise to unaffiliated customers, and we conduct the review on that basis. However, the determination of whether to a review sales of merchandise entered during the period of review hinges on such case-specific factors as whether certain sales of subject merchandise may be missed because, for example, the preceding review covered sales made during that review period or sales may not have occurred in time to be captured by the review. Additionally, the Department must consider whether a respondent has been able to link sales and entries previously for prior review periods and whether it appears likely that the respondent will continue to be able to link sales and entries in future reviews. The Department must consider these factors because of the distortions that could arise by switching from one method to another in different review periods. Also, in cases in which the Department is sampling sales under section 777A of the Act, other complicating factors mitigate against using entries during the POR as the basis for the review.

Finally, the fact that the amount of duties assessed may differ depending on the method used is not necessarily grounds to conclude that the assessment rate method is distortive, because neither the Act nor the AD Agreement specifies whether sales or entries are to be reviewed, nor do they specify how the Department must calculate the amount of duties to be assessed. *See, Torrington Co.* v. *United States*, 44 F.3d 1572, 1578 (Fed. Cir. 1995). Moreover, as the Court of International Trade has recognized in upholding the Department's assessment rate method, a review of sales, rather than entries, ''appears not to be biased in favor of, or against, respondents.'' *FAG Kugelfischer Georg Schafer KgaA* v. *United States*, 1995 Ct. Int'l. Trade LEXIS 209, *10 (1995), *aff'd*, 1996 U.S. App. LEXIS 11544 (Fed. Cir 1996).

With respect to the issue of whether merchandise entered prior to suspension of liquidation is ''subject merchandise,'' the Department addressed this issue in *Stainless Steel Wire Rod from France*, 61 FR 47874, 47875 (Sept. 11, 1996), in which the Department stated:

> Sales of merchandise that can be demonstrably linked with entries prior to the suspension of liquidation are not subject merchandise and therefore are not subject to review by the Department. Merchandise that entered the United States prior to the suspension of liquidation (and in the absence of an affirmative critical circumstances finding) is not subject merchandise within the meaning of section 771(25) of the Act.

Finally, with respect to the effective date of paragraph (b)(1), in many cases the Department currently is applying the assessment rate method. However, the Department cannot apply this method to all unliquidated entries. Because liquidation of entries may have been delayed by the Customs Service for reasons unrelated to the collection of

antidumping duties, applying this method to all unliquidated entries would require the amendment all of our prior liquidation instructions. Not only would this place an enormous burden on the Department and the Customs Service, it also would cause uncertainty for the importing community.

For these reasons, the Department will apply paragraph (b)(1) only to assessment instructions issued on the basis of final results in reviews initiated after the effective date of these regulations. As noted previously, however, because this regulation merely codifies a past practice, the Department will apply the assessment rate method in those cases that are not technically subject to the regulation. However, the Department will do so as a matter of practice, and not as a regulatory requirement. The purpose of having an effective date is to ensure that the Department is not required to amend old assessment instructions based on reviews in which the Department did not collect the necessary information.

Regional industry cases: As noted above, we received suggestions from one commenter regarding proposed § 351.211(c), which established special procedures for proceedings in which the Commission identified a regional industry. Under paragraph (c), which was designed to implement sections 706(c) and 736(d) of the Act, the Secretary could except from the assessment of duties merchandise of an exporter or producer that did not supply the region during the POI.

While the commenter generally supported the procedures set forth in § 351.211(c), it suggested several improvements. First, it suggested that the Department clarify that a petitioner has a right to respond to certifications submitted by an exporter or producer. In its post-hearing comments, this commenter further refined this suggestion by proposing that the Department require certifications from foreign exporters and producers to be submitted early in the investigation, rather than at its end.

Second, for purposes of certifying and establishing whether an exporter or producer exported subject merchandise for sale in the region concerned during the POI, the commenter suggested that the relevant POI be the ITC's POI. According to the commenter, the Department's normal one-year POI is too short, and the Commission's normal three-year POI is preferable.

Third, the commenter suggested that U.S. importers should be required to certify to the Customs Service, upon entry into the United States of merchandise from an exporter or producer whose merchandise has been excepted from assessment, whether that merchandise will be sold in the region concerned. If an importer certified that merchandise would be sold in the region, the importer would be required to notify the Department directly so that the Department could direct that merchandise of the exporter or producer in question would be subject to the assessment of duties.

Finally, in its post-hearing comments, the commenter suggested that the certifications of exporters and producers should include the period *after* the POI. In this regard, it noted that paragraph (c), as drafted, required that the certifications of U.S. importers cover the period after the POI.

We believe these suggestions have considerable merit, and with, certain exceptions, we have incorporated them into these final regulations. However, after reviewing the commenter's suggestions and proposed § 351.211(c), we came to the conclusion that instead of creating an entirely new procedure, it would be more administrable for the Department to consider requests for an exception from the assessment of duties in the context of an existing procedural mechanism. Among other things, this would ensure that domestic interested parties have ample opportunity to comment on requests for an exception, something which was one of the primary concerns of the commenter. Entries of subject merchandise from an exporter or producer that did not supply the region concerned during the original POI would be subject to cash deposit requirements. However, because final duties would not be levied if, in a review, the exporter or producer established its eligibility for an exception from assessment, this procedure is consistent with Article 4.2 of the AD Agreement and Article 16.3 of the SCM Agreement.

Therefore, we have added a new paragraph (f) to § 351.212 to deal with requests for an exception from the assessment of duties in regional industry cases. The procedures for obtaining an exception would work as follows. First, paragraph (f)(1) sets forth the basic standard for obtaining an exception, and incorporates some of the suggestions of the commenter.

Paragraph (f)(2) provides that requests for an exception from assessment will be considered in the context of an administrative review or a new shipper review. Paragraph (f)(2)(i) provides that an exporter or producer seeking an exception from assessment must request an administrative review or a new shipper review under § 351.213 or § 351.214, respectively. The request for review must be accompanied by a request that the Secretary determine whether subject merchandise of the exporter or producer satisfies the requirements of paragraph (f)(1) and should be excepted from the assessment of duties. The exporter or producer may request that the Secretary limit the review to a determination as to whether an exception should be granted. In addition, a request for review and exception from assessment must be accompanied by the certifications described in paragraphs (f)(2)(i) (A) and (B).

If the requirements of paragraph (f)(2)(i) and § 351.213 or § 351.214, as the case may be, are satisfied, the Secretary will initiate an administrative review or a new shipper review. The Secretary will conduct the review in accordance with § 351.221. However, under paragraph (f)(2)(ii), the Secretary may limit the review to a determination as to whether an exception from assessment should be granted if requested to do so by the exporter or producer under paragraph (f)(2)(i). Notwithstanding the submission of such a request, the Secretary could decline to conduct a limited review if, for example, a domestic interested party had requested an administrative review of the particular exporter or producer.

Under paragraph (f)(3), if the Secretary determines that the exporter or producer satisfies the requirements for an exception from assessment, the Secretary will instruct the Customs Service to liquidate entries without regard to antidumping or countervailing duties. These instructions would apply only to entries of subject merchandise of the exporter or producer concerned that were covered by the review. Future entries of subject merchandise would remain subject to cash deposit requirements for estimated duties, although the exporter or producer could seek an exception from assessment for future entries in a subsequent review.

Paragraph (f)(4) describes the actions that the Secretary will take if the Secretary does not grant an exception from assessment. Under paragraph (f)(4)(i), if the review was not limited to the question of an exception from assessment, the Secretary will instruct the Customs Service to assess duties in accordance with § 351.212(b); *i.e.*, to assess duties in accordance with the results of the review. Under paragraph (f)(4)(ii), however, if the review was limited to the question of an exception from assessment, the Secretary will apply the automatic assessment provisions of § 351.212(c).

Returning to the commenter's suggestions, because we now have opted

to deal with requests for exception from assessment in the context of reviews, we have not adopted the suggestion concerning the early submission of certifications in an investigation. By dealing with requests for an exception in the context of a review, domestic interested parties should have ample opportunity to scrutinize, and comment on, the certifications submitted by an exporter or producer.

In addition, we have not adopted the suggestion that we use the Commission's POI. Neither section 703(c) nor section 706(d) expressly state whether the relevant POI is the Department's or the ITC's. However, we think that section 751(a)(2)(B) of the Act provides guidance as to what Congress intended. Section 751(a)(2)(B), which deals with new shipper reviews, refers to an

> exporter or producer [that] did not export the merchandise * * * to the United States (or, in the case of a regional industry, did not export the subject merchandise for sale in the region concerned) during the period of investigation. * * *

The Department interprets this section as referring to the Department's period of investigation, because the section is directed to the Department. If Congress had intended that the Department use the Commission's POI for purposes of determining whether an exporter was a new shipper under section 751(a)(2)(B), it would have said so explicitly. Given the obvious interrelationship between section 751(a)(2)(B) and sections 706(c) and 736(d), the more reasonable interpretation is that ''period of investigation,'' as used in the latter two sections, means the Department's POI.

Provisional measures deposit cap: Although we have not revised proposed paragraph (d) in these final regulations, the Department is using this opportunity to clarify that the provisional measures deposit cap contained in paragraph (d) will apply to entries subject to an AD order secured by bonds as well as cash deposits, as stated in that paragraph.

On July 29, 1991, the Court of International Trade (the CIT) invalidated the Department's AD regulation on the provisional measures deposit cap (19 CFR § 353.23) in a case on televisions from Taiwan. *Zenith Electronics* v. *United States,* 770 F. Supp. 648. The CIT followed this precedent on July 28, 1992, in a challenge to a review of televisions from Korea. *Daewoo Electronics* v. *United States,* 794 F. Supp. 389 (*Daewoo I*). On September 30, 1993, the Court of Appeals for the Federal Circuit reversed the CIT's decision in the Korean television case, and upheld the regulation. *Daewoo Electronics* v. *United States,* 6 Fed. 3d 1511 (*Daewoo II*). As a result of the Federal Circuit's decision, the CIT subsequently vacated its July 29, 1991, order in Taiwan televisions. The Department never amended its regulation, and the original regulation (now replicated in paragraph (d)) remains valid. For this and other reasons discussed below, paragraph (d) and its predecessor provision should be applied to all entries as though the CIT never invalidated it.

Section 733(d)(2) of the Act provides that an importer of merchandise subject to an AD investigation must post bonds, cash deposits, or other security for entries of the subject merchandise between the Department's affirmative preliminary determination of sales at less than fair value and the Commission's final injury determination.

Assuming an AD order is imposed, a manufacturer or importer may request an administrative review under section 751(a) of the Act to determine the actual amount of antidumping duties due on the sales during this period. Section 737(a)(1) of the Act provides that, if the amount of a cash deposit collected as security for an estimated antidumping duty is different from the amount of the antidumping duty determined in the first section 751 administrative review, then the difference shall be disregarded, to the extent that the cash deposit collected is lower than the duty determined to be due under a section 751 administrative review. This is called the provisional measures deposit cap, and applies to entries between publication of the Department's preliminary determination and the Commission's final determination of injury.

The provisional measures deposit cap for countervailing duties (section 707 of the Act), on the other hand, explicitly provides that the cap applies whether the entry is secured by a cash deposit or by a bond or other security. That is, the Act at first glance appears to apply the cap to entries secured both by cash deposits and by bonds in CVD cases, but only by entries secured cash deposits in AD cases.

Since 1980, the Department, by regulation, took the position that the difference between the AD and CVD provisions in the statute was an oversight, and the agency thus applied the provisional cap to entries secured both by bonds and by cash deposits in both AD and CVD cases. 19 C.F.R. § 353.50 in pre-1989 regulations; 19 CFR § 353.23 in the post-1989 regulations.

On July 29, 1991, in a case involving televisions from Taiwan, the CIT rejected the Department's interpretation that the statutory differences between the AD and CVD provisions were an oversight, based on its analysis of the statute and the Tokyo Round AD Code. It ruled that, in AD cases, the provisional measures deposit cap applied only to entries secured by cash deposits. *Zenith.*

The Department decided it would not appeal the decision when it became final, and published notice of its acquiescence in the **Federal Register**. 57 FR 45769 (1992). It also announced that, from the date of the decision, it would apply the cap only to entries secured by cash deposits in AD cases. However, the Department never amended its regulations to be consistent with this position.

In 1992, the CIT followed its Taiwan television decision on the cap in a case involving televisions from Korea. (*Daewoo I*) Respondents appealed the decision on this issue to the Federal Circuit.

Although not directly before it, the Federal Circuit reviewed the reasoning in the *Zenith* decision while deciding *Daewoo II.* The Federal Circuit disagreed with the *Zenith* reasoning. It found that the statute does not prohibit the application of the cap to bonds, that the Department's interpretation was reasonable, and it overruled the CIT's decision. On September 30, 1994, the Federal Circuit held that the Department's regulation was valid, and that the cap can apply where duties are secured by bonds as well as cash deposits. In footnote 17 of its decision, the Federal Circuit noted with respect to the Department's **Federal Register** notice:

> After the Court of International Trade issued its opinion in *Zenith II* [in 1991], Commerce indicated that it would follow that holding, but prospectively only. The court here rejected that limitation [to cash deposits]. In view of our resolution of this issue, the changed regulation may have prospective application only [from October 5, 1992 forward].

Thus, the Federal Circuit, erroneously treating our public notice as an amendment to the Department's regulations, held that the ''amended regulation'' could only be applied prospectively from the date it was adopted, October 5, 1992. It was not valid during the time between the CIT decision in *Zenith* and the date of the **Federal Register** notice. The Department's **Federal Register** notice, however, did not amend its original regulation; it only stated that it did not intend to appeal the *Zenith* decision and

would change its practice. Therefore, the original regulation remained valid from the date the CIT overturned it to the present.

In addition, on October 21, 1994, when the *Zenith* decision became final, the CIT vacated its original 1991 decision in Korean televisions with regards to the cap. *Zenith,* Slip Op. 94–170.

Section 351.213

Section 351.213 deals with administrative reviews under section 751(a)(1) of the Act. We received a few comments concerning § 351.213.

Publication of preliminary dumping margins: One commenter suggested that the Department refrain from including individual, company-specific preliminary dumping margins in its published notices of preliminary results of review. We have not adopted this suggestion, because, in our view, section 777(i)(2)(A)(iii)(II) of the Act requires that individual margins be included in the published notice of preliminary results.

Deferral of administrative reviews: To reduce burdens on parties and the Department, in proposed § 351.213(c) the Department established a procedure by which the Secretary could defer the initiation of an administrative review for one year if (i) the request for review was accompanied by a request that the Secretary defer the review; and (ii) no relevant party to the proceeding objected. One commenter strongly supported this proposal, but two commenters opposed it. According to the two opponents, deferral of reviews lacks a statutory basis, is inconsistent with legislative intent, and may not result in a reduction of burdens. In addition, the opposing commenters argued that the requirement that no party object to deferral is an inadequate procedural safeguard. They claim that the Department may apply pressure on petitioners to acquiesce in requests for deferrals, citing instances in which petitioners have requested postponements of final determinations as an accommodation to the Department.

After considering the comments, we have left § 351.213(c) unchanged, except for (1) minor revisions to paragraph (c)(1)(ii) aimed at improving the clarity of that provision; and (2) an addition to paragraph (c)(3) that extends the deadline in § 351.301(b)(2) for submitting factual information. As stated by the commenter supporting the change, we believe that the deferral process will save ''time and money, for both the Department and the parties.'' In addition, we do not think that it is inconsistent with the statute or legislative intent to defer a review for one year where all parties consent. As for the claim that the ''no objection'' requirement is an inadequate safeguard, while it is true that the Department, at times, may take the initiative in suggesting that parties request postponements or extensions, the Department does not ''pressure'' parties into submitting such requests. In the case of a request for a deferral, if a deferral is not in the interests of a particular party, that party will be free to object without risk of any adverse consequences.

Rescissions of administrative reviews: Commenting on proposed § 351.213(d)(1) and its 90-day limit on withdrawals of a request for a review, one commenter suggested that the provision be modified so as to allow the Department to rescind an administrative review after the 90-day period has expired if (1) the party that initially requested the review withdraws its request, and (2) no other party objects to the rescission within a reasonable period of time. According to the commenter, such a rule would avoid the burden and expense of completing reviews that none of the parties want.

We agree that the 90-day limitation may be too rigid. However, we believe that the Department must have the final say concerning rescissions of reviews requested after 90 days in order to prevent abuse of the procedures for requesting and withdrawing a review. For example, we are concerned with the situation in which a party requests a review, the Department devotes considerable time and resources to the review, and then the party withdraws its requests once it ascertains that the results of the review are not likely to be in its favor. To discourage this behavior, the Department must have the ability to deny withdrawals of requests for review, even in situations where no party objects.

Therefore, in § 351.213(d)(1), we have retained the 90-day requirement. In addition we have added a new sentence, taken from 19 CFR §§ 353.22(a)(5) and 355.22(a)(3), that essentially provides that if a request for rescission is made after the expiration of the 90-day deadline, the decision to rescind a review will be at the Secretary's discretion.

Extension of review period: One commenter suggested that if the Department has the authority to defer the initiation of an administrative review, it follows that it has the authority to begin an administrative review early, or to extend the period of a particular review beyond one year. This commenter stated that in certain industries where prices change rapidly, it is important to have duty deposit rates that are as current as possible. The commenter suggested a revision to proposed § 351.213(e)(1) that would permit the Secretary to extend the period of an administrative review, for good cause shown, up to the date on which questionnaire responses are due.

We believe that the regulation, as drafted, is sufficiently flexible to address these concerns in extraordinary circumstances. Section 351.213(e)(1)(i) states that the period of review ''normally'' will be linked to the anniversary month of the order. The use of ''normally'' indicates that the Secretary has the discretion to use some other period in appropriate circumstances, but the Department will exercise this discretion only in very unusual circumstances.

Duty absorption: Proposed paragraph (j) established administrative review procedures for analyzing antidumping duty absorption. We have made several changes to paragraph (j) in response to the comments received.

Timing of the absorption inquiry: Three commenters argued that proposed paragraph (j)(1) was unlawful to the extent that it allowed for absorption inquiries during reviews other than those occurring in the second and fourth years following the publication of an AD order. In response, two other commenters argued that section 751(a)(4) of the Act does not preclude parties from requesting, or the Department from conducting, a duty absorption inquiry during administrative reviews other than the second and fourth. One of these two commenters further argued that the retention of the authority to conduct absorption inquiries in any review would prevent automatic filings of requests by petitioners in the second and fourth reviews.

A sixth commenter asserted that for orders entered in 1993, section 751(a)(4) provides for duty absorption determinations in reviews commenced in 1995 and 1997. Therefore, in the view of this commenter, proposed paragraph (j)(1) is inconsistent with the statute to the extent that it provides for absorption inquiries in reviews commencing in 1996 and 1998.

We have not revised paragraph (j)(1) in light of these comments. Paragraph (j)(1), in accordance with section 751(a)(4), provides for the conduct, upon request, of absorption inquiries in reviews initiated two and four years after the publication of an AD order. As noted by the commenters, paragraph (j)(1) also provides for such inquiries in

reviews initiated in the second and fourth years following the continuation of an AD order as the result of a sunset review under section 751(c) of the Act. The reason for this schedule is that (1) duty absorption findings are intended for use in the five-year sunset reviews conducted by the Department and the Commission (*see* SAA at 885), and (2) there will be subsequent sunset reviews of AD orders that remain in place following the completion of an initial sunset review (*see* section 751(a)(c)(1)(C) of the Act). Moreover, section 751(a)(4) does not preclude the Department from conducting absorption inquiries in reviews initiated in the second and fourth years after continuation.

With respect to the comment concerning AD orders published in 1993, under section 751(c)(6)(C) of the Act, these orders constitute ''transition orders'' because they were in effect on January 1, 1995, the date on which the WTO Agreement became effective with respect to the United States. Under section 751(c)(6)(D) of the Act, the Department is to treat transition orders, such as the 1993 orders in question, as being issued on January 1, 1995. Therefore, paragraph (j)(2) properly permits absorption inquiries for transition orders to be requested in any administrative review initiated in 1996 or 1998, because these are the second and fourth years after the date on which transition orders are deemed to be issued.

Who can request an absorption inquiry: We have modified paragraph (j)(1) to clarify that only domestic interested parties may request a duty absorption inquiry. This is consistent with the Department's view that one exporter or producer may not request an administrative review of another exporter or producer.

Deadline and content of request: Two commenters supported as reasonable the Department's proposal to impose a deadline of 30 days after initiation on requests for absorption inquiries. One of these commenters also suggested that the Department require requests for absorption inquiries to be made on a respondent-specific basis.

Two other commenters argued that the Department should eliminate the 30-day deadline. One of these two commenters argued that the 30-day requirement was not reasonable in cases in which the necessary evidence of absorption is already before the Department. The other commenter stated that, because a respondent's questionnaire response would not be available to a domestic interested party within the first 30 days of an administrative review, the Department should extend the request period until after the date on which questionnaire responses are filed.

A fifth commenter suggested that requests for duty absorption inquiries should contain legitimate and substantial evidence of duty absorption. In response, two other commenters argued that the Department should not impose any special burden on a party requesting an absorption inquiry, and that any such burden would be contrary to section 751(a)(4).

With respect to these comments, we agree with the commenters who stated that the 30-day deadline is reasonable. No change in the deadline is necessary, because any domestic interested party requesting an absorption inquiry will not have to supply any information to the Department other than the name(s) of the respondent(s) to be examined for duty absorption.

We also agree with the suggestion that absorption inquiry requests be respondent-specific, and we have made appropriate revisions to paragraph (j)(1). In the Department's view, a requirement that the request identify the respondents to be examined is not unreasonable, and such a requirement will spare the Department the burden of conducting an absorption inquiry of respondents in which the domestic industry is not interested.

Finally, we have not adopted the suggestion that requests for duty absorption inquiries must be accompanied by evidence of duty absorption. In our view, any such requirement would be contrary to section 751(a)(4).

Substantive criteria: One commenter argued that the Department should set forth in the regulations substantive criteria regarding duty absorption. This commenter further proposed that as part of these criteria, the Department should give an exporter or producer credit for negative dumping margins.

A second commenter agreed with the need for substantive criteria, and argued that the Department should find duty absorption whenever an affiliated entity pays either estimated or final antidumping duties. This commenter also asserted that the regulations should state expressly that a finding of absorption does not result in the treatment of the absorbed duties as a cost in the Department's calculations of dumping margins.

A third commenter, also supporting the promulgation of substantive criteria, suggested that the Department must develop a ''bright-line'' test to review and examine intracompany transfers of capital. This commenter also asserted that the Department should make clear that the duty absorption provision applies only to final, assessed antidumping duties, not to estimated antidumping duty deposits.

We have not adopted the suggestions that we promulgate substantive duty absorption criteria. The Department will need experience with absorption inquiries before it is able to promulgate such criteria. However, we have added a new paragraph (j)(3) that clarifies that the Department will limit the absorption inquiry to information pertaining to antidumping duties determined in the administrative review in which the absorption inquiry is requested. In our view, this limitation flows directly from the objective of section 751(a)(4), which is to identify producers or exporters that have affiliated importers and that continue to dump while the affiliated importer pays the antidumping duties. *See,* S. Rep. No. 412, 103d Cong., 2d Sess. 44 (1994). Limiting the inquiry in this manner precludes any approach to duty absorption that attempts to measure the degree to which the duties determined in a prior review period were passed on to unaffiliated purchasers, and precludes basing absorption on estimated antidumping duty deposits.

Exception from assessment of duties in regional industry cases: In light of the revised procedure for obtaining an exception from the assessment of duties in regional industry cases, discussed above in connection with § 351.212, we have added a new paragraph (l) that cross-references § 351.212(f).

Administrative reviews of CVD orders conducted on an aggregate basis: With respect to requests for zero rates in administrative review of CVD orders that are conducted on an aggregate basis, we revised paragraph (k)(1)(iv) to clarify that in the case of a non-producing exporter, the foreign government must certify that neither the exporter nor the exporter's supplier received more than *de minimis* subsidies during the review period.

Section 351.214

Proposed § 351.214 established procedures for conducting new shipper reviews, a new type of review provided for in section 751(a)(2)(B) of the Act. We received several comments concerning new shipper reviews, some of which related to § 351.214 and some of which related to other sections. For ease of discussion, we will address here those comments concerning other sections.

Initiation of a new shipper review: Three commenters suggested that the regulations clarify that the Department may initiate a new shipper review based

on an irrevocable offer for sale. They argue that if an irrevocable offer is considered sufficient for purposes of initiating an investigation, it should be considered sufficient for purposes of initiating a new shipper review. In addition, they argued that the statute does not preclude this approach, and they cited to one instance in which the Department allegedly initiated a new shipper review based on an irrevocable offer. Another commenter, however, argued in response that the statute precludes the initiation of a new shipper review in the absence of a sale or entry during the relevant review period, although the commenter did not cite the particular provision of the statute containing this preclusion. Yet another commenter suggested that the Department clarify that a person can request a new shipper review as long as there is a *bona fide* sale of subject merchandise to the United States, even if that merchandise has not yet been shipped to or entered the United States.

We agree that the Department should clarify the basis on which an exporter or producer may request a new shipper review. Therefore, in paragraph (b), we have added a new paragraph (b)(1) and have renumbered the remainder of paragraph (b) accordingly. Under paragraph (b)(1), an exporter or producer may request a new shipper review if it has exported subject merchandise to the United States or if it has sold subject merchandise for export to the United States. Thus, an exporter or producer may request a new shipper review prior to the entry of subject merchandise.

We have not adopted the suggestion that an irrevocable offer for sale would suffice for purposes of initiating a new shipper review. First, as discussed above in connection with § 351.102(b) and the definition of ''likely sale,'' we have deleted the irrevocable offer standard from the regulations. More generally, however, we do not believe it appropriate to base a new shipper review on anything short of a sale. The initiation of new shipper reviews and the issuance of questionnaires requires an expenditure of administrative resources by the Department that is not inconsiderable when cumulated across all AD/CVD proceedings. In our view, the Department should not expend these resources unless there is a reasonable likelihood that there ultimately will be a transaction for the Department to review; namely, as discussed below, an entry and sale to an unaffiliated purchaser. In the case of an offer, because the offer may or may not result in a sale, we do not believe that there is a sufficient likelihood of an eventual entry and sale to warrant the expenditure of resources on the initiation of a new shipper review.

The same commenter requested that the regulations clarify that one shipment or sale is sufficient for a new shipper to be entitled to a review, assuming that the other requirements of § 351.214(b) are satisfied. While we do not disagree with the proposition that a new shipper review may be initiated based on a single transaction, we believe that the regulation, as proposed, makes this clear. As discussed below, we have revised § 351.214(f)(2) to provide that the Secretary may rescind a new shipper review if there ''has not been an entry and sale.'' In our view, the use of the singular indicates that a single transaction is sufficient for purposes of initiating and completing a new shipper review.

Citing the possibility of meritless claims for new shipper reviews, one commenter, referring to proposed paragraph (b) (now paragraph (b)(2)), suggested that the Department require additional documentation from an exporter claiming to be a new shipper. Specifically, this commenter stated that the Department should require: (1) Documentation concerning the exporter's offers to sell merchandise in the United States; (2) documentation identifying the exporter's sales activities in the United States; (3) an identification of the complete circumstances surrounding the exporter's sales to the United States, as well as any home market or third country sales; (4) in the case of a non-producing exporter, an explanation of the exporter's relationship with its producer/supplier; (5) an identification of the exporter's relationship to the first unrelated U.S. purchaser; and (6) a certification from the purchaser that it did not purchase the subject merchandise from the exporter during the POI of the original investigation. Another commenter opposed this suggestion.

While the Department has no interest in dealing with meritless claims for new shipper reviews, by the same token, we do not want to discourage meritorious claims. The information requirements that this commenter would impose might discourage legitimate new shippers from requesting new shipper reviews. Moreover, some of the information sought (*e.g.*, the complete circumstances surrounding an exporter's home market or third country sales) appears to be of little relevance in determining whether an exporter is a new shipper to the United States. Therefore, we have not adopted this suggestion.

Another commenter questioned the implication, in the case of a CVD proceeding, that the foreign government will be required to provide a full response to a Department questionnaire. Presumably, the commenter was referring to proposed § 351.214(b)(5) and the requirement that a person requesting a new shipper review certify that it ''has informed the government of the exporting country that the government will be required to provide a full response to the Department's questionnaire.'' According to the commenter, if the foreign government cooperated during the original CVD investigation and provided a full response to the Department's questionnaire, another questionnaire response would not be necessary.

We have not revised § 351.214(b)(5) in light of this comment, because it overlooks the fact that the period of review in a new shipper review will be different from the POI of the original CVD investigation. Therefore, just as in the case of an administrative review, the Department will require information from the foreign government concerning any countervailable subsidies conferred during the period of review. In addition, as stated in the AD Proposed Regulations, the purpose of this particular certification requirement is ''to minimize situations in which [the Department] will be forced to rely upon the facts available.'' 61 FR at 7318.

Completion of a new shipper review: One commenter suggested that the Department clarify that a sale to an unaffiliated person along with an entry during the review period should be a prerequisite for completing a new shipper review. This commenter interpreted the references in proposed § 351.214(f)(2) to ''entries, exports, or sales'' as indicating that the Department might complete a new shipper review even in the absence of an entry and sale to an unaffiliated person during the review period.

In drafting proposed § 351.214, our intent was that the Department would complete a new shipper review only if there were an entry during the review period and a sale to an unaffiliated person. However, we appreciate that proposed § 351.214(f)(2), as drafted, does not accurately reflect this intent. Therefore, we have revised § 351.214(f)(2) to clarify this particular point.

Another commenter suggested that the Department modify proposed § 351.214(f)(2) to allow a review to continue if there were no entries during the review period but an entry occurred within 30 days after initiation. We have not adopted this suggestion. The

Department does not disagree with the notion that the Secretary should have the discretion to expand the review period in appropriate cases. However, given our lack of experience with this new procedure, we are reluctant to select 30 days as the relevant cut-off point for all cases. There may be cases in which the cut-off point should be greater or lesser than 30 days. In our view, § 351.214(f)(2)(ii) appropriately provides the Department with a more flexible approach for dealing with the types of problems envisioned by the commenter.

Conduct of new shipper reviews: One commenter also suggested that the regulations should provide that, in each new shipper review, the Department will send a questionnaire to the U.S. customer seeking information concerning the *bona fide* nature of the new shipper transaction. According to the commenter, such an approach would safeguard against new shippers conspiring with an unaffiliated U.S. customer to engage in a single transaction at a high price that would generate a dumping margin and deposit and assessment rates of zero. Again, another commenter opposed this suggestion.

We have not adopted this suggestion, because we believe that the statutory and regulatory schemes provide adequate safeguards against such manipulation, should it actually occur. It bears emphasis that in the scenario described by the commenter, a new shipper obtaining a dumping margin of zero would not be excluded from the order. Instead, its merchandise would remain subject to the AD order, and if the new shipper later began to sell at dumped prices, antidumping duties could be assessed with interest for any underpayment of estimated duties.

The same commenter made a suggestion regarding proposed §§ 351.221(b)(3) and 351.307(b)(iv), which together provide that the Department will conduct a verification in a new shipper review if the Secretary determines that good cause for verification exists. The commenter suggested that the regulations clarify that it will be the Department's normal practice to conduction a verification in a new shipper review.

We have not adopted this suggestion. While new shipper reviews constitute a new procedure, new shippers themselves are not a new phenomenon. Under the former statutory and regulatory scheme, the Department reviewed new shippers and assigned them their own rates in the context of reviews under section 751(a)(1) of the Act (now defined in § 351.102(b) as ''administrative reviews''). Under this scheme, the Department would not automatically conduct a verification in any review that involved a new shipper. We do not believe that the creation of a separate review mechanism for new shippers, in and of itself, warrants a departure from this practice. In addition, making verification the norm in all new shipper reviews would impose a considerable administrative burden on the Department. For these reasons, therefore, we have not adopted the suggestion.

A different commenter suggested that the regulations provide that the new shipper review period always will encompass all shipments of the subject merchandise made by the new shipper during the period preceding initiation of the review. This commenter cited the situation in which, in an AD proceeding, a new shipper waits until the end of the year following its first shipment to request a review. Because, according to the commenter, the period of review in an AD new shipper review may be the six-month period immediately preceding the anniversary or semiannual anniversary month, the review would not capture shipments, including the first shipment, made in the first six months. In addition, the commenter argued that in a CVD proceeding, because, under proposed § 351.214(g)(2), the normal new shipper review period would be the most recently completed calendar year, a shipment made before initiation but outside the calendar year would not be captured in the review period.

We have not adopted this suggestion, because we do not believe it is necessary. In the case of AD proceedings, while § 351.214(c) permits a new shipper to wait one year before requesting a review, it does not require a new shipper to do so. A new shipper can ensure that its first shipment is covered by submitting a request for a review at the earliest possible date. Moreover, in the case of new shipper reviews initiated after the anniversary month of an order, the period of review normally will be twelve, not six, months.

In the case of CVD proceedings, while it is possible that a review period based on the most recently completed calendar year may not capture a new shipper's first shipment because that shipment occurs after the calendar year in question, we believe that § 351.213(e)(2), which is cross-referenced in § 351.214(g)(2), and § 351.214(f)(2)(ii) provide the Department with sufficient flexibility to resolve any problems that may arise by modifying the standard review period.

This commenter also claimed that proposed paragraph (g) creates an anomaly by providing for different review periods for AD and CVD proceedings. The commenter suggested that the Department revise paragraph (g) so that the review periods for both AD and CVD new shipper reviews coincide.

The Department does not see any ''anomaly,'' because the POI and POR for AD and CVD investigations and reviews normally are different. *See* §§ 351.204(b) and 351.213(e). Moreover, the commenter did not offer any explanation as to why they should be identical. Therefore, we have not adopted this suggestion.

Deadlines for completing new shipper reviews: Another commenter, apparently referring to proposed § 351.214(d), contended that the timing of initiation of new shipper reviews was not consistent with the intent that new shippers be accorded expedited reviews. This commenter urged the Department to treat new shipper reviews more expeditiously, and alleged that the AD Agreement provides for such reviews at any time after an order is issued.

We have not adopted this suggestion, because, in our view, § 351.214(d) is consistent with section 751(a)(2)(B)(ii) of the Act, which, in turn, is consistent with Article 9.5 of the AD Agreement. Article 9.5 does not prescribe exactly when an authority must commence a new shipper review, but simply requires that such a review be ''initiated * * * on an accelerated basis, compared to normal duty assessment and review proceedings in the importing Member.'' This is precisely what section 751(a)(2)(B)(ii) and § 351.214(d) accomplish, because they provide for initiation on an accelerated basis as compared to an administrative review.

A different commenter suggested that to ensure that the Department completes new shipper reviews within the statutory deadlines, the regulations should provide that a new shipper would no longer have to post a bond or make a cash deposit for subject merchandise if a new shipper review extends beyond 270 days. According to the commenter, such a provision is necessary because a new shipper allegedly has no effective judicial remedy if a review extends beyond the 270-day period. We have not adopted this suggestion, because we do not believe that the Department has the authority (and the commenter does not cite to any authority) to do what the commenter suggests.

Bonding requirements: One commenter, presumably referring to proposed § 351.214(e), suggested that instead of permitting the posting of

bonds (in lieu of cash deposits) only when the Secretary initiates a new shipper review, the Department should permit the posting of bonds to be suspended immediately upon acceptance of a request for a new shipper review. We have not adopted this suggestion, because section 751(a)(2)(B)(iii) of the Act provides that the Secretary may direct the Customs Service to allow the posting of a bond ''at the time a review * * * is initiated. * * *''

Another commenter suggested that upon the initiation of a new shipper review, the new shipper should have the option of replacing its estimated duty deposits with a bond or other security. Specifically, this commenter suggested that in the case of merchandise entered prior to the initiation of the new shipper review, the Department should direct the Customs Service to refund all estimated duty deposits with interest, provided that the new shipper replaces those deposits with a bond or other security. We have not adopted this suggestion, because it is required by neither the statute nor the AD Agreement, and its implementation would result in a considerable administrative burden for the Department and the Customs Service.

Citing to proposed § 351.214(e) and the importer's option to post a bond in lieu of a cash deposit, one commenter suggested that the regulations provide for the payment of interest on liquidation, even where the importer has opted to post bond in lieu of cash deposits. We have not adopted this suggestion, because it would be inconsistent with the Department's general approach that interest may not be imposed where an importer has posted a bond or other security in lieu of a cash deposit. The Federal Circuit sustained this approach in *The Timken Co.* v. *United States*, 37 F.3d 1470 (1994), and the commenter did not offer any justification for applying a different approach in the context of new shipper reviews.

Duty assessments: One commenter suggested that the Department revise § 351.214 so as to ensure that the rate determined in a new shipper review will apply to any entries that occurred before the new shipper review period. The commenter proposed changes to paragraphs (b) and (g).

We have not adopted this suggestion, because we do not believe that it is necessary. Although § 351.214 gives a new shipper the option of waiting for up to one year before requesting a new shipper review, it does not require a new shipper to do so. A new shipper can ensure that its initial shipments are covered by the rates determined in a new shipper review by promptly requesting a new shipper review at a sufficiently early date.

Multiple reviews: One commenter objected to proposed § 351.214(j), which deals with situations where there are multiple reviews (or requests for review) of merchandise from a particular exporter or producer. According to the commenter, a new shipper should be guaranteed a new shipper review when multiple reviews covering the same merchandise are requested. The commenter cited Article 9.5 of the AD Agreement and the requirement that new shippers must have an opportunity for a review ''on an accelerated basis, compared to normal duty assessment and review proceedings in the importing Member.'' The commenter argued that the objective of Article 9.5 would be thwarted if the Department chose to terminate or not initiate a new shipper review in favor of a more protracted administrative review. The commenter proposed revised language that would have guaranteed a new shipper review if the request for review was made within six months of the first shipment. If the request was made later than six months and the merchandise already was the subject of a different type of review, the Secretary could decline to initiate a new shipper review.

With respect to this suggestion, we are mindful of the requirements of Article 9.5. In drafting a solution to the problem of multiple reviews, our intent was to provide the Secretary with sufficient flexibility so that the Secretary could opt to use the review mechanism that, in light of the facts, would be most likely to provide a new shipper with its own rate at the earliest possible date. Therefore, we believe that our objective was not inconsistent with that of the commenter.

On the other hand, as noted previously, new shipper reviews are a new procedure with which we have little experience. In our view, the proposal suggested by the commenter may be too rigid to accommodate all of the possible permutations that may arise in actual cases. Therefore, we have not adopted the suggestion, and have left § 351.214(j) somewhat open-ended in terms of the Secretary's discretion. We should emphasize again, however, that our intent is that the Secretary will exercise this discretion in a manner that provides a new shipper with its own individual rate at the earliest possible date.

Expedited reviews in CVD proceedings for noninvestigated exporters: In proposed paragraph (k), the Department established procedures for expedited reviews in CVD proceedings of exporters that the Department did not individually examine in the original CVD investigation. Upon further review, we have made several revisions to paragraph (k).

First, we have consolidated proposed paragraphs (k)(1) and (k)(2) into a single paragraph (k)(1). Paragraph (k)(1) continues to require that a request for review be submitted within 30 days of the date of publication in the **Federal Register** of the countervailing duty order. In addition, instead of providing for the initiation of paragraph (k) reviews in the semi-annual anniversary month or the anniversary month, in a revised paragraph (k)(2) we have provided that the Secretary will initiate a review in the month following the month in which a request for review is due.

Second, we have made certain changes to paragraph (k)(3) to better reflect the distinctions between a paragraph (k) review and a new shipper review. Under paragraph (k)(3)(i), the period of review will be the period of investigation used by the Secretary in the investigation that gave rise to the CVD order. This change will enable the Department to use government data from the original investigation, thereby enabling the Department to truly expedite the review. The objective is to provide a noninvestigated exporter with its own cash deposit rate prior to the arrival of the first anniversary month of the order, at which point the exporter may request an administrative review. In this regard, in paragraph (k)(3)(iii) we have clarified that the final results of a paragraph (k) review will not be the basis for the assessment of countervailing duties, except, of course, under the automatic assessment provisions of § 351.212(c).

Finally, because the Department will be reviewing the original period of investigation, we have provided in paragraph (k)(3)(iv) for the exclusion from a CVD order of a firm for which the Secretary determines an individual countervailable subsidy rate of zero or *de minimis.* However, the Secretary will not exclude an exporter unless the information on which the exclusion is based has been verified.

One commenter made two comments concerning proposed § 351.214(k). First, the commenter questioned the basis for not extending the opportunity to post bonds to reviews conducted under § 351.214(k). Second, the commenter questioned the implication that the foreign government will be required to provide a full response to the Department's questionnaire.

With respect to the first comment, we have not extended the opportunity to post a bond to these types of reviews because this option is not required by either the statute or the SCM Agreement. With respect to the second comment, for the reasons discussed in the preceding paragraph, we do not agree with the comment. However, the comment has identified a lack of precision in proposed (k)(1) regarding the information to be provided by an exporter requesting a review of this type. Therefore, we have added a new paragraph (k)(1)(iii) to clarify that an exporter must certify that it has informed the government of the exporting country that it will be required to provide a full questionnaire response.

One commenter argued that paragraph (k) should be extended to permit expedited reviews of exporters that were not investigated in an antidumping investigation. With respect to this comment, as stated in the AD Proposed Regulations, paragraph (k) implements Article 19.3 of the SCM Agreement. 61 FR at 7318. Article 19.3 requires expedited reviews for exporters that were not ''actually investigated'' in a CVD investigation. Because the AD Agreement does not contain a similar requirement, we have continued to limit paragraph (k) to CVD proceedings.

Exception from assessment of duties in regional industry cases: In light of the revised procedure for obtaining an exception from the assessment of duties in regional industry cases, discussed above in connection with § 351.212, we have added a new paragraph (l) that cross-references § 351.212(f).

Section 351.216

Section 351.216 deals with changed circumstances reviews under section 751(b) of the Act. In connection with § 351.216, one commenter suggested that the Department should adopt objective criteria for determining changed circumstances that would take into account the best interests of the current American industry rather than merely the interests of the petitioner. The commenter then described a series of scenarios for which, the commenter claimed, the regulations do not provide express answers. The commenter appeared to be focusing on so-called ''no-interest revocations.'' According to the commenter, the regulations, as drafted, provide a petitioner with a veto.

We have not revised the regulations in light of this comment, because we believe that the proposed regulations adequately take into account the interests of domestic producers other than the petitioner. First, § 351.216(b) provides that any interested party may request a changed circumstances review. Therefore, U.S. producers other than the petitioner may request such a review. Second, insofar as no-interest revocations are concerned, § 351.222(g)(1)(i) states that the lack of interest must be expressed by ''[p]roducers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) or suspended investigation pertains.* * *'' Thus, a petitioner does not acquire a ''veto'' due to its status as petitioner.

Another commenter suggested that § 351.216 be revised so as to provide for a determination as to whether the domestic industry supports the continuation of an order. We have not adopted this suggestion, because it is inconsistent with legislative intent to preclude reconsideration of support for a petition after the initiation of an investigation. *See* sections 702(c)(4)(E) and 732(c)(4)(E) of the Act; SAA at 863.

Several commenters argued that the Department's existing regulatory procedures inadequately deal with situations of short supply. These commenters proposed a number of substantive and procedural changes in the areas of revocation, changed circumstances reviews, and temporary relief. Other commenters opposed the creation of a regulatory short supply provision. The commenters expressed concern that such a provision would undermine the AD/CVD law by creating a huge loophole, raising the cost of AD/CVD procedures, and interfering with the economic impact of an order. These commenters argued that a short supply provision would allow unfair low prices to continue and thereby thwart U.S. companies from renewing production in those products. The commenters also argued that no statutory authority exists in U.S. law to create a short supply provision.

With respect to revocation, several commenters suggested that the Department codify in the regulations its authority to revoke an order (or terminate a suspended investigation) in part with respect to particular products included within the scope of an order or suspended investigation. Another commenter proposed that demonstration of a lack of domestic availability would create a rebuttable presumption that the continued inclusion of the product within an order does not serve the purpose for which AD/CVD relief is granted, and, unless the petitioning industry rebutted the presumption, the Department would revoke the order with respect to the particular product. The commenter proposed also that the regulations set forth specific standards and procedures that would allow parties to demonstrate that a product covered by an order is not available domestically.

With respect to changed circumstances reviews, several commenters proposed that the regulations be amended to provide that lack of domestic availability of a product constitutes a ''changed circumstance'' sufficient to warrant a changed circumstance review. Other commenters proposed that the regulations provide that the mere allegation of lack of domestic availability is sufficient to trigger a changed circumstances review. Commenters also proposed that lack of domestic availability or, alternatively, an allegation of lack of domestic availability, should constitute ''good cause'' under section 751(b)(4) of the Act to initiate a changed circumstances review less than two years after the issuance of an order or the suspension of an investigation.

Several commenters specifically objected to the proposal that lack of domestic availability alone would trigger the initiation of a changed circumstances review. These commenters argued that a lack of interest or consent by the petitioning industry should be the only factor relevant to the decision to initiate a changed circumstances review of products alleged to be unavailable domestically. Other commenters argued that an express lack of interest in continuing the order is required to show ''good cause.'' They argued that, especially in the first two years after issuance of an order, industries that had been injured by dumped imports would be unable to begin or renew production if they continued to confront dumped goods.

Additionally, with respect to changed circumstances reviews, several commenters proposed specific regulatory deadlines governing the initiation and completion of changed circumstances reviews in cases based on lack of domestic availability. Another commenter also suggested that the Department adopt internal deadlines now and consider regulatory deadlines at a later date. Certain commenters also suggested that the Department revise its regulations to allow industrial users or consumers to file requests for changed circumstances reviews with respect to particular products covered by an order or suspended investigation.

With respect to temporary relief, several commenters proposed that the Department establish procedures that

provide for temporary relief in appropriate cases. In a similar vein, one commenter suggested that in the case of a suspension agreement based on quantitative restraints, the regulations should require the inclusion of a provision in the agreement that would permit the Department to suspend temporarily quantitative restrictions on the import of particular products that are not available domestically.

As is clear from these comments, the issues raised under the rubric of ''domestic availability'' represent the positions of parties with conflicting interests. The Department believes, however, that it is possible to provide relief to industries from unfair trade practices while also ensuring that products in which the affected industry has no interest are properly removed from, or not included in the scope of an order. As discussed in more detail below, through administrative practice, the Department has developed procedures that, in our view, adequately address the interests of both domestic producers and domestic users. In these regulations, we have modified some of these procedures in light of the comments received. In addition, we have created two new procedures specifically to address parties' concerns. Both the new and modified procedures are designed to ensure that products in which the affected industry has no interest are removed from, or not included in the scope of an order, without undermining the Department's ability to effectively enforce the AD/CVD law.

Two important new procedures we will implement are intended to avoid, in the first instance, situations where products in which the domestic industry has no interest are included in the scope of an order. These new procedures will, at the outset of a proceeding, focus on the proposed scope of an investigation. The Department believes that early attention to product coverage issues will alleviate the need to revisit these issues in the future.

First, we will include in our checklist of items raised to petitioners during pre-filing consultations, whether the proposed scope of a proceeding is an accurate reflection of the product for which the domestic industry is seeking relief. The Department's experience, in some cases, has been that proposed product coverage may be unintentionally over inclusive. This situation typically arises in cases where the proposed scope of an investigation is worded broadly or covers numerous HTS classification subheadings including subject and nonsubject merchandise. Raising these types of coverage issues during the pre-filing consultation period will give petitioners the opportunity to focus the scope on those products causing injury to the domestic industry. The resulting refined scope will contain a more accurate reflection of intended product coverage. In addition, the Department believes that beginning an investigation with more carefully defined scope language and tariff classifications will reduce the need to address product coverage issues later during the course of the proceeding.

Even after reconsideration of product coverage based on pre-filing consultations, petitioners may not be aware that the scope is over inclusive until U.S. purchasers have an opportunity to review the scope language and tariff classifications. As a result, as a second new procedure, we also will set aside a specific period early in an investigation for issues regarding product coverage to be raised. This new specific comment period will provide parties with ample opportunity to address product coverage issues. Petitioners will then have the opportunity to reconsider product coverage and the Department can amend the scope of the investigation if warranted. Given the timing of any amendments, the ITC may be able to take the refined scope into account in defining the domestic like product for injury purposes. In addition, early amendment will partially alleviate the reporting burden on respondents and avoid suspension of liquidation and posting of bonds or cash deposits on products of no interest to petitioners.

No regulations are needed to implement these two new procedures. We believe that affirmatively addressing product coverage, both pre-filing and early in an investigation, is the single most effective means to address the parties' concerns. This approach results in less ambiguity over coverage and avoids problems inherent in later clarifications and modifications to an order. In addition, resolution of product coverage issues early in a proceeding reduces costs for all parties by diminishing the necessity for later changed circumstances reviews or scope inquiries.

With respect to revocation, we believe that, as a matter of administrative practice, the Department's authority to issue such partial revocations or terminations already is well-established. For example, in *New Steel Rail, Except Light Rail, from Canada,* 61 FR 11607 (March 21, 1996), the Department issued a partial revocation with respect to certain 100 lb. rail. Similarly, in *Certain Cut-to-Length Carbon Steel Plate from Canada,* 61 FR 7471 (Feb. 28, 1996), the Department issued a partial revocation with respect to certain cobalt 60-free steel. To make clear the Department's commitment to the use of this established authority, we have codified this practice in section 351.222 (g). The Department, however, has not adopted the commenters' suggestions with respect to temporary relief because we believe that prompt and permanent revocation (or termination), where warranted by the facts, has been an adequate mechanism and is one which provides greater predictability for all parties. We will continue to consider the efficacy of our approach as this issue arises in individual cases.

We have not adopted the proposal that demonstration of lack of domestic availability creates a rebuttable presumption that, unless rebutted by the petitioning industry, would lead to automatic revocation of the order with respect to a particular product. Shifting the burden of proof would constitute a dramatic change from the Department's current practice.

We also have not adopted the proposal that lack of domestic availability, or an allegation thereof, constitutes a ''changed circumstance'' sufficient to warrant a changed circumstances review. Nor have we adopted the proposal that lack of, or the alleged lack of domestic availability automatically constitutes ''good cause'' to initiate an expedited changed circumstances review. The Department has an established practice of partially revoking an order after a changed circumstances review in certain situations where an interested party has alleged that a product should not be subject to an order and the petitioner or the domestic industry expresses a lack of interest in continuing the order with respect to the particular product. Furthermore, the Department has, in appropriate circumstances, initiated a changed circumstances review less than two years after the issuance of an order where the petitioners agreed there was ''good cause'' to conduct a review with respect to a particular product. *See Flat Panel Displays from Japan,* 57 FR 58791 (1992). We believe that Department practice, therefore, can adequately meet the needs of both the domestic industry and the domestic users of the particular product.

With respect to the suggestion that the Department adopt specific regulatory deadlines for changed circumstances reviews in cases where an interested party has alleged that a particular product should not be subject to an order, we agree that a deadline for

initiation is appropriate, and we have revised § 351.216(b) to provide for a 45-day deadline for initiation decisions. In addition, we recognize that the Department can complete changed circumstances reviews more quickly in cases in which there is agreement on the issues. Therefore, we have revised § 351.216(e) to require the Secretary, in such cases, to issue final results of review within 45 days after initiation. As revised, these regulations would permit the Secretary to issue final results within, roughly, 90 days of the receipt of a request for review. However, because changed circumstances reviews, by their nature, are fact-specific and often involve unique issues, we continue to believe that in situations where there is no agreement on the issues, a deadline of 270 days is appropriate for the completion of a changed circumstances review.

Finally, the Department has not adopted the suggestion that industrial users or consumers be allowed to file requests for changed circumstances reviews because we believe that it would conflict with the statutory scheme contemplated by Congress. Section 751(b)(1) of the Act refers only to requests for a changed circumstances review from an ''interested party.'' In addition, the Act and the SAA make a clear distinction between ''interested parties'' and other participants in an AD/CVD proceeding. On the other hand, section 751(b)(1) of the Act permits the Department to self-initiate a changed circumstances review when it ''receives information * * * which shows changed circumstances sufficient to warrant a review. * * *'' Nothing in these regulations alters the Department's authority under that provision. Despite statements that section 751(b) of the Act puts industrial users at a disadvantage with regard to supply concerns, the Department's experience has been that the requirements of the section have not prevented requests for changed circumstance reviews.

Section 351.218

Section 351.218 deals with sunset reviews under section 751(c) of the Act. We received a few comments concerning different aspects of § 351.218.

Initiation of sunset reviews: One commenter noted that proposed § 351.218(c) fails to account for sunset reviews other than the first sunset review. We agree that this oversight should be corrected, and we have revised paragraph (c) accordingly. In addition, we also have added a reference in paragraph (c) to the statutory provisions governing the initiation of sunset reviews of transition orders.

Another commenter suggested that the Department amend paragraph (c) to ensure that the intent of initiating a sunset review prior to the start of the last year of an order is made clearer. We have not revised paragraph (c) in light of this comment, because, in our view, the regulation already is clear that the Secretary, in certain circumstances, may issue an early initiation of a sunset review.

Sunset review procedures: One commenter argued that there should be no routine issuance of questionnaires in sunset reviews, and noted that the proposed regulations were ambiguous on this point. The commenter observed that proposed § 351.221(b)(2), which applies to reviews generally, calls for the issuance of questionnaires in every case. On the other hand, proposed § 351.221(c)(5)(i), which deals with sunset reviews in particular, provides that the notice of initiation of a sunset review will contain a request for information described in section 751(c)(2) of the Act. According to the commenter, these information requests may obviate the need for the Department to issue questionnaires.

Although we have yet to conduct an actual sunset review, we agree with the commenter that it may not be necessary to issue questionnaires in every sunset review. Accordingly, we have revised § 351.221(c)(5) by adding a new paragraph (iii) which permits the Secretary to refrain from issuing the questionnaires called for by § 351.221(b)(2). Of course, the Secretary would retain the discretion to issue questionnaires in sunset reviews in appropriate situations.

The same commenter also argued that because it is not anticipated that parties will have to submit much additional factual information in a sunset review, there should be no need for the Department to conduct verifications in sunset reviews. However, the commenter noted, proposed § 351.307(b)(1)(iii) requires a verification if the Department determines to revoke an order as the result of a sunset review. The commenter argued that verification should occur only for good cause, and that § 351.307(b)(1)(iii) should be revised to refer only to revocations under section 751(d)(1) of the Act, and not to revocations under section 751(d)(2) resulting from a sunset review.

We have not adopted this suggestion, because section 782(i)(2) of the Act provides that the Department will verify all information relied upon in making ''a revocation under section *751(d)* of the Act'' (emphasis added). Thus, section 782(i)(2) does not distinguish between revocations under section 751(d)(1) and revocations under section 751(d)(2).

Finally, this commenter suggested that the Department amend proposed § 351.218(e)(2) to set forth specifically the time limits for transition orders. We have not adopted this suggestion. Because the schedule in section 751(c)(6) of the Act for conducting sunset reviews of transition orders refers to the completion of activity by both the Department and the Commission, we believe it more appropriate to simply include in paragraph (e)(2) a reference to the relevant provisions of the statute.

Substantive guidelines: Three commenters suggested that § 351.218 should include standards and guidelines for determining the likelihood of dumping in a sunset review. (One of these commenters actually submitted its comment in connection with § 351.222(i)). One commenter simply noted the absence of standards and guidelines. However, the other commenter, proceeding from the premise that there is an internationally agreed preference for the revocation of old orders, made specific suggestions concerning the contents of standards and guidelines. At a minimum, this commenter suggested, the regulations should incorporate the relevant discussion from the SAA. A third commenter essentially suggested that the regulations should put the burden of proof on the domestic industry, and that the Department should consider arguments from petitioners valid only if the preponderance of the evidence supports their claim.

We have not adopted these suggestions. Due to our lack of experience with sunset reviews, we do not believe it appropriate at this time to elaborate in regulations on the substantive standards to be applied in determining whether dumping would be likely to continue or resume if an order were revoked. As for the suggestion that we incorporate into the regulations relevant language from the SAA, as noted previously, we generally have refrained from repeating in these regulations the language of the statute or the SAA.

We should note, however, that we do not agree with the statement by the one commenter that there is an internationally agreed preference for the revocation of old orders. The commenter does not elaborate on the precise source of this preference, and we do not find one in either the AD Agreement or the SCM Agreement. All that these agreements require is that

national authorities periodically review an order or suspended investigations to determine whether the maintenance of the order or suspended investigation is necessary to remedy injurious dumping or countervailable subsidization. In addition, we find no basis in either the statute or the agreements for placing the burden of proof on the domestic industry.

Section 351.221

Section 351.221 deals with review procedures. In paragraph (c)(7)(i) of this section, we moved the word ''will'' from that paragraph to the beginning of paragraph (c)(7).

We received one comment concerning § 351.221(b), in which the commenter stated that the regulation should provide that the results of a review include the Department's factual and legal bases for the determination. As noted previously in connection with a related comment, we have not included this requirement in the regulations because it already is clearly provided for in section 777(i) of the Act.

One commenter suggested that proposed § 351.221(c)(4) should be revised so as to provide for the issuance of preliminary results of review in the case of Article 8 Violation and Article 4/Article 7 reviews under section 751(g) of the Act and § 351.217. According to the commenter, while the Department should conduct these special reviews on an expedited basis, this objective can be preserved without eliminating an ''essential step'' in the review process.

We have not adopted this suggestion. In the case of an Article 8 Violation review, the review will be premised on a WTO ruling that the foreign government in question has violated its international obligations concerning the notification and use of so-called ''green light'' subsidies. In our view, in this situation, it is important to act as quickly as possible in order to provide the relevant domestic industry the relief to which it is entitled.

In the case of Article 4/Article 7 reviews, we also believe that swift action is essential to ensure that the United States promptly implements its international obligations in situations where the United States has prevailed in a dispute under Article 4 or Article 7 of the SCM Agreement. Moreover, we believe that Article 4/Article 7 reviews will be sufficiently straightforward so as to obviate the need for the issuance of preliminary results.

Section 351.222

Section 351.222 deals with the revocation of orders and the termination of suspended investigations. We received several comments relating to certain aspects of § 351.222.

Intervening periods: In proposed § 351.222 (b) and (c), the Department retained the requirement of the former regulations that an order or suspended investigation may be revoked or terminated based on the absence of dumping for three consecutive years or the absence of countervailable subsidization for three (or in some cases five) consecutive years. However, in proposed § 351.222(d), the Department established a new procedure under which a review of an ''intervening year'' would not be necessary if (1) the Department conducted a review of the first and third (or fifth) years and found no dumping or countervailable subsidization for those time periods; and (2) the Secretary is satisfied that during the unreviewed intervening years there were exports to the United States in commercial quantities of subject merchandise. As the Department explained, the purpose of paragraph (d) was to reduce the Department's workload by removing the incentive for companies to request reviews that they otherwise might not request.

Several commenters supported paragraph (d), while others opposed it. All of the commenters opposing paragraph (d) argued that it would not reduce the Department's workload, because if the first administrative review of an order or suspended investigation resulted in a rate of zero, the domestic industry likely would request a review in the second period to ensure that there was no dumping or subsidization during intervening years. In addition, one opposing commenter argued that paragraph (d) would allow a respondent to engage in significant dumping and still secure revocation. Another commenter suggested that a domestic interested party might not be in a position to know whether a particular producer is selling in commercial quantities. Yet another commenter argued that in cases where the Department relied on sampling and applied sample rates to non-sampled companies, there would be no basis for assuming that the non-sampled companies were not dumping in the beginning and ending years, or in the intervening years.

Having considered these comments carefully, we have retained paragraph (d). While it may be true that in many instances a domestic industry will request a review of an intervening year to ensure that dumping margins or countervailable subsidy rates did, in fact, remain at zero, we believe that there also will be cases where the domestic industry, based on its own knowledge of what is going on in the marketplace, will refrain from requesting a review because it is satisfied that dumping or countervailable subsidization has ceased. In terms of the Department's workload, this constitutes an improvement over the existing situation, in which a respondent must request a review for each year in order to obtain a revocation or termination.

As for the argument that a respondent might engage in significant dumping during an intervening year, one of the opponents of paragraph (d) admits that a domestic interested party could request a review if it believed that this was taking place. Similarly, while a domestic interested party may not know the precise volumes sold by a particular company, we believe, based on our experience, that domestic interested parties generally are sufficiently aware of marketplace developments so as to know whether a company is selling in commercial quantities. Finally, with respect to the comment concerning sampling, any sample used by the Department must be statistically valid. Therefore, we do not believe that it is illogical to extrapolate the results of sampling in the beginning and ending years to intervening years.

One commenter suggested that if paragraph (d) is retained, the Department should revise various paragraphs in § 351.222(e) so as to require, in addition to the certifications already required, that a request for revocation be accompanied by information concerning the volume and value of exports of subject merchandise during the initial period of investigation and each of the last three (or five) consecutive years. We have not adopted this suggestion, because we do not believe that this information needs to be provided at the same time as the request for revocation is submitted. However, the Department intends to request this type of information in the course of its review of the ending year in the three- or five-year period. Such information would be necessary to fulfill the requirement of § 351.222(d)(1) that the Secretary ''must be satisfied that, during each of the three (or five) years, there were exports to the United States in commercial quantities of the subject merchandise to which a revocation or termination will apply.''

Turning to supporters of paragraph (d), one supporter suggested certain amendments. First, the commenter suggested that the Department eliminate the requirement of commercial shipments during intervening years. According to the commenter, the presence of shipments during the

intervening years is irrelevant because the U.S. industry would not have been the victim of dumped or subsidized imports, and the available evidence from the first and last reviews would indicate that AD or CVD rates were not a factor in the absence of imports and that dumping or subsidization had ceased.

We have not adopted this suggestion, because we do not accept the premise that the absence of shipments in the intervening years is irrelevant. The underlying assumption behind a revocation based on the absence of dumping or countervailable subsidization is that a respondent, by engaging in fair trade for a specified period of time, has demonstrated that it will not resume its unfair trade practice following the revocation of an order. If the respondent is not selling in commercial quantities characteristic of that company or industry for the duration of the specified period, this assumption becomes weaker.

Moreover, we believe that it is reasonable to presume that if subject merchandise, shipped in commercial quantities, is being dumped or subsidized, domestic interested parties will react by requesting an administrative review to ensure that duties are assessed and that cash deposit rates are revised upward from zero. If domestic interested parties do not request a review, presumably it is because they acknowledge that the subject merchandise continues to be fairly traded. However, neither presumption can be made when merchandise is not being shipped in commercial quantities.

This same commenter also suggested that paragraph (d) be revised so as to permit more than one intervening unreviewed year in an AD proceeding or more than three unreviewed years in a CVD proceeding. According to the commenter, there may be reasons why a respondent might not request revocation at the earliest possible opportunity, such as cash flow difficulties that would preclude the respondent from incurring the expense of a review, or the respondent simply might miss the deadline for requesting a review. The Department agrees with this suggestion and has revised paragraphs (d)(2), (e)(1)(iii), (e)(2)(ii)(C), and (e)(2)(iii)(C) accordingly.

Revocation based on absence of review requests: In the AD Proposed Regulations, the Department eliminated its prior ''sunset revocation'' procedures based on the absence of requests for administrative reviews. These procedures previously were set forth in 19 CFR §§ 353.25(d)(4) and 355.25(d)(4). One commenter asked that the Department reconsider its elimination of these types of revocations.

The Department has reconsidered this matter, but continues to believe that these types of revocations should be eliminated. The procedures called for by §§ 353.25(d)(4) and 355.25(d)(4) result in a considerable administrative burden on Department staff, a burden that is unnecessary in light of the new sunset review procedure contained in section 751(c) of the Act and § 351.218 of these regulations.

Nonproducing exporters: As in the case of exclusions, in the AD Proposed Regulations, 61 FR at 7319, the Department requested additional public comment on the issue of whether there should be special revocation rules for firms, such as trading companies, that export, but do not produce, subject merchandise. We noted that one alternative would be to limit any revocation of a nonproducing exporter to the subject merchandise produced by those producers that supplied the exporter prior to revocation. The comments we received on this issue mirrored those concerning special exclusion rules for nonproducing exporters. For the same reasons discussed above with respect to exclusions, the Department believes it is appropriate to normally limit the revocation of a nonproducing exporter to that exporter's exports of subject merchandise produced by those producers that supplied the exporter during the years that formed the basis for the revocation. Therefore, we have added paragraphs (b)(3) and (c)(4) to provide that the partial revocation of an order with respect to a nonproducing exporter will be limited to that exporter's exports of subject merchandise produced or supplied by those companies that supplied the exporter during the time period that formed the basis for the revocation.

Other changes: In paragraph (g)(3)(vii), we corrected a typographical error. Also, we revised the structure of paragraph (j) to conform to **Federal Register** drafting guidelines.

Section 351.224

Section 351.224 deals with the disclosure of calculations and procedures for the correction of ministerial errors.

Section 351.224(b) provides for automatic disclosure normally within five days after the date of public announcement of the preliminary or final determination or final results of review. One commenter proposed that the regulations provide for release of disclosure materials on the same day that the Department releases its determination or results, and that comments on clerical errors be due 10 days thereafter. Another commenter proposed that the regulations permit disclosure of draft preliminary determinations and draft final determinations and results of review, and provide for filing of comments identifying ministerial errors, prior to their public announcement. A third commenter proposed that the regulations permit disclosure and correction of ministerial errors before publication of the Department's determination or results of review because an interested party may file an appeal immediately upon publication of the final, effectively removing jurisdiction from the Department and hence requiring litigation and court approval for correction of ministerial errors.

We have not adopted these proposals. In response to concerns about needless litigation arising out of lengthy review of ministerial error allegations, the Department has streamlined the disclosure and ministerial error correction process by providing a 30-day time frame for response to ministerial error allegations. While nothing prevents the Department from, for example, releasing disclosure materials on the day of public announcement, it is unlikely given the amount of work necessary to prepare the **Federal Register** notice, draft decision memoranda, finalize the computer programs, assemble the disclosure materials, etc., that the Department would be able to shorten the timing of disclosure even further.

Section 351.224(c) provides for filing of comments regarding ministerial errors. Paragraph (c)(1) indicates that the Department will not consider comments concerning ministerial errors made in the preliminary results of review. One commenter proposed that the regulations clarify that while the Department will not amend preliminary results to correct ministerial errors, it will consider comments concerning ministerial errors made in preliminary results in parties' case briefs. The commenter is concerned that the language in the proposed regulation suggests that the Department is prohibited from considering comments concerning ministerial errors until after the final results have been issued. The Department agrees that the language in the proposed regulation could be misconstrued. It was not our intention to suggest that the Department would not consider comments concerning ministerial errors made in preliminary results of review during the course of

the review. Rather, we meant only to indicate that the Department will not issue amended preliminary results to correct ministerial errors. Therefore, we have adopted the commenter's proposal and have amended the regulation to clarify that we will consider comments concerning ministerial errors made in a preliminary results of a review in a party's case brief. The alleged errors, therefore, will be addressed in the final results of review.

Two commenters proposed that the proposed regulations be amended to provide for correction of ministerial errors in preliminary results calculations because of ''significant commercial harm'' caused by publication of erroneous preliminary dumping margins in administrative reviews. We have not adopted this proposal. As the Department explained in the preamble to the proposed regulations, unlike a preliminary determination in an investigation, which may result in the suspension of liquidation and the imposition of provisional measures, a preliminary results of review has no immediate legal consequences. *See* 61 FR at 7321. As a result, a more judicious use of Department resources is to correct any ministerial errors made in a preliminary results of review in the final results. The Department is unable to comment on the commenters' concern that not correcting ministerial errors in preliminary results of review results in ''significant commercial harm'' because the commenters offered no examples or further explanation as to what they meant.

Section 351.224(c)(3) establishes the time limits for filing replies to comments. One commenter proposed that the regulations permit the filing of responses to allegations of ministerial errors in the context of preliminary determinations because the proposed timetable provides sufficient time for the Department to analyze such responses in addition to the original submissions. We have not adopted this proposal. Paragraph (c)(3) provides that replies to comments must be filed not later than five days after the date on which such comments are filed. There is an exception for replies to comments in connection with a significant ministerial error in a preliminary determination. As the Department explained in the preamble to the proposed regulations, because of greater time constraints due, in part, to the fact that Department personnel conduct verification soon after the announcement of a preliminary determination, the Department will not consider replies to comments in a preliminary determination. *See* 61 FR at 7321. Given the short time between public announcement of a preliminary determination and departure for verification, the Department disagrees with the commenter's suggestion that the proposed timetable provides sufficient time for the Department to analyze replies to comments in a preliminary determination. Any reply that a party wishes to make should, therefore, be included in that party's case brief so that the Department may address the reply in its final determination.

Section 351.224(e) provides for the analysis of any comments received and the announcement of the issuance of a correction notice normally not later than 30 days after the date of public announcement of the Department's preliminary or final determination or final results of review. One commenter proposed that the proposed regulations be modified to provide for announcement of the Department's decision on ministerial error allegations no later than 25 days after publication of the final in the **Federal Register**. Another commenter expressed strong support for the 30-day time frame set forth in the proposed regulations. The Department has not made any changes to the provision. A period of 30 days after the date of public announcement (the Department's regulation) or 25 days after publication in the **Federal Register** (the commenter's proposal) is roughly the same because there are typically three to seven days between the date of public announcement of a Department decision and the date of publication of that decision in the **Federal Register**. We have chosen to tie the deadline for issuance of a correction notice to the date of public announcement because the other deadlines in the ministerial regulation are also tied to the date of public announcement.

Sections 351.224(g) and (f) define *ministerial error* and *significant ministerial error,* respectively. One commenter proposes that the regulations clarify that ministerial errors do not include ''substantive'' errors, *i.e.,* errors which call a data submission into question in terms of basic accuracy or credibility. The commenter also proposed that the regulations state explicitly that parties are not allowed to submit new evidence beyond the time frame for submitting information to show or deny the existence of an error.

The Department has not adopted these proposals. The provisions of § 351.224—covering disclosure of *the Department's* calculations and procedures for correction of ministerial errors—only apply to ministerial errors, as defined in paragraphs (f) and (g), and, hence, only to errors made by the Department. Errors made by *respondents* in their submissions to the Department, such as transposing digits as a result of a data input error or other computer errors resulting in the omission of data cited as examples by the commenter, are not governed by the provisions of § 351.224. Prior to the deadline for submission of factual information, the Department's practice normally is to accept a respondent's correction of an error in its own data because the Department has time to review, analyze, and where applicable, verify the corrected data. Where a respondent alleges an error in its own data only after the deadline for submission of factual information, frequently after the preliminary determination or results of review, the Department's longstanding practice has been to correct the respondent's own clerical errors only if the Department can assess from information already on the record that an error has been made, that the error is obvious from the record, and that the correction is accurate. *See, e.g., Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Italy,* 57 FR 8295, 8297 (1992). In light of the Federal Circuit's decision in *NTN Bearing Corp.* v. *United States,* Slip Op. 94–1186 (1996), however, the Department is in the process of reevaluating its policy for correcting clerical errors of respondents. We believe that it is appropriate to develop such a policy through practice. *See Certain Fresh Cut Flowers From Colombia,* 61 FR 42833, 42833–34 (August 19, 1996) (proposing a number of conditions under which we would accept corrections of a respondent's own clerical error). As a result, we do not believe that a regulation on this issue would be appropriate at this time.

Section 351.225

Section 351.225 details the procedural and substantive rules for scope rulings, including rulings involving the anticircumvention provisions of section 781 of the Act. We have noted below the few changes made from the AD Proposed Regulations.

Suspension of liquidation: In connection with proposed paragraph (l), a number of commenters urged that, contrary to previous practice and the proposed regulation, the Department should suspend liquidation of possibly affected entries at the time of the formal initiation of a scope inquiry, and that this suspension should continue unless and until the Department makes a final negative ruling. These commenters argued that proposed paragraph (l) is

contrary to the purpose of the statute, which is designed to provide relief from imports of merchandise that, in the context of a scope inquiry, the Department already has determined to have been dumped. They noted that because scope rulings only clarify, and do not expand, the scope of an order, the Department must view any merchandise that it determines to be within the scope of an order as always having been within the scope. Therefore, they asserted, the Department should suspend liquidation when it initiates a formal scope inquiry (if liquidation is not already suspended), and this suspension should apply to all unliquidated entries. Finally, these commenters argued that the Department should terminate suspension of liquidation only upon the issuance of a negative final determination.

Another commenter suggested that to help address the problem of imports escaping the assessment of duties, the Department should impose a deadline on the formal initiation of scope inquiries following the receipt of a request for a scope ruling or an anticircumvention inquiry. In addition, one commenter asked the Department to specify that the suspension of liquidation and the imposition of a cash deposit requirement will apply prospectively from the date of an affirmative scope ruling. Other commenters supported the suspension of liquidation provisions in proposed paragraph (l).

The Department believes that, for the most part, the suspension of liquidation rules in paragraph (l) are appropriate and has not changed them. Suspension of liquidation is an action with a potentially significant impact on the business of U.S. importers and foreign exporters and producers. The Department should not exercise this governmental authority before it has first given all parties a meaningful opportunity to present relevant information and defend their interests, and before the Department gives a reasoned explanation for its action. Formal initiation of a scope inquiry by the Department represents nothing more than a finding by the Department that it cannot resolve the issue on the basis of the plain language of the scope description or the clear history of the original investigation. It would be extremely unfair to importers and exporters to subject entries not already suspended to suspension of liquidation and possible duty assessment with no prior notice and based on nothing more than a domestic interested party's allegation. Because, when liquidation has not been suspended, Customs, at least, and perhaps the Department as well, have viewed the merchandise as not being within the scope of an order, importers are justified in relying upon that view, at least until the Department rules otherwise. Therefore, the Department will not order the suspension of liquidation until it makes either a preliminary or final affirmative scope ruling, whichever occurs first.

Nonetheless, the Department is cognizant of the concerns expressed on this issue by representatives of domestic interested parties. In particular, the Department is concerned that significant delays in initiating scope inquiries can be harmful. Accordingly, we have amended paragraph (c), in accordance with a suggestion made by one commenter, to impose a time limit of 45 days, from the date of receipt of a request for a scope ruling, on the determination whether to initiate a formal scope inquiry under § 351.225. This deadline will apply to all scope requests, including requests relating to circumvention. Although the Department will continue to resolve scope questions, where it can, on the basis of the plain language of the scope description and the clear history of the original investigation without initiating a formal inquiry, the Department will do so in 45 days or less.

In further recognition of the concerns expressed by domestic interested parties, the Department also has revised paragraph (l) to make a suspension of liquidation, when ordered in conjunction with a preliminary or final affirmative ruling, effective as to entries of all affected merchandise that are made on or after the date of initiation of the scope inquiry and that remain unliquidated as of the date of publication of the affirmative ruling.

Anticircumvention/Major input rule: Several commenters noted a discrepancy between proposed paragraphs (g) and (h) relating to the application of the ''major input'' rule under section 773(f)(3) of the Act. Under proposed paragraph (g), which deals with products completed or assembled in the United States, the application of the major input rule was discretionary when valuing parts or components acquired from an affiliated person. Under proposed paragraph (h), the application of the major input rule was mandatory in dealing with products completed or assembled in other foreign countries. One commenter suggested that use of the major input rule be mandatory in all cases. Another suggested that it be discretionary in all cases.

The SAA at 894 states that affiliation ''* * * *can* result in application of the major input rule * * *'' (emphasis added). Therefore, the Department has revised paragraph (h) to make application of the rule discretionary for purposes of both U.S. and third country assembly. We also have corrected a typographical error in the last sentence of paragraph (g).

Several commenters suggested that, in applying paragraphs (g) and (h), the Department should not apply the major input rule in determining the value of parts and components originating in the country subject to the order. They argued that the statute requires a determination of whether such parts and components constitute a significant percentage of the final value of the finished product. Because the major input rule provides for the use of cost of production to value such parts or components, use of the rule, they asserted, necessarily would omit a profit element, thereby understating the value of the parts or components.

The Department has not made the change suggested by these commenters. First, the SAA, as noted above, clearly contemplates the use of the major input rule in appropriate circumstances. Second, the statute clearly states that in dealing with inputs from affiliated persons, the Department may use the higher of transfer price, market value, or cost of production to ''determine the value of the major input. * * *'' Thus, cost of production may be used as the basis of the ''value'' of such an input. Finally, as noted above, the application of the major input rule is discretionary. Should the Department encounter a case in which the application of this rule would, in our judgment, be inappropriate, we will explore other methods of valuing such parts or components.

Anticircumvention/Other issues: Several commenters suggested that the Department should provide more definitive guidance on what constitutes circumvention. One commenter suggested a ''safe harbor'' of 35 percent value added in determining whether the value added in a process of assembly or completion in the United States or a third country is ''significant.'' Another commenter suggested the adoption of value-added ranges for what the Department will consider ''significant'' in examining assembly or completion or assembly in the United States or a third country. Another suggested that the Department adopt a standard of considering production in the United States or a third country as ''significant'' and simple assembly as not ''significant''. Still another commenter proposed that the Department develop a framework for analyzing scope issues

and a comprehensive set of factors within that framework.

The Department has not adopted these suggestions because we believe that the wide variety of products and processes encountered in AD/CVD proceedings makes the adoption of any more specific standards inadvisable at this time. To establish a ''safe harbor'' or specific guidelines might result in the incorrect classification of substantial production operations as ''insignificant'' and ''screwdriver'' operations as ''significant.'' As we gain more experience, we will consider promulgating more detailed rules.

One commenter suggested that for purposes of determining whether completion or assembly processes in the United States or a third country are minor or insignificant, the Department should require all relevant factors in sections 781(a)(2) and 781(b)(2) to be present and demonstrably insignificant before finding that circumvention exists. The Department has not adopted this suggestion, because we believe it to be at odds with the statute, which requires only that all the listed factors be taken into account. Adoption of this suggestion would, we believe, restrict the application of the anticircumvention provisions in a manner contrary to the intent of the law.

Another commenter suggested that the regulations (1) provide that all anticircumvention inquiries will encompass at least the four most recent fiscal quarters of any respondent subject to the inquiry, and (2) make verification mandatory in all anticircumvention inquiries. The Department has not adopted these suggestions because we believe that the exact periods appropriately covered in an anticircumvention inquiry may vary widely and are best left to a case-by-case judgment. Also, verification can and will be conducted whenever the Department believes it appropriate, but it is unnecessary to mandate it in every case.

One commenter argued that because the emphasis in anticircumvention inquiries concerning completion or assembly in the United States or a third country is now on whether that process is minor or insignificant, any parts or components sourced from third countries should not be included in making that judgment. We have not adopted this suggestion. The commenter is correct about the change in emphasis in anticircumvention inquiries. However, the Department also must determine whether the value of the parts or components from the subject country is a significant portion of the total value of the merchandise. Any parts or components sourced from a third country necessarily form part of the total value of any such merchandise.

Another commenter suggested that the regulations make clear that the requirement that merchandise circumventing an order be of the same ''class or kind'' as the merchandise subject to the order be broadly construed to include within the same class or kind of merchandise a component and a finished product. According to the commenter, such a construction is necessary to effectuate Congress' intent and is fully consistent with the terms of the statute, the Department's past practice and judicial precedent.

The Department has not adopted this suggestion. As we stated in the AD Proposed Regulations, 61 FR at 7322, ''the term ''class or kind'' in the circumvention context is not broader than the merchandise covered by an order for other purposes of the statute.

One commenter suggested that the Department include in the regulations the factors for applying section 781(c) of the Act, the ''minor alterations in the merchandise'' provisions, that are enumerated in the Senate Report on the URAA. The Department believes that the adoption of this suggestion would be inappropriate. While the Department may apply them in practice, formal adoption of them might be so restrictive as to make it more difficult to reach sound decisions on such questions, given the widely varying fact patterns encountered in such inquiries.

Scope procedures: One commenter suggested that the final regulations clarify that the Department has the authority to self-initiate anticircumvention and other types of scope inquiries. According to the commenter, the proposed regulation did not state expressly that the Department could self-initiate a scope inquiry.

The Department has not adopted this suggestion, because we believe that the regulation as proposed is clear that the Department has the authority to self-initiate an anticircumvention inquiry, as well as any other type of scope inquiry. The proposed regulation makes clear that the term ''scope ruling'' includes rulings relating to anticircumvention, and § 351.225(b) clearly provides for self-initiated scope inquiries.

Another commenter requested that the four-month time limit for resolving formally initiated scope inquiries run from the date of receipt of a request for a ruling, not the date of initiation of an inquiry. The Department believes that such a change would so compress the time available for making scope decisions as to hamper our ability to make decisions that are both timely and proper. Accordingly, we have not adopted this suggestion. However, as noted above, we have adopted a 45-day time limit on the initiation of scope inquiries to ensure that there are no undue delays in the resolution of scope issues.

One commenter suggested, in the context of comments regarding scope issues, that the Department establish presumptions concerning the domestic unavailability of a product at issue. According to the commenter, these presumptions would be based upon allegations by petitioners and the products produced by them. With respect to this comment, the Department has addressed it in the section of this notice dealing with comments relating to lack of domestic availability.

Another commenter suggested that the Department specify in the regulations that scope rulings are clarifications, not modifications, of the scope of an order. We have not adopted this suggestion, because we believe that this principle is so well-established that a regulation is not necessary.

One commenter suggested that the regulations be revised to require the Department, after issuing an affirmative scope ruling, to (1) canvas known importers to detect covered imports, and (2) then advise Customs to proceed to suspend liquidation on entries of such merchandise. The same commenter requested a regulation that would require immediate electronic transmission from the Department to the Customs Service of all final scope rulings.

The Department believes that a canvassing process would be an enormous burden, and one that is neither contemplated in the statute or its legislative history nor necessary for effective enforcement of the law. Accordingly, we have not adopted this suggestion. To the extent that electronic transmittals of scope rulings to the Customs Service is meritorious, it is unnecessary and inappropriate to provide for this in the regulations.

Two commenters asked the Department to revise the regulations to clarify that in the case of an industrial user that has participated in any segment of a proceeding, the Department will include the industrial user on the scope service list and will notify the industrial user of a ruling under § 351.225(d). With respect to this suggestion, it was our intent in the proposed regulations that all persons, whether interested parties, industrial users, or a representative consumer group, would be included on the scope service list and would be notified of

scope rulings. Therefore, we are modifying the language in paragraphs (d) and (n) of § 351.225 to clarify this intent.

One commenter suggested that the Department require service on *all* parties included on the scope service list only in the case of an application for a scope ruling. This commenter suggested that other documents should be served only on those parties that entered an appearance in the scope inquiry. According to the commenter, proposed § 351.225(n) and § 351.303(f) both require service of all documents on all parties included on the scope service list.

The Department does not believe that a revision of § 351.225(n) is necessary. In our view, paragraph (n) makes clear that the term ''scope service list'' differs from the term ''service list,'' and that only applications for scope rulings need to be served on all parties included on the scope service list. As for service of all other submitted documents, the requirements of § 351.303(f) apply, which require only service on parties included on the normal ''service list'; *i.e.*, those parties that have entered an appearance and, in the case of business proprietary information, have obtained an APO for the particular scope inquiry. As noted above, we have modified § 351.225(d) so that all parties included on the scope service list will be notified of scope rulings.

The same commenter made a suggestion concerning paragraph (l)(4), which provides for the inclusion of a product within a pending review if, within 90 days after initiation of the review, the Secretary issues a final scope ruling that the product is included within the scope. The commenter suggested that we should extend the 90-day period if the Secretary extends the time for a preliminary determination in the review.

The Department has not adopted this suggestion because the decision to extend the time for a preliminary review determination often comes only a short time before the expiration of the normal time limit and well after the expiration of 90 days. Therefore, we could not implement the proposal in a manner that would allow the Department to request and receive the needed additional information in a timely manner.

Another commenter made a suggestion regarding proposed § 351.225(l)(4). Paragraph (l)(4) provides, among other things, that if the Secretary determines after 90 days of the initiation of a review that a product is included within the scope of an order or suspended investigation, the Secretary may decline to seek sales information concerning the product for purposes of the review. The commenter suggested that although it may not be practicable, for purposes of an *ongoing* review, to collect information on sales found to be within the scope of an order, the Department should collect this information for use in a subsequent review.

The Department has not adopted this suggestion, because we do not believe it appropriate to collect information for a review that has not yet been, and may never be, requested. However, paragraph (l)(4) makes clear that while the Department may not collect information regarding sales of a particular product, it will not disregard those sales for purposes of the ongoing review. Instead, the Department will calculate dumping margins or CVD rates, and will issue appropriate assessment instructions, for sales of such products on the basis of non-adverse facts available. Moreover, during the next requested review, if any, the Department will examine all sales of the products determined to be within the scope of the order or suspended investigation that were sold during the time period covered by that review.

Finally, in connection with proposed § 351.225(k), one commenter suggested that the Department should revise its scope criteria by developing a framework for analyzing scope issues, and then developing a comprehensive set of factors within that framework. In particular, according to this commenter, to provide greater certainty for industrial users of merchandise that may be covered by an investigation or order, the Department should include factors that examine both consumption and production substitutability.

In our view, this suggestion relates to the broader topic of domestic non-availability. Accordingly, we have addressed this suggestion in the portion of this notice dealing with issues relating to domestic non-availability.

Other Procedural Comments

In addition to the comments discussed above, we received other comments relating to AD/CVD procedures that were not necessarily tied to a particular provision of the AD Proposed Regulations. These comments are addressed below.

Publication of remand determinations: Numerous commenters representing both domestic and foreign interests suggested that the Department should make remand determinations more accessible to the public, although the details of the particular suggestions differed. Some commenters argued that the Department should publish remand determinations in the **Federal Register**, or at least publish a notice indicating the existence of a remand determination. Others argued that, at a minimum, the Department should make remand determinations more easily obtainable once their existence is known.

The Department agrees that remand determinations constitute an important source of precedential material, and that currently it is unduly difficult for private parties to obtain access to remand determinations. Indeed, in some instances, it has proven unduly difficult for Department personnel to obtain copies of these documents. Therefore, we agree that new procedures are necessary.

On the other hand, we do not agree with the assertion that, as a legal matter, remand determinations must be published in the **Federal Register**, and we are reluctant to incur the expense of such publication when less expensive alternatives are available. In addition, we do not believe that it is necessary to publish a **Federal Register** notice announcing the existence of a remand determination, because the court or binational panel opinion giving rise to the remand determination will indicate to the public that a case has been remanded and that a remand determination will be forthcoming.

Accordingly, the Department intends to take the following steps to make remand determinations more readily accessible. First, the Department will place the public version of each remand determination on its Internet page so that remand determinations will be available electronically. While this step may not permit electronic research, if there is sufficient interest in conducting such research we would expect that one or more of the commercial online research systems would begin to include remand determinations in their databases, just as they do in the case of ITC determinations that are not published in the **Federal Register**.

Second, the Department will place the public version of a remand determination in the public file (located in the Department's Central Records Unit) for the AD/CVD proceeding to which the determination pertains. In addition, to further facilitate access, the Central Records Unit also will maintain a separate, chronological file containing public versions of all remand determinations.

The Department hopes that through these steps it will have addressed the concerns giving rise to the comments. If these steps prove to be inadequate, we

remain open to further suggestions on improvement.

Third country AD petitions: One commenter suggested that the Department include in its regulations a provision for implementing new section 783 of the Act, which deals with third country antidumping petitions. The commenter also suggested that any regulation should expressly provide that such petitions may be filed on behalf of a regional industry or industries in the third country. We have not adopted this suggestion because we believe that it is more appropriately addressed to the Office of the U.S. Trade Representative.

Binding ruling procedure: A few commenters proposed that the Department should institute a system for issuing binding letter rulings under which persons could obtain advance rulings regarding the application of the Act and the regulations to particular factual scenarios. Absent misrepresented, incomplete, or changed facts, these rulings would be binding for purposes of an AD/CVD proceeding, unless revoked. Even when revoked, the revocation of the ruling would have prospective effect only.

We have not adopted this proposal for several reasons. First, the proponents of this binding letter ruling system contemplated an essentially *ex parte* procedure in which the Department would issue binding rulings within 30 days of receipt of a request for a ruling. In our view, such a procedure would conflict with the numerous procedural safeguards in the Act that are designed to ensure that all sides involved in an AD/CVD proceeding have an equal opportunity to affect the outcome.

These procedural shortcomings cannot be overcome by the fact that parties would be able to challenge the validity of the ruling in, for example, an administrative review in order to have the ruling revoked. Because, under the proposal, the revocation of the ruling would have prospective, rather than retroactive, effect, a successful challenger still would have been denied the opportunity to have input concerning the application of the AD/CVD law to imports covered by a ruling prior to its revocation.

In addition to these procedural defects, we have serious doubts as to the compatibility of a binding letter ruling system with the requirements of section 751(a) of the Act. Section 751(a)(2)(C) of the Act provides that the Department must assess antidumping and countervailing duties (and establish cash deposit rates) in accordance with the results of reviews under section 751(a). Thus, a letter ruling could affect the rate at which entries are liquidated only to the extent that (1) the facts upon which the ruling was based are consistent with the administrative record established in the review, and (2) the Department adopts in the review the policies set forth in the ruling. With certain limited exceptions, it is doubtful that the Department could bind itself to apply the results of a letter ruling in a review.

Having said this, we would consider the adoption of a non-binding ruling procedure. At this point, however, we are uncertain as to whether parties would find such a procedure useful. In addition, the resource requirements that such a procedure would entail could be substantial. Nevertheless, we intend to continue the dialogue with persons having an interest in a possible letter ruling procedure. In addition, if a sufficient number of persons indicate an interest, we will convene a hearing on this topic.

Subpart C—Information and Argument

Subpart C of part 351 deals with collection of information and presentation of arguments to the Department.

Section 351.301

Section 351.301 sets forth the time limits for submission of factual information in investigations and reviews.

Time limits for submission of factual information in investigations and reviews: Section 351.301(b)(1) provides that with respect to investigations, submission of factual information is due no later than seven days before the verification of *any* person is scheduled to commence. Several commenters suggested that the deadline be revised to provide for submission of factual information no later than seven days before the verification of *the* respondent to which the information applies is scheduled to commence. The commenters expressed concern that the proposed regulation unjustly penalizes respondents whose information will not be verified until very late in the verification schedule and that where there are multiple respondents, the different respondents may not be aware of the other respondents' verification schedules.

We have not adopted this suggestion. In the past there has been some confusion over the deadline for submission of factual information. In furtherance of the goal of simplifying the Department's procedures, the regulations clarify that the deadline for submission of factual information is identical for all parties. Contrary to the suggestion that this penalizes respondents scheduled for verification late in the verification schedule, a single deadline ensures fairness in that all parties have an equal amount of time to submit factual information to the Department. Furthermore, a single deadline ensures that Department analysts have time to review submitted information before they depart for verification, particularly where they are scheduled to perform consecutive verifications of different respondents. The Department recognizes the concern that different respondents may not be aware of other respondents' verification schedules and, as such, will respond promptly to inquiries as to the date on which the first verification is scheduled to commence once that date has been set.

Section 351.301(b)(2) provides that with respect to administrative reviews, submission of factual information is due no later than 140 days after the last day of the anniversary month. One commenter suggested that the deadline for submission of factual information in administrative reviews be triggered by publication of the notice of initiation as are the deadlines for submission of factual information in other types of reviews. Another commenter suggested that the Department allow for submission of factual information in administrative reviews up to 30 days after the publication of the preliminary determination. A number of commenters also suggested that the Department should automatically extend the deadline for submission of factual information whenever it extends the deadline for the preliminary or final determinations in an administrative review.

We have not adopted these suggestions. The deadline for submission of factual information in administrative reviews is tied to the anniversary month because the statutory deadlines for preliminary and final determinations are tied to the anniversary month (*see* section 751(a)(3) of the Act). In contrast, the deadlines for submission of factual information in other types of reviews such as new shipper, changed circumstances, or sunset reviews are tied to the publication of the notice of initiation because the statutory deadlines for preliminary and/or final determinations in these proceedings are either tied to initiation or not prescribed (*see*, *e.g.*, paragraphs (a)(1)(B), (b), and (c) of section 751 of the Act). Furthermore, because the Department normally conducts verification prior to issuing its preliminary determination in an administrative review, a deadline for submission of factual information of up

to 30 days *after* the preliminary determination would not allow sufficient time for analysis and, if necessary, further submissions upon request prior to any scheduled verifications. Finally, although the regulations do not provide for automatic extension of the deadline for submission of factual information in reviews whenever the deadline for the preliminary or final determinations is extended, the Department may extend any time limit, including deadlines for submission of factual information, for good cause (*see* § 351.302). Because the Department's decision to extend the deadline for its determination in an administrative review may be based on the fact that, for example, there are a significant number of respondents to review or a number of complicated issues to resolve, automatic extension of the deadline for submission of factual information might result in the filing of additional information requiring further analysis and review, thereby frustrating the objective of the Department to allow additional time for making its determination.

Proposed sections 351.301(b) (1)-(4) provided that where verification is scheduled for a person, factual information requested by verifying officials will be due no later than seven days after the date on which the verification of that person is complete. Two commenters suggested that the seven-day deadline be eliminated and that Department analysts be allowed to establish the deadlines for such submissions on a case-by-case basis. One commenter suggested in the alternative that the regulations should qualify the deadline with the word ''normally'' to make it clear that the deadline can be extended where appropriate.

We have not eliminated the seven-day deadline for post-verification submissions; however, we have added the word ''normally'' to the regulations to clarify that the deadline can be extended where appropriate. The seven-day deadline provides an equal amount of time for all parties to file post-verification submissions upon request and provides guidance to other parties to the proceeding, including petitioners, as to when such submissions can be expected. Whether or not a regulation includes the qualifier ''normally,'' the Department retains the authority to extend any time limit established in these regulations unless precluded by statute (*see* § 351.302(b)). As stated in the preamble to the proposed regulations, ''[p]arties should not draw an inference that simply because a particular deadline does not explicitly address the Department's authority to extend such deadline that the Department may not do so. Unless expressly precluded by statute, the Secretary may extend any deadline for good cause'' (61 FR at 7325).

One commenter proposed that the regulations provide that petitioners are required to submit any pre-verification comments at least seven days before verification. We have not adopted this proposal. There is no limitation on the submission of comments—as opposed to new factual information—prior to verification. Written argument may be submitted at any time during the course of an AD/CVD duty proceeding through the submission of case and rebuttal briefs (*see* § 351.309 (note that § 351.309(c)(2) provides that the case brief must present all arguments that a party wants the Department to consider in its final determination or final results of review)). While it may be in a party's interest to submit pre-verification comments at least seven days before verification so that the Department has sufficient time to consider them prior to verification, it is not required.

Time limits for certain submissions: Section 351.301(c) sets forth the time limits for certain submissions, including information to rebut, clarify, or correct factual information submitted by another party, information in questionnaire responses, and publicly available information to obtain values for factors in nonmarket economy AD cases.

Submission of factual information to rebut, clarify, or correct factual information: Section 351.301(c)(1) provides that any interested party may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party at any time prior to the applicable deadline for submission of such factual information or, if later, 10 days after the date such factual information is served on the interested party or, if appropriate, made available under APO to the authorized applicant. Upon further review, we have revised this provision to eliminate potentially confusing language and to clarify that in no case will a party have less than 10 days to submit factual information to rebut, clarify, or correct factual information submitted by any other interested party.

Two commenters proposed that the regulations provide that only domestic interested parties be allowed to submit new factual information to rebut, clarify, or correct factual information submitted by foreign interested parties. According to the commenters, this would avoid the selective provision of rebuttal information by foreign interested parties. Another commenter proposed that the 10-calendar day deadline be changed to 10 business days.

We have not adopted either of these proposals. The prior regulations allowed only domestic interested parties to rebut, clarify, or correct factual information submitted by respondent interested parties. However, the Department reconsidered the regulation and the rationale behind it and determined that the goal of accurate determinations is enhanced by allowing any interested party and, as now provided in § 351.312, industrial users and consumers, to comment on submissions of factual information. One commenter specifically expressed support for this change. Additionally, the Department has maintained the 10-calendar day deadline. This deadline is relevant only where factual information is submitted less than 10 days before, on, or after (normally, only with the Department's permission) the applicable deadline for submission of factual information; at this point in the proceeding, the Department and the parties have an interest in finalizing the addition of new factual information to the record. The Department believes that 10 calendar days provide ample time for an interested party to rebut, clarify, or correct factual information submitted by another interested party.

Two commenters proposed that the regulations provide that any interested party may submit factual information to rebut, clarify, or correct factual information contained in the Department's verification reports. We have not adopted this proposal. Verification is the process by which the Department checks, reviews, and corroborates factual information previously submitted. Parties are free to comment on verification reports and to make arguments concerning information in the reports up to and including the filing of case and rebuttal briefs (note that § 351.309(c)(2) provides that the case brief must present all arguments that a party wants the Department to consider in its final determination or final results of review). In making their arguments, parties may use factual information already on the record or may draw on information in the public realm to highlight any perceived inaccuracies in a report. Though comment on the Department's verification findings is appropriate, submission of new factual information at this stage in the proceeding is not, because the Department is unable to verify post-verification submissions of new factual information.

Questionnaire responses: Section 351.301(c)(2) deals with questionnaire responses and other submissions on request. Section 351.301(c)(2)(ii) provides that the Department must give notice of certain requirements to each interested party from whom the Department requests information.

One commenter proposed that the Department should review and revise its questionnaire to reduce reporting burdens. In addition, the commenter suggested that the Department accept the reporting of financial data in the form consistent with the generally accepted accounting principles of the respondent's country of origin. The Department already has significantly revised its standard questionnaire to make it more ''user friendly'' and efficient by simplifying information requests and reducing reporting burdens. One of the areas in which the Department has simplified reporting burdens is in the reporting of cost data. Consistent with past practice and section 773(f)(1)(A) of the Act, the Department normally will calculate costs based on a respondent's records, if such records are kept in accordance with the generally accepted accounting principles of respondent's country of origin and reasonably reflect the costs associated with the production and sale of the merchandise. As such, much of the required reporting of cost and financial data is consistent with a respondent's normal books and records. However, given the requirements of the AD law, it is not always possible to accept the reporting of financial or cost data in the form such data are maintained in a respondent's books and records. To the extent that a party has specific suggestions for improvements in the Department's questionnaire and reporting requirements, the Department welcomes those suggestions. Also, if a questionnaire requirement poses specific difficulties in a particular proceeding, the respondent can request the Department to modify the requirement on an *ad hoc* basis.

One commenter proposed that the regulations provide a deadline for the introduction of issues so that respondents would have adequate time to research, draft, and translate a complete response. The Department has not adopted this proposal. Barring specific statutory or regulatory deadlines or subject matter constraints, parties may raise relevant issues which may arise throughout the course of an AD/CVD duty proceeding. A generalized deadline on raising issues would have unforeseeable consequences such that we do not feel confident in foreclosing debate on them in advance. Furthermore, the Department may request any person to submit factual information at any time during a proceeding (*see* § 351.301(c)(2)(i)).

Two commenters proposed that the regulations indicate that the Department is required to rapidly respond to a respondent's request for clarification of an information request. One of the commenters proposed a three-day deadline for response, which, if not met, would lead to an automatic extension of the time for the respondent to supply the information in question by the length on time it took the Department to provide the necessary clarification. The Department has not adopted this proposal. The Department makes every effort to respond to requests for clarifications as soon as possible. Hence, a specific regulatory deadline is unnecessary. While it is possible that the Department might find good cause for granting a request for an extension where response to a clarification request was delayed, an automatic extension provision could lead to the filing of clarification requests simply to extend the deadline for filing a questionnaire response or other submission.

One commenter proposed that the regulations provide that the Department must notify a party if the information it submitted is deficient and provide the party with an opportunity to remedy the deficiency. The Department has not adopted this proposal as this issue is covered specifically in the statute (*see* section 782(d) of the Act), and, as noted above, the Department has sought to avoid repeating the statute in the regulations. Parties will be informed in the initial questionnaire, and in supplemental questionnaires, that failure to submit requested information in the requested form and manner by the date specified may result in the use of facts available under section 776 of the Act and § 351.308. The Department's practice is to send a respondent a supplemental questionnaire where the Department needs clarification of a response or the Department seeks additional information to address questions arising out of reported information. The Department, however, will not necessarily repeat a precise or direct question that the respondent has not answered. The decision to specifically inform a party that information it submitted is deficient is a decision that can only be made on a case-by-case basis taking into consideration the Department's initial information request and the party's response to that request.

One commenter suggested that the Department reduce the scope of supplemental questionnaires to curb the use of data demands as a tactical measure by petitioners to harass respondents by imposing additional financial burdens on them. The Department disagrees with the characterization of the issuance of supplemental questionnaires as a method to harass respondents. In its supplemental questionnaires, the Department typically seeks clarification of reported information or seeks responses to questions precipitated by reported information. In drafting its supplemental questionnaires, the Department may incorporate lines of questioning based on input from petitioners. However, where the Department chooses to use input from petitioners, it does so precisely because such input is constructive. The Department only requests information it deems to be necessary and will continue to do so. However, a blanket requirement that supplemental data requests be reduced is inconsistent with the Department's obligation to conduct a thorough investigation based on the necessary facts.

Section 351.301(c)(2)(iii) provides that interested parties shall have at least 30 days from the date of receipt to respond to the full initial questionnaire. This subparagraph also provided that the ''date of receipt'' will be seven days from the date on which the initial questionnaire was ''transmitted.''

One commenter proposed that the regulations require the Department to release the questionnaire within five days after initiation. We have not adopted this proposal. Release of the questionnaire immediately after initiation, particularly in investigations, often is not possible because the Department needs input from companies, for example, to identify appropriate respondents, tailor information requests, and format requirements to the specific merchandise under investigation. The Department will continue its current practice of releasing the questionnaire as soon as possible.

Another commenter proposed that the regulations provide a mechanism under which the Department would consult with the parties and decide certain issues—such as date of sale, product matching criteria, the identity of affiliated parties, whether downstream sales by affiliated parties in the home market should be reported, and whether affiliated party transactions are at arm's length—prior to the issuance of the questionnaire. The Department has not adopted this proposal. Consistent with its normal practice, the Department already consults with parties and decides certain issues prior to issuance

of the questionnaire. For example, the Department normally consults with the parties to identify appropriate respondents or model matching criteria. However, deciding all of the issues listed by the commenter prior to release of the questionnaire is not feasible. Either an issue cannot be decided until the Department has reviewed and analyzed all of the submitted data or it is not practicable to gather all of the data necessary to decide the issue prior to release of the questionnaire given the statutory time limits for conduct of investigations and reviews.

Two commenters proposed that the regulations provide interested parties at least 30 days to respond to a questionnaire or any part of a questionnaire. Other commenters proposed that the regulations provide for at least 45 days to respond to the questionnaire or for automatic 15-day extensions upon request. Finally, another commenter proposed that the regulations provide for an additional 30 days to respond to a questionnaire that requests information on two administrative reviews in situations where the Department has deferred initiation of an administrative review for one year and that all deadlines for the deferred administrative review are counted with respect to the later POR's anniversary month. The SAA, at 866, provides that interested parties shall have at least 30 days from the date of receipt to respond to the full initial questionnaire. As the Department explained in the preamble to the proposed regulations, 61 FR at 7324, the time limit for response to individual sections of the questionnaire, if the Secretary requests a separate response to such sections, may be less than the 30 days allotted for response to the full questionnaire. For example, the Department anticipates that the response to section A of an AD questionnaire, which seeks general information about a company, will be due before the expiration of the 30-day period. The Department's ability to timely identify appropriate respondents, in particular, would be hampered were the Department to delay the deadline for submission of this information. The Department, therefore, has not adopted the proposal that parties be granted 30 days to respond to any part of the questionnaire. Likewise, the Department has not adopted the proposal that the regulatory deadline for questionnaire responses be extended to 45 days. Only with prompt responses will the Department be able to meet its statutory obligations of conducting timely investigations and administrative reviews. Parties can, if necessary, request an extension of the time limit for submission of a questionnaire response under § 351.302. The Department also has not adopted the proposal that the regulations provide a 60-day deadline for submission of questionnaire responses where the Department has deferred initiation of an administrative review. While the Department will examine and would like to adopt schedules that allow a longer questionnaire response time for deferred reviews, it is reluctant to adopt such a regulation prior to gaining experience in administering deferred reviews. The Department also believes that it is appropriate to determine a deadline on a case-by-case basis taking into consideration the companies and merchandise under review. Because the Department has no experience yet with the deferred administrative review provision and, hence, cannot foresee every timing issue that might arise, it has not codified in the regulations the proposal that all deadlines for the deferred administrative review be counted with respect to the later POR's anniversary month. The proposal on its face makes sense, however, and the Department will attempt to implement it in practice.

With respect to the ''transmission'' of the questionnaire, one commenter proposed that the regulations define ''transmitted'' and provide for notification of parties when ''transmission'' occurs. Another commenter proposed that the regulations provide that seven days should be added to the date of transmission of the questionnaire to calculate receipt date only where the agency does not have evidence that the questionnaire was actually received at an earlier date. One commenter opposed this second proposal.

We have not adopted either proposal. The Department considers the date of transmission to be the date the Department indicates on the questionnaire. Thus, it is obvious from looking at the document when ''transmission'' has ccurred, and, as such, it is not necessary to codify this definition in the regulations. The Department has not adopted the second proposal because it is not practicable for the Department to try and keep track of a possible range of receipt dates.

Section 351.301(c)(2)(iv) provides a 14-day deadline for notification by an interested party, under section 782(c)(1) of the Act, of difficulties in submitting a questionnaire response. Section 782(c)(1) of the Act provides that, if promptly asked to do so by an interested party, the Department may modify its requests for information to avoid imposing an unreasonable burden on that party.

One commenter proposed that the regulations recognize that the Department's questionnaire may be modified to reduce reporting burdens under certain circumstances pursuant to section 782(c)(1) of the Act. In our view, section 351.301(c)(2)(iv) of these regulations does just that.

Another commenter proposed that any notification by a foreign interested party of difficulties in submitting information in response to the Department's questionnaire must be placed formally on the record of the proceeding. With respect to this suggestion, it was always the Department's intent under § 351.301(c)(2)(iv) to require notification in writing. However, to avoid any confusion, the final regulation clarifies that such notification is to be submitted ''in writing.''

One commenter suggested that the regulations provide petitioners with a right to comment on requests to modify an original questionnaire at the time the request is made. The Department has not adopted this proposal. As the Department explained in the preamble to the proposed regulations, parties have the right generally to submit comments on any relevant issue throughout the course of a proceeding. As such, the Department does not believe that a specific regulation addressing this issue is necessary. *See* 61 FR at 7324.

One commenter proposed that the regulations ensure that difficulties experienced by interested parties (in particular, small companies) will be taken into account when the Department requests information and plans and conducts verification. In addition, the commenter proposed that the regulations include provisions that the Department will take into account the size of the respondent in assessing the adequacy of a response and also in determining whether facts available should be applied, and, if so, whether an adverse inference should be drawn.

With respect to these suggestions, section 782(c)(2) of the Act provides that the Department will take into account difficulties experienced by interested parties, particularly small companies, in supplying information, and will provide any assistance that is practicable. The statute does not indicate that the Department is specifically required to take into account the *size* of the company in assessing the adequacy of the response or whether application of adverse facts available is applicable. Rather, section 776(b) of the Act provides for use of an

adverse inference where the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information.'' Under this standard the Department may consider the size of a company in determining whether it acted to the best of its ability. Any decision to do so would be made on a case-by-case basis.

One commenter proposed that the regulations provide that the 14-day deadline for notifying the Department under section 782(c)(1) of the Act of difficulties in submitting information in response to a questionnaire is subject to extension upon request and that the request need not be made within the 14-day period. We have not adopted this proposal. Section 351.302 of these regulations contains the general provision for extensions of time limits upon request. As such, a specific provision regarding the 14-day deadline is unnecessary. Whether the Department would grant an extension of the 14-day period where the request for the extension was filed after the 14-day period had expired can only be determined on a case-by-case basis upon review of the party's explanation of the ''good cause'' for such a request and for the lateness of the request.

Section 351.301(c)(2)(v) indicates that a respondent interested party may request that the Department conduct a questionnaire presentation during which Department officials will explain the requirements of the questionnaire. One commenter proposed that the regulations clarify that explanations provided during a questionnaire presentation are not intended as a modification of the questionnaire or as an ''understanding'' between the Department and any respondent regarding the questionnaire, except as expressly provided in the questionnaire or subsequent modifications and supplements to the questionnaire. Furthermore, the commenter proposed that the regulations provide that the substance of a questionnaire presentation be memorialized for the record.

The Department agrees in principle with these proposals but does not believe that a specific regulation is necessary. Any modifications or supplements to the questionnaire, or any agreed-upon changes in reporting requirements between a respondent and the Department will be reflected in the record.

Submission of publicly available information to value factors: Section 351.301(c)(3) contains the time limits for submission of publicly available information to obtain values for factors in nonmarket economy AD cases. One commenter expressed support for the proposed deadlines. Another commenter proposed changing the deadline for such submissions to the date the case briefs are due. The commenter argued that this minor difference (the proposed deadlines are approximately 10 days before the date for submission of case briefs) will still allow the other parties to comment on the new information in their rebuttal briefs, while permitting the potential submitting parties to make the decision on what information is relevant, worth obtaining or placing on the record at a time when arguments in the case brief have been drafted, thus preventing missed documents or cluttering of the record with documents ultimately deemed unnecessary by the submitter.

While the Department agrees with some of the commenter's reasoning, it has not adopted this proposal for several reasons. First, the Department is concerned that the short deadline for filing rebuttal briefs, *i.e.*, five calendar days after case briefs are filed, will not allow parties enough time to prepare rebuttal arguments and review and comment on new factor information. Second, the Department does not believe that inclusion of new factual information with submission of arguments in case briefs allows for thorough analysis by the Department. Finally, inclusion of new factual information in case briefs is not consistent with the purpose of case briefs; namely to comment on what the Department did in its preliminary determination and to place before the Department any arguments that continue, in the submitter's view, to be relevant to the Secretary's final determination or results of review.

Time limits for certain allegations: Section 351.301(d) sets forth the time limits for certain allegations, including allegations concerning market viability, allegations of sales at prices below the cost of production, countervailable subsidy allegations, and upstream subsidy allegations. In response to suggestions from several commenters, we have added a time limit for allegations of purchases of major inputs from an affiliated party at prices below the affiliated party's cost of production.

Allegations regarding market viability: Section 351.301(d)(1) establishes a deadline for allegations regarding market viability of 40 days after the date on which the initial questionnaire was transmitted. Several commenters proposed a longer alternative deadline of 120 days after initiation. Another commenter proposed that the deadline for allegations regarding market viability be tied to the receipt of the response to the relevant section of the questionnaire instead of to the date of transmittal of the initial questionnaire.

We have not adopted either proposal. The information necessary to make allegations concerning market viability typically is contained in a respondent's section A response. Normally section A responses are due no later than 21 days after transmittal of the initial questionnaire. The 40-day deadline, therefore, should allow parties sufficient time to review the questionnaire responses and, if desired, make market viability allegations. The regulation makes clear that the Secretary may alter this time limit. The Secretary is likely to do so where the deadline for section A responses is extended, the responses themselves are so incomplete as to hinder a party's ability to make a market viability allegation, or the information necessary to make a market viability allegation is not available as part of the section A response.

Allegations of sales at prices below the cost of production: Section 351.301(d)(2) establishes the time limits in investigations and reviews for allegations of sales at prices below the cost of production (COP) under section 773(b) of the Act.

One commenter proposed that the deadline for cost allegations be extended by seven days to take into account the additional seven days for receipt of the questionnaire. We have not adopted this proposal because the proposed deadlines already take into account the seven days for receipt of the questionnaire by tying the deadline to the date of receipt of the relevant questionnaire response. Country-wide allegations do not depend on information contained in questionnaire responses.

A number of other commenters proposed eliminating entirely the notion of company-specific cost allegations for a number of reasons. One commenter argued that company-specific costs are not likely to be reasonably available to petitioner even after submission of the Section B response.

The Department has not adopted this proposal. Complete company-specific costs normally are not placed on the record until the Department requests them, *i.e.*, typically *after* the Department has initiated a cost investigation. Nonetheless, the Department commonly receives adequate company-specific cost allegations based on data that are reasonably available to the petitioner. In making company-specific cost allegations, petitioners often use data provided for difference in merchandise adjustments and data from a

respondent's financial statements which are submitted with a respondent's section A and B questionnaire responses. In addition, a domestic interested party may compare company-specific home market prices from a respondent's section B response with its own adjusted cost data in order to make a company-specific cost allegation (*see* section 773(b)(2)(A)(i) of the Act).

Two other commenters reasoned that country-wide cost allegations may provide reasonable grounds for an investigation of all respondents even if submitted after receipt of all sales responses because, for example, the allegation could demonstrate that prices among producers are similar and could be based on the cost data of the most efficient producer. The Department believes that where company-specific information has been placed on the record, any subsequent sales below cost allegation must take into consideration such information. As the Department noted in the preamble to the proposed regulations, the SAA at 833 states that the standard for initiation of a sales below cost investigation is the same as the standard for initiating an AD investigation. The Department interprets this to mean that an allegation of sales below cost, like an allegation of dumping, must be supported by information reasonably available to petitioner, including information already on the record. *See* 61 FR at 7324. Therefore, demonstrating that one company's sales are below cost does not demonstrate that other companies' sales are below cost if the other companies' information is reasonably available.

Finally, two additional commenters argued that respondents will do everything possible to avoid submitting responses that could form the grounds for the filing of a COP allegation. It is our experience that respondents do not behave in such a manner. We believe that it is unlikely respondents would intentionally submit grossly deficient responses simply to avoid providing data sufficient to form the basis for a cost allegation. To do so might subject them to the application of adverse facts available, surely a more daunting prospect than the possible initiation of a cost investigation.

One commenter argued that cost allegations on a country-wide basis are not permitted under the statute because the statutory ''reasonable grounds to believe or suspect'' standard for initiating a cost investigation has not changed since the Department adopted a policy of entertaining only company-specific allegations under the CIT's holding in *Al Tech Specialty Steel Corp.* v. *United States*, 575 F. Supp. 1277, 1281 (1983). Contrary to the commenter's suggestion, the SAA at 833 specifically provides for the consideration of cost allegations on a country-wide basis. The commenter also argued that a country-wide allegation must contain some demonstration of the representativeness of the presented data where there are substantial variants of the subject merchandise under investigation. The Department agrees that a country-wide allegation should contain some demonstration of the representativeness of the presented data, but only to the extent that pertinent data are reasonably available to the petitioner.

Allegations of purchases of major inputs from an affiliated party at prices below the affiliated party's cost of production: In response to several comments, we have added a new provision in these final regulations establishing deadlines for allegations under section 773(f)(3) of the Act regarding purchases of major inputs from an affiliated party at prices below the affiliated party's cost of production. One commenter proposed that the regulations provide that such allegations are due within seven days after a COP response is filed. Another commenter proposed that the deadlines be identical to the deadlines for cost allegations.

We have not adopted either of these proposed deadlines. Instead, new § 351.301(d)(3) provides for filing such allegations within 20 days after a respondent files a response to the relevant section of the questionnaire; *i.e.*, the section D response containing cost data. The applicability of this provision is limited, however. Specifically, because the Department's normal practice is to analyze an affiliated supplier's production cost data for major inputs whenever it conducts a cost investigation, this provision is only applicable where the Department has determined to base foreign market value on constructed value for reasons other than that sales were disregarded under the cost test.

Two commenters additionally proposed that the regulations establish a deadline for determining which inputs are deemed to be ''major.'' We have not adopted this proposal. The determination of which inputs are ''major'' must be made on a case-by-case basis taking into consideration the nature of the product, its inputs, and the company-specific information on the record.

Countervailable subsidy and upstream subsidy allegations: Proposed § 351.301(d)(3), now renumbered as § 351.301(d)(4), sets forth the time limits for countervailable subsidy allegations in investigations and reviews and upstream subsidy allegations in investigations. We received one comment regarding this provision which was supportive of the Department's treatment of this issue. After a further review of this provision, we have left it unchanged except for the change in numbering.

Targeted dumping allegations: Proposed § 351.301(d)(4), now renumbered as § 351.301(d)(5), sets forth the time limit for a targeted dumping allegation in an AD investigation. A number of commenters proposed that the deadline for targeted dumping allegations be eliminated, or, at a minimum, revised so as to merely require that an allegation of targeted dumping be made no later than the date case briefs are due. Two commenters reasoned that a targeted dumping analysis does not require the collection of additional data not requested in the questionnaire. Two other commenters reasoned that the deadline should be eliminated because the Department should always test for targeted dumping. One commenter supported the maintenance of a deadline for targeted dumping allegations. The Department has not adopted the proposals eliminating or changing the proposed deadline for targeted dumping allegations. The Department believes that the deadline of 30 days before the scheduled date of the preliminary determination will provide petitioners with sufficient time to analyze the applicable data and submit an allegation if appropriate. To extend the deadline would make it difficult for the Department to consider the allegation for the preliminary determination. However, the Department recognizes the burden such a deadline may place on domestic interested parties in some situations and intends to be flexible with respect to the deadline where appropriate. For example, if the timing of responses does not permit adequate time for analysis, the Department will consider that ''good cause'' to extend the deadline under § 351.302. Additional comments concerning the substantive targeted dumping provisions are discussed below in connection with § 351.414(f).

Section 351.302

Section 351.302 sets forth the procedures for requesting an extension of a time limit and clarifies the Department's authority to grant extensions. In addition, this section explains when and how the Department will reject untimely or unsolicited submissions.

Extension of time limits: Sections 351.302 (b) and (c) provide that the Department may extend a regulatory deadline based upon its own determination that there is good cause to do so or where an interested party shows good cause for such extension. One commenter expressed support for this provision. Another commenter proposed that extensions of up to 15 days will normally be granted upon a reasonable showing of good cause. A third commenter argued that the regulation providing for extensions for ''good cause shown'' is too restrictive and suggested that the regulation provide that the Department will grant an extension where it would not delay the completion of an investigation or review or cause other interested parties difficulties in representing their interests.

The Department has not specifically adopted these suggestions, but does recognize that some of these concepts factor into its decision as to whether good cause has been shown. As the Department indicated in the preamble to the proposed regulations, decisions regarding the possibility of extensions will be based on the ability of the party to respond within the original deadline and the parties' and the Department's ability to accommodate the requested extension. Thus, the Department believes that it is appropriate to determine whether to grant an extension, and for how long, based upon the facts in a particular proceeding. 61 FR at 7326.

Section 351.303

Section 351.303 contains the procedural rules regarding filing, format, service, translation, and certification of documents.

Time of filing: One commenter proposed that the regulations provide that in computing any period of time prescribed or allowed by the statute, the regulations, or the instructions of the Department, when the last day of the period is not a business day, the period runs to the first business day. In our view, the regulations as drafted accommodate the commenter's proposition. Specifically, § 351.303(b) provides that if the applicable time limit expires on a non-business day, the Secretary will accept documents that are filed on the next business day (*see also* § 351.103 describing the location and function of Import Administration's Central Records Unit).

The commenter also proposed that the regulations provide that whenever a period is less than 11 days, intermediate non-business days are excluded from the count. The Department has not adopted this proposal. The very few deadlines in these regulations of less than 11 days were specifically established by the Department after consideration of related timing issues.

Filing of submissions: One commenter suggested that the regulations provide that the additional copies of APO documents should be filed within the applicable time limits for filing business proprietary versions instead of waiting for the one-day lag rule so that analysts have an extra day to review the documents. The Department has not adopted this suggestion. A principal reason that the Department revised and codified the one-day lag rule in the regulations was to avoid the problem of analysts working from documents with mistakes in bracketing of business proprietary information. As a result, § 351.303(c)(2)(i) provides for filing of only one copy of the business proprietary version of a document within the applicable time limit; § 351.303(c)(2)(ii) provides for filing of six copies of the complete, final business proprietary version, *i.e.*, with bracketing mistakes corrected, on the next business day. This final version is the one distributed internally to the analysts. If parties wish to send additional courtesy copies directly to the analysts, they should similarly send this complete, final business proprietary version.

Document markings: We have made a minor change to § 351.303(d)(2)(v) to clarify that only the business proprietary version of a document filed under § 351.303(c)(2)(i) of the one-day lag rule should include the warning ''Bracketing of Business Proprietary Information is Not Final for One Business Day After Date of Filing'' on pages containing business proprietary information.

Translation to English: Section 351.303(e) requires that documents submitted in a foreign language be accompanied by an English translation. One commenter proposed that regulations provide that English language summaries of foreign language documents may be submitted in lieu of complete translations. We have not adopted this proposal. When parties are unable to comply with the English-translation requirement, the Department will work with them on an acceptable alternative. Furthermore, as explained in the preamble to the proposed regulations, parties may submit an English translation of pertinent portions of a non-English language document. 61 FR at 7326. Another commenter proposed that the regulations include this latter clarification. We agree that the clarification that parties may submit an English translation of only pertinent portions of a document, as opposed to the entire document, is helpful and have included it in the final regulations. The regulation makes clear, however, that parties must obtain the Department's approval for submission of an English translation of only portions of a document prior to submission to the Department.

Service of copies on other persons: Section 351.303(f) provides for service of documents filed with the Department on all other persons on the service list. The Department has received a number of informal suggestions and comments by parties seeking permission to serve certain documents by facsimile or other electronic transmission processes. The Department believes that under certain conditions, service by means other than personal service or first class mail is permissible. As a result, we have added new paragraph (f)(1)(ii) to provide for service of public versions and business proprietary versions containing only the server's own business proprietary information on other persons on the service list by facsimile or other electronic means, such as e-mail, where the intended recipient consents to such service. This provision does not apply to filing documents with the Department. Proposed paragraph (f)(1) has been renumbered as paragraph (f)(1)(i).

One commenter proposed that the regulations require the Department to serve all parties on the service list copies of any document that the Department transmits to another party in the proceeding. The commenter also proposed that the regulations require the Department to notify immediately all parties whenever it transmits a document to a party. A second commenter supported these proposals.

The Department has not adopted these proposals. We recognize the importance of making documents available to parties and believe that the current mechanisms for making documents available are adequate. Specifically, for documents the Department releases under APO, under the terms of the APO application (where parties may ask to receive all memoranda generated by the Department) the Department releases such documents to all parties under APO. All public documents, including public versions of documents containing business proprietary information, generated by the Department are made available to parties in our Central Records Unit (see § 351.103). As circumstances warrant, the Department also releases public

documents directly to parties other than the recipient and will continue to do so.

Certifications: Section 351.303(g) provides that each submission containing factual information must be accompanied by the appropriate certification regarding the accuracy of the information. One commenter proposed that the regulations provide that the required party certification may be submitted for the first time when the party files its public version and any corrections to its proprietary version. The Department has not adopted this proposal. A person must file the applicable certification(s) with each submission of factual information, including the original business proprietary version of a document filed with the Department, within the applicable time limits pursuant to § 351.303(c)(2). The public version and the final business proprietary version filed on the following business day must be identical to the business proprietary version filed the previous day except for any bracketing corrections. Therefore, there is no reason why the certification should change.

Another commenter proposed that to authenticate the date of certification, the Department should require an original dated certification sworn before an authorized equivalent to a notary public for each submission. One commenter opposed this proposal. We have not adopted this proposal. The Department believes that such a regulation would not provide substantially greater assurance of completeness and accuracy of submitted information, yet it would further complicate the process of submitting information. We assume that legal counsel, other representatives, and company officials are acting in good faith when they certify to the completeness and accuracy of a specific submission. For this reason, we also have not adopted regulations authorizing sanctions for certification violations as proposed by two commenters.

Section 351.304 [Reserved—APO]

Section 351.305 [Reserved—APO]

Section 351.306 [Reserved—APO]

Section 351.307

Section 351.307 deals with verification of information.

Conducting verification: One commenter suggested that there is no need for automatic verifications where the Department intends to revoke an order as the result of a sunset review. The commenter proposed that the regulations clarify that verifications for sunset reviews should occur only for good cause. The Department has not adopted this suggestion. Section 782(i) of the Act mandates that the Department conduct verification before revoking an order as the result of a sunset review.

Another commenter proposed that the regulations establish 30 days after receipt of the supplemental response as the deadline for verification requests. The commenter was concerned that because the Department frequently grants extensions to respondents to answer questionnaires and supplemental questionnaires, the ability of domestic interested parties to demonstrate the requisite ''good cause'' would be hampered by time constraints.

The Department has not adopted this suggestion. While the regulations establish a deadline for requesting verification in an administrative review upon request where no verification was conducted during either of the two immediately preceding administrative reviews (§ 351.307(b)(1)(v)), there is no deadline for requesting verification in an administrative review based on good cause (§ 351.307(b)(1)(iv)). Thus, nothing prevents domestic interested parties from making good cause arguments at any point in the review, including after supplemental responses are filed. However, the Department's practice is to conduct verification in administrative reviews prior to issuing its preliminary results. Good cause arguments made late in the proceeding may not allow sufficient time for the Department to conduct verification. The third-year verification provision has a deadline for domestic interested parties to request verification of 100 days after publication of the notice of initiation of review. This timeframe allows the Department sufficient time to prepare for verification.

Verification of a sample: Section 351.307(b)(3) provides that the Department may select and verify a sample of exporters and producers where it is impracticable to verify relevant factual information for each person due to the large number of exporters or producers included in an investigation or administrative review. One commenter proposed that the regulation be revised to provide that sample verifications will be relied upon in only exceptional circumstances, and that it is the Department's intention, in cases involving numerous potential respondents, to select a reasonable number of companies that can be examined and verified.

The Department has not adopted this proposal. As provided in the regulation, the Department may verify a sample of respondents where it is impracticable to verify every respondent due to the large number of companies included in an investigation or review. A decision as to whether it is impracticable to verify every respondent is made on a case-by-case basis, considering the circumstances particular to a specific investigation or review.

Verification report: Section 351.307(c) provides that the Department will issue a verification report. One commenter proposed that the regulations require the Department to issue a verification report normally no later than 30 days after completion of verification in an investigation, and no later than 14 days prior to the issuance of preliminary results in an administrative review. Another commenter proposed that the regulations provide that documents that are retained by the Department and designated as verification exhibits in the verification report be served within 48 hours after service of the verification report.

The Department has not adopted these proposals. Because the Department's standard practice is to issue verification reports and require service of verification exhibits as soon as possible after verification, the Department does not believe that specific regulatory deadlines are necessary.

Another commenter proposed that the regulations provide that verification reports will not be released to respondent's counsel for comments on bracketing proprietary information before release to domestic industry counsel because to do so allows respondents to obtain an unfair head-start on preparation of verification comments, case briefs, etc. An additional commenter proposed that draft verification reports, as well as the final report, should be included on the record.

The Department has not adopted either proposal. Because they are not final, draft verification reports, including reports where bracketing has not been finalized, are not included in the record or released generally to all interested parties. Furthermore, release of an unfinished version of the final document risks inadvertent release of business proprietary information belonging to the verified respondent. The sole purpose of providing this draft is to allow a respondent to comment on proper bracketing..

One commenter suggested that regulations should provide that within seven days of the completion of verification, the verifying official should memorialize for the administrative record all requests for new information as a result of the completed verification, the date verification for that company was completed, and any other official

requests for adjustments to the database relied on in the preliminary phase of the proceeding, whether or not considered new information. In addition, the commenter proposed that in a cover letter transmitting the requested information the government or person supplying the requested information should be required to separately identify every change to the computer database from the database relied on by the Department in the preliminary phase, identify every change to the computer database made as a result of the verifying officials' request, and certify that no changes have been made to the database relied on by the Department in the preliminary phase with the exception of those noted in the cover letter.

The Department does not believe that additional specific regulations are necessary, because Department practice already incorporates many of the commenters' suggestions. The Department intends to incorporate the remaining suggestions into its practice because they represent improvements to the verification process.

Procedures for verification: Section 351.307(d) describes certain procedures for verification. A number of commenters proposed that the regulations require the Department to provide respondents with the complete verification outline, including the date and place of verification, the information to be verified, and a detailed outline of verification steps to be followed, by a particular date prior to the commencement of verification. Some commenters proposed seven days; others proposed 14 days.

With respect to these suggestions, the Department in practice issues the verification outline normally not less than seven days prior to the commencement of verification. Thus, a specific regulation on this issue is unnecessary.

One commenter proposed that the regulations provide that any member of the verification team who is not an officer of the U.S. government must agree to be subject to the APO. We have not adopted this suggestion, because as part of the Department's standard practice, individuals that are not Department employees, such as interpreters or embassy personnel, are required to sign a standard non-disclosure agreement regarding limited disclosure of business proprietary information.

Two commenters opposed the Department's stated intention to require respondents to submit any computer programs used to identify sales subject to review in advance of verification. One commenter argued that the computer program was not likely to be helpful because it would reflect the unique aspects of each company's computer systems and it would be very difficult for someone not familiar with the company's computer system to understand the program. The other commenter argued that the record consists of the sales listing and not the programs used to generate that listing. A third commenter expressed support for the Department's intention to request the computer programs.

With respect to these suggestions, where helpful, the Department intends to require that, prior to the commencement of verification, respondents submit any computer programs used to identify the sales subject to investigation or review. If, over time, it becomes clear that nothing helpful to the verification process is gained by reviewing these computer programs, the Department will end this practice.

Another commenter proposed that the regulations provide that all parties have an opportunity to comment on significant aspects of verification, such as notice of verification and the verification outline. Another commenter proposed that the regulations provide that petitioners must submit any pre-verification comments no later than 14 days before the scheduled starting date of any verification.

We have not adopted these suggestions, because subject to the applicable statutory, regulatory, or submission-specific deadlines, parties are free to comment on any aspect of verification.

One commenter proposed that the regulations clarify that the scope of verification is limited to reviewing the accuracy of factual information submitted by respondents and that the Department will pay deference to the verification reports prepared by its analysts. The Department has not adopted these proposals. Consistent with section 782(i) of the Act, the Department will verify, where applicable, information relied on in making its final determination. The SAA at 868 states that the Department is not precluded from requesting further information during a verification. Contrary to the commenter's suggestion, therefore, the Department is not limited during verification to reviewing only the accuracy of factual information previously submitted by respondents. We agree that verification reports are evidence on the record that the Department must consider in making its final determination along with all other relevant information on the record.

Another commenter proposed that the regulations provide that if the Department is not able to trace information in the responses to documents generated by the company or government in the normal course of business or is not able to reconcile the cost of production response to the company's financial statements, the Department will reject the response and use facts available.

Section 776(a)(2)(D) of the Act provides that the Department may use facts available where a person provides information that cannot be verified. In the interest of not repeating statutory provisions in the regulations, the Department has not adopted this proposal.

Other comments: One commenter correctly pointed out that the preamble to the proposed regulations, 61 FR at 7327, incorrectly states that § 351.307(d)(2) provides for access to the records of persons not affiliated with respondents. The correct provision is § 351.307(d)(3).

Several commenters expressed support for the Department's rejection of suggestions by several other commenters that the Department allow a neutral third party to attend verification, copy all documentation relied upon in verification, allow all parties to review all draft verification reports, include in the record both the draft and final versions of the verification reports, conduct verification in Washington, and permit domestic counsel and consultants to participate at verification. *See* 61 FR at 7327 (discussing the Department's original response to these suggestions in the preamble to the proposed regulations). We continue to believe that the original suggestions should not be adopted in the final regulations.

Section 351.308

Section 351.308 deals with determinations on the basis of the facts available.

When to apply facts available: Section 351.308(b) provides that the Department may make a determination based on facts available in accordance with section 776(a) of the Act.

Two commenters proposed that the regulations provide that the Department should take into account the magnitude of the deficiencies or the effect on the margin in applying facts available. One of the commenters suggested that total facts available normally should not be applied unless there is a consistent pattern of inaccurate and unverifiable information which affects the reliability of a substantial portion of the information on which the Department

must rely for its determination. Another commenter proposed that the Department only apply total facts available under extreme circumstances, for example, where a respondent fails to answer a questionnaire, refuses to allow verification, or totally fails verification. An additional commenter proposed that the regulations require the use of facts available when the government or person objects to verification. Another commenter proposed that the regulations provide that facts available may be used to fill gaps in the record. Another commenter proposed that the regulations provide that partial facts available should only be used where the information deemed inaccurate or unverifiable affects a large number of the necessary costs or price comparisons, the information deemed to be inaccurate or unverifiable is likely to have a material effect on the outcome of the calculation, and insufficient transactions remain unaffected by the deficiency to base the dumping margins on those transactions alone.

We have not adopted these suggestions. Some suggestions unnecessarily limit the application of facts available; others already are directly covered by the statute or regulations.

Section 776(a) of the Act provides that the Department may make determinations on the basis of the facts available whenever necessary information is not available on the record, an interested party or any other person withholds or fails to provide information requested in a timely manner and in the form required or significantly impedes a proceeding, or the Secretary is unable to verify submitted information. In addition, § 351.307(b)(4) provides that if a person or government objects to verification, the Department may disregard any or all information submitted by the person in favor of use of facts available.

One commenter proposed that the regulations clarify that where information has been submitted on the record as to a particular issue, facts available will be used only if the information does not meet the requirements of section 782(e) of the Act. The commenter also suggested that § 351.308(a) should be modified to clarify that the use of facts available is subject to sections 782 (c)(1) and (e) of the Act regarding the Department's modification of certain information requirements and paragraph (e) of § 351.308.

We have not adopted these suggestions. Section 351.308(e) provides that the Department will not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the Department if the conditions listed under section 782(e) of the Act are met. This is different from the commenter's proposal that facts available will only be used if information does not meet the requirements of section 782(e) of the Act. Where the Department agrees to modifications of certain information requirements under sections 782(c)(1) of the Act, it would have no reason to apply facts available to a respondent that complied fully with the modified information requirements, barring other problems involving, for example, failure of verification completely or in part.

When to make an adverse inference: Section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party in selecting facts available where the Department finds that that party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information.''

One commenter recognized that the regulations provide the Department with significant discretion in determining when a respondent is ''acting to the best of its ability,'' and urged the Department to apply this standard reasonably and fairly in actual practice. Other commenters proposed that the regulations provide that when a respondent fails to cooperate, the imposition of adverse inferences should be mandatory, not discretionary. These commenters argued that application of neutral facts available when a respondent fails to cooperate with requests for information would undermine the Department's ability to obtain complete, timely, and accurate information when carrying out its statutory obligations.

The Department does not agree that the imposition of adverse inferences is mandatory. Section 776(b) of the Act provides that if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department, in reaching its determination, ''*may* use an inference that is adverse to the interests of that party in selecting from the facts otherwise available.''

A number of commenters proposed that the regulations should provide that generally a good faith effort to provide information responsive to the Department's request meets the ''best of its ability'' requirement. Several parties opposed the ''good faith effort'' standard, arguing that good faith has nothing to do with ''best of its ability.'' One commenter proposed that the regulations provide that in determining whether a respondent has acted to the best of its ability to supply requested data, the Department should take into account all information submitted by respondents. Another commenter suggested that the regulations provide that in determining whether a respondent's failure to provide certain data constitutes grounds for adverse inferences, the Department will consider all circumstances of the respondent's position, including the number of reviews in which identical information has been requested. One commenter proposed that the regulations provide that the Department is required to identify affirmative evidence of a respondent's bad faith before making an adverse inference. One commenter also proposed that the regulations provide that where the Department determines that an interested party has not made a good faith effort, the Department should be required to state on the record the reasons for its conclusion that the interested party had not made a good faith effort before drawing an adverse inference.

The Department has not adopted these proposals. As the Department explained in the preamble to the proposed regulations, the determination of whether a company has acted to the best of its ability will be decided on a fact- and case-specific basis. The Department will consider whether a failure to respond was due to practical difficulties that made the company unable to respond by the specified deadline. It is clear, however, that affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference. *See* 61 FR at 7327–28.

One commenter suggested that the regulations reserve ''punitive'' use of facts available for cases of deliberate misrepresentation of facts because it is not fair to penalize a company for making an economically rational decision about the costs and benefits of whether to participate in a proceeding. Two other commenters proposed that the regulations provide that no adverse inference should be drawn if a party submits information that is in the form that is regularly kept for corporate records, provided that such information is substantially equivalent to the information requested and the party shows that submitting the information requested in the required form would pose a significant burden. Another commenter proposed that the regulations clarify that if late in the

proceeding the Department disagrees with a respondent's methodology, as a result of which the necessary information is not on the record, no adverse inference should be drawn if there is no time to supplement the record. Other commenters proposed that the regulations require that where the Department disagrees with a respondent's methodology on a given adjustment or issue, the Department will provide respondents with a reasonable opportunity to provide any data necessary so that the Department's revised methodology can be based on the company's actual data rather than on adverse facts available.

The Department has not adopted these proposals. As discussed above, the Department will make its determination of whether to apply facts available on a fact- and case-specific basis. The determination of whether a company has acted to the best of its ability to comply with an information request can only be made based on the record evidence in a particular proceeding.

One commenter proposed that the regulations provide that the Department may conclude that a party has ''failed to cooperate by not acting to the best of its ability'' even though it has submitted some information to the agency, if it has not submitted other information requested or failed to clarify an inconsistency the agency identifies. In addition, the commenter proposed that the regulations provide that the Department may use available data in an adverse manner when the Department has determined that a party has failed to cooperate and when no alternative ''adverse'' information is available. The commenter was concerned that respondents may fail to cooperate by deliberately withholding information requested by the Department until verification, but then benefit from use of the information discovered at verification without an adverse inference being made because it becomes the only information available on the record.

While we do not disagree with the substance of the comment, we do not believe that this specific addition to the regulation is necessary. Under section 776 of the Act and § 351.308, the Department has the authority to adequately address these types of situations as they arise.

Another commenter proposed that the regulations provide that respondents must certify that their responses comply with prior Department rulings as to reporting requirements applicable to their company. The commenter also suggests that the regulations provide that the Department will make an adverse inference whenever a respondent fails to comply with prior Department rulings with regard to that company without identifying and justifying such non-compliance.

The Department has not adopted these proposals. The Department may reconsider its position on an issue during the course of a proceeding in light of the facts and arguments presented by the parties. Parties are entitled, at the risk of the Department determining otherwise, to argue against a prior Department determination.

Two commenters proposed that the regulations provide that failure to produce data from ''affiliated'' parties, over which a respondent has no real leverage or control, would not justify the use of adverse inferences. Another commenter proposed that the regulations should provide that where a respondent has made a good faith effort to obtain information from an affiliate, failure of the affiliate to provide the information should not give rise to an adverse inference. One commenter proposed that the Department avoid use of adverse facts available when a foreign law prohibits or constrains an affiliated party from providing to the respondent information requested by the Department. Several commenters also suggested that the regulations provide that failure to produce data where the timeframe for compiling data is unduly short, mistakes in calculations and unintentional errors of commission or omission, and failures to produce all requested documents should not justify the use of adverse inferences.

While we do not disagree with the substance of some of these comments, we do not believe the addition of these specific provisions is warranted. The Department will make determinations on the basis of the facts available and determine whether to apply adverse inferences on a fact- and case-specific basis.

What to use as facts available: One commenter urged the Department to apply its new regulations regarding the selection of facts available in a fair and flexible manner so as to faithfully implement the spirit of the law. Two other commenters proposed that the regulations provide that the Department should consider information submitted by respondents for use as facts available even if it is not ideal in all respects. Another commenter proposed that the regulations provide that in determining what data should be applied as facts available, the Department will take into account all information and arguments supplied by the parties including comments concerning the accuracy of the data to be used as facts available.

With respect to these suggestions, the Department will consider all information on the record, including comments from the parties, in determining what to use as facts available. No additional regulation is necessary to accomplish this.

Another commenter proposed that the regulations make clear that the Department will not follow its previous policy of applying the highest rate ever applied to the respondent to particular sales as ''partial BIA.'' This would be an unlawful use of an adverse inference, because the respondent would have provided information to allow the calculation of margins on the majority of its sales and thus presumably has cooperated to the best of its ability. We have not adopted this suggestion because, the fact that the Department has not adopted the two-tiered methodology for selecting BIA developed under the old law (*see* 61 FR at 7327) does not preclude the Department from applying information in a similar manner under the new facts available provision where such application would be consistent with the new law and regulations.

Several commenters proposed that the regulations provide that all respondents, regardless of the degree to which they are deemed to have cooperated, are entitled to submit comments on what to use as facts available, and to propose independent sources for use as secondary information. Another commenter opposed the proposition that noncomplying respondents be entitled to comment on what information should be used as facts available.

Although the Department has not adopted a specific regulation as suggested, nothing prevents parties from filing comments regarding what to use as facts available. Furthermore, the statute does not limit the specific sources from which the Department can obtain facts available.

One commenter proposed that the regulations provide that data contained in a petition will not be used if it is based on unreasonable and unsubstantiated assumptions, is otherwise distorted or is not corroborated. Another commenter proposed that the regulations provide that information in the petition should only be used as a last resort or when all parties agree to the use of such information, and that petition information may only be used to the extent that it is verifiable and consistent with findings in the investigation or review.

We have not adopted these proposals. Section 776(c) of the Act provides that,

to the extent practicable, the Department will corroborate secondary information, which includes the petition, from independent sources that are reasonably at the disposal of the Department. The Department believes the suggested additional restraints on the use of such information are not warranted.

Corroboration of secondary information: Section 351.308(d) provides that where the Department relies on secondary information, to the extent practicable the Department will corroborate that information from independent sources, such as published price lists, official import statistics and customs data, and information obtained from interested parties during the instant investigation or review.

One commenter expressed support for the Department's rejection of the suggestion that information from a petition be deemed corroborated. The commenter suggested that the final regulations retain the requirement that information from a petition, like information from any other secondary source, must be corroborated.

We have retained this requirement. Consistent with the SAA at 870 and section 776(c) of the Act, §§ 351.308(c) and (d) provide that, to the extent practicable, the Department will corroborate secondary information, including information derived from a petition.

Another commenter proposed that the regulations provide that in determining what facts available to use, the Department will choose the most probative facts available. The Department has not adopted this proposal. The SAA at 870 explains that corroborate means that the Department must satisfy itself that secondary information to be used as facts available has probative value, not that the Department must choose the most probative information as facts available.

One commenter proposed that the regulations provide that the Department may consider information provided by industrial users and consumers in corroborating secondary information. Section 351.308(d) provides that independent sources used to corroborate secondary information ''may include, *but are not limited to,* published price lists, official import statistics and customs data, and information obtained from interested parties during the instant investigation or review.'' The Department has not amended the regulation to include information provided by industrial users and consumers because it is unnecessary. The Department agrees with the commenter that the Department may also consider information provided by industrial users and consumers in corroborating secondary information. The regulation is clear that the list is not an exhaustive list of independent sources.

Section 351.309

Section 351.309 deals with written argument. We have made a minor change to paragraphs (c)(2) and (d)(2) to encourage parties to include a table of statutes, regulations, and cases cited in their case and rebuttal briefs in addition to summaries of their arguments.

Several commenters proposed that the Department accept reply briefs after a hearing. With respect to this proposal, in certain circumstances, the Department may request parties to file reply briefs after a hearing. The Department will decide whether to do so on a case-by-case basis.

Another commenter proposed that the deadline for filing rebuttal briefs in investigations and reviews, under § 351.309(d), be five business days after the filing of case briefs, instead of five calendar days. We have not adopted this proposal. Given the statutory time frame for completion of investigations and reviews, the Department has determined that five calendar days is appropriate.

Section 351.310

Section 351.310 deals with matters related to hearings.

One commenter proposed that the regulations retain the provision that certain high-level employees chair the hearing to ensure that the hearings are effective and useful. The commenter also proposed that the regulations provide that all Department employees who have been involved in the investigation or review normally will be present at the hearing to ensure that those individuals involved in the decision-making process will be familiar with all relevant issues prior to reaching the final determination.

While we agree with the substance of the comments, we do not believe that a specific regulation on this point is necessary. The Department's practice is to have a high-level employee chair the hearing and to ensure that employees involved in the proceeding attend the hearing.

Two commenters proposed that parties should be allowed to comment on any issue raised in the proceeding during the hearing, whether or not that issue is specifically addressed in the party's case brief or rebuttal brief. One commenter proposed that the regulations allow for witness testimony and the collection of new evidence at hearings.

The Department has not adopted these proposals. The introduction of testimony, other new evidence, and new arguments at the hearing is not feasible given that parties will have no way to prepare rebuttals or respond to introduction of new information and argument. Furthermore, the Department would have difficulty analyzing and verifying such new information and argument at this stage of the proceeding.

A number of commenters supported the proposed improvements to the hearing process including allowing for closed hearing sessions to discuss proprietary data. One commenter proposed that § 351.310(f) be revised to allow for consolidated hearings only if all interested parties in each case agree. The Department has not adopted this proposal. However, the Department certainly will take into consideration any opposition to consolidation of hearings in making is decision.

Another commenter proposed that the regulations provide that parties will be notified in advance of the hearing of the issues of concern to the Department. We have not adopted this proposal. The Department has on occasion requested that parties brief specific issues of concern to the Department and will continue to do so where necessary.

Section 351.311

Section 351.311 deals with countervailable subsidy practices discovered during an investigation or review. We received one comment regarding § 351.311 to the effect that the Department should: (1) clarify that § 351.311 covers a broad array of subsidies and subsidy practices; (2) clarify that petitioners do not carry the burden of establishing that a newly discovered subsidy is countervailable, but rather than a subsidy need only be potentially countervailable; and (3) specify how much time is insufficient to preclude the Department from considering a practice in the course of the proceeding. One commenter opposed these suggestions.

We have not adopted these suggestions. With respect to (1), we do not believe that the requested change is necessary, because § 351.311 is not limited by its terms to particular types of subsidies. With respect to (2), we believe that the phrase ''appears to provide a countervailable subsidy with respect to the subject merchandise'' adequately covers practices for which there may not have been a definitive determination of countervailability. Finally, with respect to (3), we agree with the opposing commenter that the time necessary to investigate a

particular subsidy practice will vary from case to case.

Section 351.312

Section 351.312 clarifies the regulatory provisions under which industrial users and consumers are entitled to provide information and comments and clarifies that all such submissions are subject to the Department's standard filing requirements.

One commenter proposed that the phrase ''concerning dumping or a countervailable subsidy'' be deleted from § 351.312(b) because it could be interpreted to limit the right of industrial users and consumers to comment or file information on only the existence or amount of dumping or subsidization. Another commenter proposed that the regulations provide that there is no limitation on the issues that industrial users may address. A third commenter proposed that the regulations define ''relevant factual information'' as used in § 351.312(b) to include information relevant strictly to the substantive issues before the Department, the sections of the statute involved, and the statutory mission of the Department so as to not allow already complex proceedings to be sidetracked because of information and argument submitted on irrelevant issues, such as the impact of orders on consumer prices. The commenter also proposed that the regulations provide for the return of information and briefs that go beyond this definition so that domestic interested parties would not feel obliged to rebut irrelevant argumentation.

We have not adopted these proposals. The language in § 351.312, which provides that industrial users and consumers may submit ''relevant factual information and written argument * * * concerning dumping or a countervailable subsidy'' parallels language in section 777(h) of the Act. The SAA at 871 also states that industrial users and consumers comments ''must concern matters relevant to a particular determination of dumping [or] subsidization * * *.'' This language is intended to clarify that submissions and comments by industrial users and consumers should focus on matters within the purview of the Department's statutory authority to investigate and review dumping and subsidization. In order to address the concerns raised by the commenters, we wish to clarify that industrial users and consumers are not limited to commenting on only the existence or amount of dumping, and, for example, are entitled to comment on the scope of an investigation. However, the Department will not consider comments on matters not within the Department's purview in antidumping and countervailing duty proceedings to be ''relevant.'' Although we recognize the concern raised by the third commenter regarding submissions on ''irrelevant'' issues, we do not consider it appropriate to have a regulation providing for the rejection of information or argument not ''relevant'' to the proceeding because the requisite subjective determinations concerning the relevancy of submissions or parts of submissions throughout the course of the proceeding would be too time consuming.

Proposed § 351.312(b) provided for the submission of relevant factual information and argument to the Department under § 351.301(b) and paragraphs (c) and (d) of § 351.309. Two commenters proposed that the regulations allow for submission of factual information and argument under all provisions of § 351.301 and § 351.309.

Upon further review, we have modified § 351.312(b) to allow for submission of relevant factual information and written argument by industrial users and consumers also under § 351.301(c)(1), providing for rebuttal, clarification, or correction of factual information submitted by another party, and under § 351.301(c)(3), providing for the submission of publicly available information to value factors under § 351.408(c). These provisions, in addition to the ones previously listed in § 351.312(b) provide industrial users and consumers the opportunity to submit relevant information and argument to the Department to assist us in our determinations. In addition, we note that nothing in the regulations or the statute precludes industrial users and consumers from making written submissions upon request from the Department.

One commenter proposed that the Department formally establish a practice of seeking industrial users' comments on the issue of industry support for a petition. With respect to this suggestion, section 732(c)(4)(E) of the Act provides for pre-initiation filing of comments on the issue of industry support for a petition only by those who would qualify as an ''interested party'' if an investigation were initiated. As a result, we have not adopted this proposal. However, the Department has the authority to seek comments from any person, including industrial users, and will determine whether to do so on a case-by-case basis.

Subpart D—Calculation of Export Price, Constructed Export Price, Fair Value, and Normal Value

Subpart D, which corresponds to subpart D of part 353 of the Department's prior regulations, deals with what is commonly referred to as ''AD methodology.'' Specifically, subpart D sets forth rules concerning the calculation of export price (''EP''), constructed export price (''CEP'') and normal value (''NV'').

Section 351.401

Section 351.401 deals with principles common to the calculation of export price, constructed export price and normal value.

Adjustments in general: Section 351.401(b) sets forth certain general principles that the Department will apply with respect to the adjustments that go into the calculation of export price, constructed export price, and normal value. We have revised paragraph (b) by inserting ''and'' between paragraphs (b)(1) and (b)(2). In addition, for the reasons discussed below, we have revised paragraph (b)(1).

Proposed paragraph (b)(1) stated that the party claiming an adjustment must establish the claim to the satisfaction of the Secretary. In connection with this paragraph, two commenters suggested that the Department expressly provide that the respondent bears the burden of establishing that selling expenses incurred in connection with home market sales are direct expenses and that selling expenses incurred in connection with U.S. sales are indirect expenses. These commenters also argued that the regulations should state that the respondent has the burden of establishing its entitlement to any downward adjustment to normal value and any upward adjustment to export price or constructed export price. They argued that, as drafted, proposed paragraph (b)(1) could be construed as placing on domestic interested parties the burden of establishing any downward adjustment to export price or constructed export price.

In drafting proposed paragraph (b)(1), our intent was not to break new ground, but rather to codify an established principle developed and applied over the years by the Department and the courts. According to this principle, the party in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment. In the context of adjustments to normal value, this rule was reflected in 19 CFR § 353.54 (1995) of the former regulations, which served

as the model for proposed paragraph (b)(1). Section 353.54 stated: ''Any interested party that claims an adjustment under §§ 353.55 through 353.58 must establish the claim to the satisfaction of the Secretary.''

Section 353.54, however, dealt only with adjustments to foreign market value (now normal value), whereas in proposed paragraph (b)(1), the Department was seeking to articulate a principle that would be applicable to the calculation of both normal value and export price (or constructed export price). Unfortunately, in the context of adjustments to the U.S. side of the AD equation, proposed paragraph (b)(1), as drafted, could be interpreted as shifting the burden to domestic interested parties, something that was not our intent.

Accordingly, we have revised paragraph (b)(1) to accurately reflect the principle discussed above. In particular, instead of referring to a ''claim'' for an adjustment in an undifferentiated manner, we have referred to the two separate components of an adjustment: The amount and the nature of an adjustment. With respect to establishing the ''nature'' of the adjustment, it is our intent to codify the well-established principle that the Secretary will treat a selling expense related to a U.S. sale as a direct expense unless a respondent interested party establishes to the Secretary's satisfaction that the expense is an indirect selling expense in nature. Conversely, the Secretary will treat a selling expense related to a foreign market sale as an indirect expense unless a respondent interested party establishes that the expense is direct in nature. As the courts have recognized, this assignment of the burden of proof is necessary to provide those in possession of the relevant information with an incentive to produce it. *See, e.g., RHP Bearings* v. *United States,* 875 F. Supp. 854, 859 (Ct. Int'l Trade 1995), and cases cited therein.

A different commenter maintained that proposed paragraph (b)(1) appropriately reflected the Department's practice of requiring a respondent to provide sufficient support for claimed adjustments without, at the same time, imposing rigid presumptions concerning the nature of adjustments. This commenter suggested, however, that the Department should further clarify paragraph (b)(1) by stating that the Department will consider both the nature of the expense and the individual circumstances of each respondent's records and accounting system when determining whether a respondent has provided sufficient support for an adjustment at issue.

This comment relates to another comment addressed in the section entitled ''Other Comments'' at the end of our discussion of subpart D. The issue common to both comments is the extent to which a firm's internal record keeping procedures should dictate the results of an AD analysis. As we state below with respect to the other comment, we have sought, and will continue to seek, ways in which the AD process can be made less onerous for all parties involved. However, the statute imposes certain standards, such as standards relating to adjustments to normal value and export price and constructed export price, that the Department is not free to revise in order to accommodate a particular respondent's accounting practices. Thus, while we certainly would take a respondent's records and accounting systems into consideration in determining whether that respondent had cooperated to the best of its ability, we have not adopted this suggestion to revise paragraph (b)(1).

Price adjustments: Proposed paragraph (c) restated the Department's practice with respect to price adjustments, such as discounts and rebates. The comments we received demonstrated a certain amount of confusion concerning the meaning of paragraph (c), as well as the nature of ''price adjustments'' in general. This confusion may be due, in part, to a lack of precision in the Department's terminology over the years.

In these final regulations, the Department has taken several steps aimed at alleviating that confusion. First, we have added a definition of the term ''price adjustment'' in § 351.102. As discussed above, contrary to the assumption of many commenters, price adjustments are not expenses, either direct or indirect. Instead, price adjustments include such things as discounts and rebates that do not constitute part of the net price actually paid by a customer.

Second, we have made a clarification in paragraph (c) itself. Paragraph (c) now provides that in calculating export price, constructed export price, or a price-based normal value, the Secretary will use a price that is net of any price adjustment that is reasonably attributable to the subject merchandise or the foreign like product. This use of a net price is consistent with the view that discounts, rebates and similar price adjustments are not expenses, but instead are items taken into account to derive the price paid by the purchaser.

The third clarification relates to the Department's policy regarding the allocation of price adjustments. The Department's policy concerning the allocation of both expenses and price adjustments is now contained in a single paragraph, paragraph (g), and is discussed in more detail below.

One commenter suggested that, at least for purposes of normal value, the regulations should clarify that the only rebates Commerce will consider are ones that were contemplated at the time of sale. This commenter argued that foreign producers should not be allowed to eliminate dumping margins by providing ''rebates'' only after the existence of margins becomes apparent.

The Department has not adopted this suggestion at this time. We do not disagree with the proposition that exporters or producers will not be allowed to eliminate dumping margins by providing price adjustments ''after the fact.'' However, as discussed above, the Department's treatment of price adjustments in general has been the subject of considerable confusion. In resolving this confusion, we intend to proceed cautiously and incrementally. The regulatory revisions contained in these final rules constitute a first step at clarifying our treatment of price adjustments. We will consider adding other regulatory refinements at a later date.

Movement expenses: Paragraph (e) deals with adjustments for movement expenses. At the outset, we should note that the Department has restructured paragraph (e) so that paragraph (e)(1) now deals with the term ''original place of shipment'' and paragraph (e)(2) deals with warehousing expenses.

In discussing proposed paragraph (e)(2) (now paragraph (e)(1)), the Department explained that in situations where the Department bases export price, constructed export price, or normal value on sales made by an unaffiliated reseller, the Department intended to measure the movement adjustment from the place of shipment by a reseller, as opposed to the production facility. *See* AD Proposed Regulations, 61 FR at 7330. One commenter observed that this was only a partial explanation, because it did not reflect the principle objective of the statute, which is, according to the commenter, to measure the deduction of movement expenses from both U.S. and foreign market prices from the point of production. Accordingly, the commenter proposed that the Department restate the general rule, as well as the application of the rule in a reseller situation.

The Department recognizes that the term ''seller'' in the proposed paragraph (e)(2) was subject to misinterpretation. Therefore, the Department has modified

this paragraph (which, again, is now paragraph (e)(1)) to clarify that, where the Department bases export price, constructed export price, or normal value on sales by the producer of the subject merchandise or foreign like product, the Department will deduct all movement expenses (including all warehousing) that the producer incurred after the goods left the production facility. However, in situations where the Department uses sales by an unaffiliated reseller (*i.e.*, a person that purchased, rather than produced, the subject merchandise or foreign like product and that is not affiliated with the producer), the Secretary may limit the deduction to movement and related expenses that the reseller incurred after the goods left the place of shipment of the reseller.

The purpose of distinguishing between sales by a producer and sales by an unaffiliated reseller is to avoid deducting expenses that form part of the reseller's cost of acquisition. In this regard, however, one commenter noted that there may be different delivery patterns for home market sales and sales to the United States. In response to this comment, the Department has made paragraph (e)(1) permissive, in order to maintain the flexibility needed to address certain delivery patterns by resellers that differ by market.

Another commenter suggested that paragraph (e) should require expressly that the Department limit adjustments to normal value to movement expenses that are shown to be reasonably attributable to sales of the foreign like product. In addition, the same commenter argued that the Department should not limit adjustments to EP or CEP in any way unless a respondent demonstrates that certain expenses are not reasonably attributable to sales of subject merchandise.

In our view, the issues raised by this commenter involve the allocation of expenses, a topic that the Department has dealt with under paragraph (g), discussed below. Therefore, the Department has not adopted this suggestion to revise paragraph (e).

Another commenter proposed that the Department modify paragraph (e)(1) (now paragraph (e)(2)) to eliminate the reference to warehousing expenses, because whether a particular direct warehouse cost is a movement expense or a selling expense is a fact-specific inquiry. This commenter argued that the proposed rule misleadingly suggested that all warehousing expenses are movement expenses, a concept that is at odds with past Department practice, unwarranted by case law, and unwarranted given commercial practices. According to the commenter, the proposed rule constituted a change in law and practice that was not intended in the URAA. As with all expenses and adjustments, the Department can seek information regarding the nature of any warehousing expenses in its questionnaire, instruct respondents accordingly, and make an appropriate determination, based on the record in each case, as to whether a particular expense qualifies as a movement expense or a selling expense.

The Department has not adopted this suggestion. The URAA specified, for the first time, that the Department is to deduct movement and related expenses from export price, constructed export price, *and normal value,* and that this deduction should account for all such expenses incurred after the merchandise left the place of production. In this regard, the SAA at 823 specifies that in calculating EP and CEP, the Department is to deduct ''transportation *and other expenses, including warehousing expenses,* incurred in bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States.'' (Emphasis added). The SAA includes similar language with respect to the corresponding adjustment to normal value. SAA at 827. In addition, the requirement to deduct warehousing expenses as movement expenses is made even more plain by the language of the Senate Report, which states that the Department must ''when included in the price used to establish normal value, deduct * * * transportation, warehousing, and other expenses incurred in bringing the merchandise from the original place of shipment in the exporting country to the place of delivery in the exporting country or a third country.'' S. Rep. No. 412, 103d Cong., 2d Sess. 70 (1994).

In light of these clear legislative instructions, the Department has continued to provide in paragraph (e)(2) for the treatment of warehousing expenses as movement expenses. However, the Department has modified this paragraph to clarify that the Department will not deduct factory warehousing as a movement expense.

Collapsing of producers: Proposed paragraph (f) described the circumstances under which the Department will treat two or more affiliated producers as a single entity (*i.e.*, ''collapse'' the producers). Proposed paragraph (f) provided for the collapsing of affiliated producers if (1) the producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (2) there is a significant potential for the manipulation of price or production. In addition, paragraph (f) contained a non-exhaustive list of the factors to be considered in identifying a significant potential for the manipulation of price or production.

With respect to paragraph (f), several commenters suggested that the Department should provide that it will collapse affiliated producers only in extraordinary circumstances, an approach which, the commenters alleged, is the Department's current practice. These commenters also proposed that the regulations contain illustrations of the extraordinary circumstances in which the Department will collapse affiliated producers.

Other commenters urged that, in connection with the potential for manipulation, the Department delete the word ''significant.'' According to these commenters, this constitutes an unduly high threshold for collapsing, in conflict with what these commenters alleged to be the Department's existing practice.

Finally, one commenter suggested that the Department clarify that (1) not all of the criteria of paragraph (f) need to be present in order to collapse affiliated producers, and (2) the Department will look to the potential for future price manipulation.

The differing descriptions of the Department's practice offered by the commenters indicates that there has been a degree of confusion concerning the Department's practice of collapsing affiliated producers. We have promulgated paragraph (f) in order to clarify this practice. In particular, the Department has codified the ''significant potential'' criterion. The Department has not adopted the suggestion that it will collapse only in ''extraordinary'' circumstances. A determination of whether to collapse should be based upon an evaluation of the factors listed in paragraph (f), and not upon whether fact patterns calling for collapsing are commonly or rarely encountered.

On the other hand, we have retained the word ''significant'' with respect to the potential for manipulation. The suggestion that the Department collapse upon finding any potential for price manipulation would lead to collapsing in almost all circumstances in which the Department finds producers to be affiliated. This is neither the Department's current nor intended practice. As indicated in paragraph (f), collapsing requires a finding of more than mere affiliation.

We also have declined to include in the regulations examples of situations in which the Department will collapse

affiliated producers. In our view, these determinations are very much fact-specific in nature, requiring a case-by-case analysis, as reflected in the Department's determinations in actual cases, which are published in the **Federal Register**.

With respect to the suggestion that not all of the factors identified in paragraph (f) need be present in order to collapse affiliated producers, to the extent that this suggestion is directed at the factors relating to a significant potential for manipulation, we agree. However, we believe that this principle already is clearly reflected in proposed paragraph (f), and that an additional change is not necessary.

On the other hand, the factors concerning a significant potential for manipulation relate to only one of the two elements that must be present in order to collapse affiliated producers. In addition to finding a significant potential for manipulation, the Secretary also must find the requisite type of production facilities. To clarify this point, we have revised paragraph (f) so that paragraph (f)(1) refers to the two basic elements, while paragraph (f)(2) contains the non-exhaustive list of factors that the Secretary will consider in determining whether there is a significant potential for manipulation.

With respect to the suggestion that the regulations clarify that the Department will consider future manipulation as well as actual manipulation in the past, we agree that the Department must consider future manipulation. However, we believe the proposed regulation was sufficiently clear on this point. In this regard, we selected the standard of ''significant potential'' to deal with precisely this point. In the past, the Department at times had used a standard of ''possible manipulation.'' As recognized recently by the Court of International Trade, this latter standard may require evidence of actual manipulation, whereas a standard based on the potential for manipulation focuses on what may transpire in the future. *FAG Kugelfischer Georg Schafer KGaA* v. *United States*, slip op. 96–108 at 23 (July 10, 1996).

In addition to the changes described above, the Department also has changed what is now paragraph (f)(2)(ii) to clarify that the Department will examine not only whether affiliated producers share management or board members, but also whether they share board members or management with, for example, a common parent.

Allocation of expenses and price adjustments: Proposed paragraph (g) dealt with the treatment of expenses that are reported on an allocated basis. In response to the substantial number of comments we received concerning the subject of allocation, we have revised paragraph (g) to provide greater clarity with respect to the allocation of expenses. In addition, we have expanded the coverage of paragraph (g) to include the allocation of price adjustments, and we have revised the heading of paragraph (g) accordingly. Also, we have renumbered proposed paragraph (g) as paragraph (g)(1).

By way of background, neither the pre-URAA statute nor the Department's prior regulations addressed allocation methods, although issues relating to allocation methods arose in almost every AD investigation and review. Instead, the Department and the courts resolved these issues on a case-by-case basis. The resulting absence of guidelines has been responsible for a considerable amount of litigation that increased the costs of AD proceedings for all parties involved, including the Department. Therefore, the Department believes that its administration of the AD law would be enhanced by the adoption of some general guidelines on allocation methods that provide a greater measure of certainty and predictability.

The statute, as amended by the URAA, continues to be silent on the question of allocation methods. However, the SAA at 823–24 states that ''[t]he Administration does not intend to change Commerce's current practice, sustained by the courts, of allowing companies to allocate these expenses when transaction-specific reporting is not feasible, provided that the allocation method used does not cause inaccuracies or distortions.'' Although this statement was made in the context of deductions from constructed export price for direct selling expenses, we believe that the principle embodied in the statement applies equally to price adjustments and other types of selling expenses, as well.

The commenters disagreed with respect to the Department's treatment of allocated expenses and price adjustments and the interpretation to be accorded the language in the SAA. Several commenters argued that all allocations result in the attribution of expenses and price adjustments to some sales that did not incur them, and remove them from some sales that did. These commenters essentially argued that, as compared to transaction-specific reporting, all allocation methods are defective. Therefore, they asserted, the Department should consider all allocation methods to be inaccurate or distortive within the meaning of the SAA.

With respect to these comments, the Department agrees that allocated expenses or price adjustments may not be as exact as expenses or price adjustments reported on a transaction-specific basis. However, in our view, the drafters of the URAA and the SAA could not have intended that all allocations are inherently distortive or inaccurate for purposes of the AD law. Under such an interpretation (1) Congress and the Administration permitted something less than transaction-specific reporting, but (2) because allocation methods are *per se* inaccurate and distortive, only transaction-specific reporting is acceptable.

In our view, the drafters of the URAA and the SAA were not dealing with abstract concepts, but instead were dealing with issues concerning the application of a law to real life factual scenarios. As the Federal Circuit stated many years ago in connection with this very issue: ''In a purely metaphysical sense, Smith-Corona is correct in that the ad expense cannot be directly correlated with specific sales. Yet, the statute does not deal in imponderables.'' *Smith-Corona Group* v. *United States*, 713 F.2d 1568, 1581 (1983). Therefore, when the drafters referred to allocation methods as causing ''inaccuracies or distortions,'' they must have been referring to allocation methods that result in inaccuracies or distortions that are unreasonable in light of the objectives of the AD law.

General rule: With the preceding discussion in mind, we now turn to a discussion of the specific provisions of paragraph (g). Paragraph (g)(1) contains the basic principle that the Department will follow in dealing with allocated expenses and price adjustments, and continues to establish a preference for transaction-specific reporting. There are two principal changes from proposed paragraph (g).

First, we have revised paragraph (g)(1) to provide that the Secretary will consider allocated expenses and price adjustments if the Secretary is satisfied that the allocation method used ''does not cause inaccuracies or distortions.'' As discussed above, because all allocation methods are, in some sense, inexact, the Department intends to reject only those allocations methods that produce unreasonable inaccuracies or distortions.

Second, we have revised paragraph (g)(1) to cover the allocation of price adjustments. As discussed in connection with § 351.102(b) and the new definition of the term ''price adjustments,'' price adjustments are distinguishable from expenses.

In this regard, we received several comments that addressed the relevance of *Torrington* v. *United States*, 82 F.3d 1039 (Fed. Cir. 1996), to the allocation of price adjustments. In that case, although the Court appeared to question whether price adjustments constituted expenses at all, *id.*, at 1050, note 15, it held that assuming that the price adjustments in question were expenses, they had to be treated as direct selling expenses rather than indirect selling expenses. According to the Court, ''[t]he allocation of expenses . . . does not alter the relationship between the expenses and the sales under consideration.'' *Id.*, at 1051.

In our view, *Torrington* is of limited relevance to the instant issue, because the Court did not address the propriety of the allocation methods used in reporting the price adjustments in question. Instead, it simply stated that regardless of the allocation methods used, the Department could not treat the price adjustments as indirect selling expenses. Moreover, these regulations are consistent with the holding of the case, because, by distinguishing price adjustments from expenses, we have ensured that the Department will not treat price adjustments as any selling expenses, including indirect selling expenses.

Reporting allocated expenses and price adjustments: Paragraph (g)(2) deals with the information that a party must provide when reporting an expense or a price adjustment on an allocated basis. One commenter expressed concern that proposed paragraph (g) placed too much emphasis on the Department's responsibility to verify an allocation method, and insufficient emphasis on a respondent's obligation to demonstrate its entitlement to an adjustment based on a particular allocation method. We agree with the commenter, and have added paragraph (g)(2) in order to address the commenter's concern.

First, the party must demonstrate to the Secretary's satisfaction that it is not feasible to report the expense or price adjustment on a more specific basis. Such a demonstration should include an explanation of accounting systems, the manner in which the expenses or price adjustments are incurred or granted, and an explanation of the accounting practices in the industry in question.

In addition, paragraph (g)(2) also requires a party to explain why the allocation method used does not cause inaccuracies or distortions. With respect to this latter requirement, it is not our intent to require a party to ''prove a negative'' or demonstrate what the amount of the expense or price adjustment would have been if transaction-specific reporting had been used. However, the party must provide a sufficiently detailed explanation of the allocation method used so that the Department can make an initial judgment at the time when information is submitted as to the reasonableness of the method and, if necessary, issue a supplemental questionnaire. Of course, allocation methods, like any other type of factual information, are subject to verification.

In this regard, we have not identified in paragraph (g) itself specific types of allocation methods that the Department would consider as acceptable. Before doing so, we first would like to gain more experience in applying paragraph (g) in actual cases. However, there are certain types of allocation methods that we believe would be acceptable.

One such allocation method applies to cases where the Department uses averages, such as when using the average-to-average price comparison method under section 777A(d)(1)(A)(i) of the Act and § 351.414(d). In such instances, we would consider as acceptable an allocation method that allocates total expenses incurred, or total price adjustments made, in connection with sales included within an averaging group over those sales.

For example, assume that an averaging group consists of sales of products X, Y, and Z. The respondent in question is able to identify the warranty expenses incurred in connection with sales of X, Y, and Z in the aggregate, but cannot identify the warranty expenses incurred on a product-specific basis. In this situation, it would be acceptable for the respondent to allocate the total warranty expenses over total sales of products X, Y, and Z. Because the sales of products X, Y, and Z will be averaged together, transaction-specific reporting, if it were feasible, would achieve the same result as the allocation method just described.

In addition, while not addressed in paragraph (g), the Department normally will accept an allocation method that calculates expenses or price adjustments on the same basis as the expenses were incurred or the price adjustments granted. Thus, for example, where a producer offers a rebate conditioned on the purchase of a certain amount of merchandise, it would not be inaccurate or distortive to spread the value of the rebate over the purchases needed to earn the rebate. Similarly, if a producer granted a $100 rebate for a particular month, it would not be inaccurate or distortive to apportion that $100 over all sales made during that month. Such a method merely apportions the price adjustment over the sales on which it was actually earned.

Feasibility: Paragraph (g)(3) deals with the factors the Secretary will take into account in determining (1) whether transaction-specific reporting is not feasible under paragraph (g)(1); or (2) whether an allocation is calculated on as specific a basis as is feasible under paragraph (g)(2). Paragraph (g)(3) provides that among the factors the Secretary will take into account are: (i) the records maintained by the firm in the ordinary course of its business; (ii) normal accounting practices in the country and industry in question; and (iii) the number of sales made by the firm during the period of investigation or review.

In this regard, one commenter suggested that the Department should clarify that it will accept allocated expenses or price adjustments where transaction-specific reporting is neither appropriate nor ''reasonably feasible.'' In response, another commenter objected to any departure from the language of the SAA, which refers to ''feasible'' rather than ''reasonably feasible.''

With respect to these comments, the Department agrees with the second commenter that the standard in the SAA is ''feasible,'' not ''reasonably feasible.'' On the other hand, the feasibility of reporting transaction-specific information is not something that the Department can analyze in the abstract, but instead is something that the Department must consider on a case-by-case basis. For example, what may be feasible for firms in one industry may not be feasible for firms in another. In our view, paragraph (g)(3) appropriately reflects these types of considerations.

Some commenters suggested that in assessing the feasibility of transaction-specific reporting, the Department should look solely to the records of the party in question to determine what level of detailed reporting is feasible. The Department has not adopted this suggestion, because it might provide an incentive for firms that are (or are likely to be) subject to an AD proceeding to maintain their records in a less specific manner than they otherwise would. Although the Department will accept allocated expenses or price adjustments in certain circumstances, the regulations still retain a preference for transaction-specific information.

Allocation methods involving ''out-of-scope'' merchandise: Paragraph (g)(4) deals with the issue of allocation methods that involve ''out-of-scope'' merchandise. Specifically, paragraph (g)(4) deals with situations in which an allocation includes expenses or price

adjustments that were incurred or made in connection with sales of merchandise that is not ''subject merchandise'' or a ''foreign like product.'' In some cases, the inclusion of ''out-of-scope'' merchandise *per se* has been considered as rendering an allocation method as distortive and, thus, automatically unacceptable.

In our view, such a position is too extreme. An allocation method that includes ''out-of-scope'' merchandise is distortive only where the expenses or price adjustments likely are incurred or granted disproportionately on the out-of-scope or the in-scope merchandise. However, based on our experience, there is no basis for irrebuttably presuming such disproportionality without regard to the facts of a specific case.

Therefore, paragraph (g)(4) provides that the Secretary will not reject an allocation method solely because the method includes ''out-of-scope'' merchandise. Instead, the Secretary will apply the standards of paragraph (g) to ensure that the allocation method used is not inaccurate or distortive. However, in the case of these types of allocation methods, it will be particularly important that a party claiming an adjustment provide the explanation required under paragraph (g)(2) as to why the allocation method used is not inaccurate or distortive. In addition, the Secretary will pay special attention to the extent to which the out-of-scope merchandise included in the allocation pool is different from the in-scope merchandise in terms of value, physical characteristics, and the manner in which it is sold. Such information will be important in determining whether it is more or less likely that expenses were incurred, or price adjustments were made, in proportionate amounts with respect to sales of out-of-scope and in-scope merchandise.

Additional comments: In connection with the topic of allocation methods, many commenters made suggestions as to the manner in which the Department should classify expenses and price adjustments as direct or indirect. The Department has not adopted these suggestions for the following reasons. First, insofar as expenses are concerned, the method of allocating an expense does not dictate the nature of the expense. *Torrington, supra,* at 1051. Second, with respect to price adjustments, as discussed above, price adjustments are neither direct nor indirect expenses, but rather are additions or deductions necessary to arrive at the actual price paid by the customer.

Several commenters stated that the Department must be careful in evaluating (1) a respondent's procedures for granting price adjustments, and (2) the extent to which allocations used by a respondent in its normal business records are non-distortive. According to these commenters, if the Department sets standards that, in practice, result in the rejection of most or all allocated price adjustments and expenses, the result will be distorted comparisons.

The Department agrees with the notion that it should attempt to use allocations that are based on the most precise information available in light of a respondent's books and records. Such an approach helps to avoid comparisons that do not reflect the actual prices paid by customers or the actual expenses incurred by respondents. On the other hand, the Department cannot allow a respondent's accounting procedures to dictate the Department's methodology in a particular case. The Department always must balance the reporting burdens of respondents against the objective of obtaining accurate results. If a particular allocation method is unreasonably inaccurate or distortive, the Department cannot rely on that method simply because it is the only method that the respondent's records will allow.

Another commenter stated that the professed ''need'' to allocate price adjustments often flows from artificially narrow agency determinations regarding the scope of a proceeding. In addition, this commenter contended that the Department should expect foreign companies found guilty of injuring an American industry to adjust their accounting and bookkeeping practices to conform to the requirements of the AD law.

With respect to this comment, we are not persuaded that there is any relationship between the need to allocate adjustments and the Department's alleged narrowing of the scope of a proceeding. Moreover, the commenter appeared to be arguing more against the wisdom of narrowing subject merchandise than the propriety of accepting allocations. In our view, questions concerning the narrowness or breadth of the scope of a particular proceeding are more appropriately addressed on a case-by-case basis in actual AD proceedings. Finally, with respect to the comment regarding changes in respondents' record keeping practices, if the Department denies an adjustment because a firm's record keeping practices do not permit it to use an acceptable allocation method, we would expect that the firm would revise those practices if it hopes to have the Department grant the adjustment in some future segment of the particular proceeding.

Date of sale: Paragraph (i) deals with the identification of the date of sale for sales of the subject merchandise and foreign like product. Paragraph (i) continues to provide that the Secretary normally will consider the date of invoice, as recorded in a firm's records kept in the ordinary course of business, to be the date of sale.

Use of uniform date of sale: Several commenters supported the notion of using a uniform date for purposes of identifying the date of sale, and specifically endorsed the use of invoice date. According to these commenters, the use of a uniform date of sale would promote predictability.

Other commenters, however, opposed the use of a uniform date. According to these commenters, the use of a uniform date of sale is inconsistent with Article 2.4.1, note 8 of the AD Agreement. They also suggested that a reasonable reading of the statute does not support using the date of invoice, because that is not necessarily the date on which price and quantity are established, and, thus is not the date on which the domestic industry lost the ability to make a sale to a U.S. customer. In addition, some of these commenters argued that in situations where exchange rates fluctuate between the date on which the terms of sale are established and the date of invoice, the results of the Department's calculations will become less, rather than more, predictable.

In these final regulations, we have retained the preference for using a single date of sale for each respondent, rather than a different date of sale for each sale. Contrary to suggestions made by some of the commenters, this has been the Department's practice in the past.

Moreover, there are several valid reasons for this practice. First, by simplifying the reporting and verification of information, the use of a uniform date of sale makes more efficient use of the Department's resources and enhances the predictability of outcomes.

Second, as a matter of commercial reality, the date on which the terms of a sale are first agreed is not necessarily the date on which those terms are finally established. In the Department's experience, price and quantity are often subject to continued negotiation between the buyer and the seller until a sale is invoiced. The existence of an enforceable sales agreement between the buyer and the seller does not alter the fact that, as a practical matter, customers frequently change their

minds and sellers are responsive to those changes. The Department also has found that in many industries, even though a buyer and seller may initially agree on the terms of a sale, those terms remain negotiable and are not finally established until the sale is invoiced. Thus, the date on which the buyer and seller appear to agree on the terms of a sale is not necessarily the date on which the terms of sale actually are established. The Department also has found that in most industries, the negotiation of a sale can be a complex process in which the details often are not committed to writing. In such situations, the Department lacks a firm basis for determining when the material terms were established. In fact, it is not uncommon for the buyer and seller themselves to disagree about the exact date on which the terms became final. However, for them, this theoretical date usually has little, if any, relevance. From their perspective, the relevant issue is that the terms be fixed when the seller demands payment (*i.e.,* when the sale is invoiced).

Finally, with respect to the arguments that the date on which material terms are established is the date on which the domestic industry is injured and the date on which respondents rely for exchange rate purposes, in our view, these arguments beg the question of ''when are material terms established?'' In paragraph (i), we merely have provided that, absent satisfactory evidence that the terms of sale were finally established on a different date, the Department will presume that the date of sale is the date of invoice.

Therefore, for the foregoing reasons, we have continued to provide for the use of a uniform date of sale, which normally will be the date of invoice. However, we have revised paragraph (i) in response to suggestions that the Department clarify its authority to use a date other than date of invoice in appropriate cases. In some cases, it may be inappropriate to rely on the date of invoice as the date of sale, because the evidence may indicate that, for a particular respondent, the material terms of sale usually are established on some date other than the date of invoice. In proposed paragraph (i), we had intended this type of flexible approach through our use of the word ''normally.'' In light of the comments, however, we have revised paragraph (i) to provide that ''the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.''

Although the date of invoice will be the presumptive date of sale under paragraph (i), the Department intends to continue to require that a respondent provide a full description of its selling processes. Among other things, this information will permit domestic interested parties to submit comments concerning the selection of the date of sale in individual cases. Of course, a respondent also will be free to argue that the Department should use some date other than the date of invoice, but the respondent must submit information that supports the use of a different date. Finally, a respondent's description of its selling processes, like any other item of information, will be subject to verification.

If the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department will use that alternative date as the date of sale. For example, in situations involving large custom-made merchandise in which the parties engage in formal negotiation and contracting procedures, the Department usually will use a date other than the date of invoice. However, the Department emphasizes that in these situations, the terms of sale must be firmly established and not merely proposed. A preliminary agreement on terms, even if reduced to writing, in an industry where renegotiation is common does not provide any reliable indication that the terms are truly ''established'' in the minds of the buyer and seller. This holds even if, for a particular sale, the terms were not renegotiated.

Date of invoice versus date of shipment: Several commenters argued that if the Department uses a uniform date of sale, it should use date of shipment rather than date of invoice. These commenters claimed that because respondents can control the timing of invoice issuance, they will be able to manipulate the Department's dumping calculations by manipulating the date of sale. According to these commenters, date of shipment is ''manipulation-proof,'' because the date on which merchandise is shipped is largely determined by the needs of the customer.

For several reasons, the Department has not adopted this suggestion. First, date of shipment is not among the possible dates of sale specified in note 8 of the AD Agreement. Second, based on the Department's experience, date of shipment rarely represents the date on which the material terms of sale are established. Third, unlike invoices, which can usually be tied to a company's books and records, firms rarely use shipment documents as the basis for preparation of financial reports. Thus, reliance on date of shipment would make verification more difficult.

Finally, with respect to the commenters' concerns regarding possible manipulation, we do not believe that these concerns warrant substituting date of shipment for date of invoice as the presumptive date of sale. As explained above, the Department will continue to require respondents to provide a full description of their sales processes. Moreover, these descriptions will be subject to verification, and we are confident that we will be able to uncover, through verification, attempts at manipulation. For example, the Department can verify the average length of time between invoice date and shipment date, and can scrutinize deviations from the norm. In addition, most firms have a standard invoicing practice (*e.g.,* three days after shipment, every two weeks). Where a firm does not have such a practice, or where it changes that practice, the Department will be particularly attentive to the possibility of manipulation of dates of sale.

Early resolution of date of sale issues: One commenter suggested that because issues surrounding date of sale must be resolved in the early stages of an investigation or review, the regulations should provide a mechanism under which the Department consults with the parties and decides these issues prior to the issuance of a request for information. This commenter was concerned that unilateral judgments by a respondent as to the appropriate date of sale can result in the unfair and prejudicial use of ''facts available'' should the Department ultimately disagree with that judgment.

The Department has not adopted this suggestion. While we recognize that it is preferable to settle issues regarding the date of sale early in an investigation or review, we believe that the mechanisms in place are adequate. First, the response to the section of the Department's questionnaire that addresses general selling practices, including selling processes, is due to the Department earlier than those sections that require information pertaining to specific sales, thereby allowing parties an early opportunity to comment on date of sale. Second, paragraph (i) will put parties on notice that, in the absence of information to the contrary, the Department will use date of invoice as the date of sale.

Finally, there is a limit on the Department's ability to guarantee that date of sale issues are always resolved

definitively at the outset of an investigation or review. Among other things, domestic interested parties must have an opportunity to comment on information describing a respondent's selling processes. In addition, the Department also must verify this information. In some cases, the Department may be persuaded by the arguments of domestic interested parties or the results of verification that its initial identification of the date of sale was in error.

Indirect export price: One commenter proposed that the Department make clear that its method for identifying the date of sale will not change the determination of when a sale constitutes an ''indirect export price'' sale. Although the Department has not revised the final regulations in light of this comment, we agree that the method for identifying the date of sale does not affect the method for determining whether a particular sale constitutes an ''indirect export price'' sale.

Long-term contracts: Several commenters raised issues concerning long-term contracts. One commenter suggested that the Department codify in the regulations its statement in the AD Proposed Regulations, 61 FR at 7330–7331, that the Department will continue to determine the date of sale for long-term contracts on a case-by-case basis, without presuming that date of invoice is the date of sale. Another commenter suggested that the Department should presume that the date of invoice is the date of sale in the case of long-term contracts.

The Department has not adopted either of these suggestions. Because of the unusual nature of long-term contracts, whereby merchandise may not enter the United States until long after the date of contract, the Department will continue to review these situations carefully on a case-by-case basis. In our view, paragraph (i) is sufficiently flexible so as to eliminate the need for a separate provision addressing long-term contracts. We should note, however, that date of invoice normally would not be an appropriate date of sale for such contracts. The date on which the material terms of sale are finally set would be the appropriate date of sale for such contracts.

Effect on reviews: One commenter argued that in implementing paragraph (i), the Department should ensure that, in conducting administrative reviews, it does not omit sales in those proceedings where some date other than invoice date was used as the date of sale in prior segments of the proceeding. Another commenter suggested that the Department should permit parties to continue to use the date of sale method established in prior segments.

Although we have not revised the regulations in light of these comments, the Department will be particularly attentive to the possibility that sales may be missed in administrative reviews in which the date of sale changes due to the implementation of paragraph (i). The Department will address these types of issues on a case-by-case basis to ensure that all sales are reviewed.

Currency conversions: One commenter proposed that the Department retain its prior practice, without adopting the date of invoice presumption, for purposes of establishing the date on which currency will be converted. Essentially, this commenter suggested that the Department establish two dates of sale, one for purposes of determining which sales to report, and a different one for exchange rate purposes.

We have not adopted this suggestion. There is no indication in the statute, the SAA, or the AD Agreement that the Department should use different dates of sale for different purposes. For all purposes, the date of sale is the date on which the material terms of sale are established. In promulgating paragraph (i), the Department merely has adopted a rebuttable presumption that this date is the date of invoice. The Department cannot adopt a system under which two different dates are identified as being the date on which the material terms of sale were established.

Other Comments Concerning § 351.401

Fair comparison: Two commenters contended that the AD Agreement and the URAA require that a dumping margin be based on a ''fair comparison.'' They believed that this requirement for a fair comparison should be carried forward into the regulations, which should state clearly that the Department will apply this principle to all aspects of its AD methodology, including decisions regarding the prices to be compared and the type and amount of adjustments to make to those prices. Another commenter suggested that the regulations, or at least the preamble, refer to a ''fair comparison'' as a fundamental requirement.

In response, another commenter, while agreeing that the purpose of the AD law is to reach a ''fair comparison'' between the sales being compared, argued that there is no reason to insert into the agency's regulations a requirement that, in the commenter's view, was vague. According to the commenter, in the statute Congress identified in detail the method for accomplishing a ''fair comparison.''

In our view, the regulations do not require any further clarification on this particular issue. Congress dealt explicitly with this question in the statute itself. Specifically, section 773(a) of the Act provides: ''In determining under this title whether subject merchandise is being, or is likely to be, sold at less than fair value, a fair comparison shall be made between the export price or constructed export price and normal value. In order to achieve a fair comparison with the export price or constructed export price, normal value shall be determined as follows: [*i.e.*, in accordance with the provisions discussing the calculation of normal value].'' The House Report on the URAA provided further clarification by stating: ''The requirement of Article 2.4 of the Agreement that a fair comparison be made between the export price or constructed export price, and normal value is stated in *and implemented by* new section 773.'' H.R. Rep. No. 826, Pt. 1, 103d Cong., 2d Sess. 82 (1994) (emphasis added). Given the clarity of the statute and the legislative history on this point, we do not believe that additional elaboration in the regulations is necessary.

Indirect export price: One commenter suggested that the Department codify in the regulations its four-factor test for determining whether sales made through an affiliate located in the United States are classifiable as ''export price'' (formerly ''purchase price'') transactions. According to the commenter, this test for identifying so-called ''indirect export price sales'' is firmly rooted in Department practice, has been repeatedly approved by the courts, and was endorsed by Congress in the URAA. The commenter argued that because this test involves a fundamental issue in AD proceedings, the public would benefit from the codification of the test in the regulations.

A second commenter, however, objected to codification of the test. According to this commenter, because the four factors of the indirect export price test continue to be subject to interpretation, the Department should not restrict its discretion at this time by issuing a regulation. This commenter also disagreed specifically with the first commenter's articulation of some of the factors. Finally, referring to the factor dealing with inventory, this commenter suggested that if the Department should include the test in the regulations, the Department should clarify that the merchandise need only be included in inventory, not *physical* inventory.

We have not adopted the suggestion of the first commenter that we codify the ''indirect export price'' test in the regulations. While we do not disagree with the commenter's characterization of the test's pedigree, we have not attempted in these regulations to codify all aspects of the Department's AD methodology that are well-established. We generally have refrained from codifying principles that are clearly set forth in the statute and/or the legislative history. In our view, the ''indirect export price'' test is one of these principles. As for the suggestions of the second commenter, these suggestions are moot in light of our decision to refrain from codifying the ''indirect export price'' test.

Section 351.402

Section 351.402 deals with the calculation of export price and constructed export price under section 772 of the Act.

Adjustments to constructed export price: Proposed paragraph (b) addressed the expenses that the Department will deduct from the starting price in calculating constructed export price (''CEP'') under section 772(d) of the Act. In addition to a stylistic change, we have made one substantive revision to paragraph (b), as discussed below.

In proposed paragraph (b), the Department stated that it would adjust for ''expenses associated with commercial activities in the United States, no matter where incurred.'' Noting that this language only required a deduction for expenses associated with United States selling activities, several commenters argued that the Department should adjust for all expenses incurred on CEP sales, including expenses incurred in the foreign market. These commenters contended that proposed paragraph (b) was inconsistent with: (1) The plain language of section 772(d); (2) judicial precedent interpreting the pre-URAA version of the statute, which contained language identical to that of section 772(d); and (3) established Department practice.

A second set of commenters argued in response that, in calculating constructed export price, the Department may deduct from the starting price only those expenses associated with activities occurring in the United States. According to these commenters, expenses incurred in the exporting country that are *directly* attributable to United States sales (*i.e.*, that are not indirect expenses) are subject to adjustment under the circumstances of sale provision of section 773(a)(6)(C)(iii) of the Act.

In these final regulations, we have clarified that the Secretary will deduct only expenses associated with a sale to an unaffiliated customer in the United States. With respect to the suggestion of the first group of commenters that we deduct all expenses incurred in connection with the CEP sale, we do not believe such an approach is consistent with the statute. Although section 772(d)(1) is ambiguous on this particular point, section 772(f), which deals with the deduction of profit from CEP, refers to the expenses to be deducted under section 772(d)(1) as ''United States expenses,'' thereby suggesting that the coverage of section 772(d)(1) is limited to those expenses incurred in connection with a sale in the United States. In addition, the SAA makes clear that only those expenses associated with economic activities in the United States should be deducted from CEP. In discussing section 772(d)(1), the SAA states that the deduction of expenses in calculating CEP relates to ''expenses (and profit) *associated with economic activities occurring in the United States*.'' SAA at 823 (emphasis added).

In addition to conflicting with the SAA, the suggestion that we deduct all expenses would disrupt the statutory scheme with respect to the level-of-trade (''LOT'') adjustment. The statute clearly anticipates that an adjustment for differences in levels of trade will not be necessary every time the Department uses CEP. However, under the proposed interpretation, because the Department always would calculate CEP exclusive of all expenses and normal value inclusive of such expenses, CEP and normal value always would be at different levels of trade. Thus, an adjustment for differences in levels of trade would be necessary in almost every case. This would frustrate the legislative intent that the Department make comparisons at the same level of trade to the extent possible, and that the Department make level of trade adjustments only when such comparisons are not possible.

Finally, the Department believes that the deduction of all expenses from CEP would conflict with Article 2.4 of the AD Agreement. Article 2.4, on which section 772(d) is based, requires the deduction of costs ''incurred between importation and resale.'' The suggestion of the first group of commenters would call for the deduction of expenses that are incurred before importation and that do not relate to activities between importation and resale.

With regard to the argument concerning judicial and administrative precedents under the pre-URAA version of the statute, the Department notes that the URAA changed the manner in which CEP (formerly ''exporter's sales price'') is calculated. Because of this change, and in light of the clear intent expressed in the SAA, we do not believe that these old law precedents govern the interpretation of section 772(d)(1) with respect to this particular point.

Although we have not adopted the suggestion that we deduct all expenses from CEP, we have revised paragraph (b) to clarify its meaning. In the first sentence of paragraph (b), we have deleted the phrase ''no matter where incurred'' and have replaced it with the phrase ''that relate to the sale to the unaffiliated purchaser, no matter where or when paid.'' In addition, we have added the following new sentence: ''The Secretary will not make an adjustment for any expense that is related solely to the sale to an affiliated importer in the United States, although the Secretary may make an adjustment to normal value for such expenses under section 773(a)(6)(C)(iii) of the Act.''

The purpose of these changes is to distinguish between selling expenses incurred on the sale to the unaffiliated customer, which may be deducted under 772(d)(1), and those associated with the sale to the affiliated customer in the United States, which may not be deducted. In addition, the phrase ''no matter where or when paid'' is intended to indicate that if commercial activities occur in the United States and relate to the sale to an unaffiliated purchaser, expenses associated with those activities will be deducted from CEP even if, for example, the foreign parent of the affiliated U.S. importer pays those expenses. Finally, the reference to adjustments to normal value reflects our agreement with the comment that the Secretary may adjust for direct selling expenses (as well as assumed expenses) associated with the sale to the affiliated importer under the circumstance of sale provision, discussed below.

One commenter urged the Department to define ''selling expenses'' to exclude ''general and administrative expenses.'' The Department has not adopted this suggested change. Typically, the primary, if not sole, function of an affiliated U.S. importer is to sell. Therefore, many or all general and administrative expenses of such firms are properly considered as selling expenses and must be deducted under section 772(d)(1)(D).

Another commenter stated that, in the past, the Department would not deduct selling expenses in calculating CEP (formerly ESP) in AD proceedings involving nonmarket economies. According to the commenter, the

Department's stated reason for not making a deduction was its inability to make an offsetting circumstance-of-sale adjustment to normal value (formerly foreign market value). The commenter stated that the Department has reevaluated this particular practice, and now recognizes that the statute requires CEP deductions in nonmarket economy cases irrespective of whether a circumstance-of-sale adjustment is possible. The commenter suggests that the agency's regulations should reflect this change in practice, and should make clear that CEP deductions are required in nonmarket economy cases.

With respect to this suggestion, the commenter is correct concerning the Department's reevaluation of its practice. In a recent determination, the Department stated: ''Regarding the necessity of making CEP deductions, we have reevaluated our practice in this area and have concluded that CEP deductions are required by the plain language of the statute, which states in section 772(d)(2)(D) that CEP 'shall be reduced' by the selling expenses associated with economic activity in the United States. Consequently, we have made deductions to CEP for all selling expenses associated with economic activities in the United States in accordance with our practice.'' *Bicycles from the People's Republic of China*, 61 FR 19026, 19031 (April 30, 1996). However, because the statute is clear on this point, we do not believe that a change to paragraph (b) is necessary.

''Special rule'' for merchandise with value added after importation: Proposed paragraph (c) addressed the ''special rule'' of section 772(e) of the Act that is applicable in situations where imported merchandise is subject to further manufacture or assembly in the United States before it is sold to an unaffiliated customer. Except for the modification of the percentage threshold normally used to determine when the special rule applies (discussed below), we have not changed paragraph (c).

By way of background, prior to the enactment of the URAA, section 772(e)(3) of the Act required that the Department calculate ESP (now CEP) by deducting the amount of any increased value resulting from a process of manufacture or assembly performed on imported merchandise prior to its sale to an unaffiliated customer. In situations where the amount of value added in the United States was very large, the process of calculating this deduction was very difficult and time-consuming for the Department. In addition, the legislative history of section 772(e)(3) provided that if the final product sold did not contain a significant amount of the subject merchandise, the Department was to refrain from assessing antidumping duties, even though the merchandise may have been dumped.

Congress retained the U.S. value-added adjustment, in modified form, in section 772(d)(2) of the Act. However, in the URAA, Congress addressed the problems described in the preceding paragraph by providing an alternative method for dealing with imported merchandise for which a large amount of value is added in the United States. Under section 772(e), the merchandise no longer is excepted from the assessment of duties. In addition, instead of requiring that the Department calculate and deduct the precise amount of value added in the United States from the price of the finished product, section 772(e) permits the Department, in certain circumstances, to determine the dumping margin for value-added merchandise on some other basis, such as by relying on the dumping margins calculated on sales to unaffiliated customers for which no value was added in the United States. Under section 772(e), the Department may use an alternative method where the value added to the subject merchandise ''is likely to exceed substantially'' the value of the subject merchandise as imported. The SAA at 826 explains that this ''special rule'' does not require the Department to make a precise calculation of the value added. Instead, the phrase ''exceed substantially'' means that the Department estimates that the value added in the United States is ''substantially more than half'' of the price of the merchandise as sold to the unaffiliated customer. The SAA at 825–826 further explains that the intent of the new rule is to avoid requiring the Department to calculate and back out large amounts of value added, while also avoiding the undesirable result of subject merchandise escaping the assessment of antidumping duties entirely.

Threshold for applying the ''special rule'' and use of transfer prices: In proposed paragraph (c)(2), the Department provided that if the Secretary estimated the value added in the United States to be at least 60 percent of the price charged to the first unaffiliated purchaser, the Secretary normally would determine that the value added in the United States was likely to exceed substantially the value of the subject merchandise; *i.e.*, that the special rule applied. The Department reasoned that a 60 percent threshold met the SAA's requirement of ''substantially more than half.'' *See* AD Proposed Regulations at 7331. In addition, in estimating the value added, proposed paragraph (c)(2) called for the use of transfer prices between the foreign exporter/producer and the affiliated U.S. importer.

Several commenters argued against the adoption of a bright-line test for determining whether the estimated value added is ''substantially more than half,'' the finding that triggers the application of the special rule. These commenters argued that a bright-line test was inappropriate and inconsistent with the SAA. In addition, these commenters argued that if the Department insisted upon using a bright-line test, it should use a threshold higher than 60 percent. Finally, these commenters argued that the Department should not estimate the U.S. value added by relying on transfer prices, because of the risk that exporters might manipulate these prices to their advantage. Instead, they asserted, the Department should compare the price charged to unaffiliated customers for the finished goods to the constructed value (cost) of the imported merchandise.

A different group of commenters supported the use of a bright-line test and transfer prices. While most of these commenters also supported a 60 percent value-added standard, one commenter argued that in proceedings where the absolute volume of merchandise is large, the standard should be 50 percent value added. This latter commenter argued that a 50 percent standard is warranted because of (1) the heavy burden of reporting value added information in these types of cases, and (2) the alleged distortions in dumping margins caused by the value-added calculations.

With respect to the comments concerning the use of a bright-line test, the Department continues to believe that such a test is appropriate and desirable. Neither the SAA nor the statute indicates that the Department may not adopt guidelines in this area, and there are sound policy reasons for having a bright-line test. First, if the Department did not adopt a standard in these final regulations, the burden of establishing on a case-by-case basis the amount of value added that constitutes ''significantly more than half'' would erase the administrative savings that Congress intended section 772(e) to generate. Second, a bright-line standard enables the Department to inform respondents early in an investigation or review as to whether they will have to provide detailed value-added information.

We must emphasize, however, that the Department does not intend that its bright-line standard operate as an

irrebuttable presumption for all cases. The Department may use a different threshold where it is satisfied, based on the facts, that a different threshold is more appropriate in a particular case. In addition, the Department retains the discretion to refrain from applying the special rule in situations where there are an insufficient number of sales to unaffiliated customers to use as an alternative basis for determining the dumping margin on value added sales. Finally, because the purpose of section 772(e) is to reduce the administrative burden on the Department, the Department retains the authority to refrain from applying the special rule in those situations where the value added, while large, is simple to calculate.

With respect to the issue of transfer prices, paragraph (c)(2) continues to provide for the use of transfer prices in estimating U.S. value added. Section 772 and the SAA are silent on the precise manner by which the Department is to estimate the amount of value added. However, in discussing the alternate methods that the Department may use to determine CEP once the Department has determined that the special rule applies, the SAA at 826 states that the Department may use transfer prices. This suggests to us that, had the drafters of the statute and the SAA focussed on the matter, they would have permitted the use of transfer prices in estimating U.S. value added.

While the Department appreciates the arguments raised concerning the possible manipulation of transfer prices, in our view, there are several factors that minimize this danger. First, because a respondent does not control the selection of the alternative method used in situations where the special rule applies, a respondent will not know in advance whether it would be better or worse off through the application of the special rule. Thus, if a respondent chose to manipulate transfer prices, it would do so at its peril. Second, while transfer prices may be suspect, there are some independent constraints on transfer pricing, such as the transfer pricing rules of the U.S. Internal Revenue Service and the valuation rules of the Customs Service. Finally, as discussed below, to guard against the misuse of transfer prices, the Department has raised the bright-line threshold to account for the fact that any estimate of U.S. value added might be inflated due to artificial transfer prices.

We have balanced the dangers of using transfer prices against the alternatives. In our view, absent reliance on transfer prices, there is no other reasonable way to measure the amount of value added that accomplishes the burden-reducing objective of the special rule. The alternative suggested by the commenters (use of constructed value of the subject merchandise) would be as complex and burdensome a method as the method that section 772(e) was intended to replace.

Having explained our retention of a bright-line test based on the use of transfer prices, this brings us to the issue of the precise test that the Department should apply. The Department has reviewed proposed paragraph (c)(2), and agrees with the commenters that by increasing the threshold, the Department would ensure that the special rule applies only in appropriate circumstances. While the Department continues to believe that 60 percent is ''substantially more than half,'' the Department recognizes that section 772(e) requires an imprecise ''estimate,'' an estimate which, as discussed above, the Department must base in part on transfer prices. Because of the imprecision inherent in any estimate, in these final regulations we have adopted a standard of 65 percent, thereby providing additional assurance that the actual value added is substantially greater than half.

We have not adopted the suggestion that we use a 50 percent standard. As discussed above, the SAA states that the Department will apply the special rule only where the U.S. value added is ''substantially more than half'' of the total value of the finished product. Therefore, the Department cannot adopt a standard that would trigger the use of the special rule when the U.S. value added is only one half on the total value. Moreover, while the commenter making this suggestion cited the need to reduce the burden on respondents, the SAA indicates that the focus of section 772(e) was on reducing the burden on the Department. Finally, we do not agree with the commenter that the value added calculation is distortive or that the special rule was motivated by a concern over distorted calculations. While the legislative history demonstrates a recognition that the value added calculation is complex and time-consuming, there is no indication that Congress or the Administration considered the calculation to be distortive.

One commenter proposed that the regulations contain a presumption against use of the ''special rule'' when: (a) The final goods are trademarked; (b) an essential feature or characteristic of the further manufactured good exists at importation; (c) the transfer price to an affiliated person is less than the sales price of the imported component to an unaffiliated person; (d) sales to unaffiliated persons of identical or similar merchandise are not in significant quantity; or (e) the Secretary believes that the circumstances preclude use of the special rule. The Department has not incorporated this suggestion into the final regulations. However, we believe that under section 772(e) and paragraph (c), the Department has sufficient flexibility to refrain from applying the special rule where the circumstances so warrant. As for the specific circumstances identified by the commenter, whether these circumstances would justify a departure from the special rule would depend upon the facts of a particular case.

One commenter proposed that the Department calculate the amount of value added by comparing the price at which subject merchandise (without value added) is sold to unaffiliated customers to the price at which merchandise (with value added) is sold to unaffiliated customers. Although we believe that this method would be permissible, given our lack of experience in applying section 772(e), we have not codified this method in these final regulations.

Application of alternative methods to determine dumping margins: One commenter argued that under proposed paragraph (c)(3), the Department might assign dumping margins to special rule entries in situations where no dumping margins should be found at all. This commenter suggested that the Department should provide in its final regulation that its preferred approach in applying the special rule will be to determine the export price for sales subject to the rule based on the most similar sales of subject merchandise, and that such an export price will be used to compare to normal value. This commenter urged the Department to give careful consideration to all relevant differences between the ''special rule'' sales and the sales used in applying the ''special rule.''

We have not adopted this suggestion. In the Department's view, the methodology set forth in proposed paragraph (c)(3) for determining dumping margins on merchandise to which the special rule applies is in accordance with section 772(e). Section 772(e) authorizes the Department to use an alternative means of calculating the dumping margin where merchandise has a substantial amount of U.S. value added, including reliance on the dumping margins calculated on sales for which there is no U.S. value added. In adopting section 772(e), Congress and the Administration were aware that the dumping margins determined by use of these alternative means might not be

identical to those that would be determined if the Department were to calculate the precise amount of U.S. value added and deduct that amount from the price. However, they concluded that the burden on the Department of performing the value added calculations far outweighed any marginal increase in accuracy gained by such calculations.

Finally, with respect to the sales from which the Department will derive dumping margins to apply to special rule sales, we must emphasize that the Department has little experience with this new methodology. Therefore, the Department is not in a position at this time to provide a great deal of guidance beyond what is contained in section 772(e) and the SAA. However, we do believe that whether merchandise is identical may be a factor to consider in selecting the sales to be substituted for the value added sales. We do not believe, however, that most similar in the United States is a consideration, and have not, therefore, incorporated this comment in the rule.

Another commenter asked the Department to clarify that in applying the special rule, it will base surrogate margins on sales to unaffiliated persons only if those sales have been made in sufficient quantities. While the Department agrees with the substance of this comment, we do not believe that a regulation is necessary, because section 772(e) expressly requires that sales to an unaffiliated person be in ''a sufficient quantity.''

One commenter suggested that the Department clarify that, when the special rule applies, the Department will base its alternative methods for calculating a dumping margin exclusively on a producer's own information, as opposed to information pertaining to another exporter or producer. We have not adopted this suggestion. While the Department agrees that it should rely on a respondent's own data where possible, section 772(e) does not impose such a limitation. In some cases, it may be necessary for the Department to rely on another respondent's data, such as in situations where all of a particular respondent's sales have U.S. value added and are subject to the special rule.

One commenter proposed that the Department reflect in the final regulations the statement in the AD Proposed Regulations that the Department normally will base dumping margins for merchandise to which the special rule applies on margins calculated on other merchandise. The final regulation reflects the particular requirements of section 772(e) of the Act. As the Department explained in the AD Proposed Regulations, in situations in which the special rule applies, the Department normally will apply the methodology described in paragraph (c)(3); *i.e.*, assigning a margin equal to the weighted-average margin calculated based upon the prices of identical or other subject merchandise sold to unaffiliated parties.

CEP profit deduction: Proposed paragraph (d) dealt with the deduction of profit from CEP. Although we received several comments concerning the CEP profit deduction, for the reasons set forth below, we have left paragraph (d) unchanged.

Several commenters suggested that the Department clarify that the amount of profit to be deducted in calculating CEP may never be less than zero. In addition, these commenters contended that in calculating the total actual profit used to derive the CEP profit deduction, the Department must ignore all home market sales made at prices below the cost of production.

The Department has not adopted these suggestions. With respect to the first suggestion, we believe that section 772(f) and the SAA at 825 clearly provide that the profit deduction never may be less than zero. Therefore, we do not believe that a regulation is necessary on this point.

Regarding the suggestion concerning the treatment of below-cost sales, in order to determine the total actual profit earned by a respondent on the relevant sales, the Department must take into account sales made at a profit and sales made at a loss. As we stated in the AD Proposed Regulations, 61 FR at 7332, ''there is no provision in the statute for disregarding sales below cost in this context, and doing so would conflict with the statutory requirement to use 'actual profit.' ''

Several commenters urged the Department to retain the flexibility to calculate the CEP profit deduction on the basis of something less than all sales of the subject merchandise and the foreign like product throughout the period of investigation or review (*e.g.*, on the basis of a specific model or sales channel, or on a time period less than a full year). We have not adopted this suggestion, because we believe that paragraph (d)(1) provides the Department with sufficient flexibility to use such approaches in those instances where the facts so warrant.

However, we believe that such instances should be the exception, rather than the rule, because the suggested approaches would add yet another layer of complexity to an already complicated exercise and would be more susceptible to manipulation, which the Department wishes to safeguard against, as suggested by the Senate Report.

One commenter suggested that the Department provide further guidance regarding the calculation of the CEP profit deduction in situations where there are no useable home market or third country sales. We have not adopted this suggestion, because, as stated in the AD Proposed Regulations, 61 FR at 7332, the Department currently does not have enough experience to provide further guidance on this issue.

Another commenter, alleging that the Department generally calculates profit by deducting expenses from revenues, argued that to avoid double-counting, the Department should deduct all expenses, including imputed expenses, in calculating the CEP profit deduction. We have not adopted this suggestion, because the Department does not take imputed expenses into account in calculating cost. Moreover, normal accounting principles permit the deduction of only actual booked expenses, not imputed expenses, in calculating profit.

Other commenters proposed that the Department should (1) cap the CEP profit deduction by the amount of actual profit accruing on CEP sales, and (2) make a corresponding deduction from normal value. We have not adopted these suggestions. With respect to the first suggestion, as the Department stated in the AD Proposed Regulations, 61 FR at 7332, the statute does not authorize a cap on the amount of profit deducted from CEP. Moreover, the SAA at 825 states that the transfer price between the producer and the affiliated importer should not be used to determine the profit. In our view, this indicates that Congress and the Administration did not intend that there be a cap. With respect to the deduction of profit from normal value, we discuss this suggestion below in connection with § 351.410.

Finally, one commenter argued that the Department is required to calculate the CEP profit deduction on a transaction-specific basis. The final regulations do not reflect this approach. In our view, section 772(f), through its references to ''total actual profit'' and ''total expenses,'' clearly does not contemplate the calculation of the CEP profit deduction on a transaction-specific basis.

Reimbursement of antidumping duties and countervailing duties: Paragraph (f) deals with the deduction from export price or CEP of the amount of any reimbursed antidumping duties or countervailing duties. Although we

received several comments concerning duty reimbursement, for the reasons set forth below, we have left paragraph (f) unchanged.

Reimbursement of countervailing duties: In proposed paragraph (f), the Department expanded the scope of former 19 CFR § 353.26 to include the reimbursement of countervailing duties in situations where imported merchandise is subject to both AD and CVD orders. As the Department explained in the AD Proposed Regulations, 61 FR at 7332, the reimbursement of countervailing duties effectively is nothing more than a reduction in the price paid by the importer. Absent the reimbursement, the effective price paid by the importer would increase by the amount of any such duties. As such, a deduction for reimbursed countervailing duties is a necessary price adjustment in AD calculations.

Several commenters objected to the proposed change, asserting that the Department lacks statutory authority to deduct reimbursed countervailing duties. In addition, these commenters argued that such a deduction would violate Article 19.4 of the SCM Agreement, which prohibits the levying of countervailing duties in excess of the amount of subsidization found. They also claimed that the deduction could violate section 772(c)(1)(C) of the Act by permitting the imposition of both antidumping and countervailing duties to offset the same situation of dumping or export subsidization. Other commenters, however, supported a deduction for reimbursed countervailing duties, asserting that such a deduction is consistent with the SCM Agreement and the Act.

In these final regulations, we have retained the deduction for reimbursed countervailing duties. In the Department's view, this deduction is consistent with the SCM Agreement and the Act. A deduction for reimbursed countervailing duties neither increases the amount of countervailing duties assessed nor imposes duties for the same situation of dumping and export subsidization. The deduction simply recognizes that the reimbursement of countervailing duties constitutes a reduction in the price paid by the purchaser. Moreover, any reimbursement of countervailing duties on specific sales is directly tied to such sales and is no different in substance from any of the other types of price adjustments that the Department routinely factors into its calculations. Because antidumping duties are reduced by the amount of any countervailing duties attributable to an export subsidy, no double assessment is involved.

Finally, we do not believe that the absence of a statutory provision expressly dealing with the reimbursement of countervailing duties is fatal. The courts have long recognized the Department's ability to develop methodologies to deal with situations not expressly addressed by the statute. As the Federal Circuit stated in *Melamine Chemicals, Inc.* v. *United States*, 732 F.2d 924, 930 (1984), ''there is no stultifying requirement that [the Department] cite a statute detailing *in haec verba* the specific action it may take when confronted with a particular set of circumstances among the myriad that may occur.''

Reimbursement in general: Referring to situations involving affiliated importers, several commenters urged the Department to automatically investigate whether the foreign affiliate reimbursed the importer for antidumping or countervailing duties. Other commenters went even further, arguing that in cases involving affiliated importers, the Department should make an irrebuttable presumption that reimbursement has occurred, or, at a minimum, a rebuttable presumption. They alleged that because the Department treats affiliated exporters and importers as a single entity for virtually all other purposes, there is no reason to treat them differently for purposes of analyzing reimbursement.

We have not adopted these suggestions, because we do not believe that they are necessary or justifiable. As under former 19 CFR § 353.26, paragraph (f) applies to affiliated importers, and requires that they certify that they have not been reimbursed by the exporter. Should an affiliated importer fail to make this certification, the Department would deduct the appropriate amount of antidumping duties or countervailing duties to establish the EP or the CEP, just as it would in the case of an unaffiliated importer. Moreover, in our view, it is not justifiable to presume that the existence of an affiliation will result in reimbursement or that an affiliated U.S. importer, because of its affiliation, is more likely to file a false certification.

Section 351.403

Section 351.403 deals with sales and offers for sale and the use of sales to or through an affiliated party. Comments on this section addressed paragraph (c) and the approach the Department should take in determining whether sales to an affiliated party are an appropriate basis for determining normal value (the ''arm's length test''). Comments also addressed paragraph (d) and the issue of when the Department should require the reporting of sales made by affiliated customers (''downstream sales'').

Arm's length test: The Department's current policy is to treat prices to an affiliated purchaser as ''arm's length'' prices if the prices to affiliated purchasers are on average at least 99.5 percent of the prices charged to unaffiliated purchasers. We received several comments asking that we codify the current 99.5 percent test. We also received several comments asking that we refrain from codifying the 99.5 percent test, and that we instead develop and codify a new methodology for testing affiliated prices.

After considering the comments received on this issue, we have decided not to codify an arm's length test at this time. We believe that, while the 99.5 percent test has functioned adequately in numerous cases, there may be other methods available. We will continue to apply the current 99.5 percent test unless and until we develop a new method. If we develop a new methodology, the Department will describe that methodology in a policy bulletin. We will also publicly announce the issuance of policy bulletins and ensure that they are easily accessible to the public.

One commenter asked that the Department adopt a separate test for situations where the vast majority of a firm's sales are to affiliated parties. We have not adopted this suggestion, because we believe that, in this context, the appropriate means to make this determination is by comparison to known arm's length prices. In order to perform such an arm's length test, the Department first must establish that sales to unaffiliated purchasers are sufficient in number or quantity sold to serve as a benchmark for testing affiliated party transactions. If sales to unaffiliated purchasers are insufficient, we simply will not use sales to affiliated purchasers to determine normal value.

One commenter argued that in determining whether sales are at arm's length, the Department should consider normal business practices, such as volume discounts, preferences for longstanding customers, and differences due to level of trade. Many other commenters stated that under the 99.5 percent test, the Department correctly limits its examination to a comparison of prices.

The Department agrees that a proper comparison focuses on the comparability of prices charged to affiliated and unaffiliated purchasers. However, the Department also agrees

that it should take into account differences in levels of trade, quantities, and other factors that affect price. For example, in comparing prices charged to affiliated and unaffiliated purchasers, we would attempt to make comparisons on the basis of sales made at the same level of trade.

Several commenters argued that the Department should disregard not only affiliated party sales that fall below 99.5 percent, but also sales that fall above 100.5 percent. We have not adopted this suggestion. The purpose of an arm's length test is to eliminate prices that are distorted. We test sales between two affiliated parties to determine if prices may have been manipulated to lower normal value. We do not consider home market sales to affiliates at prices above the threshold to have been depressed due to the affiliation. Therefore, the Department should treat such sales in the same manner as sales to unaffiliated customers. However, if a party wishes to argue that sales at high prices to an affiliate are outside the ordinary course of trade, the Department would consider such arguments on a case-by-case basis.

Downstream sales: With respect to paragraph (d) and the use of ''downstream sales,'' certain commenters asked that the regulations provide that the Department normally will require a respondent to report downstream sales by an affiliated party to the first unaffiliated customer. Other commenters argued that the Department should require a respondent to report downstream sales only if the sales to the affiliated party are not made at arm's length.

The Department does not believe it necessary or appropriate to require the reporting of downstream sales in all instances. Questions concerning the reporting of downstream sales are complicated, and the resolution of such questions depends on a number of considerations, including the nature of the merchandise sold to and by the affiliate, the volume of sales to the affiliate, the levels of trade involved, and whether sales to affiliates were made at arm's length.

However, we have decided to codify the Department's current practice regarding the reporting of downstream sales when the volume of sales to affiliates is small. Under our current practice, we normally do not require the reporting of downstream sales if total sales of the foreign like product by a firm to all affiliated customers account for five percent or less of the firm's total sales of the foreign like product. In such situations, the Department calculates normal value on the basis of sales to unaffiliated customers and arm's-length sales to affiliated customers. In addition, in certain cases, the Department may decide that a percentage higher than five percent is an appropriate benchmark, and, in such cases, the Department will not require the reporting of downstream sales. Also, while the Department normally will calculate this percentage on the basis of total sales value, there may be cases where it is more appropriate to use total volume or sales quantity.

If the Department determines that an affiliate made downstream sales of a foreign like product, the Department usually will not require the reporting of both the sales to the affiliate and the downstream sales by the affiliate. We will examine the sales between the affiliated parties under paragraph (c). If sales to the affiliate fail the arm's-length test, the Department will require the respondent to report that affiliate's downstream sales. If sales to the affiliate pass the arm's-length test, the Department normally will not require the respondent to report the affiliate's downstream sales and will calculate normal value based on sales to the affiliate.

The Department will require a respondent to demonstrate in each segment of an AD proceeding that the reporting of downstream sales is not necessary. Similarly, the Department will analyze affiliated party transactions in each segment. In other words, the fact that the Department may have determined in an investigation or review that affiliated party transactions are at arm's length does not mean that the Department automatically will treat such transactions as being at arm's length in subsequent segments of a proceeding.

One commenter stated that the quantity of sales sold in the foreign market to an affiliated customer is not necessarily relevant to the calculation of a dumping margin, because the Department may compare those sales to a large number of sales in the U.S. market. Other commenters stated that all home market sales should be reported so that Department can address each situation on its facts. Another commenter stated that section 771(16) of the Act requires the reporting of all downstream sales of the foreign like product.

With respect to these comments, the Department believes that imposing the burden of reporting small numbers of downstream sales often is not warranted, and that the accuracy of determinations generally is not compromised by the absence of such sales. Even if a respondent demonstrates that its sales to affiliated parties account for less than five percent of its total sales, the Department still will require the respondent to report its sales to the affiliated parties. Where all sales to all affiliates represent less than 5 percent of total sales, and where the only match for a U.S. sale is a downstream sale, the Department normally will base normal value on constructed value, as opposed to requiring that a respondent report downstream sales.

In our view, this methodology does not conflict with section 771(16) of the Act, because section 771(16) deals with the type of merchandise for which the Department needs to obtain sales information. Section 771(16) does not require that the Department obtain information on all possible sales of the foreign like product.

Some commenters argued that where certain types of affiliation are involved, such as long-term supplier relationships, the Department should not require the reporting of downstream sales under paragraph (d), nor should the Department conduct an arm's-length test analysis under paragraph (c). We have not adopted this suggestion, because the Department believes that it should apply these provisions whenever there are transactions between parties that are affiliated within the meaning of section 771(33) of the Act. Therefore, if two parties are affiliated, any transactions between those parties are subject to paragraphs (c) and (d). However, in instances where a respondent does not report downstream sales, the Department will consider the nature of the affiliation in deciding how to apply facts available.

Section 351.404

Section 351.404 deals with the selection of the market to be used in establishing normal value. We have not made any changes from proposed § 351.404.

Viability, particular market situation, and representative price: In proposed paragraph (c)(1), the Department provided that decisions concerning the calculation of a price-based normal value generally will be governed by the Secretary's determination as to whether the market in a particular country is ''viable'' (*i.e.*, whether sales in that country constitute 5 percent or more of a firm's sales to the United States). In proposed paragraph (c)(2), however, the Department provided that the Secretary may decline to calculate normal value based on sales in a particular market if it is established to the satisfaction of the Secretary that (1) a particular market situation exists that does not permit a proper comparison, or (2) in the case of a third country, the price is not

representative. In addition, in the preamble to the AD Proposed Regulations, 61 FR at 7334, the Department stated that a party would have to submit ''convincing evidence'' in order to overcome a determination, based on an application of the 5 percent standard, that a particular market is an appropriate basis for calculating normal value.

Several commenters objected to the Department's proposed approach to the ''particular market situation'' criterion. According to these commenters, section 773(a)(1) of the Act identifies the ''particular market situation'' in the exporting country or in a third country as one of three coequal factors that the Department must consider in determining whether it may use sales in that country as the basis for calculating normal value. Therefore, they argued, it is improper for the Department to require that parties present ''convincing evidence'' of the extraordinary nature of a particular market situation before the Department will invoke this statutory provision. Consistent with the statute and the SAA, the Department's proposed regulations should not impose a higher evidentiary standard for determinations regarding the ''particular market situation'' than for other determinations that the Department makes during the course of an AD proceeding.

The Department has not revised paragraph (c) in light of these comments. There are a variety of analyses called for by section 773 that the Department typically does not engage in unless it receives a timely and adequately substantiated allegation from a party. For example, the Department does not engage in a fictitious market analysis under section 773(a)(2) absent an adequate allegation from a party. *See, e.g., Tubeless Steel Disc Wheels from Brazil,* 56 FR 14083 (1991); and *Porcelain-on-Steel Cooking Ware from Mexico,* 58 FR 32095 (1993). Likewise, the Department does not automatically request information relevant to a multinational corporation analysis under section 773(d) of the Act in the absence of an adequate allegation. *See, e.g., Certain Small Business Telephone Systems and Subassemblies Thereof from Taiwan,* 54 FR 31987 (1989); and *Appendix B, Antifriction Bearings from the Federal Republic of Germany,* 54 FR 18993, 19027 (1989). Also, as discussed above, the Department and the courts have held that the party claiming that a sale is not in the ''ordinary course of trade'' has the burden of proof. Significantly, both the ''ordinary course of trade'' and the ''particular market situation'' criteria appear in section 773(a)(1).

In short, the Department's AD methodology contains presumptions that certain provisions of section 773 do not apply unless adequately alleged by a party or unless the Department uncovers relevant information on its own. In our view, this is an eminently reasonable approach. A common feature of these provisions is that they call for analyses based on information that is quantitatively and/or qualitatively different from the information normally gathered by the Department as part of its standard AD analysis. If the Department were to routinely seek the information called for by these provisions in every case, the Department's ability to comply with its statutory deadlines would be significantly impaired. Moreover, in many instances, the exercise would prove to be pointless and a waste of resources for both the Department and the parties involved. For example, absent an adequate allegation, it would not make much sense to routinely investigate whether Japan is a nonmarket economy country merely to ensure that section 773(c) of the Act does not apply.

In the Department's view, the criteria of a ''particular market situation'' and the ''representativeness'' of prices fall into the category of issues that the Department need not, and should not, routinely consider. In this regard, we note that the SAA at 822, through its repeated use of the words ''may'' and ''might,'' appears to treat the ''particular market situation'' criterion as a discretionary criterion that is subordinate to the primary criterion of ''viability.'' In addition, the SAA at 821 recognizes that the Department must inform exporters at an early stage of a proceeding as to which sales they must report. This objective would be frustrated if the Department routinely analyzed the existence of a ''particular market situation'' or the ''representativeness'' of third country sales.

Having said this, however, we believe that the language in the preamble concerning ''convincing evidence'' was not consistent with proposed paragraph (c)(2) and was unartful, at best. It was not the Department's intent to establish an entirely new evidentiary standard, such as the ''clear and convincing evidence'' standard that is sometimes used in civil matters. Instead, by using the phrase ''if it is established to the satisfaction of the Secretary'' in paragraph (c)(2), we merely were attempting to provide that the party alleging the existence of a ''particular market situation'' or that sales are not ''representative'' has the burden of demonstrating that there is a reasonable basis for believing that a ''particular market situation'' exists or that sales are not ''representative.''

One commenter proposed that the Department recognize that significant sales to affiliated parties constitute a ''particular market situation'' that may cause a specific market to be ''inappropriate as a basis for determining normal value.'' The Department has not adopted this recommendation, because under the statute and these regulations, the Department may use affiliated party sales if they are made at arm's-length prices. If affiliated party sales are made at arm's-length prices, there is no basis for concluding that the mere fact of affiliation precludes a proper comparison. By definition, such sales are equivalent to sales to unaffiliated parties.

Another commenter suggested that the Department revise § 351.404 to allow the Department to reject a given third-country market if prices to that country are ''not representative *for reasons other than for supporting dumping.*'' In other words, if high prices in a third country support dumping to the United States, the Department should not disregard those prices as ''not representative.'' This commenter also argued that it would be useful for the regulations to contain a definition of ''representative,'' and that ''representative prices'' are market-set prices, as opposed to fictitious or artificial prices.

The Department has not included a definition of representative prices in these regulations, because the Department does not yet have sufficient experience with this new statutory term to provide meaningful guidance. However, the Department does not agree with the implication in the comment that ''not representative'' can mean only that the prices are unrepresentatively low, nor does the Department agree with the suggestion that it must identify the reasons for a particular respondent's pricing scheme.

Another commenter, referring to the Department's explanation of proposed § 351.404, proposed that the final regulation provide that the Department will interpret the term ''quantity'' in a broad manner. In addition, this commenter argued, the final rule should clarify that the Department always will determine quantity on the basis of the ''aggregate'' sales of the foreign like product. This commenter also urged the Department to define the terms ''representative,'' ''particular market situation,'' and ''proper comparison,''

and to use narrow definitions based on the language in the SAA. Finally, with regard to selection of a third country market, this commenter suggested that the Department elaborate on the ''other relevant factors'' it will consider under § 351.404(e)(3), and that the final regulation include a statement that all of the criteria do not have to be present in order to select a market and that no one criterion is dispositive.

The Department has not adopted these suggestions. First, with respect to ''quantity,'' because the SAA at 821 is clear that the term quantity is to be interpreted broadly, there is no need for a regulation. Second, regarding ''aggregate sales,'' the final regulation adopts the language of the proposed § 351.404(b)(2), which states that the Secretary ''normally'' will determine whether sales are in sufficient quantity based on ''aggregate'' sales of the foreign like product. We have retained the word ''normally'' in order to provide the Department with the flexibility to deal with unusual situations. Third, regarding definitions of terms, as suggested previously, ''particular market situation'', ''representative'' prices, and ''proper comparisons'' are new concepts added to the Act by the URAA. The Department does not have sufficient experience in applying these new terms to provide any additional guidance at this time. Finally, with respect to the selection of a third country market, in proposed § 351.404(e)(3), we left the term ''other relevant factors'' undefined precisely because we cannot foresee all of the possible factual scenarios that we may encounter in future cases. In addition, we believe that § 351.404(e) is sufficiently clear that (1) not all of the three criteria need be present in order to justify the selection of a particular market, and (2) no single criterion is dispositive.

Time limits: Proposed paragraph (d) cross-referenced proposed § 351.301(d)(1), in which the Department provided that allegations regarding viability, including allegations regarding a particular market situation or the unrepresentativeness of prices, must be submitted within 40 days after the date on which the initial AD questionnaire was transmitted. Section 351.301(d)(1) also authorized the Secretary to alter the 40-day time limit. We have addressed comments regarding § 351.301(d)(1) below in connection with our discussion of that section.

One commenter proposed that the regulations explicitly state that the Department will make its viability determination early in a proceeding. The Department has not adopted this suggestion. We agree that the Department should strive to make viability determinations early in an investigation or review, and, as noted above, we have drafted § 351.404 with this objective in mind. However, there may be instances in which the Department must delay or reconsider a decision on viability.

Section 351.405

Section 351.405 deals with the calculation of normal value based on constructed value (''CV'').

Appropriate market for determining profit: Subparagraph (A) of section 773(e)(2) of the Act sets forth the preferred method for determining the amount of selling, general, and administrative (''SG&A'') expenses and profit to be included in constructed value. Subparagraph (B) of that section sets forth three alternative methods. In proposed § 351.405(b), the Department defined the term ''foreign country'' differently for purposes of subparagraphs (A) and (B).

With respect to these definitions, one commenter argued that well-established rules of statutory construction preclude the Department from defining the term ''foreign country'' differently in different subparagraphs of the same statutory provision. This commenter observed that section 773(e)(2) provides that for both the preferred method under subparagraph (A) and the alternative methods under subparagraph (B), the Department must determine SG&A expenses and profit on the basis of sales of the foreign like product ''for consumption in the foreign country.'' The commenter further noted that the phrase ''for consumption in the foreign country'' appears in the statute with respect to each of the four methods for computing SG&A and profit. Thus, according to the commenter, there is no basis for the Department to construe the phrase ''foreign country'' to mean either the home market or a third country for purposes of subparagraph (A), while at the same time interpreting the identical phrase to mean only the home market for purposes of subparagraph (B). The commenter believed that the Department should compute SG&A and profit for CV exclusively by reference to home market sales.

Another commenter also argued that the Department should not interpret the term ''foreign country'' differently for purposes of subparagraphs (A) and (B). However, unlike the prior commenter, this commenter believed that the correct interpretation allows the Department to compute SG&A and profit on the basis of either home market or third country sales, as appropriate, under any of the methods listed in section 773(e)(2). In this commenter's view, to limit the alternative SG&A and profit methods to home market experience, as the Department proposed, would be inconsistent with the intent of the drafters of the URAA and the AD Agreement. Moreover, this commenter noted, such an interpretation would be logically inconsistent in circumstances where, because the Department has found the home market to be non-viable, the Department uses third country data for normal value. Accordingly, the commenter suggested, the Department should revise proposed paragraph (b) in order to retain flexibility to use third country profit and SG&A experience in computing CV under the alternative methods of subparagraph (B), as well as under the preferred method of subparagraph (A).

The Department has not adopted the suggestions of either commenter. With respect to the three alternative methods, the SAA and the AD Agreement expressly indicate that profit and SG&A are to be based on home market sales. Thus, the Department cannot adopt the proposal to use third country profit and SG&A under the alternative methods. By contrast, with respect to the preferred method, the SAA and the AD Agreement are silent as to the market on which SG&A and profit should be based. The absence of any express intent in the SAA or other legislative history with respect to the preferred method—in contrast to the express intent set forth in these same documents regarding the alternative methods—indicates that, in the case of this particular issue, the drafters did not intend that the preferred and alternative methods be identical.

The Department believes that in situations where an exporter's third country sales form the basis for normal value, but the Department resorts to CV (because, for example, third country sales are below cost), third country sales constitute the most reasonable and accurate basis for calculating profit and SG&A. In such situations, because the Department already has rejected a respondent's home market sales as a basis for normal value, the Department also must reject SG&A and profit based on those sales. Further, where a respondent reports third country COP data, use of third country sales is the most practical basis for deriving profit and SG&A for both the Department and the respondent, because the respondent already will have reported the necessary data.

Determination of product categories for calculation of SG&A and profit: In the AD Proposed Regulations, 61 FR at 7335, the Department stated that it would calculate SG&A and profit on the

basis of aggregate figures for all covered foreign like products. A number of commenters disagreed with this approach. Although differing somewhat in their respective statutory interpretations and suggestions, all of the commenters generally agreed that the Act requires the Department to compute SG&A and profit on a basis narrower than that contemplated by the Department. In this regard, some of the commenters recommended that the regulations provide for the calculation of SG&A and profit on the basis of different product groupings, and that such groupings be limited to those models of the foreign like products capable of comparison to each model of the subject merchandise. Other commenters suggested an even narrower, model-specific basis for computing SG&A and profit; *i.e.*, when the Department disregards all home market sales of a particular model of the foreign like product, it would select the next most similar model as the basis for computing SG&A and profit.

The Department recognizes that there are other methods available for computing SG&A and profit for CV under section 773(e)(2)(A) of the Act, including those suggested by the commenters. We continue to believe, however, that an aggregate calculation that encompasses all foreign like products under consideration for normal value represents a reasonable interpretation of the statute. This approach is consistent with the Department's method of computing SG&A and profit under the pre-URAA version of the statute, and, while the URAA revised certain aspects of the SG&A and profit calculation, we do not believe that Congress intended to change this particular aspect of our practice.

Moreover, the Department believes that in applying the preferred method for computing SG&A and profit under section 773(e)(2)(A), the use of aggregate data results in a reasonable and practical measure of profit that the Department can apply consistently in each case. By contrast, a method based on varied groupings of foreign like products, each defined by a minimum set of matching criteria shared with a particular model of the subject merchandise, would add an additional layer of complexity and uncertainty to AD proceedings without generating more accurate results.

Inclusion of below-cost sales in the calculation of profit: One commenter argued that, in calculating CV profit, the Department should exclude all below-cost sales, whether or not the Department disregarded such sales as being outside the ordinary course of trade under section 773(b) of the Act. This commenter believed that the SAA at 840 supports this position in that it provides for the use of profitable sales as the basis for calculating CV profit in most cases. In the commenter's view, the Department's regulations should implement the legislative and administrative intent by providing that the loss resulting from *any* below-cost sale will not enter into the profit calculation for CV.

Another commenter disagreed with the proposal that the Department automatically exclude all below-cost sales from the profit calculation, arguing that the statutory directive for computing CV profit (as well as SG&A expenses) requires that the Department use sales ''in the ordinary course of trade'' in making its profit calculations. This commenter contended that if, under its below-cost test, the Department does not disregard below-cost sales of a foreign like product, those sales are in the ordinary course of trade, notwithstanding that they are at below-cost prices. Thus, according to the commenter, the Department should account for such sales in the CV profit calculation. The commenter further noted that the statute provides no restriction on using home market sales in the ordinary course of trade in the first and third alternative profit methods under section 773(e)(2)(B) of the Act. Accordingly, the commenter maintained, the Department must use *all* home market sales to compute profit under these alternative profit methods.

The Department believes that, in computing profit for CV, the automatic exclusion of below-cost sales would be contrary to the statute. In computing profit under the preferred and second alternative methods, the statute allows for the exclusion of sales outside the ordinary course of trade. The statutory definition of ordinary course of trade, in turn, provides that only those below-cost sales that are ''disregarded under section 773(b)(1)'' of the Act are automatically considered to be outside the ordinary course of trade. In other words, the fact that sales of the foreign like product are below cost does not automatically trigger their exclusion. Instead, such sales must have been disregarded under the cost test before the Department will exclude from the calculation of CV profit.

In addition, we believe that the SAA at 840 supports this position. The SAA states that unlike the Department's old law practice (under which the Department accounted for all sales, including sales disregarded as being below-cost, in the computation of profit), the new statute precludes the Department from including in its calculation of profit any below-cost sales that the Department disregards under section 773(b)(1) of the Act. Consequently, under the new law and as described in the SAA, profitable sales would constitute the majority of the transactions used to compute profit for CV under the preferred and second alternative methods.

With respect to the other alternative profit methods authorized by section 773(e)(2)(B), the Department believes that the absence of any ordinary course of trade restrictions under the first alternative is a clear indication that the Department normally should calculate profit under this method on the basis of all home market sales, without regard to whether such sales were made at below-cost prices. However, the same cannot be said of the third alternative method, which provides for the use of ''any other reasonable method'' in determining CV profit. The SAA at 841 makes it clear that, given the absence of any comparable standard under the prior statute, it would be inappropriate to establish methods and benchmarks for applying this alternative. Thus, depending on the circumstances and the availability of data, there may be instances in which the Department would consider it necessary to exclude certain home market sales that are outside the ordinary course of trade in order to compute a reasonable measure of profit for CV under the third alternative method.

Abnormally high profits: One commenter recommended that the regulations state that above-cost sales are not ''in the ordinary course of trade'' for purposes of determining CV profit when the use of those sales would lead to irrational or unrepresentative results. This commenter noted that the SAA at 834 and 840 refers to sales with ''abnormally high profits'' and merchandise sold at ''aberrational prices'' as examples of transactions that the Department may consider as being ''outside the ordinary course of trade'' for purposes of determining CV profit. Based on these examples, the commenter posited that if the Department excluded the vast majority of a respondent's sales from the profit calculation because they were below cost, the few remaining above-cost sales, by definition, would be sold at aberrational prices. As such, the Department also would have to exclude those sale from the CV profit calculation.

Another commenter suggested that the regulations stringently define the phrase ''abnormally high profits.'' This

commenter argued that the fact that profit margins are relatively high is an insufficient basis for determining that profits are ''abnormal.'' Instead, the commenter argued, the burden of establishing that a given profit amount is ''abnormal'' should be very high, and should be based on express economic assumptions.

The Department agrees that the sales used as the basis for CV profit should not lead to irrational or unrepresentative results. However, we have not adopted the first commenter's recommendation, because there may be instances in which it would be appropriate to base profit on a small number of above-cost sales. Specifically, where the Department finds a majority of sales of a foreign like product to be at below-cost prices (and, thus, excludes those sales from the calculation of profit), the fact that only a few sales remain at above-cost prices does not, by itself, render such sales outside the ordinary course of trade. Rather, it is the below-cost sales that are outside the ordinary course of trade. Whether the few remaining above-cost sales are also outside the ordinary course of trade is a separate issue that depends on the facts and circumstances surrounding these transactions.

In this regard, the Department believes that the burden of showing that profits earned from above-cost sales are ''abnormal'' (or otherwise unusable as the basis for CV profit) rests with the party making the claim. We do not consider it appropriate, however, to establish a stringent evidentiary burden in the regulations, as suggested by the second commenter. In most instances, proof that the profits earned by respondent on specific sales are abnormal will depend on a number of factors, including the type of merchandise under investigation or review and the normal business practices of the respondent and of the industry in which the merchandise is sold. Thus, the Department believes it appropriate to make such ordinary course of trade determinations on a case-by-case basis.

Profit ceiling: One commenter proposed that the regulations impose a ceiling on the amount of profit to be used in those cases where no or too few foreign market sales are found to be made ''in the ordinary course of trade.'' For such a ceiling, the commenter suggested that the Department use the average profit rate for the industry that produces/sells the subject merchandise.

The Department does not believe that there is a statutory basis for imposing a profit ceiling. Consistent with our position in the preceding comment, where there are only a few sales made by a respondent in the ordinary course of trade, such sales would form the basis for CV profit, because they would fulfill the requirement for actual profits under section 773(e)(2)(A) of the Act. It would contradict the plain language of the statute (which calls for the use of respondent's actual profits for a foreign like product) were the Department to impose an industry-wide ceiling on the profit used for CV.

Moreover, in instances where there are no sales in the ordinary course of trade from which to compute profit, section 773(e)(2)(B) of the Act does not provide that a profit ceiling be imposed for each of the alternative methodologies. Instead, only the third alternative method (*i.e.*, amounts realized under any other reasonable method) requires that the Department consider a ''ceiling'' on the amount calculated for CV profit. Here too, however, the Department believes that the commenter's recommended industry-wide average profit ceiling does not conform to the statutory requirement. Section 773(e)(2)(B)(iii) of the Act provides that the so-called ''profit cap'' be determined based on amounts realized by *other* exporters or producers in the *foreign country* in connection with sales of merchandise that is the *same general category* as the subject merchandise. This differs from the commenter's suggestion in two important respects. First, the statutory profit cap is to be derived from sales in the general category of products and, thus, encompasses a group of products that is broader than the subject merchandise. Second, where it relies on the third alternative method, the Department is required to determine the profit cap figure based on sales in the foreign country exclusive of profits realized by the exporter or producer under investigation or review. By contrast, the proposed average industry-wide profit figure presumably would include sales by all exporters and producers in all markets, including sales by the exporter and producer in question and sales to the United States. In our view, the statute prohibits the use of such sales for this purpose.

Finally, it is important to note that the SAA at 841 anticipates situations in which the Department will be unable to determine a profit cap due to an absence of the appropriate data. In these instances, the Department may apply the third alternative profit method on the basis of facts available. However, the Department will not make adverse inferences in applying facts available, unless the respondent did not cooperate to the best of its ability during the course of the investigation or review.

Use of other producer's profit data: One commenter suggested that the regulations state that, when calculating a respondent's profit for CV under section 773(e)(2)(B) of the Act, the Department will resort to the second alternative method (other producers' profits for the foreign like product) only in exceptional circumstances. The commenter contended that the adoption of this principle will help to ensure fairness and predictability in AD proceedings.

In our view, the SAA at 840 makes clear that there is no hierarchy or preference among the three alternative methods for calculating profit under section 773(e)(2)(B). Rather, the SAA provides that the Department's selection of an alternative profit calculation method will be made on a case-by-case basis, and will depend, to an extent, on the data available with regard to profits earned in the foreign market. For this reason, we have not adopted the commenter's recommendation to limit the use of the second alternative method to exceptional circumstances, because such an approach would impose a preference in favor of the first and third alternative methods.

Section 351.406

Section 351.406 deals with the analysis of whether to disregard certain sales as below the cost of production under section 773(b) of the Act.

Extended period of time: Several commenters made suggestions regarding the ''extended period of time'' criterion for below-cost sales under section 773(b)(1)(A) of the Act. Two of these commenters disagreed with the statement in the AD Proposed Regulations, 61 FR at 7336, that the Department would exclude below-cost sales made during only one month of the period of investigation or review. These commenters maintained that because one-month's worth of sales do not represent the pricing practices of a company over a full investigation or review period, the Department should not consider such sales to have been made within an extended period of time. Similarly, another commenter recommended that the Department establish criteria for determining when sales of ''custom'' products (products not manufactured continuously throughout the period of investigation or review) have been made ''within an extended period of time in substantial quantities.''

The Department has not adopted these suggestions, because we believe that the SAA is clear as to when below-

cost sales have occurred ''within an extended period of time.'' The SAA at 831–832 states that ''below-cost sales need occur only within (rather than over) an extended period of time.'' According to the SAA, this means that the Department ''no longer must find that below-cost sales occurred in a minimum number of months before excluding such sales from its analysis.'' Thus, for example, where a particular model is sold at prices below the cost of production during one month of the period of investigation or review (and where such sales are in substantial quantities and are not at prices that would permit cost recovery), the Department may disregard these sales in its determination of normal value.

Another commenter made two recommendations regarding the language in proposed paragraph (b) that an extended period of time ''normally will coincide with the period in which the sales under consideration for the determination of normal value were made.'' First, the commenter cited the statutory requirement that the substantial quantity of below-cost sales occur ''within'' the extended period of time, and not ''over'' that period. Based on this requirement, the commenter argued, paragraph (b) should not state that the period required to satisfy the ''extended period of time'' criterion must be as long as, or ''coincide'' with, the period of investigation or review. Second, this commenter noted that under proposed paragraph (b), the period in which ''sales under consideration'' are made could vary by model or part number. For example, according to this commenter, if a model was discontinued only a few months into the period of review, paragraph (b), as drafted, would limit the ''extended period of time'' to the duration of sales of that model. The commenter suggested that if the Department intends that the entire period of investigation or review constitute the ''extended period of time,'' it should make this clear in the final regulations.

It was not the Department's intention (nor do we believe it to be the case) that the use of the word ''coincide'' in proposed paragraph (b) changes the clear language of section 773(b)(1)(A) from ''within an extended period of time'' to ''over'' such a period. Instead, proposed paragraph (b) merely establishes the duration of that interval which the Department normally will consider as being ''an extended period of time'' for purposes of determining whether below-cost sales were made in substantial quantities under section 773(b)(1) of the Act. Below-cost sales need only occur *within* that period in order to be counted toward the substantial quantities threshold.

The Department does not believe it appropriate to redraft paragraph (b) to refer to sales within the period of investigation or review. The commenter making this suggestion presented a scenario in which a firm sells a particular model of a foreign like product only during the first few months of a review period. This commenter argued that paragraph (b) could be construed in such a way as to limit the extended period of time to the duration of sales of that model. We do not believe this to be the case, however, because the extended period of time is based on the period during which *all* foreign market sales were made, not merely sales of individual models. In other words, although it has been the Department's practice to conduct the sales below cost analysis on a model-specific basis, the extended period of time interval is generally the same for all models of the foreign like product that are under consideration for normal value. The fact that a firm makes sales of a particular model in only a few months does not alter the defined ''extended period of time.''

This being the case, it is important to note that paragraph (b) allows the Department to adhere to the statutory requirement that an extended period of time normally be one year. At the same time, however, it recognizes that the foreign market sales used as the basis for determining normal value (and that may become the subject of a sales below cost analysis) can occur over a period that is longer or shorter than one year. For example, in an administrative review, because of our practice of looking to ''contemporaneous'' sales in months other than the month in which the sale of the subject merchandise took place, the Department often requests a respondent to submit data regarding contemporaneous sales of foreign like products for specific months prior to and after the normal one-year period of review. In this instance, the extended period of time would be longer than twelve months. Likewise, the extended period of time could be shorter than one year if, for example, the subject merchandise consisted of highly perishable agricultural products with growing and selling seasons that are shorter than one year.

Section 351.407

Section 351.407 contains rules regarding the allocation of costs, the application of the major input rule under section 773(f)(3) of the Act, and the application of the startup adjustment to CV and COP under section 773(f)(1)(C) of the Act.

Affiliated party transactions/major input rule: In response to a number of comments, the Department has added a new paragraph (b) to § 351.407 that clarifies the Department's practice with respect to the determination of the value of major inputs purchased from affiliated suppliers in cases involving cost of production and/or CV. (We have redesignated proposed paragraphs (b) and (c) as paragraphs (c) and (d), respectively.) The new paragraph provides that, when the Department applies the major input rule, the Department normally will use the transfer price paid by the producer for a major input so long as that price is not below the input's market price or the supplier's cost of production for the input. In addition, if both the transfer price and the market price for a major input are less than the supplier's cost of production for the input, the Department normally will use production costs as the appropriate value for the major input under section 773(f)(3) of the Act.

Several commenters made recommendations regarding the Department's treatment of production inputs purchased from affiliated parties under section 773(f)(2) and (3) of the Act (affiliated party transactions disregarded and the major input rule). In general, these commenters suggested that, in determining the value of production inputs, the Department should place greater reliance on transfer prices between producers and their affiliated suppliers, especially where the reporting burden on respondents outweighs the value of conducting an arm's length test for every input. More specifically, two commenters suggested that the regulations establish an arm's-length test for inputs obtained from affiliated parties. One commenter believed that only significant differences—for instance, plus or minus 10 percent—between the average price charged to affiliated parties and the average price charged to unaffiliated parties should cause the Department to reject the affiliated party transactions as not being at arm's-length prices. As an alternative, this commenter suggested that the regulations provide that affiliated party prices are at arm's length if they do not deviate from the average non-affiliated party prices by substantially more than the deviation of non-affiliated party prices from that average. The other commenter suggested that if record evidence demonstrates that a producer cannot manipulate the price of inputs purchased from an affiliated party, the Department should

conclude that the producer purchased the input at arm's length.

We have not adopted the proposal to include in the regulations an arm's-length test for inputs sourced from affiliated suppliers. Although a test along these lines may be appropriate in some instances, it may not be in others. For instance, where a particular input represents a significant portion of the cost of the merchandise under investigation, a 10 percent difference between the price charged to the affiliated producer and the price charged to unaffiliated producers could have a significant effect on the results of the Department's AD analysis. In other instances, where inputs sourced from an affiliated party represent an immaterial part of the overall manufacturing costs of the merchandise, the Department may find it appropriate to accept a producer's transfer prices (or to test those prices on a sample basis) without conducting a full-blown arm's-length test based on the prices paid for all such inputs. Thus, instead of implementing a single arm's-length test applicable to all situations involving affiliated party inputs, we think it is important that the Department consider the facts of each case in order to determine the appropriate level of scrutiny it should give to affiliated party transactions.

With respect to the recommendation that the Department consider the ability of a producer to manipulate the price of inputs purchased from an affiliated party, we do not think that the potential price manipulation standard described by the commenter is appropriate for purposes of examining the arm's-length nature of input transfer prices. The indeterminate nature of such a standard would make it unadministrable and impractical. Instead, the Department believes that the appropriate standard for determining whether input prices are at arm's length is its normal practice of comparing actual affiliated party prices with prices to or from unaffiliated parties. This practice is the most reasonable and objective basis for testing the arm's length nature of input sales between affiliated parties, and is consistent with section 773(f)(2) of the Act.

With respect to the major input rule, two of the commenters recommended that the regulations establish a threshold for determining when an input will be considered ''major.'' These commenters suggested that normally the Department should not consider affiliated party inputs to be ''major'' if they represent less than 20 percent of the cost of production. Two commenters added that where a producer cannot obtain cost data from an affiliated supplier, the Department should allow the producer to report transfer prices.

Another commenter opposed these suggestions, noting that the only substantive change made by the URAA with respect to the issue of input dumping was to clarify that section 773(f) applies to the calculation of both cost of production and CV. Thus, the commenter argued, the Department should reject as inappropriate the suggestions of the other commenters.

The Department has not adopted the suggested definitions of ''major input.'' We continue to believe that the determination of whether an affiliated party input constitutes a ''major input'' in a particular case depends on several factors, including the nature of the input and the product under investigation. The determination also may depend on the nature of the transactions and operations between the producer and its affiliated supplier. For example, a producer could purchase a number of significant inputs from an affiliated supplier that individually account for a small percentage of the total cost of production for the subject merchandise, but, when considered in the aggregate, comprise a substantial portion of the total cost of production. In this instance, it may be appropriate for the Department to consider the inputs to be major inputs for purposes of examining the affiliated supplier's production costs under section 773(f)(3) of the Act. Similarly, the Department may find it necessary to analyze, on a sample basis, the production costs incurred for affiliated party inputs where a large number of such inputs are purchased from various affiliated suppliers and the combined value of the inputs purchased represents a significant portion of the total manufacturing cost of the subject merchandise.

These examples illustrate the difficulties inherent in relying on a single, all-encompassing definition of ''major input.'' There also is an additional problem associated with using a single numerical standard. In identifying ''major input,'' the Department generally must rely on the transfer price charged by the affiliated supplier. However, because the transfer price itself may be below cost, it may not constitute an appropriate basis on which to measure the significance of the input. Because of this problem, we do not believe that the Department would have sufficient flexibility to examine affiliated party transactions were we to adopt the 20 percent-of-cost definition or any other specific threshold for major inputs suggested by the commenters.

Nonrecurring costs: One commenter suggested that the Department add a new paragraph to its regulations to clarify the treatment of nonrecurring costs under section 773(f)(1)(B) of the Act. Specifically, this commenter recommended that the regulations establish a rebuttable presumption that all nonrecurring costs benefit current and/or future production, and that the Department either will (1) expense such costs to current production, or (2) allocate the costs over current and future production, as appropriate.

As the Department stated in the AD Proposed Regulations, 61 FR at 7342, the allocation of nonrecurring costs, such as research and development costs, for purposes of computing COP and CV is dependent on case-specific factors. Section 773(f)(1)(B) recognizes the fact-specific nature of these allocation issues by providing only that the Department adjust costs appropriately to take account of any benefit that may accrue to a respondent's current and/or future production as a result of incurring such costs. Thus, in these final regulations, we have not elaborated on the allocation of nonrecurring costs. Instead, the Department will continue to determine the appropriate allocation of non-recurring costs on a case-by-case basis.

Reliance on generally accepted accounting principles: With respect to the allocation of costs, one commenter recommended that the regulations provide that the Department normally will allocate costs in accordance with the generally accepted accounting principles (GAAP) of the country of exportation.

The Department has not adopted this suggestion, because it would establish a standard for computing COP and CV different from the standard contemplated by the Act. Section 773(f)(1)(A) provides that the Department normally will calculate costs ''based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise.'' Thus, the statute expresses a preference for computing costs on the basis of foreign country GAAP only when those practices measure costs in a reasonable manner. In addition, where a producer does not keep its normal accounting records in accordance with foreign country GAAP, the statute does not require that such records be made to conform with foreign GAAP.

We do not mean to suggest that the Department would not look to the

GAAP of the foreign country (or to U.S. or international accounting principles) in establishing whether the normal accounting practices of the producer reasonably reflect the costs associated with the production of the merchandise in question. Instead, we mean only that, for AD purposes, the fact that a producer does not follow its national accounting principles does not automatically mean that the producer's accounting practices do not reasonably reflect costs.

Startup adjustment: We received several comments concerning various aspects of proposed paragraph (c) (now paragraph (d)) and the new startup adjustment.

Definition of startup: One commenter, stating that the definition of terms in proposed paragraph (c) seemed to conform to the statute and the AD Agreement, urged the Department to apply paragraph (c) in a manner consistent with the SAA and the URAA. Specifically, this commenter maintained that the Department should allow for a startup adjustment in those instances where a semiconductor producer can demonstrate that a substantial investment was required to change a design, significantly reduce wafer size, or produce other new types of products that fall within a current chip generation.

Another commenter contended that the definitions of ''new products'' and ''new production facilities'' in proposed paragraph (c)(1) were exceedingly narrow. This commenter asked the Department to confirm that improvements to products or production facilities that entail substantial costs and that involve significant decreases in productivity will qualify for the startup adjustment.

Two commenters oppose the suggestions described above. One commenter argued that the startup adjustment does not apply to the semiconductor design changes described. In support, this commenter cited the SAA at 836, which states that ''a 16 megabyte Dynamic Random Access Memory (DRAM) chip, for example, would be considered a new product if the latest version of the product had been a 4 megabyte chip. However, an improved version of a 16 megabyte chip (*e.g.*, a physically smaller version) would not be considered a new product.''

The other commenter opposing the suggestions argued that the definition of ''new products'' in proposed paragraph (c)(1)(ii) was too broad, and suggested that the regulations provide examples that would limit the circumstances under which the ''complete revamping or redesign'' of products would be eligible for a startup cost adjustment. This commenter noted that in many industries, firms continually revamp or redesign products in order to obtain incremental improvements in performance or to reduce production costs, or both. In the commenter's view, however, such process or performance improvements that do not change the dimensions and construction of an article are not sufficient to result in a ''new product.'' The commenter recognized that in proposed paragraph (c)(1)(ii), the Department sought to distinguish ''mere improvements'' to products from the ''complete revamping or redesign'' of such products. However, the commenter believed that this paragraph was unduly vague and that the Department should clarify it by means of specific, narrowly defined examples of ''new products.''

The Department has not incorporated the suggestions made by these commenters in the regulations. Nor do we consider this explanatory preamble an appropriate vehicle for making determinations as to whether situations specific to the semiconductor industry would warrant a startup adjustment under section 773(f)(1)(C). Instead, paragraph (d)(1) continues to set forth the definitions contained in the SAA at 836. Given the variety of products and industries with which the Department deals and the fact that the startup provision is new to the statute, we believe that these examples are well-suited to the task of providing guidance to parties without unintentionally expanding or limiting the availability of a startup adjustment.

Standard for granting a startup adjustment: One commenter noted that proposed paragraph (c) correctly recognized that the standard for granting a startup adjustment is no more or less stringent than those applicable to other types of adjustments under the Act. This commenter added that because there are numerous situations that may call for some form of startup adjustment, proposed paragraph (c) properly left the Department wide latitude in analyzing and granting startup adjustments.

Another commenter, however, argued that the Department should strengthen paragraph (c) to ensure that respondents are not encouraged to file meritless claims for startup adjustments. To achieve this, the commenter recommended that the regulations provide that a respondent must submit substantial evidence demonstrating that the expenses for which a startup adjustment is sought can be directly tied to a startup phase of production.

A third commenter suggested that, because respondents bear the burden of proof in demonstrating they are entitled to a startup adjustment, the regulations should clarify the information necessary to obtain the adjustment. This commenter asked that the Department give specific examples of the types of documentation that will be sufficient to meet its requirements.

With respect to these suggestions, the Department notes that the SAA at 838 provides that the burden of establishing entitlement to a startup adjustment rests with the party seeking the adjustment. Among other things, the claimant must demonstrate that the costs for which an adjustment is claimed are directly associated with the startup phase of operations. Having said this, however, we have not adopted the suggestion that we establish a special burden of proof for startup adjustments, because we believe that the burden of establishing eligibility for a startup adjustment is the same as that applicable to any other AD adjustment. However, as in the case of any other adjustment, the Department intends to seek the case-specific information and documentation necessary to establish whether a startup adjustment is appropriate.

We also have chosen not to implement the suggestion that the Department provide specific examples of the documentation required in order to qualify for a startup adjustment. The SAA indicates that startup inquiries will be based on the specific facts of each case. For example, the SAA at 838 states that ''companies must demonstrate that, for the period of investigation or review, production levels were limited by technical factors associated with the initial phase of commercial production and not by factors unrelated to startup, such as marketing difficulties or chronic production problems. In addition, to receive a startup adjustment, companies will be required to explain their production situation and identify those technical difficulties associated with startup that resulted in the underutilization of facilities.'' Here, the SAA clearly contemplates a fact-based inquiry that includes consideration of a respondent's specific production situation and the unique technical difficulties that led to decreases in its normal production output. Moreover, other portions of the SAA further support the conclusion that the Department must conduct a fact-based examination of claims for a startup adjustment. Thus, it would be inappropriate, as well as impractical, for the Department to impose a mandatory set of information requirements that would apply to all cases.

Duration of startup period: One commenter recommended that the regulations refer expressly to the quality of merchandise produced as a criterion to be considered in determining the length of the startup period. The commenter argued that where merchandise, although in production, is not yet of a quality sufficient for sale, some startup adjustment would be appropriate. Another commenter, however, opposed this proposal, arguing that the ''quality of a product'' is an amorphous concept that respondents could manipulate.

The Department has not adopted the suggestion to make product quality a criterion in determining the length of the startup period, because we believe that this suggestion is inconsistent with the statute and the SAA. Section 773(f)(1)(C)(ii) of the Act provides that the Department will consider startup as having ended as of the time the producer achieves a level of commercial production that is characteristic of the merchandise, producer, or industry concerned. The SAA at 836 states that in making a determination as to when a producer reaches commercial production levels, the Department will measure the producer's actual production levels based on the number of units processed. The SAA also provides that, to the extent necessary, the Department will examine other factors (such as historical data reflecting the same producer's or other producer's experiences in producing the same or similar products) in determining the end of the startup period.

We note also that the SAA does not refer to quality of merchandise as a criterion for measuring the length of the startup period, but instead relies strictly on the number of units processed as a primary indicator of the end of the startup period. In fact, the SAA at 836 states that the Department will not extend the startup period in a manner that would cover product improvements and cost reductions that may occur over the life cycle of a product. The Department believes this to be a clear reference to product quality and yield improvements that may continue to exist long after startup has ended and, if taken into consideration, could result in extending the startup period beyond the point at which commercial production is achieved.

Startup costs: One commenter suggested revisions to proposed paragraph (c)(4) (now paragraph (d)(4)) regarding the types of costs that are eligible for a startup adjustment under the Act. According to this commenter, these revisions would help to clarify the legislative intent that, in making a startup adjustment, the Department may consider only those costs that are tied directly to manufacturing of the merchandise.

We have adopted the revisions suggested by the commenter. These changes provide additional clarification regarding the types of non-production costs that the Department will consider as ineligible for a startup adjustment. These costs include general and administrative (''G&A'') expenses and general research and development costs that the Department normally considers to be part of G&A.

Amortization of startup costs: One commenter disagreed with the Department's position that it should amortize over a reasonable period of time any excess between a respondent's actual costs and the costs adjusted and calculated for startup costs. In this commenter's view, there is no basis under the AD Agreement for such an approach. In addition, the commenter maintained that any adjustments for startup costs are isolated adjustments that the Department reasonably can take into account during the period of investigation or review.

Another commenter recommended that the Department provide that amortized expenses related to prior startup operations be included as part of respondent's startup costs during the period under investigation or review. This commenter maintained that its recommendation was consistent with sound accounting principles and would preclude a respondent from receiving an unintended and improper benefit as a result of a startup adjustment.

The Department believes that its position concerning the amortization of unrecognized startup costs is fully consistent with the URAA and the AD Agreement. As a result of making a startup adjustment under section 773(f)(1)(C), the difference between actual production costs during the startup phase and costs at the end of the startup phase are not accounted for during the startup phase. Because this difference represents actual costs incurred by the producer, it is reasonable to expect that the producer recoup these costs over an appropriate time period. Failing to consider these costs would mean ignoring a portion of the actual costs incurred by the producer in manufacturing subject merchandise.

Moreover, as described in the SAA at 837, the difference between actual and adjusted startup costs is recouped through amortization over a reasonable period of time (subsequent to the startup phase) based on the life of the product or production machinery, as appropriate. Because the amortization period is based on the estimated life cycle of a product or machinery, this period may extend beyond the period of investigation or review. Therefore, it is not possible for the Department, in all instances, to account for startup costs within the investigation or review period.

The Department also has not adopted the recommendation that respondents be required to account for startup operations that may have taken place prior to the period of investigation. The Department believes that only where respondents have adjusted for startup costs in an investigation or review period would they be required to account for (through amortization in periods subsequent to the startup phase) the difference between actual costs and costs computed for startup. As noted above, this practice ensures that respondents account for all actual costs incurred to produce the merchandise. Where merchandise was produced, or production facilities have been in place, prior to the period of investigation, the Department considers it unnecessarily burdensome to require that respondents account for previously incurred startup costs in the same manner as for startup operations that occurred during the investigation or review period. Nor is such a requirement contemplated under the statute as a condition for granting a startup adjustment.

Section 351.408

Section 351.408 implements section 773(c) of the Act, which creates a special methodology for calculating normal value in AD proceedings involving a nonmarket economy (''NME'') country. We received numerous comments on this section.

Market-oriented industry test: Section 773(c)(1) of the Act permits the Department, in certain circumstances, to use the ''market economy'' methodology set forth in section 773(a) to determine normal value in an NME case. To identify those situations where we would apply the market economy methodology and calculate normal value based on domestic prices or costs in the NME, we developed our so-called ''market oriented industry'' or ''MOI'' test. However, we elected not to codify the MOI test in the AD Proposed Regulations because of our concern that the test did not succeed in ''identifying situations where it would be appropriate to use domestic prices or cost in an NME as the basis for normal value * * *.'' 61 FR at 7343.

Several comments were filed concerning the MOI test and whether the Department should codify its

current test or an amended version of the MOI test. One commenter put forward numerous arguments against the current MOI test. First, this commenter argued that the third leg of the MOI test is unrealistic. (The third leg of the test requires that market-determined prices must be paid for virtually all inputs before the Department will find a particular industry to be an MOI.) In this commenter's view, this third leg extends the Department's inquiry beyond the pricing of the input itself to factors that only remotely impact the price of the input, such as land use and energy policies. Because of the breadth of this inquiry, this commenter believed that the Department effectively requires an examination of the entire NME economy, an approach that contravenes the stated purpose of the MOI test; *i.e.*, to determine whether a particular input or sector in the NME is sufficiently subject to market forces.

According to this commenter, another indication that the MOI test is unreasonable is that few, if any, market economy countries have industries in which every single input is 100 percent subject to market forces. To make the MOI test more reasonable, this commenter suggested amending the third leg of the test to require only that a reasonable portion of inputs be subject to market forces.

This commenter also questioned the Department's all-or-nothing approach under the third leg of the MOI test. Specifically, this commenter contended that the Department's requirement that all inputs sourced in the NME be obtained at market-determined prices overlooks the fact that certain inputs may be purchased at market prices. Where certain inputs are purchased at market prices, this commenter argued, the Department should use those prices. Moreover, in this commenter's view, doing so would be consistent with the Department's policy of using the actual input prices paid by an NME producer when the producer purchases the input from a market economy supplier and pays for the input in a market economy currency. The all-or-nothing approach also leads to anomalous results, in this commenter's view. When an NME industry is unable to meet the burden of showing that virtually all of its inputs are purchased at market-determined prices, the Department uses the NME methodology and values the NME producers' inputs in a surrogate market economy country that, according to this commenter, would itself fail the MOI test.

This same commenter also questioned the second leg of the MOI test, particularly as it applies to the People's Republic of China (''PRC''). (In order to qualify under the second leg of the test, the industry producing the merchandise should be characterized by private or collective ownership.) In this commenter's view, government ownership should not be dispositive of whether an industry is subject to market forces. The Department investigates many state-owned companies in market economy countries, and government ownership of those companies does not lead the Department to apply a different AD methodology. Moreover, based on its experience in administering the separate rates test (*see* § 351.102(b)), the Department has found on numerous occasions that PRC companies ''owned by the people'' operate independently of the government. Hence, in this commenter's view, ownership by the people should not preclude a PRC industry from achieving MOI status.

On a more general level, this commenter urged the Department to apply the MOI test on a company-specific basis rather than to all companies within a given industry. The failure of particular companies to provide evidence that market forces are at work should not, in this commenter's view, work unfairly against those companies that are able to satisfy the test. Similarly, according to this commenter, the regional nature of certain economic reforms in the PRC argues for a company-specific approach.

Two commenters raised various policy arguments against the rigidity of the MOI test. In their view, the MOI test should be applied in such a way as to encourage market reforms in NMEs. Instead, they claimed that the current MOI test sends a signal to NMEs that the Department will not recognize their reforms. Additionally, in the view of one commenter, NME producers and exporters would be more willing to cooperate in AD proceedings if the Department changed the MOI test, because they would have an opportunity to avoid the unfairly high margins generated by the NME methodology.

Two commenters suggested amendments to the current MOI test to make it meaningful and fair for ''economies in transition'' to market economies. Specifically, they urged the Department to adopt a presumption that when the first two legs of the current MOI test are met (*i.e.*, there is no government involvement in setting the prices or production quantities of the product, and the industry is characterized by private and collective ownership), the Department will perform a market economy AD analysis. Under their proposal, the presumption could be rebutted by evidence showing that the central government set the prices paid for inputs constituting a substantial value of the final product.

One commenter urged the Department either to (1) retain the current MOI test (on the grounds that it does succeed in identifying those situations where it would be appropriate to use prices or costs in the NME), or (2) abandon the notion of MOIs altogether. In this commenter's view, it is not possible to reconcile the notion that a country is an NME with the notion that the prices or costs of some participants in that economy are immune from that economy's influences.

We have not codified the current MOI test in our final regulations. Nor have we adopted a modified version of the MOI test. Given the changing conditions in NMEs, we believe that we should continue to develop our policy in this area through the resolution of individual cases, and the comments that were submitted will help us in that process. This area of the law continues to be extremely important to the agency and will receive the Department's careful attention.

Surrogate selection: In applying the NME AD methodology, the first step is to identify the so-called ''surrogate country'' to be used for valuing the NME producers' factors of production. Under section 773(c)(4) of the Act, the surrogate should be a country (or countries) at a level of economic development comparable to the NME and a significant producer of merchandise comparable to the merchandise being investigated. In proposed paragraph (b), we stated that we would place primary emphasis on per capita GDP as the measure of economic comparability. More generally with respect to surrogate selection, we explained that the relative weights we would place on the two selection criteria (*i.e.*, economic comparability and significant production of comparable merchandise) would vary based on the specific facts presented by individual cases.

We received two comments on the issue of surrogate selection. One commenter suggested that where other economic indicators (*e.g.*, growth rates, distribution of labor between the manufacturing, agricultural and service sectors) reflect disparities in economic comparability, the Department should take this into account. The second commenter agreed with the Department's position that surrogate selection should be made on the basis of the particular circumstances presented by each case.

Regarding the comment on economic comparability, we believe that paragraph (b) provides the Department with adequate flexibility to take into account economic indicators other than per capita GDP. While similar levels of per capita GDP would always be considered the primary indicator of comparability, other measures of comparability could outweigh it where the circumstances so warranted.

Valuation of the factors of production: Once the Department identifies an appropriate surrogate country, the next step in an AD proceeding involving an NME is to value the NME producers' factors of production. Proposed paragraph (c) contained rules for determining these values. In general, under proposed paragraph (c), we would value inputs using publicly available information regarding prices in a single surrogate country. However, we articulated certain exceptions to this general rule. First, where the NME producer purchases inputs from a market economy producer and these inputs are paid for in a market economy currency, we would use the price paid by the NME producer to value that input. Second, we proposed valuing the NME producer's labor input by reference to a regression-derived calculation that effectively includes wage information from a number of countries, rather than a single country.

We received several comments on the proposed factor valuation rules. One commenter called for the Department to seek internal coherence among the factor values by obtaining them from a single source. In this commenter's view, the goals espoused by the Department (*i.e.*, to achieve accuracy, fairness and predictability) would be better served if where there were a tight interrelationship among the surrogate values. Moreover, because the Department calculates certain values (such as manufacturing overhead, general expenses, and profit) relative to labor and material costs, this commenter believed the Department should derive all of these amounts from the same source.

We have not adopted this suggestion. In order to derive ''internally consistent'' values, as the commenter used the term, it would be necessary to obtain valuation data from a single producer in the surrogate country. We have tried this approach in the past and it has not worked well. Frequently, we have been unable to obtain a surrogate producer willing to share this type of information with the Department. Moreover, even when we have been able to obtain data, this approach is much less transparent than use of publicly available input values, because while a surrogate producer might share data with the U.S. government, it would be less likely to make it available to a U.S. petitioner or an NME producer. Finally, we question the accuracy of this approach as it applies to individual input prices. When compared to a publicly available price that reflects numerous transactions between many buyers and sellers, a single input price reported by a surrogate producer may be less representative of the cost of that input in the surrogate country. For these reasons, we have continued the general schema put forward in the proposed paragraph (c) of relying on publicly available data (which will not normally be producer-specific) for material inputs, while relying on producer- or industry-specific data for manufacturing overhead, general expenses, and profit.

Two commenters discussed the proposal in paragraph (c)(1) regarding the use of prices paid by NME producers when they import the input from a market economy and pay for the input in a market economy currency. One commenter objected to the Department's approach on the grounds that (1) such prices are not publicly available, and (2) they are not internally coherent with other values included in the calculation (see discussion above). In this commenter's view, if the Department does use the prices paid by NME producers, it should ensure that those prices are free of any distorting effects attributable to barter transactions or savings achieved through centralized purchasing. Moreover, this commenter continued, the Department should not use those input values except for the specific transactions to which they pertain. Thus, if an NME producer sourced some of the input from market economy suppliers and the remainder from domestic sources, then the value for the domestically-sourced inputs should be based on surrogate values and not on the price paid by the NME producers to the market economy suppliers. In support, this commenter stated that: (1) relying solely on the price paid to the market economy supplier to value the input is inappropriate because it assumes that the NME producer could purchase all of its needs at this price, and (2) it ignores the statutory requirement that the NME producer's factors of production be valued in a surrogate market economy country to the extent possible. The second commenter supported the Department's proposal to use the price paid by the NME producer to a market economy supplier in these situations, because that price is a more reasonable and accurate indicator of the value of the input than a surrogate price would be.

We have not adopted the suggestions put forward by the first commenter. While we acknowledge that prices paid by the NME producer to a market economy supplier will not be publicly available, we have weighed this consideration against the increased accuracy achieved by our proposal. We note that the Federal Circuit has upheld our practice of using prices paid for inputs imported from market economies instead of surrogate values. *Lasko Metal Products, Inc.* v. *United States*, 43 F.3d. 1442 (1994) (''*Lasko*''). While we certainly do not view this decision as permitting us to use distorted (*i.e.*, non-arm's length) prices, we believe that the Court's emphasis on ''accuracy, fairness and predictability'' does provide us with the ability to rely on prices paid by the NME producer to market economy suppliers, in lieu of surrogate values, for the portion of the input that is sourced domestically in the NME. Moreover, as noted in the AD Proposed Regulations, 61 FR at 7345, we would not rely on the price paid by an NME producer to a market economy supplier if the quantity of the input purchased was insignificant. Because the amounts purchased from the market economy supplier must be meaningful, this requirement goes some way in addressing the commenter's concern that the NME producer may not be able to fulfill all its needs at that price.

Another commenter suggested that the Department should ''test'' surrogate values for reasonableness. For example, if the Department has two values for a particular input that are very different, but one is closer to the price paid by the NME producer in the NME, the Department should select the price that is closer to the price paid by the NME producer. More generally, this commenter urged the Department to apply the law as fairly as possible by closely matching the characteristics of the input used by the NME producer with the input selected in the surrogate country for valuation purposes.

We agree that ''aberrational'' surrogate input values should be disregarded (*see, e.g., Certain Cased Pencils from the People's Republic of China*, 59 FR 55625, 55630 (1994)). However, we have not accepted this commenter's benchmark for determining whether a particular surrogate value is reasonable. Use of an NME price as a benchmark is inappropriate because it is the unreliability of NME prices that drives us to use the special NME methodology in the first place. The Department does attempt to match the surrogate product

used for valuation purposes closely with the input used by the NME producer. This practice is reflected in paragraph (c), wherein the Department elected to codify a preference for publicly available information rather than publicly available published information. This approach allows us to use input-specific data instead of the aggregated data that frequently appear in published statistics. *See* AD Proposed Regulations, 61 FR at 7344.

Finally, we received a comment regarding factor valuation in general. This commenter urged the Department to add to the regulations an illustrative list of the factors of production that are included in calculating the normal value of an import from an NME. The commenter believed that including such a list will increase the likelihood that all the appropriate factors of production will be identified. We have not adopted this proposal, because, in our view, the statute is sufficiently clear regarding the identify of the factors of production to be valued. If a party to a particular proceeding believes that certain factors are not being reported, it should raise its concerns with the Department in the context of that proceeding.

Valuation of the labor input: Proposed paragraph (c)(3) included a proposal for valuing the labor input in NME cases. Rather than relying on the wage rate in the selected surrogate country, under this proposal the Department would have valued the labor input using a wage rate developed through a regression analysis of wages and per capita GDP. After a further review of paragraph (c)(3) and the comments relating thereto, we have left paragraph (c)(3) unchanged.

Three commenters submitted views on the Department's proposal. One commenter noted that the proposal did not provide different wage levels for skilled and unskilled labor. The second commenter urged the Department to allow itself the flexibility to use other types of wage data if the record indicated that the other data would be better. Also, to value NME labor inputs, this commenter urged the Department to include full labor costs rather than simply wages, and to use industry-specific data because wages can vary dramatically from industry to industry within a single surrogate country.

We agree with the first commenter that the regression-based calculation fails to provide differentiated wage rates for skilled and unskilled labor. However, this results from limitations on the available data, not from the proposed approach. Even using a single country as a surrogate, it has been rare for the Department to find different wage rates for skilled and unskilled labor. Limitations on available data also prevent us from considering whether we should be using full labor costs or industry-specific wages, as suggested by the second commenter.

The third commenter also urged the Department not to adopt the regression-based wage rate. First, in this commenter's view, the proposal ignored the statutory requirement that factors be valued in a country that is economically comparable to the NME and is a significant producer of comparable merchandise. More specifically, this commenter pointed out that because the regression was based on wage rates and per capita GDP, the Department would have calculated NME wage values without regard to the significant production criterion. In a related argument, this commenter stated that the regression-based wage value was inconsistent with the intent of Congress that the Department select a surrogate country where input prices allow significant production to occur. Third, this commenter claimed that the proposal was contrary to standard and accepted economic theory on the grounds that when a producer locates in a country, that producer will choose the appropriate mix of capital and labor based on their relative prices. By applying a theoretical wage rate, the Department's proposal would have upset that relative price structure with the result that NME calculations would be less accurate and less related to real economic conditions. Finally, this commenter contended that the premise underlying the Department's proposal was unsound. In this commenter's view, because many potential factor valuations vary significantly between and among eligible surrogate countries, there is no reason for singling out labor as a factor to be valued under a regression approach while using single values for other inputs.

Addressing these comments in reverse order, we do not share the commenter's concern that the premise underlying our wage rate proposal was unsound because values for other factors of production are not similarly averaged. In general, we believe that more data is better than less data, and that averaging of multiple data points (or regression analysis) should lead to more accurate results in valuing any factor of production. However, it is only for labor that we have a relatively consistent and complete database covering many countries. To employ a parallel approach for other factors of production, the Department would have to develop a comparable database. Even if we were to limit our search for data to those countries that meet both the economic comparability criterion and the significant production criterion, the burden imposed on the Department in compiling such a database normally would outweigh any gains in accuracy.

Regarding the commenter's point that the proposed approach violates standard economic theory, we do not dispute that the relative prices of labor and capital are important and that relatively cheap labor usually will be substituted for relatively expensive capital. However, in order to capture the precise tradeoff between labor and capital that this commenter is seeking, we would have to value all factors using information from a single surrogate producer. As discussed above, we have not adopted that general approach to factor valuation.

Finally, regarding the argument that proposed paragraph (c)(3) ignores the significant manufacturer criterion for surrogate selection, we believe that the regression-based wage rate significantly enhances the accuracy, fairness, and predictability of our AD calculations in NME cases, all of which were attributes highlighted by the Court in *Lasko*. As we stated in the AD Proposed Regulations, for some inputs there is no direct correspondence between significant levels of production and input price or availability. When looking at a surrogate country to obtain labor rates, we believe it is appropriate to place less weight on the significant producer criterion, because economic comparability is more indicative of appropriate labor rates. As discussed above in connection with the calculation of average values for other factors, by combining data from more than one country, the regression-based approach will yield a more accurate result. It also is fairer, because the valuation of labor will not vary depending on which country the Department selects as the economically comparable surrogate economy. Finally, the results of the regression are available to all parties, thus making the labor value in all NME cases entirely predictable. Given these attributes of the regression-based wage rate, we believe that paragraph (c)(3) is fully consistent with the statute.

Manufacturing overhead, general expenses, and profit: Regarding these factors of production, proposed paragraph (c)(4) stated that the Department normally will use information from producers of identical or comparable merchandise in the surrogate country.

One commenter suggested that the Department should rigorously check the information it uses to value

manufacturing overhead, general expense and profit. Specifically, the Department should make sure the data are reliable and that they do not double-count items such as electricity and water. In this commenter's view, the Department could check the reasonableness of these values against the experience of the NME producers under investigation.

For the reasons explained above, we do not believe it is appropriate to check surrogate values against the NME respondents' experience. Regarding the reliability of the surrogate values for manufacturing overhead, general expenses and profit, we do attempt to obtain good data and avoid double-counting where possible. Parties to the proceeding are encouraged to submit data on these factor values and to identify areas where the data are questionable.

Section 351.409

Section 351.409 sets forth the guidelines for making adjustments to normal value for differences in quantities. We have made a few revisions in light of the comments received.

One commenter proposed that the Department liberalize its policy regarding quantity adjustments, noting that the Department typically ignores the requirement in former 19 CFR 353.55(a) that the Secretary normally will use sales of comparable quantities of merchandise. Because the statute itself does not require that the Department use sales of comparable quantities, but instead merely authorizes an adjustment when the Department compares sales in different quantities, we have decided to delete this requirement from paragraph (a).

In addition, we also have deleted the last sentence of proposed paragraph (a), which refers to the consideration of industry practice in determining whether to make a quantity adjustment. Upon further consideration, the Department believes that the granting of an adjustment should depend more on the pricing behavior of the individual firm in question, and not on whether other firms in the industry engage in similar behavior.

As a matter of calculation mechanics, the Secretary may adjust for differences in quantities by deducting from all prices used to calculate normal value quantity discounts even if all sales did not receive the quantity discount. Paragraph (b) contains standards that must be satisfied before the Secretary will calculate normal value in this manner.

One commenter stated that under paragraph (b), the two situations in which the Department will make a quantity adjustment are so narrow that it is virtually impossible for a respondent to meet the applicable standards. The commenter argued that the 20 percent threshold is excessively high, that it is not required by section 773(a)(6)(C)(i) of the Act, and that there is no rationale to support it. Moreover, according to the commenter, the requirement that the discounts be ''of at least the same magnitude'' violates the statutory directive that the adjustment be made whether the price difference is ''wholly or *partly* due to differences in quantities.'' The commenter suggested that the Department provide for additional situations where it will make quantity-based adjustments, such as when the exporter or producer can correlate quantity levels and prices.

While the Department does not agree with all of the arguments made by the commenter, we agree that former 19 CFR § 353.55(b), which formed the basis of paragraph (b), should be modified so as to allow other methods of establishing entitlement to a quantity adjustment. Therefore, in proposed paragraph (b), the Department added the word ''normally'' to indicate that the two methods described in paragraph (b) are not exclusive.

Under proposed paragraph (e), the Department stated that it will not make both a quantity adjustment and a level of trade adjustment unless it is established that the difference in quantities has an effect on price comparability that is separate from the difference in level of trade. One commenter argued that paragraph (e) was superfluous in light of § 351.401(b)(2), which contains a general prohibition against the double-counting of adjustments. In addition, this commenter contended that the proposed paragraph (e) did not provide any guidance (beyond what normally would be required for any claimed adjustment) as to the kind of showing necessary to establish the difference in the effects of each type of adjustment on price comparability. Third, the commenter argued that because the Department will identify level of trade differences by focusing primarily on the selling functions, to the extent that the quantity sold is one factor in a claimed level of trade difference, the Department can determine on a case-by-case basis whether an additional claimed quantity adjustment would be duplicative.

The Department recognizes that the prohibition against double-counting adjustments in § 351.401(b)(2) applies to situations in which a party claims a level of trade adjustment and an adjustment for differences in quantities. However, the Department believes that it is appropriate to emphasize that, in this specific area, it is particularly concerned about the possibility of double-counting. Based on our experience, firms tend to sell in different quantities to different levels of trade, thereby increasing the possibility of double-counting where both adjustments are claimed. This concern is expressed in the SAA at 830, where, in discussing the effect on price comparability necessary for a level of trade adjustment, the Administration stated: ''Commerce will ensure that a percentage difference in price is not more appropriately attributable to differences in the quantities purchased in individual sales.''

With respect to the commenter's suggestion that the Department provide additional guidance as to the showing necessary to establish the individual effect of each adjustment, the Department does not have enough experience to provide additional guidance at this time. Essentially, we agree with the commenter that the Department, at least initially, will have to resolve these issues on a case-by-case basis.

Section 351.410

Section 351.410 clarifies aspects of the Department's practice concerning adjustments to normal value for differences in the circumstances of sale (''COS'').

One commenter, noting that proposed § 351.410 did not indicate the types of expenses eligible for a COS adjustment, suggested that the final regulation clarify, in accordance with the SAA, that the Department will make a COS adjustment only for direct selling expenses and assumed expenses, as opposed to indirect selling expenses.

We agree with the commenter that in proposed § 351.410, we failed to connect the definitions of ''direct selling expenses'' and ''assumed expenses'' in paragraphs (b) and (c) to the COS adjustment itself. Therefore, we have revised this section by (1) redesignating proposed paragraphs (b) and (c) as paragraphs (c) and (d), respectively; (2) redesignating proposed paragraph (d) as paragraph (f); and (3) adding a new paragraph (b) that indicates the expenses eligible for a COS adjustment. In this regard, however, in paragraph (e) we have maintained the special ''commission offset'' rule, previously codified in 19 CFR § 353.56(b)(1).

Another commenter suggested that the Department clarify that it may treat allocated expenses as direct selling

expenses eligible for a COS adjustment. We have not revised § 351.410 in light of this comment. However, as stated above in connection with § 351.401(g), the Department will accept the allocation of direct selling expenses, subject to certain conditions.

One commenter noted that under proposed § 351.412, the Department would establish the level of trade for CEP sales only after having made the adjustments required under 772(d) of the Act; *i.e.*, after having converted the CEP sale to the equivalent of an export price sale. However, this commenter argued, because U.S. resale prices are the starting point for calculating CEP, and because such prices may differ substantially from one distribution channel to another, some sales cannot be compared logically to home market sales at the relevant level of trade, absent some appropriate adjustment. Accordingly, this commenter maintained, if the Department retains proposed § 351.412, the Department should clarify in § 351.410 that it normally will compare sales made in the same distribution channels. In this regard, the commenter asserted that the new law ''requires Commerce to make fair comparisons of price, 19 U.S.C. 1677b(a), and Commerce has traditionally used COS to achieve this all-important objective.''

The Department has not adopted this suggestion. First, as discussed below, section 773(a) of the Act specifies the adjustments that are required in order to achieve a ''fair comparison.'' Moreover, under the statute, the COS adjustment is not a vehicle for identifying sales matches. Instead, the Department makes a COS adjustment only after it first has identified appropriate sales matches. Finally, the commenter's proposal would require the Department to match sales on the basis of a level of trade other than the level of trade of the CEP. However, section 773(a)(1)(B)(i) of the Act requires the Department to identify the level of trade of the CEP (which the SAA at 829 defines as a starting price to which the Department has made adjustments), and to determine normal value at the same level as the CEP, if possible. If the Department must rely on sales in the foreign market that are at a level of trade different from the level of trade of the CEP sale, and if the level of trade difference is reflected in different selling functions and a pattern of consistent price differences, then the Department must make an adjustment for the different levels of trade.

Nevertheless, as discussed in connection with § 351.412, the Department has modified the methodology it will use to identify different levels of trade. Under § 351.412, as revised, the Department will not rely solely on selling activities to identify levels of trade, but instead will evaluate differences in selling activities in the context of a seller's whole scheme of marketing. This new methodology will deal with the problem identified by the commenter.

One commenter argued that the Department should provide for a COS adjustment to normal value for resale profit in situations where the Department makes a profit deduction to CEP. The commenter stated that ''[t]he Department rightly notes in its explanations that the statute does not 'provide for an adjustment to normal value' '' for resale profit. However, the commenter argued that this is a ''grossly inadequate rationale'' for refusing to make such an adjustment, because neither the statute nor the SAA prohibits such an adjustment, and because such an adjustment is necessary ''for proceedings to be fair.'' The commenter contended that because the CEP profit deduction will be based on profit earned in both the United States and the home market, the deduction amounts to double-counting. According to the commenter, this is unfair, and it will have the perverse effect of discouraging foreign investment in the United States and adding value to imported products in the United States.

Another commenter argued that any time a home market producer sells the foreign like product through an affiliated reseller, either in the home market or in the third country, a reseller profit will exist. However, under the proposed regulations, the Department will deduct profit only from CEP sales, and not from sales used to calculate normal value. To achieve a fair comparison, the Department should add a new provision to § 351.402(d) (special rule for determining profit) and deduct this affiliated reseller profit from normal value whenever it compares normal value to CEP.

The Department has not adopted these suggestions. First, with respect to the argument concerning a double-deduction of profit, we disagree. Under section 772(f), the Department does not deduct the CEP profit earned in both the United States and the home market from the price in the United States. Instead, because transfer prices cannot be relied upon for this purpose, section 772(f) provides for the allocation of total profit in the United States and the home market to CEP sales based upon the proportion of expenses incurred in the U.S. market vis-a-vis total expenses.

In addition, the statute specifies the adjustments that the Department may make to normal value in order to achieve a fair comparison between normal value and export price or CEP. Therefore, adjustments beyond those called for by the statute (such as an adjustment for resale profit) are not appropriate. Finally, the courts have made it clear that where, as here, Congress has provided for an adjustment to sales made in one market, but not for an adjustment to sales made in the other, the Department must comply with the scheme established by Congress. *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, 13 F.3d 398, 401–02 (Fed. Cir. 1994).

One commenter stated that the Department should clarify that if prices are reported net of any rebated or uncollected taxes, no adjustment to normal value under this provision is required. We have not adopted this suggestion, because the Department believes that section 773(a)(6)(B)(iii) of the Act clearly provides that the Department need adjust for taxes only where such taxes are included in the price of the foreign like product that is reported to the Department. While the topic of taxes has been fertile ground for misinterpretation and litigation, Congress has now established conclusively that dumping comparisons are to be tax-neutral in all cases. SAA at 827.

Regarding the definition of direct selling expense contained in proposed paragraph (b), one commenter suggested that the Department specifically state that the allocation of expenses, even over non-scope merchandise, does not automatically relieve that expense of its direct nature. Again, the Department has addressed this and similar comments above in connection with § 351.401(g).

Section 351.411

Section 351.411 deals with adjustments for differences in physical characteristics (also known as ''differences in merchandise'' or ''DIFMER'' adjustments).

One commenter suggested that the Department amend § 351.411 to provide that the Department will not make DIFMER adjustments when it compares merchandise with identical control numbers, or (in the case of comparisons involving ''identical'' or ''similar'' merchandise) for characteristics that the Department did not select as product-matching criteria. In addition, this commenter suggested that the regulations state that, in reviews, the Department will use the same product matching criteria as it used in the initial investigation, unless revised by the Department. Another commenter agreed

with this commenter, and added that the Department never should base DIFMER adjustments upon differences in the ''market value'' of products, but instead should base such adjustments only upon differences in variable costs. This commenter cited the SAA at 828, which states that ''Commerce will continue its current practice of limiting this adjustment to differences in variable costs associated with physical differences.''

The Department has not modified § 351.411 in light of these suggestions. The final regulation follows the proposed regulation and prior regulations in providing that ''the Secretary will not consider differences in cost of production when compared merchandise has identical physical characteristics.'' By comparing merchandise considered identical, the Department can avoid the need to make DIFMER adjustments entirely.

Regarding the proposal that the Department not alter its matching criteria after the initial investigation, the Department agrees that continuity and consistency from one segment of a proceeding to another is desirable. However, the Department must have the flexibility to revise these criteria where the facts so warrant.

Finally, the Department has retained the language concerning the use of effect on market value in measuring the amount of a DIFMER adjustment. This provision has been in the Department's prior regulations, although the Department rarely has quantified a DIFMER adjustment on the basis of value. Moreover, the Federal Circuit has held that while the Department may maintain a methodological preference for cost over value in making adjustments, the Department may not rely on cost to the exclusion of value. *Smith-Corona Group* v. *United States*, 713 F.2d 1568, 1577 (1983). In addition, although the SAA discusses the Department's practice of making DIFMER adjustments based on variable costs, which is the usual basis for such adjustments, it is silent on the issue of market value. Therefore, the Department believes it is necessary to retain the discretion to use market value in appropriate circumstances.

Another commenter noted that under proposed § 351.411, the Department would disregard fixed costs, SG&A, and profit that are allocable to the physical differences. This commenter argued that this approach is illogical, because the purpose of the DIFMER adjustment is to put the price of the similar home market merchandise on the same basis as the price of the comparison U.S. merchandise. The commenter noted that, in the context of constructed value, the Department includes all fixed and variable costs attributable to production of the merchandise, plus amounts for general expenses and profit. We have not adopted this suggestion, because the SAA at 828 is clear that when the Department uses cost to measure the amount of a DIFMER adjustment, it is to consider only differences in variable costs associated with physical differences in the merchandise.

Section 351.412

Section 351.412 addresses the Department's methodology for identifying differences in LOT and adjusting for such differences, where appropriate. It also addresses how and when the Department will apply the CEP offset. There have been several changes from the proposed regulation.

First, a number of commenters suggested that the Department abandon its efforts to regulate in this area because of the Department's lack of experience in making LOT adjustments under new statute. They proposed instead that § 351.412 merely track section 773(a)(7)(A) of the Act, and provide that an LOT adjustment is allowed only when the claimant demonstrates entitlement ''to the satisfaction of Commerce.''

The Department believes that it is necessary to provide as much guidance in this area as it can at this time. The LOT adjustment is one of the most significant issues under the new statute and is an area in which parties are in need of guidance. It is also an area in which there has been considerable debate concerning the requirements of the statute and the SAA. Therefore, while we have avoided regulating some areas in which the Department needs more experience, such as the definition of a ''pattern of consistent price differences,'' discussed below, we have clarified our interpretations of the legal requirements, and have given as much indication as possible as to how we intend to identify, and adjust for, differences in levels of trade.

One commenter proposed that the regulations make clear that the burden of proof is on the respondent to prove entitlement to an LOT adjustment to its advantage, just as the burden is on a respondent to prove any other adjustment in its favor. The commenter also suggested that the regulations make clear that neither adjustments for LOT differences nor the CEP offset are automatic, but may be made only where the statutory requirements are satisfied.

While the Department generally agrees with these concepts, we do not believe that it is necessary to incorporate them in the regulations. The statute provides clear guidelines regarding the conditions that must be satisfied before the Department may grant an LOT adjustment. In addition, § 351.401(b) makes clear that all adjustments, including LOT adjustments, must be demonstrated to the satisfaction of the Secretary. New § 351.412(f) also clarifies that the Department will grant a CEP offset only where a respondent has succeeded in establishing that there is a difference in the levels of trade, but, although the respondent has cooperated to the best of its ability, the available data do not permit the Department to determine whether that difference affects price comparability.

Section 351.412(b) generally tracks the statute in explaining the general conditions precedent to making an LOT adjustment. Although, for organizational clarity, we have transposed paragraphs (b) and (c), we do not intend this modification to have any substantive impact.

Section 351.412(c) explains the basis on which the Department will determine whether there are differences in the levels of trade of the EP or CEP and normal value. Paragraph (c) is substantively the same as the proposed regulation. Paragraph (c)(1) explains the basis on which the Department will determine the LOT of sales and CV. Paragraph (c)(1)(i) provides that the Department will determine the LOT of EP sales on the basis of the starting prices of sales to the United States, before any adjustments under section 772(c) of the Act. Paragraph (c)(1)(ii) provides that the Department will base the LOT of CEP on the U.S. affiliate's starting price in the United States, after the CEP deductions under section 772(d) of the Act, but before the deductions under section 772(c). Paragraph (c)(1)(iii) provides that the Department will base the LOT of a price-based normal value on the starting prices in the market in which normal value is determined, before any deductions under section 773(a)(6) of the Act. The Department will base the LOT of CV on the LOT of the sales from which the Department derives SG&A and profit under section 773(e) of the Act.

Section 773(a)(1)(B) of the Act requires that, to the extent practicable, the Department base normal value on sales at the same LOT as EP or CEP. Sections 772(a) and (b) define EP and CEP, respectively, as the starting price in the United States as adjusted under sections 772(c) and (d). The adjustments under subsection (d) normally change the LOT, so that the Department must

determine the LOT of CEP sales after any deductions under subsection (d). The adjustments under subsection (c), however, are made to both EP and CEP. Therefore, determining the LOT on the basis of EP or CEP before any deductions under subsection (c) yields the LOT of the EP or CEP. Similarly, we will not make the adjustments under section 773(a)(6) before determining the LOT of normal value.

Several commenters contended that the Department's proposed regulation, which identified the LOT of CEP sales based on the price after adjustments under section 772(d), was contrary to the statute and ignored commercial reality. According to these commenters, the Department's proposed analysis would make CEP offsets virtually automatic, contrary to the intent of Congress. These commenters suggested that the Department revise its proposed regulation to state that, in all situations, it will identify LOT on the basis of the starting price.

Other commenters contended that there is no basis for identifying the LOT of CEP any differently than the LOT of EP and normal value. They argued that such an approach would result in comparing a CEP that, in reality, had been reduced to a ''factory door'' price with a normal value at a more advanced stage of distribution, thereby necessitating an LOT adjustment in virtually every instance. However, other commenters argued that the Department's identification of the LOT of CEP after adjustments was in accordance with the statute and SAA.

As discussed above, we have maintained the methodology of the proposed regulation. The statute directs the Department to determine normal value at the LOT of the CEP, which includes any CEP deductions under section 772(d). We note that many of the commenters opposed to the use of adjusted CEP appear to believe that the deductions under section 772(d) involve all direct and indirect expenses. However, as discussed above in connection with § 351.402, the deduction under section 772(d) removes only expenses associated with economic activities in the United States. Thus, CEP is not a price exclusive of all selling expenses, because it contains the same type of selling expenses as a directly observed export price.

Paragraph (c)(2) describes how the Department will determine whether two sales were made at different levels of trade. We have modified the proposed regulation to provide that the Department will not identify levels of trade based solely on selling activities. We have made this change in order to avoid any implication that every substantial difference in selling functions or activities constitutes a difference in the levels of trade.

Numerous commenters stated that the proposed regulation appeared to be inconsistent with the statute because it based the identification of levels of trade on the identification of different selling activities. These commenters argued that the statute requires that the Department identify levels of trade first, and that it consider selling activities only to determine whether an LOT adjustment is authorized.

Other commenters asserted that the proposed regulation appropriately made differences in selling activities the test for identifying levels of trade. These commenters argued, however, that the Department should not merely count the number of different selling activities, but instead should take a qualitative approach, weighing the extent and importance of each selling activity.

In the Department's view, while neither the statute nor SAA defines level of trade, section 773(a)(7)(A)(i) of the Act provides for LOT adjustments where there is a difference in levels of trade and the difference ''involves'' the performance of different selling activities. Thus, the statute uses the term ''level of trade'' as a concept distinct from selling activities. The SAA at 829 reinforces this point by explaining that the Department must analyze the functions performed by the sellers, but need not find that two levels involve no common selling activities before finding two levels of trade. In other words, the statute indicates that two sales with substantial differences in selling activities nevertheless may be at the same level of trade, and the SAA adds that two sales with some common selling activities nevertheless may be at different levels of trade. Taken together, the two points establish that an analysis of selling activities alone is insufficient to establish the LOT. Rather, the Department must analyze selling functions to determine if levels of trade identified by a party are meaningful. In situations where some differences in selling activities are associated with different sales, whether that difference amounts to a difference in the levels of trade will have to be evaluated in the context of the seller's whole scheme of marketing.

If the Department treated every substantial difference in selling activities as a separate LOT, the Department potentially would be required to address dozens of levels of trade—many of which would be artificial creations. In addition to being extremely burdensome, this would make the Department less likely to find ''patterns of consistent price differences'' between the apparently different levels of trade. This would result either in denial of LOT adjustments altogether or routine use of the CEP offset. Neither of these results was intended by the URAA.

Section 351.412(c)(2) states that an LOT is a marketing stage ''or the equivalent'' (which means that the merchandise does not necessarily have to change hands twice in order to reach the more remote LOT). It is sufficient that, at the more remote level, the seller takes on a role comparable to that of a reseller if the merchandise had changed hands twice. For example, a producer that normally sells to distributors (that, in turn, resell to industrial consumers) could make some sales directly, taking over the functions normally performed by the distributors. Such sales would be at the same LOT as the sales through the distributors. Each more remote level must be characterized by an additional layer of selling activities, amounting in the aggregate to a substantially different selling function. Substantial differences in the amount of selling expenses associated with two groups of sales also may indicate that the two groups are at different levels of trade.

Although the type of customer will be an important indicator in identifying differences in levels of trade, the existence of different classes of customers is not sufficient to establish a difference in the levels of trade. Similarly, while titles, such as ''original equipment manufacturer,'' ''distributor,'' ''wholesaler,'' and ''retailer'' may actually describe levels of trade, the fact that two sales were made by entities with titles indicating different stages of the marketing process is not sufficient to establish that the two sales were made at different levels of trade.

Section 351.412(d) provides that the Department will grant an LOT adjustment only if it is demonstrated to the satisfaction of the Secretary that the difference between the LOT of the sales in the United States and normal value affects price comparability, based on a pattern of consistent price differences between sales at those two levels of trade in the market in which normal value is determined. The Department will develop its practice in this area in the course of administrative proceedings, and intends to issue a policy bulletin once its methodology is more fully developed.

Section 351.412(e) provides that the Department will calculate LOT adjustments by determining the weighted average of the adjusted prices

at the two relevant levels of trade in the market in which normal value is determined. These two levels are the level corresponding to EP or CEP and the level at which normal value is determined. The Department will apply the average percentage difference between these weighted averages to normal value, as otherwise adjusted.

Several commenters contended that the Department should base the amount of any adjustment on the pattern of consistent price differences, rather than on a weighted average. The Department has not adopted this proposal. The SAA at 830 clearly states that ''any adjustment * * * will be calculated as the percentage by which the weighted-average prices at each of the two levels of trade differ in the market used to establish normal value.''

Several commenters proposed that the Department make clear that LOT adjustments, or the CEP offset, can be applied when normal value is based on CV, as well as when normal value is based on prices. The Department agrees, and has revised the proposed regulation to remove any suggestion that LOT adjustments will be made only to prices. Section 773(a)(8) of the Act provides that the Department may adjust CV, as appropriate, under subsection 773(a). Section 773(a)(7)(B) provides that the CEP offset is made to ''normal value.'' There is no limitation confining the adjustment to home market prices, or precluding its application to CV. Therefore, it is clear that LOT adjustments are appropriate regardless of the basis on which normal value is determined.

Where there are sales of the foreign like product at the LOT in the home market corresponding to the LOT of the EP or CEP, the Department will determine normal value on the basis of those sales, and the Department will not make an LOT adjustment. In situations where the Department seeks to make an LOT adjustment, there may be no usable sales of the foreign like product in the market in which normal value is determined at the LOT of the EP or CEP. In order to calculate LOT adjustments in such situations, the Department will examine price differences in the home market either for sales of broader or different product lines or for sales made by other companies.

The regulation also makes clear that the Department will make the LOT adjustment on the basis of adjusted prices. Although neither the statute nor the SAA stipulates whether the average prices compared to determine the amount of the LOT adjustment should be adjusted prices, the adjustment can accomplish its purpose only if calculated on the basis of adjusted prices. This is because the adjustment is intended to eliminate only differences that are: (1) attributable to a difference in levels of trade; and (2) not otherwise adjusted for. In order to avoid having the LOT adjustment duplicate other adjustments, the LOT adjustment must be calculated on the basis of prices to which those adjustments have already been made. To achieve this, the Department will adjust prices at each level of trade in the foreign market as appropriate under section 773(a)(6) before it determines the amount of the LOT adjustment.

One commenter asked the Department to specify that an LOT adjustment can have any value, positive, negative, or zero. We have not adopted this proposal because the statute and SAA make clear that LOT adjustments can be upwards or downwards. SAA at 830.

Section 351.412(f) describes the situations in which the Department will grant a CEP offset. Some commenters suggested that the CEP offset is ''automatic.'' This is not the case. The Department will calculate CEP by deducting only selling expenses and profit associated with selling activities in the United States. Thus, the resulting CEP will retain an element of selling expenses and an element of profit, as do directly observed export prices. We do not agree that there never will be comparable sales in the foreign market.

The Department will not make a CEP offset where the sales to the United States are EP sales or where the Department bases normal value on home market sales at the same LOT as the CEP. The Department will grant a CEP offset only where: (1) normal value is determined at a more remote level of trade than CEP sales; and (2) despite the fact that a respondent cooperated to the best of its ability, the data available do not provide an appropriate basis to determine whether the difference in levels of trade affects price comparability.

One commenter contended that the Department should make the CEP offset in addition to any adjustment for differences in levels of trade. The Department has not adopted this proposal. Section 773(a)(7)(B) of the Act authorizes the Department to make the CEP offset only where the data available do not provide an appropriate basis to determine an LOT adjustment. Therefore, whenever an LOT adjustment can be calculated, the Department cannot also make the CEP offset.

Section 351.413

Section 351.413 deals with the Department's authority to disregard insignificant adjustments under section 777A(a)(2) of the Act. More specifically, § 351.413 defines the term ''insignificant'' with respect to an individual adjustment and a group of adjustments.

Two commenters observed that proposed § 351.413 provided that the Department may ignore *any* ''group of adjustments'' with an *ad valorem* effect of less than one percent. Because the proposed regulations identify three separate ''groups of adjustments,'' it is possible that the Department could ignore three separate groups of ''insignificant'' adjustments for which the combined *ad valorem* effect could be nearly three percent. To prevent this, one commenter suggested that the Department delete the final sentence of proposed § 351.413 dealing with groups of adjustments. The other commenter suggested that the Department make clear that the total *ad valorem* effect of all disregarded adjustments can be no more than one percent.

The Department has not adopted these suggestions. In § 351.413, the percentages used and the definition of groups of adjustments reflects the legislative history of section 777A(a)(2) of the Act, the statutory provision on which the regulation is based. *See, e.g.,* S. Rep No. 249, 96th Cong., 2d Sess. 96 (1979). Moreover, with the exception of changes in terminology (*e.g.*, from ''foreign market value'' to ''normal value'') a revision to render this provision applicable to the calculation of export price and constructed export price, § 351.413 is unchanged from former 19 CFR § 353.59(a).

We believe that part of the commenters' concerns may arise from a misperception that the references to ''an *ad valorem* effect'' in § 351.413 relate to the *ad valorem* dumping margin, so that if the Department ignored groups of adjustments with a total *ad valorem* effect of three percent, the Department, for example, might transform a dumping margin of 4 percent *ad valorem* to 1 percent *ad valorem*. However, this is not what is contemplated by § 351.413, because that section clearly states that the *ad valorem* effect in question is the percentage change to ''export price, constructed export price, or normal value, as the case may be,'' and not the percentage change in the dumping margin.

Finally, we should note that both section 777A(a)(2) and § 351.413 give the Department the flexibility to determine, on a case-by-case basis, whether it should disregard a particular insignificant adjustment. Given this flexibility, and given that § 351.413 is taken almost *verbatim* from the

legislative history, we do not believe there is a reason to eliminate the guidance provided by the last sentence defining ''groups of adjustments.''

Section 351.414

Section 351.414 implements section 777A(d) of the Act and sets forth the three statutory methods for establishing and measuring dumping margins. Section 351.414(c) sets forth the preference for comparisons of average U.S. prices to average comparison market prices in investigations, and for comparison of transaction-specific U.S. prices to average comparison market prices in administrative reviews.

Averaging groups: In establishing the particular averaging groups to be used for price comparisons, § 351.414(d)(2) of the proposed rule stated that an averaging group will consist of subject merchandise that is identical or virtually identical in all physical characteristics and that is sold to the United States at the same level of trade. The Secretary also will take into account, where appropriate, the region of the United States in which the merchandise is sold and such other factors as are considered relevant.

One commenter objected to the Department's interpretation of the statutory provision, and suggested that the true purpose of averaging groups, as reflected in the SAA, is to identify potential targeted dumping to certain U.S. customers or certain U.S. regions, not to invite a similar division of the home market into such groups as a means of thwarting the AD law. The commenter concluded that the regulations should make clear that price averaging pertains solely to U.S. sales and that no product averaging groups will be undertaken with respect to normal value sales.

We disagree with the comment. The SAA provides that in an investigation Commerce will normally establish and measure dumping margins on the basis of a comparison of weighted-average normal values and weighted-average export or constructed export prices. The SAA specifically states:

> To ensure that these averages are meaningful, Commerce will calculate averages for comparable sales of subject merchandise to the U.S. *and sales of foreign like products.* In determining the comparability of sales for purposes of inclusion in a particular average, Commerce will consider factors it deems appropriate, such as the physical characteristics of the merchandise, *the region of the country* in which the merchandise is sold, *the time period,* and *the class of customer* involved. (Emphasis added.)

SAA at 842.

In the Department's view, the language of the SAA makes clear that Congress and the Administration contemplated the use of averaging groups for both U.S. and normal value sales. Nothing in the statute or SAA supports the view that normal value sales should not be averaged, or that normal value sales should not be averaged on the same basis as U.S. sales. Moreover, the purpose of establishing particular price averaging groups is to make accurate and meaningful price comparisons, not to identify (and address) potential targeted dumping.

Time period over which weighted-average is calculated: Under § 351.414(d)(3) of the proposed rule, the Department normally will calculate averages for the entire period of investigation or review when the average-to-average method is applied. However, the Secretary may calculate weighted-averages for shorter periods when normal values, export prices, or constructed export prices differ significantly over the course of the period of investigation or review.

One commenter pointed out that there is no reason to default to the entire period given the complete reporting requirements of the law and the capability for analysis of prices through computer support. For perishable products, the commenter noted that the Department should average prices over the shortest period necessary to take account of the perishable nature of the products, but should not average prices over a period that would mask price trends unrelated to the perishable nature of the product.

For products such as manufactured goods, the commenter contended that the Department should adopt a one-month average as the standard time period over which prices would be averaged when the Department employs the average-to-average method. According to the commenter, use of a one-month average time period results in a more precise comparison of normal values and export/constructed export prices than would a single period-wide average comparison. With a one-month standard, the Department may allow averaging over longer periods only where it is shown that a longer period does not distort the price-to-price comparison.

Another commenter supported the Department's proposed rule that the Department will rely on shorter periods in appropriate circumstances and urges the Department to give full consideration to all relevant circumstances in applying the rule.

In the Department's view, price averaging means establishing an average price for all comparable sales. In general, we believe it is appropriate to average prices across the period of investigation, though we recognize that there are circumstances in which other averaging periods are more appropriate. Accordingly, the proposed rule is designed to ensure that the time periods over which price averages and comparisons are made comports with the circumstances of the case, while maintaining a preference for period-wide averaging. Where perishable products are concerned, the Department has not fashioned a rule with respect to a particular type of product because such an approach may limit the agency's ability to address, for example, price trends unrelated to the perishable nature of the product.

Use of the average-to-average method in administrative reviews: Section 351.414(c)(2) of the proposed regulations states that in a review the Secretary normally will use the transaction-to-average method. One commenter urged the Department to expand the application of the average-to-average price comparison method to administrative reviews. In contrast, another commenter contended that such an expansion is clearly impermissible. Citing the SAA, the opposing commenter argued that both Congress and the Administration recognized that the transaction-to-average method would continue to be used in administrative reviews. Another commenter agreed and advocated adoption of a final rule that would preclude application of the average-to-average methodology in reviews, other than in exceptional circumstances.

The Department specifically addressed these divergent positions in the preamble to the proposed regulation. The final rule reflects the SAA, which expressly states that the transaction-to-average method is the preferred approach for administrative reviews. SAA at 843. However, these regulations do not preclude the use of average-to-average price comparisons in every review. Circumstances may exist that warrant application of the average-to-average method and the final rule reflects the Department's authority to apply this method where necessary.

On the subject of the transaction-to-transaction method of price comparisons, one commenter suggested that the final rule state that this method be applied ''in appropriate situations,'' rather than ''only in unusual situations'' as contemplated in the proposed regulation, § 351.414(c)(1). In the commenter's view, the language of the proposed rule establishes a strong presumption that the transaction-to-

transaction method should not be used. The commenter believed that anyone who advocates use of this alternative method should bear the burden of providing good reason for its application, but that the final rule should not discourage this option.

In the Department's view, the SAA makes clear that Congress did not contemplate broad application of the transaction-to-transaction method. SAA at 842. Specifically, the SAA recognizes the difficulties the agency has encountered in the past with respect to this methodology and suggests that even in situations where there are very few sales, the merchandise in both markets should also be identical or very similar before the agency would make transaction-to-transaction comparisons. Accordingly, we continue to maintain that the transaction-to-transaction methodology should only be applied in unusual situations.

Targeted dumping: Paragraph (f) of § 351.414 of the proposed regulation implemented the ''targeted dumping'' provision of section 777A(d)(1)(B) of the Act. Several parties commented that the final rule should provide more specific guidelines as to what constitutes targeted dumping. One commenter suggested the Department provide guidance by establishing more specific criteria for making targeted dumping determinations. Another commenter suggested that the Department needs to gain more experience in order to develop the proper standard for making such determinations, and should establish guidelines through policy bulletins as it develops its practice in this area.

More specifically, several commenters suggested that the Department recognize in its final rule that certain ''common commercial patterns of pricing'' do not constitute targeted dumping, such as (1) different pricing for larger or smaller orders, (2) seasonal pricing, and (3) price changes associated with industry practices, such as downward price changes pursuant to lower costs as are typical for semiconductors, personal computers, and other technical products. In contrast, other commenters contended that common commercial practices in an industry can constitute targeted dumping and that such behavior should not be excused or ignored simply because it is considered to be a common commercial practice.

Other commenters proposed additional substantive guidance. For example, one party suggested that targeted dumping should not be found to exist where the pattern of prices exists in both the U.S. and the comparison market. Another commenter suggested that the Department not obligate itself to use ''standard statistical techniques'' in all of its determinations. Several commenters suggested that the Department define in the final regulations the evidentiary threshold for initiating a targeted dumping inquiry. One commenter, in particular, contended that the final rule establish a low threshold for an allegation to be accepted, similar to allegations of sales below cost. Another commenter expressed concern that the Department's brief practice in this area already has established an arbitrarily high initiation standard.

In the preamble to the proposed regulations, the Department specifically avoided the adoption of any *per se* rules on targeted dumping due to the Department's limited experience administering this provision of the Act. However, the Department recognizes the need to establish guidance in this area and thus will issue policy bulletins setting forth more specific criteria as the Department develops its practice in this area. Moreover, the Department plans to employ common statistical methods in its targeted dumping determinations in order to ensure that the test is applied on a consistent basis and in a manner that ensures transparency and predictability to all parties concerned. In addition, the Department will ensure that parties have an opportunity to explain whether a particular pattern of export prices or constructed export prices constitutes targeted dumping. A policy bulletin setting forth some basic guidelines for applying statistical techniques to targeted dumping questions will be issued in the near future. As we gain more experience in this area, the bulletins will be supplemented or replaced.

Allegation requirement: In proposed § 351.414(f)(3), the Department stated that ''the Secretary will not consider targeted dumping absent an allegation.'' Many commenters opposed the allegation requirement on several grounds. First, they claimed that the burden imposed on interested domestic parties is substantial in that these parties would have to examine multiple respondents, and then reexamine revised responses, sometimes submitted subsequent to verification. Second, the commenters added that the Department's proposed rule effectively precluded self-initiation of a targeted dumping examination by the Department. One commenter contended that the Department should place the burden of proof on respondents to demonstrate that they did not engage in targeted dumping, thereby removing the improper burden placed on domestic interested parties. The commenter went on to state that, contrary to the Department's reasoning in the preamble to the AD Proposed Regulations, it is the Department, and not domestic interested parties, that is in the best position to find targeted dumping. According to the commenter, a domestic interested party's knowledge of the market in question offers no special insight into whether a foreign company has engaged in targeted dumping. While a domestic company may recognize that it is losing sales to foreign competitors, it surely can have no way of knowing the reasons behind, or pattern emanating from, such dumping. According to the commenter, the Department, through its power to assess margins based on facts available, is in the best position to obtain the information necessary to make a targeted dumping determination.

It is the Department's view that normally any targeted dumping examination should begin with domestic interested parties. It is the domestic industry that possesses intimate knowledge of regional markets, types of customers, and the effect of specific time periods on pricing in the U.S. market in general. Without the assistance of the domestic industry, the Department would be unable to focus appropriately any analysis of targeted dumping. For example, the Department would not know what regions may be targeted for a particular product, or what time periods are most significant and can impact prices in the U.S. market. Ultimately, the domestic industry possesses the expertise and knowledge of the product and the U.S. market. Information on these factors are significant for both the burden aspect and the determination itself. If the Department were required to explore the contours of the U.S. market for every product subject to an investigation, absent the knowledge as to how the market functions, the Department would be compelled to conduct countless comparisons of prices between customers, possible regions, and possibly significant time periods in every case. Absent any guiding insight as to how the market truly functions, such a requirement would be an enormous undertaking. Fundamentally, the Department needs the assistance of the domestic industry to focus the inquiry and to properly investigate the possibility of targeted dumping.

Nevertheless, there may be instances in which the Department recognizes targeted dumping on its own, without an allegation from domestic interested parties. In such cases, the Department must be able to address the targeted

dumping behavior regardless of whether any domestic interested party filed a timely and sufficient allegation. Accordingly, the Department has modified the proposed rule in order to ensure that the regulation properly reflects the Department's authority to address instances of targeted dumping absent an allegation. However, the final rule anticipates that targeted dumping examinations normally will flow from allegations of targeted dumping.

With respect to the availability of information, the Department recognizes that parties' access to relevant information on the record is crucial for making targeted dumping allegations of merit and will continue to take steps to ensure that public summaries provide the parties with adequate information. For example, the authority to determine margins based on facts available should continue to enable the Department to obtain the information necessary for domestic interested parties to make targeted dumping allegations. For example, the Department intends to calculate dumping margins using the transaction-to-average method as facts available for any respondent who refuses to supply the necessary data for a targeted dumping determination.

Time in which to file targeted dumping allegations: Section 351.301(d)(4) sets forth the time in which targeted dumping allegations must be filed. Although we received comments on the proposed regulatory deadline for filing targeted dumping allegations, for the final rule we have adopted the time requirement set forth in the proposed rule for the reasons discussed below.

Under proposed § 351.301(d)(4), the Department stated that an allegation of targeted dumping must be filed ''no later than 30 days before the scheduled date of the preliminary determination.'' Commenters pointed out that there is no reason to impose such a deadline for submitting an allegation given that the Department will receive the necessary information on targeted dumping in the normal course of every investigation. Thus, unlike cost investigations, the Department need not request additional information to conduct its examination. Accordingly, commenters contended, the Department need not require the stringent deadlines set forth in the proposed rule. Commenters also contended that the proposed deadline imposed a substantial burden in that for many cases the Department has limited, unusable information on the record 30 days prior to the preliminary determination. Commenters also noted that the proposed early and inflexible time limit would impose the added burden on petitioners at a time when the domestic industry must examine questionnaire responses for identification of deficiencies and for potential below-cost allegations. These commenters proposed that the final rule permit domestic interested parties to file allegations at any time until the deadline for the case briefs, which would allow allegations to include information uncovered at verification.

The Department has adopted the proposed regulation relating to the time in which to file targeted dumping allegations. To extend the deadline would make it impossible for the Department to consider the allegation for the preliminary determination. Furthermore, it would make any verification of issues relative to the allegation extremly difficult. However, the Department recognizes the burden such a deadline may place on domestic interested parties in some situations and intends to be flexible with respect to the deadline. For example, if the timing of the responses does not permit adequate time for analysis, the Department may consider that to be ''good cause'' and extend the deadline under section 351.302.

Limited application of average-to-transaction method: Under proposed paragraph (f)(2), the Secretary will normally limit the application of average-to-transaction comparisons exclusively to those sales in which the criteria for determining targeted dumping are satisfied. The preamble to the proposed regulations states that it would be ''unreasonable and unduly punitive'' to apply the transaction-to-average approach to all sales where, for example, targeted dumping accounted for only one percent of a firm's total sales. The preamble also states that the approach would not always be limited in application ''because there may be situations in which targeted dumping by a firm is so pervasive that the average-to-transaction method becomes the benchmark for gauging the fairness of that firm's pricing practices.''

Several commenters argued that neither the AD Agreement, statute, nor the SAA supports limited application, and advocated broad application of the transaction-to-average approach to all of a firm's sales once targeted dumping is found. In general, these commenters also were concerned that limiting the application exclusively to those sales in which the targeting criteria are met would have significant implications for submitting allegations. One commenter, in particular, noted that the ''hybrid approach'' proposed by the Department would require an exhaustive recitation, rather than a representative allegation, if all instances of targeted dumping are to be addressed. The commenter also rejected the view that broad application would be ''punitive'' and claimed that the average-to-average method was designed to simplify the dumping calculations, not to provide more accurate means of calculating dumping margins. In the commenter's view, the transaction-to-average method should be viewed as a more accurate, not more punitive, measure of dumping. Another commenter suggested that the targeted dumping provision is intended to prevent foreign producers from unduly and inappropriately benefitting from an averaging of U.S. sales. The commenter reasoned that once a party engages in targeted dumping, it has violated the spirit of the average-to-average method and forfeits entirely the privilege of receiving an average-to-average calculation. In the alternative, one commenter suggested that the Department consider application of the transaction-to-average method for all of a firm's sales where it is established that targeted dumping exists for 10 percent or more of that firm's sales.

The Department has considered the scope of application of the average-to-transaction methodology raised in the comments on this issue. Based upon our examination, the Department is adopting the proposed regulation without modification. In the Department's view, section 777A(d)(1) of the Act establishes a preference for average-to-average price comparisons in investigations. The statute contemplates a divergence from the normal average-to-average (or transaction-to-transaction) price comparison out of concern that such a methodology could conceal ''targeted dumping.'' SAA at 842. Accordingly, the Department will apply the average-to-transaction approach solely to address the practice of targeted dumping. Nevertheless, the Department contemplates that in some instances it may be necessary to apply the average-to-transaction method to all sales to the targeted area, such as a region or a customer, or even all sales of a particular respondent. For example, where the targeted dumping practice is so widespread it may be administratively impractical to segregate targeted dumping pricing from the normal pricing behavior of a company. Moreover, the Department recognizes that where a firm engages extensively in the practice of targeted dumping, the only adequate yardstick available to measure such pricing behavior may be the average-to-transaction methodology.

With respect to the contention that limiting the application of the transaction-to-average method solely to

targeted sales would require an extensive allegation, as opposed to a representative one, we disagree. The proposed regulation speaks to limited application of the transaction-to-average method once targeted dumping is found to exist. It does not address the scope of the targeted dumping examination itself. Interested parties may make representative targeted dumping allegations based upon prices to purchasers, regions, or periods of time, provided they explain how the evidence examined in the allegations is relevant to prices of other products or models, or other companies.

Section 351.415

Section 351.415 implements section 773A of the Act, which deals with the selection of the exchange rate used to convert foreign currencies to U.S. dollars. For the reasons set forth below, we have not revised § 351.415.

Forward sales of currency: Section 351.415(b) creates an exception to the general rule that the Department will use the actual exchange rate on the date of sale to convert foreign currencies to U.S. dollars. Under paragraph (b), if a currency transaction on forward markets is directly linked to an export sale under consideration, the Department will use the exchange rate specified in the forward sales agreement instead of the actual exchange rate on the date of sale.

Two commenters made suggestions regarding the application of the ''directly linked'' standard. One commenter suggested that if an exporter actually applies forward exchange rates to its export sales, then the Department should use those forward exchange rates (whether they be daily, quarterly, or quarterly averages). The second commenter proposed that in order for the Department to use a forward exchange rate, the forward sale of currency must relate specifically to the export sale, *i.e.*, the forward rate should not be allocated. According to the second commenter, this would prevent an exporter from claiming that its general hedging operations are directly linked to particular export sales. This same commenter also argued that where the forward sale agreement spans a period of time, the Department should use the exchange rate specified in the agreement only if the date of sale of the export transaction falls within that period.

With respect to these suggestions, while the Department believes that it might be desirable to have more detailed rules concerning the ''directly linked'' standard, we do not have enough experience with this standard to provide such rules at this time. Therefore, we intend to develop our practice in the context of future investigations and reviews.

Another commenter, noting that forward currency transactions usually involve a fee, suggested that the Department either should include this fee as part of the forward exchange rate or should make a COS adjustment under § 351.410 to account for the fee. We agree that the Department should account for these types of fees, but we do not believe that an additional regulation is necessary. In the case of § 351.410, for example, we believe that the provision is sufficiently flexible to encompass a COS adjustment for forward exchange rate fees.

Model for identifying and addressing fluctuations and sustained movements in exchange rates: Several commenters made suggestions to amend the model proposed by the Department for identifying and addressing fluctuations and sustained movements in exchange rates. (We described this model briefly in the AD Proposed Regulations, 61 FR at 7351, and then published a more detailed description in *Policy Bulletin (96–1): Currency Conversions,* 61 FR 9434 (March 8, 1996) (''Policy Bulletin 96–1'')). Regarding fluctuations in exchange rates, two commenters suggested that the Department replace the 8-week rolling average benchmark for determining fluctuations with a 17-week (120-day) rolling average. They also suggested that the benchmark should not include exchange rates that the Department has determined to be fluctuations, because section 773A of the Act requires the Department to ignore fluctuations.

Regarding sustained movements in an exchange rate, certain commenters claimed that the Department's model is overly rigid in identifying such movements, as evidenced by the fact that the model only identifies one sustained movement for one currency in the period since 1992. These commenters suggested several amendments to the model to ensure that it would serve the purpose of protecting exporters when the value of their currency changes faster than they can raise prices. These suggestions included: changing the so-called ''recognition period'' for sustained movements from 8 weeks to 13 weeks (90 days); requiring fewer than 8 consecutive weeks of changes before recognizing a sustained movement, or using monthly rather than weekly averages to determine whether a sustained movement has occurred; applying an historic rate (such as the rate from the quarter preceding the recognition period) during the recognition period; and, using the official exchange rate from the first day of the recognition period during the 60-day adjustment period.

One commenter argued against the latter two suggestions on the grounds that the purpose of section 773A(b) is to allow exporters an adjustment period after a sustained movement in exchange rates has occurred. Therefore, in this commenter's view, it makes no sense to use an exchange rate that predates the sustained movement, nor would section 773A(b) permit the use of an historic rate occurring during the recognition period. Finally, one commenter requested that the Department provide additional guidance on the exchange rate that it intends to apply when a foreign currency is depreciating, as opposed to appreciating, against the U.S. dollar.

The Department welcomes the numerous comments submitted on the model for identifying and addressing fluctuations and sustained movements in exchange rates. As we stated in the AD Proposed Regulations, we intend to use the model for one year and then evaluate its performance based on public comment. As part of that evaluation, we will consider the comments we have received in connection with the instant rulemaking. Moreover, as indicated in Policy Bulletin 96–1, we will consider comments we received on the model through December 31, 1996.

At this time, however, we would like to make two points. First, based on a preliminary review of the comments, we do not believe that using a benchmark rate that includes past fluctuations contravenes section 773A(a). The fluctuations identified under the model are fluctuations that are relative to a particular number calculated at a particular point in time; *i.e.*, the average of the actual exchange rates on each of the prior 40 days. The fact that a particular daily rate fluctuates vis-a-vis that number is sufficient to disqualify that daily rate for purposes of conversion on that date. However, the designation of a particular daily rate as a fluctuation does not render that rate unusable for all purposes. In particular, we believe that actual exchange rates provide the best gauge of whether a particular daily rate should be viewed as a fluctuation. Therefore, we consider it appropriate to include past fluctuations in the rolling average benchmark.

Moreover, when the Department deems a particular daily rate to be a fluctuation, we believe we should use the benchmark (which includes past fluctuations) *in lieu of* the daily rate. For

example, the fact that a daily rate three weeks ago is considered to be a fluctuation means only that the daily rate varied from the historic average as of that time. It does not mean that one should continue to view that daily rate as a fluctuation three weeks later. Because the designation of fluctuations is time-sensitive in this sense, the commenters appear to be reading too much into the statutory prohibition against the use of fluctuating exchange rates.

Second, regarding the comment on our treatment of depreciating currencies, we note that the Department addressed this issue in *Certain Pasta from Turkey*, 61 FR 30309, 30325 (June 14, 1996). In that case, which involved a situation where the foreign currency was depreciating against the U.S. dollar, we used actual daily exchange rates rather than the benchmark rates generated by the model. We agree with the commenter that we should address depreciating currencies more fully in a final model, and we welcome further suggestions on this point.

Sustained movements: While the model discussed above identifies and addresses sustained movements in exchange rates, paragraph (d) sets forth a general rule that where there is a sustained movement ''increasing the value of the foreign currency relative to the U.S. dollar,'' exporters will be given 60 days in which to adjust their prices. Two commenters claimed that paragraph (d) is ''one-sided.'' Specifically, one commenter objected to the fact that paragraph (d) only addresses sustained appreciations in a foreign currency relative to the U.S. dollar. In this commenter's view, section 773A(b) does not specify whether the sustained movement must be upward or downward. The second commenter (presumably referring to the fact that paragraph (d) does not address sustained depreciations in a foreign currency) pointed out that under paragraph (d), respondents can take advantage of favorable exchange rates when a foreign currency appreciates, but domestic industries do not receive a comparable benefit when the currency depreciates. The commenter suggested that the Department should address this by establishing a special rule for situations where exporters should be raising their U.S. prices in response to exchange rate changes, but, instead, are lowering them.

We are not adopting the proposals put forward by these commenters. The language contained in paragraph (d) regarding upward sustained movements reflects the legislative intent expressed in the SAA, which specifically discusses the granting of an adjustment period following ''a sustained increase in the value of a foreign currency relative to the U.S. dollar.'' SAA at 842. Moreover, we do not believe that the statute provides any authority for the Department to deny an adjustment period when a sustained increase in the value of a foreign currency relative to the U.S. dollar has occurred, even in the event that an exporter is lowering U.S. prices.

Another commenter pointed out that paragraph (d) would provide an adjustment period for sustained movements in exchange rates only in investigations, and not in reviews. This commenter questioned whether such a limitation was consistent with the AD Agreement. In the Department's view, paragraph (d) is consistent with the AD Agreement, because Article 2.4.1 specifies that the 60-day period for adjusting prices applies ''in an investigation.''

Finally, one commenter urged the Department to use the exchange rate in effect on the date that the price and quantity terms of a sale are first established, rather than under the methodology used to identify the date of sale for other purposes. We have not adopted this suggestion because section 773A(a) of the Act directs the Department to use the exchange rate in effect on the ''date of sale of the subject merchandise.'' We have clarified how we will identify the date of sale in section 351.401(i) of these regulations. The Department cannot establish a different date of sale for currency conversion purposes from that which is used for all other purposes. This issue is discussed further with respect to that provision, above.

Other Comments

In addition to the comments discussed above, the Department also received several comments that did not relate to a particular provision in the AD Proposed Regulations. A common theme of these comments, however, was the extent to which the Department should rely on data as recorded in a firm's books and records.

One commenter criticized the Department's practice of requiring that respondents submit data in the specific format established by the Department. According to the commenter, this requirement was unnecessary, it rendered the cost of complying with Department information requests excessively high, and, when combined with the Department's tight deadlines, it made the entire process extremely onerous for a firm attempting to comply with a request for data. Another commenter, citing the increasing convergence of accounting standards as companies compete with one another for capital on an international level, proposed that the Department accept data responses in a format that conforms to the generally accepted accounting principles of the company's home country. Another commenter supported these proposals.

With respect to these comments, we first must note that in enforcing the AD law, the Department must balance two different objectives. On the one hand, the Department has a responsibility to identify and measure dumping accurately and in accordance with the standards set forth in the AD law. In some instances, this may mean that the Department must seek information of a type that is not readily retrievable from a company's accounting or financial records or that is in a format different from the format in which a company maintains its records. On the other hand, the Department is cognizant of the need to avoid imposing, in the words of section 782(c) of the Act, ''an unreasonable burden'' on respondents.

In implementing the URAA, we have reviewed our practices and regulations in light of the two objectives described above. As a result, we have taken several steps that we believe will make the AD process less onerous for parties, but that, at the same time, preserve the Department's ability to apply the standards of the AD law. For example, the Department has revised its standard AD questionnaire to clarify that the Department will be flexible in accepting responses that reflect different accounting standards and systems. In addition, as discussed above, in the final regulations relating to allocations, date of sale, and CEP profit, we also have taken steps to accommodate different accounting standards and systems. In our view, in addition to making the AD process less onerous for parties, these changes will make the Department's verifications more efficient and effective, thereby enhancing the Department's ability to enforce the AD law.

On a somewhat related topic, one commenter stated that the regulations should address the matter of ''model-matching'' methodology.[3] According to

[3] ''Model-matching'' is a shorthand expression for the process the Department uses to identify identical or similar home market or third-country merchandise. In order to identify and measure dumping, the Department must compare a U.S. sale of a particular type or model of merchandise to a home market or third-country sale of identical or similar merchandise. Typically, in an AD proceeding, the Department will develop ''model-

Continued

the commenter, the Department currently instructs respondents as to the relative importance of physical characteristics of the subject merchandise and the foreign like product, rather than permitting respondents to make that determination, as under traditional practice. The commenter also alleged that there were two principal problems with the Department's current approach: (1) the Department's manner of identifying product characteristics, and the relative importance assigned to those characteristics, bears no necessary relation to the product coding system used by a respondent for commercial purposes; and (2) the use of the product coding system formulated by the Department in individual cases often results in inappropriate comparisons. Therefore, the commenter argued, the Department should make clear in the preamble to its regulations that the Department generally will use a respondent's existing product coding system as the starting point for identifying identical and similar merchandise. The Department then can make modifications and additions to those codes to the extent necessary to reflect desired model-match criteria.

We have not adopted the suggestion. Under section 771(16) of the Act, the starting point for model-matching is always the physical characteristics of the product. Based on our experience, a company's internal product coding system often does not provide sufficient information to allow the Department to match products in accordance with their physical characteristics. Therefore, we do not believe that it would be appropriate to establish what, in effect, would be a rebuttable presumption that a company's internal product coding system should be used for purposes of model-matching.

On the other hand, however, we do not intend to suggest that a company's product coding system is irrelevant to the model-matching exercise. We agree that the model-matching methodology used by the Department in a particular case should reflect the most significant physical characteristics of a product. We also agree that it often is the case that a company's product coding system is informative, if not dispositive, as to what those characteristics are. For example, the fact that the product coding systems of every respondent involved in an AD proceeding capture a particular physical characteristic usually is a good indication that the characteristic is significant. Therefore, the Department will continue to consider producer coding systems in developing model-match methodologies in particular cases, and will use these codes where such use is consistent with the standards set forth in section 771(16).

Subpart G—Effective Dates

Subpart G consists of a single § 351.701 which (1) establishes the dates on which the new regulations contained in Part 351 will become effective, and (2) explains the extent to which the Department's prior regulations will govern segments of proceedings to which the new regulations do not apply. Section 351.701 also explains the limited role of these new regulations in proceedings to which they do not apply.

The new regulations will apply to all investigations and other segments of proceedings (such as scope requests), other than administrative reviews, initiated on the basis of petitions filed or requests made more than thirty days after the date on which the new regulations are published. The new regulations also will apply to all investigations or other segments of proceedings that the Department self-initiates more than thirty days after the date on which the new regulations are published. In addition, the new regulations will apply to all administrative reviews initiated on the basis of requests filed in the month following the month in which the date 30 days after publication of this notice falls. The slight difference in effective date for administrative reviews is to avoid confusion over whether the new regulations apply to administrative reviews requested by different parties on different days during the month in which the new regulations become effective for investigations and other segments of proceedings (in other words, during the month that includes the day thirty days after the date on which these regulations are published).

Investigations, reviews, and other segments of proceedings to which these regulations do not apply will continue to be governed by the old regulations, except to the extent that those regulations were invalidated by the URAA or were replaced by the interim final regulations published on May 11, 1995 (60 FR 25130 (1995)).

For segments of proceedings to which these regulations do not apply, but which are subject to the Act as amended by the URAA because they were initiated on the basis of petitions filed or requests made after January 1, 1995 (the effective date of the URAA), the new regulations will serve as a restatement of the Department's interpretation of the amended Act. In other words, the new regulations describe the administrative practice that the Department will follow, unless there is a reason consistent with the amended Act to depart from that practice. The AD Proposed Regulations no longer will serve that purpose.

Annexes to Part 351

We have revised Annexes I through V to reflect changes made in these final regulations, as well as to correct typographical errors identified in the annexes attached to the AD Proposed Regulations. In addition, we have revised the charts to include certain deadlines that were not included in the AD Proposed Regulations.

One commenter suggested that the Department should refrain from adopting the ''inflexible deadlines'' outlined in the annexes, and instead should adapt the timetable to the complexity of each investigation or review. With respect to this suggestion, we must emphasize that the tables and charts contained in Annexes I through VII are intended to serve only as a guide to potential petitioners and respondents, as well as other persons potentially interested or involved in an AD/CVD proceeding. The tables themselves are not ''rules,'' and they do not represent the timetables that the Department will follow in all proceedings. In fact, they may not represent the timetables that the Department will follow in a majority of proceedings. The tables and charts simply cross-reference relevant provisions of the regulations so that parties and other persons will be aware of when such things as extensions or postponements might occur. As stated previously, under § 351.302(b), the Secretary may, for good cause, extend any time limit established by Part 351 unless such an extension is expressly precluded by statute.

Classification

E.O. 12866

This final rule has been determined to be significant under E.O. 12866.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities. The Department does not believe that there will be any substantive effect on the outcome of AD and CVD proceedings as a result of the streamlining and

matching'' criteria for identifying identical or similar merchandise in that particular case.

simplification of their administration. With respect to the substantive amendments implementing the Uruguay Round Agreements Act, the Department believes that these regulations benefit both petitioners and respondents without favoring either, and, therefore, would not have a significant economic effects. As such, a regulatory flexibility analysis was not prepared.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. This final rule does not contain any new reporting or recording requirements subject to the Paperwork Reduction Act. The collections of information contained in this rule are currently approved by the Office of Management and Budget under OMB Control Numbers 0625–0105, 0625–0148, and 0625–0200. The public reporting burdens for these collections of information are estimated to average 40 hours for the AD and CVD petition requirements, and 15 hours for the initiation of downstream product monitoring. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, D.C. 20503.

E.O. 12612

This final rule does not contain federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects

19 CFR Part 351

Administrative practice and procedure, Antidumping, Business and industry, Cheese, Confidential business information, Countervailing duties, Investigations, Reporting and recordkeeping requirements.

19 CFR Part 353

Administrative practice and procedure, Antidumping, Business and industry, Confidential business information, Investigations, Reporting and recordkeeping requirements.

19 CFR Part 355

Administrative practice and procedure, Business and industry, Cheese, Confidential business information, Countervailing duties, Freedom of Information, Investigations, Reporting and recordkeeping requirements.

Dated: May 2, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

For the reasons stated, 19 CFR chapter III is amended as follows:

Parts 353 and 355 [Removed]

1. Parts 353 and 355 are removed.

2. A new Part 351 is added to read as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

Subpart A—Scope and Definitions

Sec.

351.101 Scope.
351.102 Definitions.
351.103 Central Records Unit.
351.104 Record of proceedings.
351.105 Public, business proprietary, privileged, and classified information.
351.106 *De minimis* net countervailable subsidies and weighted-average dumping margins disregarded.
351.107 Deposit rates for nonproducing exporters; rates in antidumping proceedings involving a nonmarket economy country.

Subpart B—Antidumping and Countervailing Duty Procedures 351.201 Self-initiation.

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Authority: 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.*; and 19 U.S.C. 3538.

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

Subpart A—Scope and Definitions

§ 351.101 Scope.

(a) *In general.* This part contains procedures and rules applicable to antidumping and countervailing duty proceedings under title VII of the Act (19 U.S.C. 1671 *et seq.*), and also determinations regarding cheese subject to an in-quota rate of duty under section 702 of the Trade Agreements Act of 1979 (19 U.S.C. 1202 note). This part reflects statutory amendments made by titles I, II, and IV of the Uruguay Round Agreements Act, Pub. L. 103–465, which, in turn, implement into United States law the provisions of the following agreements annexed to the Agreement Establishing the World Trade Organization: Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994; Agreement on Subsidies and Countervailing Measures; and Agreement on Agriculture.

(b) *Countervailing duty investigations involving imports not entitled to a material injury determination.* Under section 701(c) of the Act, certain provisions of the Act do not apply to countervailing duty proceedings involving imports from a country that is not a Subsidies Agreement country and is not entitled to a material injury determination by the Commission. Accordingly, certain provisions of this part referring to the Commission may not apply to such proceedings.

(c) *Application to governmental importations.* To the extent authorized by section 771(20) of the Act, merchandise imported by, or for the use of, a department or agency of the United States Government is subject to the imposition of countervailing duties or antidumping duties under this part.

§ 351.102 Definitions.

(a) *Introduction.* The Act contains many technical terms applicable to antidumping and countervailing duty proceedings. In the case of terms that are not defined in this section or other sections of this part, readers should refer to the relevant provisions of the Act. This section:

(1) Defines terms that appear in the Act but are not defined in the Act;

(2) Defines terms that appear in this Part but do not appear in the Act; and

(3) Elaborates on the meaning of certain terms that are defined in the Act.

(b) *Definitions.*

Act. ''Act'' means the Tariff Act of 1930, as amended.

Administrative review. ''Administrative review'' means a review under section 751(a)(1) of the Act.

Affiliated persons; affiliated parties. ''Affiliated persons'' and ''affiliated parties'' have the same meaning as in section 771(33) of the Act. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Secretary will consider the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretary will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. The Secretary will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.

Aggregate basis. ''Aggregate basis'' means the calculation of a country-wide subsidy rate based principally on information provided by the foreign government.

Anniversary month. ''Anniversary month'' means the calendar month in which the anniversary of the date of publication of an order or suspension of investigation occurs.

APO. ''APO'' means an administrative protective order described in section 777(c)(1) of the Act.

Applicant. ''Applicant'' means a representative of an interested party that has applied for access to business proprietary information under an administrative protective order.

Article 4/Article 7 Review. ''Article 4/Article 7 review'' means a review under section 751(g)(2) of the Act.

Article 8 violation review. ''Article 8 violation review'' means a review under section 751(g)(1) of the Act.

Authorized applicant. ''Authorized applicant'' means an applicant that the Secretary has authorized to receive business proprietary information under an APO under section 777(c)(1) of the Act.

Changed circumstances review. ''Changed circumstances review'' means a review under section 751(b) of the Act.

Customs Service. ''Customs Service'' means the United States Customs Service of the United States Department of the Treasury.

Department. ''Department'' means the United States Department of Commerce.

Domestic interested party. ''Domestic interested party'' means an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) of the Act.

Expedited antidumping review. ''Expedited antidumping review'' means a review under section 736(c) of the Act.

Factual information. ''Factual information'' means:

(1) Initial and supplemental questionnaire responses;

(2) Data or statements of fact in support of allegations;

(3) Other data or statements of facts; and

(4) Documentary evidence.

Fair value. ''Fair value'' is a term used during an antidumping investigation, and is an estimate of normal value.

Importer. ''Importer'' means the person by whom, or for whose account, subject merchandise is imported.

Investigation. Under the Act and this Part, there is a distinction between an antidumping or countervailing duty *investigation* and a *proceeding.* An ''investigation'' is that segment of a proceeding that begins on the date of publication of notice of initiation of investigation and ends on the date of publication of the earliest of:

(1) Notice of termination of investigation,

(2) Notice of rescission of investigation,

(3) Notice of a negative determination that has the effect of terminating the proceeding, or

(4) An order.

New shipper review. ''New shipper review'' means a review under section 751(a)(2) of the Act.

Order. An ''order'' is an order issued by the Secretary under section 303, section 706, or section 736 of the Act or a finding under the Antidumping Act, 1921.

Ordinary course of trade. ''Ordinary course of trade'' has the same meaning as in section 771(15) of the Act. The Secretary may consider sales or transactions to be outside the ordinary course of trade if the Secretary determines, based on an evaluation of all of the circumstances particular to the sales in question, that such sales or transactions have characteristics that are extraordinary for the market in question. Examples of sales that the Secretary might consider as being outside the ordinary course of trade are sales or transactions involving off-quality merchandise or merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's length price.

Party to the proceeding. ''Party to the proceeding'' means any interested party that actively participates, through written submissions of factual information or written argument, in a segment of a proceeding. Participation in a prior segment of a proceeding will not confer on any interested party ''party to the proceeding'' status in a subsequent segment.

Person. ''Person'' includes any interested party as well as any other individual, enterprise, or entity, as appropriate.

Price adjustment. ''Price adjustment'' means any change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser's net outlay.

Proceeding. A ''proceeding'' begins on the date of the filing of a petition under section 702(b) or section 732(b) of the Act or the publication of a notice of initiation in a self-initiated investigation under section 702(a) or section 732(a) of the Act, and ends on the date of publication of the earliest notice of:

(1) Dismissal of petition,

(2) Rescission of initiation,

(3) Termination of investigation,

(4) A negative determination that has the effect of terminating the proceeding,

(5) Revocation of an order, or

(6) Termination of a suspended investigation.

Rates. ''Rates'' means the individual weighted-average dumping margins, the individual countervailable subsidy rates, the country-wide subsidy rate, or the all-others rate, as applicable.

Respondent interested party. ''Respondent interested party'' means an interested party described in subparagraph (A) or (B) of section 771(9) of the Act.

Sale. A ''sale'' includes a contract to sell and a lease that is equivalent to a sale.

Secretary. ''Secretary'' means the Secretary of Commerce or a designee. The Secretary has delegated to the Assistant Secretary for Import Administration the authority to make determinations under title VII of the Act and this Part.

Section 753 review. ''Section 753 review'' means a review under section 753 of the Act.

Section 762 review. ''Section 762 review'' means a review under section 762 of the Act.

Segment of proceeding.

(1) *In general*. An antidumping or countervailing duty proceeding consists of one or more *segments*. ''Segment of a proceeding'' or ''segment of the proceeding'' refers to a portion of the proceeding that is reviewable under section 516A of the Act.

(2) *Examples*. An antidumping or countervailing duty investigation or a review of an order or suspended investigation, or a scope inquiry under § 351.225, each would constitute a segment of a proceeding.

Sunset review. ''Sunset review'' means a review under section 751(c) of the Act.

Suspension of liquidation. ''Suspension of liquidation'' refers to a suspension of liquidation ordered by the Secretary under the authority of title VII of the Act, the provisions of this Part, or section 516a(g)(5)(C) of the Act, or by a court of the United States in a lawsuit involving action taken, or not taken, by the Secretary under title VII of the Act or the provisions of this Part.

Third country. For purposes of subpart D, ''third country'' means a country other than the exporting country and the United States. Under section 773(a) of the Act and subpart D, in certain circumstances the Secretary may determine normal value on the basis of sales to a third country.

URAA. ''URAA'' means the Uruguay Round Agreements Act.

§ 351.103 Central Records Unit.

(a) *In general*. Import Administration's Central Records Unit is located at Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, D.C. 20230. The office hours of the Central Records Unit are between 8:30 A.M. and 5:00 P.M. on business days. Among other things, the Central Records Unit is responsible for maintaining an official and public record for each antidumping and countervailing duty proceeding (*see* § 351.104), the Subsidies Library (*see* section 775(2) and section 777(a)(1) of the Act), and the service list for each proceeding (*see* paragraph (c) of this section).

(b) *Filing of documents with the Department*. While persons are free to provide Department officials with courtesy copies of documents, no document will be considered as having been received by the Secretary unless it is submitted to the Central Records Unit and is stamped by the Central Records Unit with the date and time of receipt.

(c) *Service list*. The Central Records Unit will maintain and make available a service list for each segment of a proceeding. Each interested party that asks to be included on the service list for a segment of a proceeding must designate a person to receive service of documents filed in that segment. The service list for an application for a scope ruling is described in § 351.225(n).

§ 351.104 Record of proceedings.

(a) *Official record*. (1) *In general*. The Secretary will maintain in the Central Records Unit an official record of each antidumping and countervailing duty proceeding. The Secretary will include in the official record all factual information, written argument, or other material developed by, presented to, or obtained by the Secretary during the course of a proceeding that pertains to the proceeding. The official record will include government memoranda pertaining to the proceeding, memoranda of *ex parte* meetings, determinations, notices published in the **Federal Register**, and transcripts of hearings. The official record will contain material that is public, business proprietary, privileged, and classified. For purposes of section 516A(b)(2) of the Act, the record is the official record of each segment of the proceeding.

(2) *Material returned*. (i) The Secretary, in making any determination under this part, will not use factual information, written argument, or other material that the Secretary returns to the submitter.

(ii) The official record will include a copy of a returned document, solely for purposes of establishing and documenting the basis for returning the document to the submitter, if the document was returned because:

(A) The document, although otherwise timely, contains untimely

filed new factual information (*see* § 351.301(b));

(B) The submitter made a nonconforming request for business proprietary treatment of factual information (*see* § 351.304);

(C) The Secretary denied a request for business proprietary treatment of factual information (*see* § 351.304);

(D) The submitter is unwilling to permit the disclosure of business proprietary information under APO (*see* § 351.304).

(iii) In no case will the official record include any document that the Secretary returns to the submitter as untimely filed, or any unsolicited questionnaire response unless the response is a voluntary response accepted under § 351.204(d) (*see* § 351.302(d)).

(b) *Public record.* The Secretary will maintain in the Central Records Unit a public record of each proceeding. The record will consist of all material contained in the official record (*see* paragraph (a) of this section) that the Secretary decides is public information under § 351.105(b), government memoranda or portions of memoranda that the Secretary decides may be disclosed to the general public, and public versions of all determinations, notices, and transcripts. The public record will be available to the public for inspection and copying in the Central Records Unit (*see* § 351.103). The Secretary will charge an appropriate fee for providing copies of documents.

(c) *Protection of records.* Unless ordered by the Secretary or required by law, no record or portion of a record will be removed from the Department.

§ 351.105 Public, business proprietary, privileged, and classified information.

(a) *Introduction.* There are four categories of information in an antidumping or countervailing duty proceeding: public, business proprietary, privileged, and classified. In general, public information is information that may be made available to the public, whereas business proprietary information may be disclosed (if at all) only to authorized applicants under an APO. Privileged and classified information may not be disclosed at all, even under an APO. This section describes the four categories of information.

(b) *Public information.* The Secretary normally will consider the following to be public information:

(1) Factual information of a type that has been published or otherwise made available to the public by the person submitting it;

(2) Factual information that is not designated as business proprietary by the person submitting it;

(3) Factual information that, although designated as business proprietary by the person submitting it, is in a form that cannot be associated with or otherwise used to identify activities of a particular person or that the Secretary determines is not properly designated as business proprietary;

(4) Publicly available laws, regulations, decrees, orders, and other official documents of a country, including English translations; and

(5) Written argument relating to the proceeding that is not designated as business proprietary.

(c) *Business proprietary information.* The Secretary normally will consider the following factual information to be business proprietary information, if so designated by the submitter:

(1) Business or trade secrets concerning the nature of a product or production process;

(2) Production costs (but not the identity of the production components unless a particular component is a trade secret);

(3) Distribution costs (but not channels of distribution);

(4) Terms of sale (but not terms of sale offered to the public);

(5) Prices of individual sales, likely sales, or other offers (but not components of prices, such as transportation, if based on published schedules, dates of sale, product descriptions (other than business or trade secrets described in paragraph (c)(1) of this section), or order numbers);

(6) Names of particular customers, distributors, or suppliers (but not destination of sale or designation of type of customer, distributor, or supplier, unless the destination or designation would reveal the name);

(7) In an antidumping proceeding, the exact amount of the dumping margin on individual sales;

(8) In a countervailing duty proceeding, the exact amount of the benefit applied for or received by a person from each of the programs under investigation or review (but not descriptions of the operations of the programs, or the amount if included in official public statements or documents or publications, or the *ad valorem* countervailable subsidy rate calculated for each person under a program);

(9) The names of particular persons from whom business proprietary information was obtained;

(10) The position of a domestic producer or workers regarding a petition; and

(11) Any other specific business information the release of which to the public would cause substantial harm to the competitive position of the submitter.

(d) *Privileged information.* The Secretary will consider information privileged if, based on principles of law concerning privileged information, the Secretary decides that the information should not be released to the public or to parties to the proceeding. Privileged information is exempt from disclosure to the public or to representatives of interested parties.

(e) *Classified information.* Classified information is information that is classified under Executive Order No. 12356 of April 2, 1982 (47 FR 14874 and 15557, 3 CFR 1982 Comp. p. 166) or successor executive order, if applicable. Classified information is exempt from disclosure to the public or to representatives of interested parties.

§ 351.106 De minimis net countervailable subsidies and weighted-average dumping margins disregarded.

(a) *Introduction.* Prior to the enactment of the URAA, the Department had a well-established and judicially sanctioned practice of disregarding net countervailable subsidies or weighted-average dumping margins that were *de minimis*. The URAA codified in the Act the particular *de minimis* standards to be used in antidumping and countervailing duty investigations. This section discussed the application of the *de minimis* standards in antidumping or countervailing duty proceedings.

(b) *Investigations.* (1) *In general.* In making a preliminary or final antidumping or countervailing duty determination in an investigation (*see* sections 703(b), 733(b), 705(a), and 735(a) of the Act), the Secretary will apply the *de minimis* standard set forth in section 703(b)(4) or section 733(b)(3) of the Act (whichever is applicable).

(2) *Transition rule.* (i) If:

(A) the Secretary resumes an investigation that has been suspended (*see* section 704(i)(1)(B) or section 734(i)(1)(B) of the Act); and

(B) the investigation was initiated before January 1, 1995, then

(ii) The Secretary will apply the *de minimis* standard in effect at the time that the investigation was initiated.

(c) *Reviews and other determinations.* (1) *In general.* In making any determination other than a preliminary or final antidumping or countervailing duty determination in an investigation (*see* paragraph (b) of this section), the Secretary will treat as *de minimis* any weighted-average dumping margin or countervailable subsidy rate that is less

than 0.5 percent *ad valorem*, or the equivalent specific rate.

(2) *Assessment of antidumping duties.* The Secretary will instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise during the relevant period of review made by any person for which the Secretary calculates an assessment rate under § 351.212(b)(1) that is less than 0.5 percent *ad valorem*, or the equivalent specific rate.

§ 351.107 Cash deposit rates for nonproducing exporters; rates in antidumping proceedings involving a nonmarket economy country.

(a) *Introduction.* This section deals with the establishment of cash deposit rates in situations where the exporter is not the producer of subject merchandise, the selection of the appropriate cash deposit rate in situations where entry documents do not indicate the producer of subject merchandise, and the calculation of dumping margins in antidumping proceedings involving imports from a nonmarket economy country.

(b) *Cash deposit rates for nonproducing exporters.* (1) *Use of combination rates.* (i) *In general.* In the case of subject merchandise that is exported to the United States by a company that is not the producer of the merchandise, the Secretary may establish a ''combination'' cash deposit rate for each combination of the exporter and its supplying producer(s).

(ii) *Example.* A nonproducing exporter (Exporter A) exports to the United States subject merchandise produced by Producers X, Y, and Z. In such a situation, the Secretary may establish cash deposit rates for Exporter A/Producer X, Exporter A/Producer Y, and Exporter A/Producer Z.

(2) *New supplier.* In the case of subject merchandise that is exported to the United States by a company that is not the producer of the merchandise, if the Secretary has not established previously a combination cash deposit rate under paragraph (b)(1)(i) of this section for the exporter and producer in question or a noncombination rate for the exporter in question, the Secretary will apply the cash deposit rate established for the producer. If the Secretary has not previously established a cash deposit rate for the producer, the Secretary will apply the ''all-others rate'' described in section 705(c)(5) or section 735(c)(5) of the Act, as the case may be.

(c) *Producer not identified.* (1) *In general.* In situations where entry documents do not identify the producer of subject merchandise, if the Secretary has not established previously a noncombination rate for the exporter, the Secretary may instruct the Customs Service to apply as the cash deposit rate the higher of:

(i) the highest of any combination cash deposit rate established for the exporter under paragraph (b)(1)(i) of this section;

(ii) the highest cash deposit rate established for any producer other than a producer for which the Secretary established a combination rate involving the exporter in question under paragraph (b)(1)(i) of this section; or

(iii) the ''all-others rate'' described in section 705(c)(5) or section 735(c)(5) of the Act, as the case may be.

(d) *Rates in antidumping proceedings involving nonmarket economy countries.* In an antidumping proceeding involving imports from a nonmarket economy country, ''rates'' may consist of a single dumping margin applicable to all exporters and producers.

Subpart B—Antidumping and Countervailing Duty Procedures

§ 351.201 Self-initiation.

(a) *Introduction.* Antidumping and countervailing duty investigations may be initiated as the result of a petition filed by a domestic interested party or at the Secretary's own initiative. This section contains rules regarding the actions the Secretary will take when the Secretary self-initiates an investigation.

(b) *In general.* When the Secretary self-initiates an investigation under section 702(a) or section 732(a) of the Act, the Secretary will publish in the **Federal Register** notice of ''Initiation of Antidumping (Countervailing Duty) Investigation.'' In addition, the Secretary will notify the Commission at the time of initiation of the investigation, and will make available to employees of the Commission directly involved in the proceeding the information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determination.

(c) *Persistent dumping monitoring.* To the extent practicable, the Secretary will expedite any antidumping investigation initiated as the result of a monitoring program established under section 732(a)(2) of the Act.

§ 351.202 Petition requirements.

(a) *Introduction.* The Secretary normally initiates antidumping and countervailing duty investigations based on petitions filed by a domestic interested party. This section contains rules concerning the contents of a petition, filing requirements, notification of foreign governments, pre-initiation communications with the Secretary, and assistance to small businesses in preparing petitions. Petitioners are also advised to refer to the Commission's regulations concerning the contents of petitions, currently 19 CFR 207.11.

(b) *Contents of petition.* A petition requesting the imposition of antidumping or countervailing duties must contain the following, to the extent reasonably available to the petitioner:

(1) The name, address, and telephone number of the petitioner and any person the petitioner represents;

(2) The identity of the industry on behalf of which the petitioner is filing, including the names, addresses, and telephone numbers of all other known persons in the industry;

(3) Information relating to the degree of industry support for the petition, including:

(i) The total volume and value of U.S. production of the domestic like product; and

(ii) The volume and value of the domestic like product produced by the petitioner and each domestic producer identified;

(4) A statement indicating whether the petitioner has filed for relief from imports of the subject merchandise under section 337 of the Act (19 U.S.C. 1337, 1671a), sections 201 or 301 of the Trade Act of 1974 (19 U.S.C. 2251 or 2411), or section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862);

(5) A detailed description of the subject merchandise that defines the requested scope of the investigation, including the technical characteristics and uses of the merchandise and its current U.S. tariff classification number;

(6) The name of the country in which the subject merchandise is manufactured or produced and, if the merchandise is imported from a country other than the country of manufacture or production, the name of any intermediate country from which the merchandise is imported;

(7) (i) In the case of an antidumping proceeding:

(A) The names and addresses of each person the petitioner believes sells the subject merchandise at less than fair value and the proportion of total exports to the United States that each person accounted for during the most recent 12-month period (if numerous, provide information at least for persons that, based on publicly available information, individually accounted for two percent or more of the exports);

(B) All factual information (particularly documentary evidence)

relevant to the calculation of the export price and the constructed export price of the subject merchandise and the normal value of the foreign like product (if unable to furnish information on foreign sales or costs, provide information on production costs in the United States, adjusted to reflect production costs in the country of production of the subject merchandise);

(C) If the merchandise is from a country that the Secretary has found to be a nonmarket economy country, factual information relevant to the calculation of normal value, using a method described in § 351.408; or

(ii) In the case of a countervailing duty proceeding:

(A) The names and addresses of each person the petitioner believes benefits from a countervailable subsidy and exports the subject merchandise to the United States and the proportion of total exports to the United States that each person accounted for during the most recent 12-month period (if numerous, provide information at least for persons that, based on publicly available information, individually accounted for two percent or more of the exports);

(B) The alleged countervailable subsidy and factual information (particularly documentary evidence) relevant to the alleged countervailable subsidy, including any law, regulation, or decree under which it is provided, the manner in which it is paid, and the value of the subsidy to exporters or producers of the subject merchandise;

(C) If the petitioner alleges an upstream subsidy under section 771A of the Act, factual information regarding:

(1) Countervailable subsidies, other than an export subsidy, that an authority of the affected country provides to the upstream supplier;

(2) The competitive benefit the countervailable subsidies bestow on the subject merchandise; and

(3) The significant effect the countervailable subsidies have on the cost of producing the subject merchandise;

(8) The volume and value of the subject merchandise imported during the most recent two-year period and any other recent period that the petitioner believes to be more representative or, if the subject merchandise was not imported during the two-year period, information as to the likelihood of its sale for importation;

(9) The name, address, and telephone number of each person the petitioner believes imports or, if there were no importations, is likely to import the subject merchandise;

(10) Factual information regarding material injury, threat of material injury, or material retardation, and causation;

(11) If the petitioner alleges ''critical circumstances'' under section 703(e)(1) or section 733(e)(1) of the Act and § 351.206, factual information regarding:

(i) Whether imports of the subject merchandise are likely to undermine seriously the remedial effect of any order issued under section 706(a) or section 736(a) of the Act;

(ii) Massive imports of the subject merchandise in a relatively short period; and

(iii) (A) In an antidumping proceeding, either:

(*1*) A history of dumping; or

(*2*) The importer's knowledge that the exporter was selling the subject merchandise at less than its fair value, and that there would be material injury by reason of such sales; or

(B) In a countervailing duty proceeding, whether the countervailable subsidy is inconsistent with the Subsidies Agreement; and

(12) Any other factual information on which the petitioner relies.

(c) *Simultaneous filing and certification*. The petitioner must file a copy of the petition with the Commission and the Secretary on the same day and so certify in submitting the petition to the Secretary. Factual information in the petition must be certified, as provided in § 351.303(g). Other filing requirements are set forth in § 351.303.

(d) *Business proprietary status of information*. The Secretary will treat as business proprietary any factual information for which the petitioner requests business proprietary treatment and which meets the requirements of § 351.304.

(e) *Amendment of petition*. The Secretary may allow timely amendment of the petition. The petitioner must file an amendment with the Commission and the Secretary on the same day and so certify in submitting the amendment to the Secretary. If the amendment consists of new allegations, the timeliness of the new allegations will be governed by § 351.301.

(f) *Notification of representative of the exporting country*. Upon receipt of a petition, the Secretary will deliver a public version of the petition (*see* § 351.304(c)) to a representative in Washington, DC, of the government of any exporting country named in the petition.

(g) *Petition based upon derogation of an international undertaking on official export credits*. In the case of a petition described in section 702(b)(3) of the Act, the petitioner must file a copy of the petition with the Secretary of the Treasury, as well as with the Secretary and the Commission, and must so certify in submitting the petition to the Secretary.

(h) *Assistance to small businesses; additional information*. (1) The Secretary will provide technical assistance to eligible small businesses, as defined in section 339 of the Act, to enable them to prepare and file petitions. The Secretary may deny assistance if the Secretary concludes that the petition, if filed, could not satisfy the requirements of section 702(c)(1)(A) or section 732(c)(1)(A) of the Act (whichever is applicable) (*see* § 351.203).

(2) For additional information concerning petitions, contact the Director for Policy and Analysis, Import Administration, International Trade Administration, Room 3093, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230; (202) 482–1768.

(i) *Pre-initiation communications*. (1) *In general*. During the period before the Secretary's decision whether to initiate an investigation, the Secretary will not consider the filing of a notice of appearance to constitute a communication for purposes of section 702(b)(4)(B) or section 732(b)(3)(B) of the Act.

(2) *Consultations with foreign governments in countervailing duty proceedings*. In a countervailing duty proceeding, the Secretary will invite the government of any exporting country named in the petition for consultations with respect to the petition. (The information collection requirements in paragraph (a) of this section have been approved by the Office of Management and Budget under control number 0625–0105.)

§ 351.203 Determination of sufficiency of petition.

(a) *Introduction*. When a petition is filed under § 351.202, the Secretary must determine that the petition satisfies the relevant statutory requirements before initiating an antidumping or countervailing duty investigation. This section sets forth rules regarding a determination as to the sufficiency of a petition (including the determination that a petition is supported by the domestic industry), the deadline for making the determination, and the actions to be taken once the Secretary has made the determination.

(b) *Determination of sufficiency*. (1) *In general*. Normally, not later than 20 days after a petition is filed, the Secretary, on the basis of sources readily

available to the Secretary, will examine the accuracy and adequacy of the evidence provided in the petition and determine whether to initiate an investigation under section 702(c)(1)(A) or section 732(c)(1)(A) of the Act (whichever is applicable).

(2) *Extension where polling required.* If the Secretary is required to poll or otherwise determine support for the petition under section 702(c)(4)(D) or section 732(c)(4)(D) of the Act, the Secretary may, in exceptional circumstances, extend the 20-day period by the amount of time necessary to collect and analyze the required information. In no case will the period between the filing of a petition and the determination whether to initiate an investigation exceed 40 days.

(c) *Notice of initiation and distribution of petition.* (1) *Notice of initiation.* If the initiation determination of the Secretary under section 702(c)(1)(A) or section 732(c)(1)(A) of the Act is affirmative, the Secretary will initiate an investigation and publish in the **Federal Register** notice of ''Initiation of Antidumping (Countervailing Duty) Investigation.'' The Secretary will notify the Commission at the time of initiation of the investigation and will make available to employees of the Commission directly involved in the proceeding the information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determinations.

(2) *Distribution of petition.* As soon as practicable after initiation of an investigation, the Secretary will provide a public version of the petition to all known exporters (including producers who sell for export to the United States) of the subject merchandise. If the Secretary determines that there is a particularly large number of exporters involved, instead of providing the public version to all known exporters, the Secretary may provide the public version to a trade association of the exporters or, alternatively, may consider the requirement of the preceding sentence to have been satisfied by the delivery of a public version of the petition to the government of the exporting country under § 351.202(f).

(d) *Insufficiency of petition.* If an initiation determination of the Secretary under section 702(c)(1)(A) or section 732(c)(1)(A) of the Act is negative, the Secretary will dismiss the petition, terminate the proceeding, notify the petitioner in writing of the reasons for the determination, and publish in the **Federal Register** notice of ''Dismissal of Antidumping (Countervailing Duty) Petition.''

(e) *Determination of industry support.* In determining industry support for a petition under section 702(c)(4) or section 732(c)(4) of the Act, the following rules will apply:

(1) *Measuring production.* The Secretary normally will measure production over a twelve-month period specified by the Secretary, and may measure production based on either value or volume. Where a party to the proceeding establishes that production data for the relevant period, as specified by the Secretary, is unavailable, production levels may be established by reference to alternative data that the Secretary determines to be indicative of production levels.

(2) *Positions treated as business proprietary information.* Upon request, the Secretary may treat the position of a domestic producer or workers regarding the petition and any production information supplied by the producer or workers as business proprietary information under § 351.105(c)(10).

(3) *Positions expressed by workers.* The Secretary will consider the positions of workers and management regarding the petition to be of equal weight. The Secretary will assign a single weight to the positions of both workers and management according to the production of the domestic like product of the firm in which the workers and management are employed. If the management of a firm expresses a position in direct opposition to the position of the workers in that firm, the Secretary will treat the production of that firm as representing neither support for, nor opposition to, the petition.

(4) *Certain positions disregarded.* (i) The Secretary will disregard the position of a domestic producer that opposes the petition if such producer is related to a foreign producer or to a foreign exporter under section 771(4)(B)(ii) of the Act, unless such domestic producer demonstrates to the Secretary's satisfaction that its interests as a domestic producer would be adversely affected by the imposition of an antidumping order or a countervailing duty order, as the case may be; and

(ii) The Secretary may disregard the position of a domestic producer that is an importer of the subject merchandise, or that is related to such an importer, under section 771(4)(B)(ii) of the Act.

(5) *Polling the industry.* In conducting a poll of the industry under section 702(c)(4)(D)(i) or section 732(c)(4)(D)(i) of the Act, the Secretary will include unions, groups of workers, and trade or business associations described in paragraphs (9)(D) and (9)(E) of section 771 of the Act.

(f) *Time limits where petition involves same merchandise as that covered by an order that has been revoked.* Under section 702(c)(1)(C) or section 732(c)(1)(C) of the Act, and in expediting an investigation involving subject merchandise for which a prior order was revoked or a suspended investigation was terminated, the Secretary will consider ''section 751(d)'' as including a predecessor provision.

§ 351.204 Time periods and persons examined; voluntary respondents; exclusions.

(a) *Introduction.* Because the Act does not specify the precise period of time that the Secretary should examine in an antidumping or countervailing duty investigation, this section sets forth rules regarding the period of investigation (''POI''). In addition, this section includes rules regarding the selection of persons to be examined, the treatment of voluntary respondents that are not selected for individual examination, and the exclusion of persons that the Secretary ultimately finds are not dumping or are not receiving countervailable subsidies.

(b) *Period of investigation.* (1) *Antidumping investigation.* In an antidumping investigation, the Secretary normally will examine merchandise sold during the four most recently completed fiscal quarters (or, in an investigation involving merchandise imported from a nonmarket economy country, the two most recently completed fiscal quarters) as of the month preceding the month in which the petition was filed or in which the Secretary self-initiated an investigation. However, the Secretary may examine merchandise sold during any additional or alternate period that the Secretary concludes is appropriate.

(2) *Countervailing duty investigation.* In a countervailing duty investigation, the Secretary normally will rely on information pertaining to the most recently completed fiscal year for the government and exporters or producers in question. If the exporters or producers have different fiscal years, the Secretary normally will rely on information pertaining to the most recently completed calendar year. If the investigation is conducted on an aggregate basis under section 777A(e)(2)(B) of the Act, the Secretary normally will rely on information pertaining to the most recently completed fiscal year for the government in question. However, the Secretary may rely on information for

any additional or alternate period that the Secretary concludes is appropriate.

(c) *Exporters and producers examined.* (1) *In general.* In an investigation, the Secretary will attempt to determine an individual weighted-average dumping margin or individual countervailable subsidy rate for each known exporter or producer of the subject merchandise. However, the Secretary may decline to examine a particular exporter or producer if that exporter or producer and the petitioner agree.

(2) *Limited investigation.* Notwithstanding paragraph (c)(1) of this section, the Secretary may limit the investigation by using a method described in subsection (a), (c), or (e) of section 777A of the Act.

(d) *Voluntary respondents.* (1) *In general.* If the Secretary limits the number of exporters or producers to be individually examined under section 777A(c)(2) or section 777A(e)(2)(A) of the Act, the Secretary will examine voluntary respondents (exporters or producers, other than those initially selected for individual examination) in accordance with section 782(a) of the Act.

(2) *Acceptance of voluntary respondents.* The Secretary will determine, as soon as practicable, whether to examine a voluntary respondent individually. A voluntary respondent accepted for individual examination under subparagraph (d)(1) of this section will be subject to the same requirements as an exporter or producer initially selected by the Secretary for individual examination under section 777A(c)(2) or section 777A(e)(2)(A) of the Act, including the requirements of section 782(a) of the Act and, where applicable, the use of the facts available under section 776 of the Act and § 351.308.

(3) *Exclusion of voluntary respondents' rates from all-others rate.* In calculating an all-others rate under section 705(c)(5) or section 735(c)(5) of the Act, the Secretary will exclude weighted-average dumping margins or countervailable subsidy rates calculated for voluntary respondents.

(e) *Exclusions.* (1) *In general.* The Secretary will exclude from an affirmative final determination under section 705(a) or section 735(a) of the Act or an order under section 706(a) or section 736(a) of the Act, any exporter or producer for which the Secretary determines an individual weighted-average dumping margin or individual net countervailable subsidy rate of zero or *de minimis.*

(2) *Preliminary determinations.* In an affirmative preliminary determination under section 703(b) or section 733(b) of the Act, an exporter or producer for which the Secretary preliminarily determines an individual weighted-average dumping margin or individual net countervailable subsidy of zero or *de minimis* will not be excluded from the preliminary determination or the investigation. However, the exporter or producer will not be subject to provisional measures under section 703(d) or section 733(d) of the Act.

(3) *Exclusion of nonproducing exporter.* (i) *In general.* In the case of an exporter that is not the producer of subject merchandise, the Secretary normally will limit an exclusion of the exporter to subject merchandise of those producers that supplied the exporter during the period of investigation.

(ii) *Example.* During the period of investigation, Exporter A exports to the United States subject merchandise produced by Producer X. Based on an examination of Exporter A, the Secretary determines that the dumping margins with respect to these exports are *de minimis,* and the Secretary excludes Exporter A. Normally, the exclusion of Exporter A would be limited to subject merchandise produced by Producer X. If Exporter A began to export subject merchandise produced by Producer Y, this merchandise would be subject to the antidumping duty order, if any.

(4) *Countervailing duty investigations conducted on an aggregate basis and requests for exclusion from countervailing duty order.* Where the Secretary conducts a countervailing duty investigation on an aggregate basis under section 777A(e)(2)(B) of the Act, the Secretary will consider and investigate requests for exclusion to the extent practicable. An exporter or producer that desires exclusion from an order must submit:

(i) A certification by the exporter or producer that it received zero or *de minimis* net countervailable subsidies during the period of investigation;

(ii) If the exporter or producer received a countervailable subsidy, calculations demonstrating that the amount of net countervailable subsidies received was *de minimis* during the period of investigation;

(iii) If the exporter is not the producer of the subject merchandise, certifications from the suppliers and producers of the subject merchandise that those persons received zero or *de minimis* net countervailable subsidies during the period of the investigation; and

(iv) A certification from the government of the affected country that the government did not provide the exporter (or the exporter's supplier) or producer with more than *de minimis* net countervailable subsidies during the period of investigation.

§ 351.205 Preliminary determination.

(a) *Introduction.* A preliminary determination in an antidumping or countervailing duty investigation constitutes the first point at which the Secretary may provide a remedy if the Secretary preliminarily finds that dumping or countervailable subsidization has occurred. The remedy (sometimes referred to as ''provisional measures'') usually takes the form of a bonding requirement to ensure payment if antidumping or countervailing duties ultimately are imposed. Whether the Secretary's preliminary determination is affirmative or negative, the investigation continues. This section contains rules regarding deadlines for preliminary determinations, postponement of preliminary determinations, notices of preliminary determinations, and the effects of affirmative preliminary determinations.

(b) *Deadline for preliminary determination.* The deadline for a preliminary determination under section 703(b) or section 733(b) of the Act will be:

(1) Normally not later than 140 days in an antidumping investigation (65 days in a countervailing duty investigation) after the date on which the Secretary initiated the investigation (*see* section 703(b)(1) or section 733(b)(1)(A) of the Act);

(2) Not later than 190 days in an antidumping investigation (130 days in a countervailing duty investigation) after the date on which the Secretary initiated the investigation if the Secretary postpones the preliminary determination at petitioner's request or because the Secretary determines that the investigation is extraordinarily complicated (*see* section 703(c)(1) or section 733(c)(1) of the Act);

(3) In a countervailing duty investigation, not later than 250 days after the date on which the proceeding began if the Secretary postpones the preliminary determination due to an upstream subsidy allegation (up to 310 days if the Secretary also postponed the preliminary determination at the request of the petitioner or because the Secretary determined that the investigation is extraordinarily complicated) (*see* section 703(c)(1) and section 703(g)(1) of the Act);

(4) Within 90 days after initiation in an antidumping investigation, and on an expedited basis in a countervailing duty investigation, where verification has

been waived (*see* section 703(b)(3) or section 733(b)(2) of the Act);

(5) In a countervailing duty investigation, on an expedited basis and within 65 days after the date on which the Secretary initiated the investigation if the sole subsidy alleged in the petition was the derogation of an international undertaking on official export credits (*see* section 702(b)(3) and section 703(b)(2) of the Act);

(6) In a countervailing duty investigation, not later than 60 days after the date on which the Secretary initiated the investigation if the only subsidy under investigation is a subsidy with respect to which the Secretary received notice from the United States Trade Representative of a violation of Article 8 of the Subsidies Agreement (*see* section 703(b)(5) of the Act); and

(7) In an antidumping investigation, within the deadlines set forth in section 733(b)(1)(B) of the Act if the investigation involves short life cycle merchandise (*see* section 733(b)(1)(B) and section 739 of the Act).

(c) *Contents of preliminary determination and publication of notice.* A preliminary determination will include a preliminary finding on critical circumstances, if appropriate, under section 703(e)(1) or section 733(e)(1) of the Act (whichever is applicable). The Secretary will publish in the **Federal Register** notice of ''Affirmative (Negative) Preliminary Antidumping (Countervailing Duty) Determination,'' including the rates, if any, and an invitation for argument consistent with § 351.309.

(d) *Effect of affirmative preliminary determination.* If the preliminary determination is affirmative, the Secretary will take the actions described in section 703(d) or section 733(d) of the Act (whichever is applicable). In making information available to the Commission under section 703(d)(3) or section 733(d)(3) of the Act, the Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding the information upon which the Secretary based the preliminary determination and which the Commission may consider relevant to its injury determination.

(e) *Postponement at the request of the petitioner.* A petitioner must submit a request for postponement of the preliminary determination (*see* section 703(c)(1)(A) or section 733(c)(1)(A) of the Act) 25 days or more before the scheduled date of the preliminary determination, and must state the reasons for the request. The Secretary will grant the request, unless the Secretary finds compelling reasons to deny the request.

(f) *Notice of postponement.* (1) If the Secretary decides to postpone the preliminary determination at the request of the petitioner or because the investigation is extraordinarily complicated, the Secretary will notify all parties to the proceeding not later than 20 days before the scheduled date of the preliminary determination, and will publish in the **Federal Register** notice of ''Postponement of Preliminary Antidumping (Countervailing Duty) Determination,'' stating the reasons for the postponement (*see* section 703(c)(2) or section 733(c)(2) of the Act).

(2) If the Secretary decides to postpone the preliminary determination due to an allegation of upstream subsidies, the Secretary will notify all parties to the proceeding not later than the scheduled date of the preliminary determination and will publish in the **Federal Register** notice of ''Postponement of Preliminary Countervailing Duty Determination,'' stating the reasons for the postponement.

§ 351.206 Critical circumstances.

(a) *Introduction.* Generally, antidumping or countervailing duties are imposed on entries of merchandise made on or after the date on which the Secretary first imposes provisional measures (most often the date on which notice of an affirmative preliminary determination is published in the **Federal Register**). However, if the Secretary finds that ''critical circumstances'' exist, duties may be imposed retroactively on merchandise entered up to 90 days before the imposition of provisional measures. This section contains procedural and substantive rules regarding allegations and findings of critical circumstances.

(b) *In general.* If a petitioner submits to the Secretary a written allegation of critical circumstances, with reasonably available factual information supporting the allegation, 21 days or more before the scheduled date of the Secretary's final determination, or on the Secretary's own initiative in a self-initiated investigation, the Secretary will make a finding whether critical circumstances exist, as defined in section 705(a)(2) or section 735(a)(3) of the Act (whichever is applicable).

(c) *Preliminary finding.* (1) If the petitioner submits an allegation of critical circumstances 30 days or more before the scheduled date of the Secretary's final determination, the Secretary, based on the available information, will make a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist, as defined in section 703(e)(1) or section 733(e)(1) of the Act (whichever is applicable).

(2) The Secretary will issue the preliminary finding:

(i) Not later than the preliminary determination, if the allegation is submitted 20 days or more before the scheduled date of the preliminary determination; or

(ii) Within 30 days after the petitioner submits the allegation, if the allegation is submitted later than 20 days before the scheduled date of the preliminary determination. The Secretary will notify the Commission and publish in the **Federal Register** notice of the preliminary finding.

(d) *Suspension of liquidation.* If the Secretary makes an affirmative preliminary finding of critical circumstances, the provisions of section 703(e)(2) or section 733(e)(2) of the Act (whichever is applicable) regarding the retroactive suspension of liquidation will apply.

(e) *Final finding.* For any allegation of critical circumstances submitted 21 days or more before the scheduled date of the Secretary's final determination, the Secretary will make a final finding on critical circumstances, and will take appropriate action under section 705(c)(4) or section 735(c)(4) of the Act (whichever is applicable).

(f) *Findings in self-initiated investigations.* In a self-initiated investigation, the Secretary will make preliminary and final findings on critical circumstances without regard to the time limits in paragraphs (c) and (e) of this section.

(g) *Information regarding critical circumstances.* The Secretary may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the subject merchandise if, at any time after the initiation of an investigation, the Secretary makes the findings described in section 702(e) or section 732(e) of the Act (whichever is applicable) regarding the possible existence of critical circumstances.

(h) *Massive imports.* (1) In determining whether imports of the subject merchandise have been massive under section 705(a)(2)(B) or section 735(a)(3)(B) of the Act, the Secretary normally will examine:

(i) The volume and value of the imports;

(ii) Seasonal trends; and

(iii) The share of domestic consumption accounted for by the imports.

(2) In general, unless the imports during the ''relatively short period'' (*see*

paragraph (i) of this section) have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.

(i) *Relatively short period.* Under section 705(a)(2)(B) or section 735(a)(3)(B) of the Act, the Secretary normally will consider a ''relatively short period'' as the period beginning on the date the proceeding begins and ending at least three months later. However, if the Secretary finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a period of not less than three months from that earlier time.

§ 351.207 Termination of investigation.

(a) *Introduction.* ''Termination'' is a term of art that refers to the end of an antidumping or countervailing duty proceeding in which an order has not yet been issued. The Act establishes a variety of mechanisms by which an investigation may be terminated, most of which are dealt with in this section. For rules regarding the termination of a suspended investigation following a review under section 751 of the Act, *see* § 351.222.

(b) *Withdrawal of petition; self-initiated investigations.* (1) *In general.* The Secretary may terminate an investigation under section 704(a)(1)(A) or section 734(a)(1)(A) (withdrawal of petition) or under section 704(k) or section 734(k) (self-initiated investigation) of the Act, provided that the Secretary concludes that termination is in the public interest. If the Secretary terminates an investigation, the Secretary will publish in the **Federal Register** notice of ''Termination of Antidumping (Countervailing Duty) Investigation,'' together with, when appropriate, a copy of any correspondence with the petitioner forming the basis of the withdrawal and the termination. (For the treatment in a subsequent investigation of records compiled in an investigation in which the petition was withdrawn, *see* section 704(a)(1)(B) or section 734(a)(1)(B) of the Act.)

(2) *Withdrawal of petition based on acceptance of quantitative restriction agreements.* In addition to the requirements of paragraph (b)(1) of this section, if a termination is based on the acceptance of an understanding or other kind of agreement to limit the volume of imports into the United States of the subject merchandise, the Secretary will apply the provisions of section 704(a)(2) or section 734(a)(2) of the Act (whichever is applicable) regarding public interest and consultations with consuming industries and producers and workers.

(c) *Lack of interest.* The Secretary may terminate an investigation based upon lack of interest (*see* section 782(h)(1) of the Act). Where the Secretary terminates an investigation under this paragraph, the Secretary will publish the notice described in paragraph (b)(1) of this section.

(d) *Negative determination.* An investigation terminates automatically upon publication in the **Federal Register** of the Secretary's negative final determination or the Commission's negative preliminary or final determination.

(e) *End of suspension of liquidation.* When an investigation terminates, if the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension ended on the date of publication of the notice of termination referred to in paragraph (b) of this section or on the date of publication of a negative determination referred to in paragraph (d) of this section, and will instruct the Customs Service to release any cash deposit or bond.

§ 351.208 Suspension of investigation.

(a) *Introduction.* In addition to the imposition of duties, the Act also permits the Secretary to suspend an antidumping or countervailing duty investigation by accepting a suspension agreement (referred to in the WTO Agreements as an ''undertaking''). Briefly, in a suspension agreement, the exporters and producers or the foreign government agree to modify their behavior so as to eliminate dumping or subsidization or the injury caused thereby. If the Secretary accepts a suspension agreement, the Secretary will ''suspend'' the investigation and thereafter will monitor compliance with the agreement. This section contains rules for entering into suspension agreements and procedures for suspending an investigation.

(b) *In general.* The Secretary may suspend an investigation under section 704 or section 734 of the Act and this section.

(c) *Definition of ''substantially all.''* Under section 704 and section 734 of the Act, exporters that account for ''substantially all'' of the merchandise means exporters and producers that have accounted for not less than 85 percent by value or volume of the subject merchandise during the period for which the Secretary is measuring dumping or countervailable subsidization in the investigation or such other period that the Secretary considers representative.

(d) *Monitoring.* In monitoring a suspension agreement under section 704(c), section 734(c), or section 734(l) of the Act (agreements to eliminate injurious effects or to restrict the volume of imports), the Secretary will not be obliged to ascertain on a continuing basis the prices in the United States of the subject merchandise or of domestic like products.

(e) *Exports not to increase during interim period.* The Secretary will not accept a suspension agreement under section 704(b)(2) or section 734(b)(1) of the Act (the cessation of exports) unless the agreement ensures that the quantity of the subject merchandise exported during the interim period set forth in the agreement does not exceed the quantity of the merchandise exported during a period of comparable duration that the Secretary considers representative.

(f) *Procedure for suspension of investigation.* (1) *Submission of proposed suspension agreement.* (i) *In general.* As appropriate, the exporters and producers or, in an antidumping investigation involving a nonmarket economy country or a countervailing duty investigation, the government, must submit to the Secretary a proposed suspension agreement within:

(A) In an antidumping investigation, 15 days after the date of issuance of the preliminary determination, or

(B) In a countervailing duty investigation, 7 days after the date of issuance of the preliminary determination.

(ii) *Postponement of final determination.* Where a proposed suspension agreement is submitted in an antidumping investigation, an exporter or producer or, in an investigation involving a nonmarket economy country, the government, may request postponement of the final determination under section 735(a)(2) of the Act (*see* § 351.210(e)). Where the final determination in a countervailing duty investigation is postponed under section 703(g)(2) or section 705(a)(1) of the Act (*see* § 351.210(b)(3) and § 351.210(i)), the time limits in paragraphs (f)(1)(i), (f)(2)(i), (f)(3), and (g)(1) of this section applicable to countervailing duty investigations will be extended to coincide with the time limits in such paragraphs applicable to antidumping investigations.

(iii) *Special rule for regional industry determination.* If the Commission makes a regional industry determination in its final affirmative determination under

section 705(b) or section 735(b) of the Act but not in its preliminary affirmative determination under section 703(a) or section 733(a) of the Act, the exporters and producers or, in an antidumping investigation involving a nonmarket economy country or a countervailing duty investigation, the government, must submit to the Secretary any proposed suspension agreement within 15 days of the publication in the **Federal Register** of the antidumping or countervailing duty order.

(2) *Notification and consultation.* In fulfilling the requirements of section 704 or section 734 of the Act (whichever is applicable), the Secretary will take the following actions:

(i) *In general.* The Secretary will notify all parties to the proceeding of the proposed suspension of an investigation and provide to the petitioner a copy of the suspension agreement preliminarily accepted by the Secretary (the agreement must contain the procedures for monitoring compliance and a statement of the compatibility of the agreement with the requirements of section 704 or section 734 of the Act) within:

(A) In an antidumping investigation, 30 days after the date of issuance of the preliminary determination, or

(B) In a countervailing duty investigation, 15 days after the date of issuance of the preliminary determination; or

(ii) *Special rule for regional industry determination.* If the Commission makes a regional industry determination in its final affirmative determination under section 705(b) or section 735(b) of the Act but not in its preliminary affirmative determination under section 703(a) or section 733(a) of the Act, the Secretary, within 15 days of the submission of a proposed suspension agreement under paragraph (f)(1)(iii) of this section, will notify all parties to the proceeding of the proposed suspension agreement and provide to the petitioner a copy of the agreement preliminarily accepted by the Secretary (such agreement must contain the procedures for monitoring compliance and a statement of the compatibility of the agreement with the requirements of section 704 or section 734 of the Act); and

(iii) *Consultation.* The Secretary will consult with the petitioner concerning the proposed suspension of the investigation.

(3) *Opportunity for comment.* The Secretary will provide all interested parties, an industrial user of the subject merchandise or a representative consumer organization, as described in section 777(h) of the Act, and United States government agencies an opportunity to submit written argument and factual information concerning the proposed suspension of the investigation within:

(i) In an antidumping investigation, 50 days after the date of issuance of the preliminary determination,

(ii) In a countervailing duty investigation, 35 days after the date of issuance of the preliminary determination, or

(iii) In a regional industry case described in paragraph (f)(1)(iii) of this section, 35 days after the date of issuance of an order.

(g) *Acceptance of suspension agreement.* (1) The Secretary may accept an agreement to suspend an investigation within:

(i) In an antidumping investigation, 60 days after the date of issuance of the preliminary determination,

(ii) In a countervailing duty investigation, 45 days after the date of issuance of the preliminary determination, or

(iii) In a regional industry case described in paragraph (f)(1)(iii) of this section, 45 days after the date of issuance of an order.

(2) If the Secretary accepts an agreement to suspend an investigation, the Secretary will take the actions described in section 704(f), section 704(m)(3), section 734(f), or section 734(l)(3) of the Act (whichever is applicable), and will publish in the **Federal Register** notice of ''Suspension of Antidumping (Countervailing Duty) Investigation,'' including the text of the agreement. If the Secretary has not already published notice of an affirmative preliminary determination, the Secretary will include that notice. In accepting an agreement, the Secretary may rely on factual or legal conclusions the Secretary reached in or after the affirmative preliminary determination.

(h) *Continuation of investigation.* (1) A request to the Secretary under section 704(g) or section 734(g) of the Act for the continuation of the investigation must be made in writing. In addition, the request must be simultaneously filed with the Commission, and the requester must so certify in submitting the request to the Secretary.

(2) If the Secretary and the Commission make affirmative final determinations in an investigation that has been continued, the suspension agreement will remain in effect in accordance with the factual and legal conclusions in the Secretary's final determination. If either the Secretary or the Commission makes a negative final determination, the agreement will have no force or effect.

(i) *Merchandise imported in excess of allowed quantity.* (1) The Secretary may instruct the Customs Service not to accept entries, or withdrawals from warehouse, for consumption of subject merchandise in excess of any quantity allowed by a suspension agreement under section 704 or section 734 of the Act, including any quantity allowed during the interim period (*see* paragraph (e) of this section).

(2) Imports in excess of the quantity allowed by a suspension agreement, including any quantity allowed during the interim period (*see* paragraph (e) of this section), may be exported or destroyed under Customs Service supervision, except that if the agreement is under section 704(c)(3) or section 734(l) of the Act (restrictions on the volume of imports), the excess merchandise, with the approval of the Secretary, may be held for future opening under the agreement by placing it in a foreign trade zone or by entering it for warehouse.

§ 351.209 Violation of suspension agreement.

(a) *Introduction.* A suspension agreement remains in effect until the underlying investigation is terminated (*see* §§ 351.207 and 351.222). However, if the Secretary finds that a suspension agreement has been violated or no longer meets the requirements of the Act, the Secretary may either cancel or revise the agreement. This section contains rules regarding cancellation and revision of suspension agreements.

(b) *Immediate determination.* If the Secretary determines that a signatory has violated a suspension agreement, the Secretary, without providing interested parties an opportunity to comment, will:

(1) Order the suspension of liquidation in accordance with section 704(i)(1)(A) or section 734(i)(1)(A) of the Act (whichever is applicable) of all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of:

(i) 90 days before the date of publication of the notice of cancellation of the agreement; or

(ii) The date of first entry, or withdrawal from warehouse, for consumption of the merchandise the sale or export of which was in violation of the agreement;

(2) If the investigation was not completed under section 704(g) or section 734(g) of the Act, resume the investigation as if the Secretary had made an affirmative preliminary determination on the date of publication

of the notice of cancellation and impose provisional measures by instructing the Customs Service to require for each entry of the subject merchandise suspended under paragraph (b)(1) of this section a cash deposit or bond at the rates determined in the affirmative preliminary determination;

(3) If the investigation was completed under section 704(g) or section 734(g) of the Act, issue an antidumping order or countervailing duty order (whichever is applicable) and, for all entries subject to suspension of liquidation under paragraph (b)(1) of this section, instruct the Customs Service to require for each entry of the merchandise suspended under this paragraph a cash deposit at the rates determined in the affirmative final determination;

(4) Notify all persons who are or were parties to the proceeding, the Commission, and, if the Secretary determines that the violation was intentional, the Commissioner of Customs; and

(5) Publish in the **Federal Register** notice of ''Antidumping (Countervailing Duty) Order (Resumption of Antidumping (Countervailing Duty) Investigation); Cancellation of Suspension Agreement.''

(c) *Determination after notice and comment.* (1) If the Secretary has reason to believe that a signatory has violated a suspension agreement, or that an agreement no longer meets the requirements of section 704(d)(1) or section 734(d) of the Act, but the Secretary does not have sufficient information to determine that a signatory has violated the agreement (*see* paragraph (b) of this section), the Secretary will publish in the **Federal Register** notice of ''Invitation for Comment on Antidumping (Countervailing Duty) Suspension Agreement.''

(2) After publication of the notice inviting comment and after consideration of comments received the Secretary will:

(i) Determine whether any signatory has violated the suspension agreement; or

(ii) Determine whether the suspension agreement no longer meets the requirements of section 704(d)(1) or section 734(d) of the Act.

(3) If the Secretary determines that a signatory has violated the suspension agreement, the Secretary will take appropriate action as described in paragraphs (b)(1) through (b)(5) of this section.

(4) If the Secretary determines that a suspension agreement no longer meets the requirements of section 704(d)(1) or section 734(d) of the Act, the Secretary will:

(i) Take appropriate action as described in paragraphs (b)(1) through (b)(5) of this section; except that, under paragraph (b)(1)(ii) of this section, the Secretary will order the suspension of liquidation of all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of:

(A) 90 days before the date of publication of the notice of suspension of liquidation; or

(B) The date of first entry, or withdrawal from warehouse, for consumption of the merchandise the sale or export of which does not meet the requirements of section 704(d)(1) of the Act;

(ii) Continue the suspension of investigation by accepting a revised suspension agreement under section 704(b) or section 734(b) of the Act (whether or not the Secretary accepted the original agreement under such section) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 704(d)(1) or section 734(d) of the Act, and publish in the **Federal Register** notice of ''Revision of Agreement Suspending Antidumping (Countervailing Duty) Investigation''; or

(iii) Continue the suspension of investigation by accepting a revised suspension agreement under section 704(c), section 734(c), or section 734(l) of the Act (whether or not the Secretary accepted the original agreement under such section) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 704(d)(1) or section 734(d) of the Act, and publish in the **Federal Register** notice of ''Revision of Agreement Suspending Antidumping (Countervailing Duty) Investigation.'' If the Secretary continues to suspend an investigation based on a revised agreement accepted under section 704(c), section 734(c), or section 734(l) of the Act, the Secretary will order suspension of liquidation to begin. The suspension will not end until the Commission completes any requested review of the revised agreement under section 704(h) or section 734(h) of the Act. If the Commission receives no request for review within 20 days after the date of publication of the notice of the revision, the Secretary will order the suspension of liquidation ended on the 21st day after the date of publication, and will instruct the Customs Service to release any cash deposit or bond. If the Commission undertakes a review under section 704(h) or section 734(h) of the Act, the provisions of sections 704(h)(2) and (3) and sections 734(h)(2) and (3) of the Act will apply.

(5) If the Secretary decides neither to consider the suspension agreement violated nor to revise the agreement, the Secretary will publish in the **Federal Register** notice of the Secretary's decision under paragraph (c)(2) of this section, including a statement of the factual and legal conclusions on which the decision is based.

(d) *Additional signatories.* If the Secretary decides that a suspension agreement no longer will completely eliminate the injurious effect of exports to the United States of subject merchandise under section 704(c)(1) or section 734(c)(1) of the Act, or that the signatory exporters no longer account for substantially all of the subject merchandise, the Secretary may revise the agreement to include additional signatory exporters.

(e) *Definition of ''violation.''* Under this section, ''violation'' means noncompliance with the terms of a suspension agreement caused by an act or omission of a signatory, except, at the discretion of the Secretary, an act or omission which is inadvertent or inconsequential.

§ 351.210 Final determination.

(a) *Introduction.* A ''final determination'' in an antidumping or countervailing duty investigation constitutes a final decision by the Secretary as to whether dumping or countervailable subsidization is occurring. If the Secretary's final determination is affirmative, in most instances the Commission will issue a final injury determination (except in certain countervailing duty investigations). Also, if the Secretary's preliminary determination was negative but the final determination is affirmative, the Secretary will impose provisional measures. If the Secretary's final determination is negative, the proceeding, including the injury investigation conducted by the Commission, terminates. This section contains rules regarding deadlines for, and postponement of, final determinations, contents of final determinations, and the effects of final determinations.

(b) *Deadline for final determination.* The deadline for a final determination under section 705(a)(1) or section 735(a)(1) of the Act will be:

(1) Normally, not later than 75 days after the date of the Secretary's preliminary determination (*see* section 705(a)(1) or section 735(a)(1) of the Act);

(2) In an antidumping investigation, not later than 135 days after the date of publication of the preliminary

determination if the Secretary postpones the final determination at the request of:

(i) The petitioner, if the preliminary determination was negative (*see* section 735(a)(2)(B) of the Act); or

(ii) Exporters or producers who account for a significant proportion of exports of the subject merchandise, if the preliminary determination was affirmative (*see* section 735(a)(2)(A) of the Act);

(3) In a countervailing duty investigation, not later than 165 days after the preliminary determination, if, after the preliminary determination, the Secretary decides to investigate an upstream subsidy allegation and concludes that additional time is needed to investigate the allegation (*see* section 703(g)(2) of the Act); or

(4) In a countervailing duty investigation, the same date as the date of the final antidumping determination, if:

(i) In a situation where the Secretary simultaneously initiated antidumping and countervailing duty investigations on the subject merchandise (from the same or other countries), the petitioner requests that the final countervailing duty determination be postponed to the date of the final antidumping determination; and

(ii) If the final countervailing duty determination is not due on a later date because of postponement due to an allegation of upstream subsidies under section 703(g) of the Act (*see* section 705(a)(1) of the Act).

(c) *Contents of final determination and publication of notice.* The final determination will include, if appropriate, a final finding on critical circumstances under section 705(a)(2) or section 735(a)(3) of the Act (whichever is applicable). The Secretary will publish in the **Federal Register** notice of ''Affirmative (Negative) Final Antidumping (Countervailing Duty) Determination,'' including the rates, if any.

(d) *Effect of affirmative final determination.* If the final determination is affirmative, the Secretary will take the actions described in section 705(c)(1) or section 735(c)(1) of the Act (whichever is applicable). In addition, in the case of a countervailing duty investigation involving subject merchandise from a country that is not a Subsidies Agreement country, the Secretary will instruct the Customs Service to require a cash deposit, as provided in section 706(a)(3) of the Act, for each entry of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the order under section 706(a) of the Act.

(e) *Request for postponement of final antidumping determination.* (1) *In general.* A request to postpone a final antidumping determination under section 735(a)(2) of the Act (*see* paragraph (b)(2) of this section) must be submitted in writing within the scheduled date of the final determination. The Secretary may grant the request, unless the Secretary finds compelling reasons to deny the request.

(2) *Requests by exporters.* In the case of a request submitted under paragraph (e)(1) of this section by exporters who account for a significant proportion of exports of subject merchandise (*see* section 735(a)(2)(A) of the Act), the Secretary will not grant the request unless those exporters also submit a request described in the last sentence of section 733(d) of the Act (extension of provisional measures from a 4-month period to not more than 6 months).

(f) *Deferral of decision concerning upstream subsidization to review.* Notwithstanding paragraph (b)(3) of this section, if the petitioner so requests in writing and the preliminary countervailing duty determination was affirmative, the Secretary, instead of postponing the final determination, may defer a decision concerning upstream subsidization until the conclusion of the first administrative review of a countervailing duty order, if any (*see* section 703(g)(2)(B)(i) of the Act).

(g) *Notification of postponement.* If the Secretary postpones a final determination under paragraph (b)(2), (b)(3), or (b)(4) of this section, the Secretary will notify promptly all parties to the proceeding of the postponement, and will publish in the **Federal Register** notice of ''Postponement of Final Antidumping (Countervailing Duty) Determination,'' stating the reasons for the postponement.

(h) *Termination of suspension of liquidation in a countervailing duty investigation.* If the Secretary postpones a final countervailing duty determination, the Secretary will end any suspension of liquidation ordered in the preliminary determination not later than 120 days after the date of publication of the preliminary determination, and will not resume it unless and until the Secretary publishes a countervailing duty order.

(i) *Postponement of final countervailing duty determination for simultaneous investigations.* A request by the petitioner to postpone a final countervailing duty determination to the date of the final antidumping determination must be submitted in writing within five days of the date of publication of the preliminary countervailing duty determination (*see* section 705(a)(1) and paragraph (b)(4) of this section).

(j) *Commission access to information.* If the final determination is affirmative, the Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding the information upon which the Secretary based the final determination and that the Commission may consider relevant to its injury determination (*see* section 705(c)(1)(A) or section 735(c)(1)(A) of the Act).

(k) *Effect of negative final determination.* An investigation terminates upon publication in the **Federal Register** of the Secretary's or the Commission's negative final determination, and the Secretary will take the relevant actions described in section 705(c)(2) or section 735(c)(2) of the Act (whichever is applicable).

§ 351.211 Antidumping order and countervailing duty order.

(a) *Introduction.* The Secretary issues an order when both the Secretary and the Commission (except in certain countervailing duty investigations) have made final affirmative determinations. The issuance of an order ends the investigative phase of a proceeding. Generally, upon the issuance of an order, importers no longer may post bonds as security for antidumping or countervailing duties, but instead must make a cash deposit of estimated duties. An order remains in effect until it is revoked. This section contains rules regarding the issuance of orders in general, as well as special rules for orders where the Commission has found a regional industry to exist.

(b) *In general.* Not later than seven days after receipt of notice of an affirmative final injury determination by the Commission under section 705(b) or section 735(b) of the Act, or, in a countervailing duty proceeding involving subject merchandise from a country not entitled to an injury test (*see* § 351.101(b)), simultaneously with publication of an affirmative final countervailing duty determination by the Secretary, the Secretary will publish in the **Federal Register** an ''Antidumping Order'' or ''Countervailing Duty Order'' that:

(1) Instructs the Customs Service to assess antidumping duties or countervailing duties (whichever is applicable) on the subject merchandise, in accordance with the Secretary's instructions at the completion of each review requested under § 351.213(b) (administrative review), § 351.214(b) (new shipper review), or § 351.215(b) (expedited antidumping review), or if a

review is not requested, in accordance with the Secretary's assessment instructions under § 351.212(c);

(2) Instructs the Customs Service to require a cash deposit of estimated antidumping or countervailing duties at the rates included in the Secretary's final determination; and

(3) Orders the suspension of liquidation ended for all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the Commission's final determination, and instructs the Customs Service to release the cash deposit or bond on those entries, if in its final determination, the Commission found a threat of material injury or material retardation of the establishment of an industry, unless the Commission in its final determination also found that, absent the suspension of liquidation ordered under section 703(d)(2) or section 733(d)(2) of the Act, it would have found material injury (*see* section 706(b) or section 736(b) of the Act).

§ 351.212 Assessment of antidumping and countervailing duties; provisional measures deposit cap; interest on certain overpayments and underpayments.

(a) *Introduction.* Unlike the systems of some other countries, the United States uses a ''retrospective'' assessment system under which final liability for antidumping and countervailing duties is determined after merchandise is imported. Generally, the amount of duties to be assessed is determined in a review of the order covering a discrete period of time. If a review is not requested, duties are assessed at the rate established in the completed review covering the most recent prior period or, if no review has been completed, the cash deposit rate applicable at the time merchandise was entered. This section contains rules regarding the assessment of duties, the provisional measures deposit cap, and interest on over- or undercollections of estimated duties.

(b) *Assessment of antidumping and countervailing duties as the result of a review.* (1) *Antidumping duties.* If the Secretary has conducted a review of an antidumping order under § 351.213 (administrative review), § 351.214 (new shipper review), or § 351.215 (expedited antidumping review), the Secretary normally will calculate an assessment rate for each importer of subject merchandise covered by the review. The Secretary normally will calculate the assessment rate by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise for normal customs duty purposes. The Secretary then will instruct the Customs Service to assess antidumping duties by applying the assessment rate to the entered value of the merchandise.

(2) *Countervailing duties.* If the Secretary has conducted a review of a countervailing duty order under § 351.213 (administrative review) or § 351.214 (new shipper review), the Secretary normally will instruct the Customs Service to assess countervailing duties by applying the rates included in the final results of the review to the entered value of the merchandise.

(c) *Automatic assessment of antidumping and countervailing duties if no review is requested.* (1) If the Secretary does not receive a timely request for an administrative review of an order (*see* paragraph (b)(1), (b)(2), or (b)(3) of § 351.213), the Secretary, without additional notice, will instruct the Customs Service to:

(i) Assess antidumping duties or countervailing duties, as the case may be, on the subject merchandise described in § 351.213(e) at rates equal to the cash deposit of, or bond for, estimated antidumping duties or countervailing duties required on that merchandise at the time of entry, or withdrawal from warehouse, for consumption; and

(ii) To continue to collect the cash deposits previously ordered.

(2) If the Secretary receives a timely request for an administrative review of an order (*see* paragraph (b)(1), (b)(2), or (b)(3) of § 351.213), the Secretary will instruct the Customs Service to assess antidumping duties or countervailing duties, and to continue to collect cash deposits, on the merchandise not covered by the request in accordance with paragraph (c)(1) of this section.

(3) The automatic assessment provisions of paragraphs (c)(1) and (c)(2) of this section will not apply to subject merchandise that is the subject of a new shipper review (*see* § 351.214) or an expedited antidumping review (*see* § 351.215).

(d) *Provisional measures deposit cap.* This paragraph applies to subject merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the Commission's notice of an affirmative final injury determination or, in a countervailing duty proceeding that involves merchandise from a country that is not entitled to an injury test, the date of the Secretary's notice of an affirmative final countervailing duty determination. If the amount of duties that would be assessed by applying the rates included in the Secretary's affirmative preliminary or affirmative final antidumping or countervailing duty determination (''provisional duties'') is different from the amount of duties that would be assessed by applying the assessment rate under paragraphs (b)(1) and (b)(2) of this section (''final duties''), the Secretary will instruct the Customs Service to disregard the difference to the extent that the provisional duties are less than the final duties, and to assess antidumping or countervailing duties at the assessment rate if the provisional duties exceed the final duties.

(e) *Interest on certain overpayments and underpayments.* Under section 778 of the Act, the Secretary will instruct the Customs Service to calculate interest for each entry on or after the publication of the order from the date that a cash deposit is required to be deposited for the entry through the date of liquidation of the entry.

(f) *Special rule for regional industry cases.* (1) *In general.* If the Commission, in its final injury determination, found a regional industry under section 771(4)(C) of the Act, the Secretary may direct that duties not be assessed on subject merchandise of a particular exporter or producer if the Secretary determines that:

(i) The exporter or producer did not export subject merchandise for sale in the region concerned during or after the Department's period of investigation;

(ii) The exporter or producer has certified that it will not export subject merchandise for sale in the region concerned in the future so long as the antidumping or countervailing duty order is in effect; and

(iii) No subject merchandise of the exporter or producer was entered into the United States outside of the region and then sold into the region during or after the Department's period of investigation.

(2) *Procedures for obtaining an exception from the assessment of duties.* (i) *Request for exception.* An exporter or producer seeking an exception from the assessment of duties under paragraph (f)(1) of this section must request, subject to the provisions of § 351.213 or § 351.214, an administrative review or a new shipper review to determine whether subject merchandise of the exporter or producer in question should be excepted from the assessment of duties under paragraph (f)(1) of this section. The exporter or producer making the request may request that the review be limited to a determination as to whether the requirements of paragraph (f)(1) of this section are satisfied. The request for a review must be accompanied by:

(A) A certification by the exporter or producer that it did not export subject merchandise for sale in the region concerned during or after the Department's period of investigation, and that it will not do so in the future so long as the antidumping or countervailing duty order is in effect; and

(B) A certification from each of the exporter's or producer's U.S. importers of the subject merchandise that no subject merchandise of that exporter or producer was entered into the United States outside such region and then sold into the region during or after the Department's period of investigation.

(ii) *Limited review.* If the Secretary initiates an administrative review or a new shipper review based on a request for review that includes a request for an exception from the assessment of duties under paragraph (f)(2)(i) of this section, the Secretary, if requested, may limit the review to a determination as to whether an exception from the assessment of duties should be granted under paragraph (f)(1) of this section.

(3) *Exception granted.* If, in the final results of the administrative review or the new shipper review, the Secretary determines that the requirements of paragraph (f)(1) of this section are satisfied, the Secretary will instruct the Customs Service to liquidate, without regard to antidumping or countervailing duties (whichever is appropriate), entries of subject merchandise of the exporter or producer concerned.

(4) *Exception not granted.* If, in the final results of the administrative review or the new shipper review, the Secretary determines that the requirements of paragraph (f)(1) are not satisfied, the Secretary:

(i) Will issue assessment instructions to the Customs Service in accordance with paragraph (b) of this section; or

(ii) If the review was limited to a determination as to whether an exception from the assessment of duties should be granted, the Secretary will instruct the Customs Service to assess duties in accordance with paragraph (f)(1) or (f)(2) of this section, whichever is appropriate (automatic assessment if no review is requested).

§ 351.213 Administrative review of orders and suspension agreements under section 751(a)(1) of the Act.

(a) *Introduction.* As noted in § 351.212(a), the United States has a ''retrospective'' assessment system under which final liability for antidumping and countervailing duties is determined after merchandise is imported. Although duty liability may be determined in the context of other types of reviews, the most frequently used procedure for determining final duty liability is the administrative review procedure under section 751(a)(1) of the Act. This section contains rules regarding requests for administrative reviews and the conduct of such reviews.

(b) *Request for administrative review.* (1) Each year during the anniversary month of the publication of an antidumping or countervailing duty order, a domestic interested party or an interested party described in section 771(9)(B) of the Act (foreign government) may request in writing that the Secretary conduct an administrative review under section 751(a)(1) of the Act of specified individual exporters or producers covered by an order (except for a countervailing duty order in which the investigation or prior administrative review was conducted on an aggregate basis), if the requesting person states why the person desires the Secretary to review those particular exporters or producers.

(2) During the same month, an exporter or producer covered by an order (except for a countervailing duty order in which the investigation or prior administrative review was conducted on an aggregate basis) may request in writing that the Secretary conduct an administrative review of only that person.

(3) During the same month, an importer of the merchandise may request in writing that the Secretary conduct an administrative review of only an exporter or producer (except for a countervailing duty order in which the investigation or prior administrative review was conducted on an aggregate basis) of the subject merchandise imported by that importer.

(4) Each year during the anniversary month of the publication of a suspension of investigation, an interested party may request in writing that the Secretary conduct an administrative review of all producers or exporters covered by an agreement on which the suspension of investigation was based.

(c) *Deferral of administrative review.* (1) *In general.* The Secretary may defer the initiation of an administrative review, in whole or in part, for one year if:

(i) The request for administrative review is accompanied by a request that the Secretary defer the review, in whole or in part; and

(ii) None of the following persons objects to the deferral: the exporter or producer for which deferral is requested, an importer of subject merchandise of that exporter or producer, a domestic interested party and, in a countervailing duty proceeding, the foreign government.

(2) *Timeliness of objection to deferral.* An objection to a deferral of the initiation of administrative review under paragraph (c)(1)(ii) of this section must be submitted within 15 days after the end of the anniversary month in which the administrative review is requested.

(3) *Procedures and deadlines.* If the Secretary defers the initiation of an administrative review, the Secretary will publish notice of the deferral in the **Federal Register**. The Secretary will initiate the administrative review in the month immediately following the next anniversary month, and the deadline for issuing preliminary results of review (*see* paragraph (h)(1) of this section) and submitting factual information (*see* § 351.302(b)(2)) will run from the last day of the next anniversary month.

(d) *Rescission of administrative review.* (1) *Withdrawal of request for review.* The Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so.

(2) *Self-initiated review.* The Secretary may rescind an administrative review that was self-initiated by the Secretary.

(3) *No shipments.* The Secretary may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be.

(4) *Notice of rescission.* If the Secretary rescinds an administrative review (in whole or in part), the Secretary will publish in the **Federal Register** notice of ''Rescission of Antidumping (Countervailing Duty) Administrative Review'' or, if appropriate, ''Partial Rescission of Antidumping (Countervailing Duty) Administrative Review.''

(e) *Period of review.* (1) *Antidumping proceedings.* (i) Except as provided in paragraph (e)(1)(ii) of this section, an administrative review under this section normally will cover, as appropriate, entries, exports, or sales of the subject merchandise during the 12 months immediately preceding the most recent anniversary month.

(ii) For requests received during the first anniversary month after publication of an order or suspension of investigation, an administrative review

under this section will cover, as appropriate, entries, exports, or sales during the period from the date of suspension of liquidation under this part or suspension of investigation to the end of the month immediately preceding the first anniversary month.

(2) *Countervailing duty proceedings.* (i) Except as provided in paragraph (e)(2)(ii) of this section, an administrative review under this section normally will cover entries or exports of the subject merchandise during the most recently completed calendar year. If the review is conducted on an aggregate basis, the Secretary normally will cover entries or exports of the subject merchandise during the most recently completed fiscal year for the government in question.

(ii) For requests received during the first anniversary month after publication of an order or suspension of investigation, an administrative review under this section will cover entries or exports, as appropriate, during the period from the date of suspension of liquidation under this part or suspension of investigation to the end of the most recently completed calendar or fiscal year as described in paragraph (e)(2)(i) of this section.

(f) *Voluntary respondents.* In an administrative review, the Secretary will examine voluntary respondents in accordance with section 782(a) of the Act and § 351.204(d).

(g) *Procedures.* The Secretary will conduct an administrative review under this section in accordance with § 351.221.

(h) *Time limits.* (1) *In general.* The Secretary will issue preliminary results of review (*see* § 351.221(b)(4)) within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and final results of review (*see* § 351.221(b)(5)) within 120 days after the date on which notice of the preliminary results was published in the **Federal Register**.

(2) *Exception.* If the Secretary determines that it is not practicable to complete the review within the time specified in paragraph (h)(1) of this section, the Secretary may extend the 245-day period to 365 days and may extend the 120-day period to 180 days. If the Secretary does not extend the time for issuing preliminary results, the Secretary may extend the time for issuing final results from 120 days to 300 days.

(i) *Possible cancellation or revision of suspension agreement.* If during an administrative review the Secretary determines or has reason to believe that a signatory has violated a suspension agreement or that the agreement no longer meets the requirements of section 704 or section 734 of the Act (whichever is applicable), the Secretary will take appropriate action under section 704(i) or section 734(i) of the Act and § 351.209. The Secretary may suspend the time limit in paragraph (h) of this section while taking action under § 351.209.

(j) *Absorption of antidumping duties.* (1) During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping order under § 351.211, or a determination under § 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

(2) For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1996 or 1998.

(3) In determining under paragraph (j)(1) of this section whether antidumping duties have been absorbed, the Secretary will examine the antidumping duties calculated in the administrative review in which the absorption inquiry is requested.

(4) The Secretary will notify the Commission of the Secretary's determination if:

(i) In the case of an administrative review other than one to which paragraph (j)(2) of this section applies, the administrative review covers all or part of a time period falling between the third and fourth anniversary month of an order; or

(ii) In the case of an administrative review to which paragraph (j)(2) of this section applies, the Secretary initiated the administrative review in 1998.

(k) *Administrative reviews of countervailing duty orders conducted on an aggregate basis.* (1) *Request for zero rate.* Where the Secretary conducts an administrative review of a countervailing duty on an aggregate basis under section 777A(e)(2)(B) of the Act, the Secretary will consider and review requests for individual assessment and cash deposit rates of zero to the extent practicable. An exporter or producer that desires a zero rate must submit:

(i) A certification by the exporter or producer that it received zero or *de minimis* net countervailable subsidies during the period of review;

(ii) If the exporter or producer received a countervailable subsidy, calculations demonstrating that the amount of net countervailable subsidies received was *de minimis* during the period of review;

(iii) If the exporter is not the producer of the subject merchandise, certifications from the suppliers and producers of the subject merchandise that those persons received zero or *de minimis* net countervailable subsidies during the period of the review; and

(iv) A certification from the government of the affected country that the government did not provide the exporter (or the exporter's supplier) or producer with more than *de minimis* net countervailable subsidies during the period of review.

(2) *Application of country-wide subsidy rate.* With the exception of assessment and cash deposit rates of zero determined under paragraph (k)(1) of this section, if, in the final results of an administrative review under this section of a countervailing duty order, the Secretary calculates a single country-wide subsidy rate under section 777A(e)(2)(B) of the Act, that rate will supersede, for cash deposit purposes, all rates previously determined in the countervailing duty proceeding in question.

(l) *Exception from assessment in regional industry cases.* For procedures relating to a request for the exception from the assessment of antidumping or countervailing duties in a regional industry case, see § 351.212(f).

§ 351.214 New shipper reviews under section 751(a)(2)(B) of the Act.

(a) *Introduction.* The URAA established a new procedure by which so-called ''new shippers'' can obtain their own individual dumping margin or countervailable subsidy rate on an expedited basis. In general, a new shipper is an exporter or producer that did not export, and is not affiliated with an exporter or producer that did export, to the United States during the period of investigation. This section contains rules regarding requests for new shipper reviews and procedures for conducting such reviews. In addition, this section contains rules regarding requests for expedited reviews by noninvestigated exporters in certain countervailing duty proceedings and procedures for conducting such reviews.

(b) *Request for new shipper review.* (1) *Requirement of sale or export.* Subject to the requirements of section 751(a)(2)(B) of the Act and this section, an exporter or producer may request a new shipper review if it has exported, or sold for export, subject merchandise to the United States.

(2) *Contents of request.* A request for a new shipper review must contain the following:

(i) If the person requesting the review is both the exporter and producer of the merchandise, a certification that the person requesting the review did not export subject merchandise to the United States (or, in the case of a regional industry, did not export the subject merchandise for sale in the region concerned) during the period of investigation;

(ii) If the person requesting the review is the exporter, but not the producer, of the subject merchandise:

(A) The certification described in paragraph (b)(2)(i) of this section; and

(B) A certification from the person that produced or supplied the subject merchandise to the person requesting the review that that producer or supplier did not export the subject merchandise to the United States (or, in the case of a regional industry, did not export the subject merchandise for sale in the region concerned) during the period of investigation;

(iii)(A) A certification that, since the investigation was initiated, such exporter or producer has never been affiliated with any exporter or producer who exported the subject merchandise to the United States (or in the case of a regional industry, who exported the subject merchandise for sale in the region concerned) during the period of investigation, including those not individually examined during the investigation;

(B) In an antidumping proceeding involving imports from a nonmarket economy country, a certification that the export activities of such exporter or producer are not controlled by the central government;

(iv) Documentation establishing:

(A) The date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if the exporter or producer cannot establish the date of first entry, the date on which the exporter or producer first shipped the subject merchandise for export to the United States;

(B) The volume of that and subsequent shipments; and

(C) The date of the first sale to an unaffiliated customer in the United States; and

(v) In the case of a review of a countervailing duty order, a certification that the exporter or producer has informed the government of the exporting country that the government will be required to provide a full response to the Department's questionnaire.

(c) *Deadline for requesting review.* An exporter or producer may request a new shipper review within one year of the date referred to in paragraph (b)(2)(iv)(A) of this section.

(d) *Time for new shipper review.* (1) *In general.* The Secretary will initiate a new shipper review under this section in the calendar month immediately following the anniversary month or the semiannual anniversary month if the request for the review is made during the 6-month period ending with the end of the anniversary month or the semiannual anniversary month (whichever is applicable).

(2) *Semiannual anniversary month.* The semiannual anniversary month is the calendar month which is 6 months after the anniversary month.

(3) *Example.* An order is published in January. The anniversary month would be January, and the semiannual anniversary month would be July. If the Secretary received a request for a new shipper review at any time during the period February-July, the Secretary would initiate a new shipper review in August. If the Secretary received a request for a new shipper review at any time during the period August-January, the Secretary would initiate a new shipper review in February.

(e) *Suspension of liquidation; posting bond or security.* When the Secretary initiates a new shipper review under this section, the Secretary will direct the Customs Service to suspend liquidation of any unliquidated entries of the subject merchandise from the relevant exporter or producer, and to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise.

(f) *Rescission of new shipper review.* (1) *Withdrawal of request for review.* The Secretary may rescind a new shipper review under this section, in whole or in part, if a party that requested a review withdraws its request not later than 60 days after the date of publication of notice of initiation of the requested review.

(2) *Absence of entry and sale to an unaffiliated customer.* The Secretary may rescind a new shipper review, in whole or in part, if the Secretary concludes that:

(i) As of the end of the normal period of review referred to in paragraph (g) of this section, there has not been an entry and sale to an unaffiliated customer in the United States of subject merchandise; and

(ii) An expansion of the normal period of review to include an entry and sale to an unaffiliated customer in the United States of subject merchandise would be likely to prevent the completion of the review within the time limits set forth in paragraph (i) of this section.

(3) *Notice of Rescission.* If the Secretary rescinds a new shipper review (in whole or in part), the Secretary will publish in the **Federal Register** notice of ''Rescission of Antidumping (Countervailing Duty) New Shipper Review'' or, if appropriate, ''Partial Rescission of Antidumping (Countervailing Duty) New Shipper Review.''

(g) *Period of review.* (1) *Antidumping proceeding.* (i) *In general.* Except as provided in paragraph (g)(1)(ii) of this section, in an antidumping proceeding, a new shipper review under this section normally will cover, as appropriate, entries, exports, or sales during the following time periods:

(A) If the new shipper review was initiated in the month immediately following the anniversary month, the twelve-month period immediately preceding the anniversary month; or

(B) If the new shipper review was initiated in the month immediately following the semiannual anniversary month, the period of review will be the six-month period immediately preceding the semiannual anniversary month.

(ii) *Exceptions.* (A) If the Secretary initiates a new shipper review under this section in the month immediately following the first anniversary month, the review normally will cover, as appropriate, entries, exports, or sales during the period from the date of suspension of liquidation under this part to the end of the month immediately preceding the first anniversary month.

(B) If the Secretary initiates a new shipper review under this section in the month immediately following the first semiannual anniversary month, the review normally will cover, as appropriate, entries, exports, or sales during the period from the date of suspension of liquidation under this part to the end of the month immediately preceding the first semiannual anniversary month.

(2) *Countervailing duty proceeding.* In a countervailing duty proceeding, the period of review for a new shipper review under this section will be the same period as that specified in § 351.213(e)(2) for an administrative review.

(h) *Procedures.* The Secretary will conduct a new shipper review under this section in accordance with § 351.221.

(i) *Time limits.* (1) *In general.* Unless the time limit is waived under paragraph (j)(3) of this section, the Secretary will issue preliminary results of review (*see* § 351.221(b)(4)) within 180 days after the date on which the new shipper review was initiated, and final results of review (*see* § 351.221(b)(5)) within 90 days after the date on which the preliminary results were issued.

(2) *Exception.* If the Secretary concludes that a new shipper review is extraordinarily complicated, the Secretary may extend the 180-day period to 300 days, and may extend the 90-day period to 150 days.

(j) *Multiple reviews.* Notwithstanding any other provision of this subpart, if a review (or a request for a review) under § 351.213 (administrative review), § 351.214 (new shipper review), § 351.215 (expedited antidumping review), or § 351.216 (changed circumstances review) covers merchandise of an exporter or producer subject to a review (or to a request for a review) under this section, the Secretary may, after consulting with the exporter or producer:

(1) Rescind, in whole or in part, a review in progress under this subpart;

(2) Decline to initiate, in whole or in part, a review under this subpart; or

(3) Where the requesting party agrees in writing to waive the time limits of paragraph (i) of this section, conduct concurrent reviews, in which case all other provisions of this section will continue to apply with respect to the exporter or producer.

(k) *Expedited reviews in countervailing duty proceedings for noninvestigated exporters.* (1) *Request for review.* If, in a countervailing duty investigation, the Secretary limited the number of exporters or producers to be individually examined under section 777A(e)(2)(A) of the Act, an exporter that the Secretary did not select for individual examination or that the Secretary did not accept as a voluntary respondent (*see* § 351.204(d)) may request a review under this paragraph (k). An exporter must submit a request for review within 30 days of the date of publication in the **Federal Register** of the countervailing duty order. A request must be accompanied by a certification that:

(i) The requester exported the subject merchandise to the United States during the period of investigation;

(ii) The requester is not affiliated with an exporter or producer that the Secretary individually examined in the investigation; and

(iii) The requester has informed the government of the exporting country that the government will be required to provide a full response to the Department's questionnaire.

(2) *Initiation of review.* (i) *In general.* The Secretary will initiate a review in the month following the month in which a request for review is due under paragraph (k)(1) of this section.

(ii) *Example.* The Secretary publishes a countervailing duty order on January 15. An exporter would have to submit a request for a review by February 14. The Secretary would initiate a review in March.

(3) *Conduct of review.* The Secretary will conduct a review under this paragraph (k) in accordance with the provisions of this section applicable to new shipper reviews, subject to the following exceptions:

(i) The period of review will be the period of investigation used by the Secretary in the investigation that resulted in the publication of the countervailing duty order (*see* § 351.204(b)(2));

(ii) The Secretary will not permit the posting of a bond or security in lieu of a cash deposit under paragraph (e) of this section;

(iii) The final results of a review under this paragraph (k) will not be the basis for the assessment of countervailing duties; and

(iv) The Secretary may exclude from the countervailing duty order in question any exporter for which the Secretary determines an individual net countervailable subsidy rate of zero or *de minimis* (*see* § 351.204(e)(1)), provided that the Secretary has verified the information on which the exclusion is based.

(l) *Exception from assessment in regional industry cases.* For procedures relating to a request for the exception from the assessment of antidumping or countervailing duties in a regional industry case, see § 351.212(f).

§ 351.215 Expedited antidumping review and security in lieu of estimated duty under section 736(c) of the Act.

(a) *Introduction.* Exporters and producers individually examined in an investigation normally cannot obtain a review of entries until an administrative review is requested. In addition, when an antidumping order is published, importers normally must begin to make a cash deposit of estimated antidumping duties upon the entry of subject merchandise. Section 736(c), however, establishes a special procedure under which exporters or producers may request an expedited review, and bonds, rather than cash deposits, may continue to be posted for a limited period of time if several criteria are satisfied. This section contains rules regarding requests for expedited antidumping reviews and the procedures applicable to such reviews.

(b) *In general.* If the Secretary determines that the criteria of section 736(c)(1) of the Act are satisfied, the Secretary:

(1) May permit, for not more than 90 days after the date of publication of an antidumping order, the posting of a bond or other security instead of the deposit of estimated antidumping duties required under section 736(a)(3) of the Act; and

(2) Will initiate an expedited antidumping review. Before making such a determination, the Secretary will make business proprietary information available, and will provide interested parties with an opportunity to file written comments, in accordance with section 736(c)(4) of the Act.

(c) *Procedures.* The Secretary will conduct an expedited antidumping review under this section in accordance with § 351.221.

§ 351.216 Changed circumstances review under section 751(b) of the Act.

(a) *Introduction.* Section 751(b) of the Act provides for what is known as a ''changed circumstances'' review. This section contains rules regarding requests for changed circumstances reviews and procedures for conducting such reviews.

(b) *Requests for changed circumstances review.* At any time, an interested party may request a changed circumstances review, under section 751(b) of the Act, of an order or a suspended investigation. Within 45 days after the date on which a request is filed, the Secretary will determine whether to initiate a changed circumstances review.

(c) *Limitation on changed circumstances review.* Unless the Secretary finds that good cause exists, the Secretary will not review a final determination in an investigation (*see* section 705(a) or section 735(a) of the Act) or a suspended investigation (*see* section 704 or section 734 of the Act) less than 24 months after the date of publication of notice of the final determination or the suspension of the investigation.

(d) *Procedures.* If the Secretary decides that changed circumstances sufficient to warrant a review exist, the Secretary will conduct a changed circumstances review in accordance with § 351.221.

(e) *Time limits.* The Secretary will issue final results of review (*see* § 351.221(b)(5)) within 270 days after the date on which the changed circumstances review is initiated, or within 45 days if all parties to the proceeding agree to the outcome of the review.

§ 351.217 Reviews to implement results of subsidies enforcement proceeding under section 751(g) of the Act.

(a) *Introduction.* Section 751(g) provides a mechanism for incorporating into an ongoing countervailing duty proceeding the results of certain subsidy-related disputes under the WTO Subsidies Agreement. Where the United States, in the WTO, has successfully challenged the ''nonactionable'' (*e.g.,* noncountervailable) status of a foreign subsidy, or where the United States has successfully challenged a prohibited or actionable subsidy, the Secretary may conduct a review to determine the effect, if any, of the successful outcome on an existing countervailing duty order or suspended investigation. This section contains rules regarding the initiation and conduct of reviews under section 751(g).

(b) *Violations of Article 8 of the Subsidies Agreement.* If:

(1) The Secretary receives notice from the Trade Representative of a violation of Article 8 of the Subsidies Agreement;

(2) The Secretary has reason to believe that merchandise subject to an existing countervailing duty order or suspended investigation is benefiting from the subsidy or subsidy program found to have been in violation of Article 8; and

(3) No administrative review is in progress, the Secretary will initiate an Article 8 violation review of the order or suspended investigation to determine whether the subject merchandise benefits from the subsidy or subsidy program found to have been in violation of Article 8 of the Subsidies Agreement.

(c) *Withdrawal of subsidy or imposition of countermeasures.* If the Trade Representative notifies the Secretary that, under Article 4 or Article 7 of the Subsidies Agreement:

(1)(i)(A) The United States has imposed countermeasures; and

(B) Such countermeasures are based on the effects in the United States of imports of merchandise that is the subject of a countervailing duty order; or

(ii) A WTO member country has withdrawn a countervailable subsidy provided with respect to merchandise subject to a countervailing duty order, then

(2) The Secretary will initiate an Article 4/Article 7 review of the order to determine if the amount of estimated duty to be deposited should be adjusted or the order should be revoked.

(d) *Procedures.* The Secretary will conduct an Article 8 violation review or an Article 4/Article 7 review under this section in accordance with § 351.221.

(e) *Expedited reviews.* The Secretary will conduct reviews under this section on an expedited basis.

§ 351.218 Sunset reviews under section 751(c) of the Act.

(a) *Introduction.* The URAA added a new procedure, commonly referred to as ''sunset reviews,'' in section 751(c) of the Act. In general, no later than once every five years, the Secretary must determine whether dumping or countervailable subsidies would be likely to continue or resume if an order were revoked or a suspended investigation were terminated. The Commission must conduct a similar review to determine whether injury would be likely to continue or resume in the absence of an order or suspended investigation. If the determinations under section 751(c) of both the Secretary and the Commission are affirmative, the order (or suspended investigation) remains in place. If either determination is negative, the order will be revoked (or the suspended investigation will be terminated). This section contains rules regarding the procedures for sunset reviews.

(b) *In general.* The Secretary will conduct a sunset review, under section 751(c) of the Act, of each antidumping and countervailing duty order and suspended investigation, and, under section 752(b) or section 752(c) (whichever is applicable), will determine whether revocation of an antidumping or countervailing duty order or termination of a suspended investigation would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy.

(c) *Notice of initiation of review; early initiation.* (1) *Initial sunset review.* No later than 30 days before the fifth anniversary date of an order or suspension of an investigation (*see* section 751(c)(1) of the Act), the Secretary will publish a notice of initiation of a sunset review (*see* section 751(c)(2) of the Act).

(2) *Subsequent sunset reviews.* In the case of an order or suspended investigation that is continued following a sunset review initiated under paragraph (c)(1) of this section, no later than 30 days before the fifth anniversary of the date of the last determination by the Commission to continue the order or suspended investigation, the Secretary will publish a notice of initiation of a sunset review (*see* section 751(c)(2) of the Act).

(3) *Early initiation.* The Secretary may publish a notice of initiation at an earlier date than the dates described in paragraph (c) (1) and (2) of this section if a domestic interested party demonstrates to the Secretary's satisfaction that an early initiation would promote administrative efficiency. However, if the Secretary determines that the domestic interested party that requested early initiation is a related party or an importer under section 771(4)(B) of the Act and § 351.203(e)(4), the Secretary may decline the request for early initiation.

(4) *Transition orders.* The Secretary will initiate sunset reviews of transition orders, as defined in section 751(c)(6)(C) of the Act, in accordance with section 751(c)(6) of the Act.

(d) *Conduct of review.* Upon receipt of responses to the notice of initiation that the Secretary deems adequate to conduct a sunset review, the Secretary will conduct a sunset review in accordance with § 351.221.

(e) *Time limits.* (1) *In general.* Unless the review has been completed under section 751(c)(3) of the Act (no or inadequate response) or, under section 751(c)(4)(B) of the Act, all respondent interested parties waived their participation in the Secretary's sunset review, the Secretary will issue final results of review within 240 days after the date on which the review was initiated. If the Secretary concludes that the sunset review is extraordinarily complicated (*see* section 751(c)(5)(C) of the Act), the Secretary may extend the period for issuing final results by not more than 90 days.

(2) *Transition orders.* The time limits described in paragraph (e)(1) of this section will not apply to a sunset review of a transition order (*see* section 751(c)(6) of the Act).

§ 351.219 Reviews of countervailing duty orders in connection with an investigation under section 753 of the Act.

(a) *Introduction.* Section 753 of the Act is a transition provision for countervailing duty orders that were issued under section 303 of the Act without an injury determination by the Commission. Under the Subsidies Agreement, one country may not impose countervailing duties on imports from another WTO Member without first

making a determination that such imports have caused injury to a domestic industry. Section 753 provides a mechanism for providing an injury test with respect to those ''no-injury'' orders under section 303 that apply to merchandise from WTO Members. This section contains rules regarding requests for section 753 investigations by a domestic interested party; and the procedures that the Department will follow in reviewing a countervailing duty order and providing the Commission with advice regarding the amount and nature of a countervailable subsidy.

(b) *Notification of domestic interested parties.* The Secretary will notify directly domestic interested parties as soon as possible after the opportunity arises for requesting an investigation by the Commission under section 753 of the Act.

(c) *Initiation and conduct of section 753 review.* Where the Secretary deems it necessary in order to provide to the Commission information on the amount or nature of a countervailable subsidy (*see* section 753(b)(2) of the Act), the Secretary may initiate a section 753 review of the countervailing duty order in question. The Secretary will conduct a section 753 review in accordance with § 351.221.

§ 351.220 Countervailing duty review at the direction of the President under section 762 of the Act.

At the direction of the President or a designee, the Secretary will conduct a review under section 762(a)(1) of the Act to determine if a countervailable subsidy is being provided with respect to merchandise subject to an understanding or other kind of quantitative restriction agreement accepted under section 704(a)(2) or section 704(c)(3) of the Act. The Secretary will conduct a review under this section in accordance with § 351.221. If the Secretary's final results of review under this section and the Commission's final results of review under section 762(a)(2) of the Act are both affirmative, the Secretary will issue a countervailing duty order and order suspension of liquidation in accordance with section 762(b) of the Act.

§ 351.221 Review procedures.

(a) *Introduction.* The procedures for reviews are similar to those followed in investigations. This section details the procedures applicable to reviews in general, as well as procedures that are unique to certain types of reviews.

(b) *In general.* After receipt of a timely request for a review, or on the Secretary's own initiative when appropriate, the Secretary will:

(1) Promptly publish in the **Federal Register** notice of initiation of the review;

(2) Before or after publication of notice of initiation of the review, send to appropriate interested parties or other persons (or, if appropriate, a sample of interested parties or other persons) questionnaires requesting factual information for the review;

(3) Conduct, if appropriate, a verification under § 351.307;

(4) Issue preliminary results of review, based on the available information, and publish in the **Federal Register** notice of the preliminary results of review that include:

(i) the rates determined, if the review involved the determination of rates; and

(ii) an invitation for argument consistent with § 351.309;

(5) Issue final results of review and publish in the **Federal Register** notice of the final results of review that include the rates determined, if the review involved the determination of rates;

(6) If the type of review in question involves a determination as to the amount of duties to be assessed, promptly after publication of the notice of final results instruct the Customs Service to assess antidumping duties or countervailing duties (whichever is applicable) on the subject merchandise covered by the review, except as otherwise provided in § 351.106(c) with respect to *de minimis* duties; and

(7) If the review involves a revision to the cash deposit rates for estimated antidumping duties or countervailing duties, instruct the Customs Service to collect cash deposits at the revised rates on future entries.

(c) *Special rules.* (1) *Administrative reviews and new shipper reviews.* In an administrative review under section 751(a)(1) of the Act and § 351.213 and a new shipper review under section 751(a)(2)(B) of the Act and § 351.214 the Secretary:

(i) Will publish the notice of initiation of the review no later than the last day of the month following the anniversary month or the semiannual anniversary month (as the case may be); and

(ii) Normally will send questionnaires no later than 30 days after the date of publication of the notice of initiation.

(2) *Expedited antidumping review.* In an expedited antidumping review under section 736(c) of the Act and § 351.215, the Secretary:

(i) Will include in the notice of initiation of the review an invitation for argument consistent with § 351.309, and a statement that the Secretary is permitting the posting of a bond or other security instead of a cash deposit of estimated antidumping duties;

(ii) Will instruct the Customs Service to accept, instead of the cash deposit of estimated antidumping duties under section 736(a)(3) of the Act, a bond for each entry of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of initiation of the investigation and through the date not later than 90 days after the date of publication of the order; and

(iii) Will not issue preliminary results of review.

(3) *Changed circumstances review.* In a changed circumstances review under section 751(b) of the Act and § 351.216, the Secretary:

(i) Will include in the preliminary results of review and the final results of review a description of any action the Secretary proposed based on the preliminary or final results;

(ii) May combine the notice of initiation of the review and the preliminary results of review in a single notice if the Secretary concludes that expedited action is warranted; and

(iii) May refrain from issuing questionnaires under paragraph (b)(2) of this section.

(4) *Article 8 Violation review and Article 4/Article 7 review.* In an Article 8 Violation review or an Article 4/Article 7 review under section 751(g) of the Act and § 351.217, the Secretary:

(i) Will include in the notice of initiation of the review an invitation for argument consistent with § 351.309 and will notify all parties to the proceeding at the time the Secretary initiates the review;

(ii) Will not issue preliminary results of review; and

(iii) In the final results of review will indicate the amount, if any, by which the estimated duty to be deposited should be adjusted, and, in an Article 4/Article 7 review, any action, including revocation, that the Secretary will take based on the final results.

(5) *Sunset review.* In a sunset review under section 751(c) of the Act and § 351.218:

(i) The notice of initiation of the review will contain a request for the information described in section 751(c)(2) of the Act; and

(ii) The Secretary, without issuing preliminary results of review, may issue final results of review under paragraphs (3) or (4) of subsection 751(c) of the Act if the conditions of those paragraphs are satisfied.

(6) *Section 753 review.* In a section 753 review under section 753 of the Act and § 351.219, the Secretary:

(i) Will include in the notice of initiation of the review an invitation for argument consistent with § 351.309, and will notify all parties to the proceeding at the time the Secretary initiates the review; and

(ii) May decline to issue preliminary results of review.

(7) *Countervailing duty review at the direction of the President.* In a countervailing duty review at the direction of the President under section 762 of the Act and § 351.220, the Secretary will:

(i) Include in the notice of initiation of the review a description of the merchandise, the period under review, and a summary of the available information which, if accurate, would support the imposition of countervailing duties;

(ii) Notify the Commission of the initiation of the review and the preliminary results of review;

(iii) Include in the preliminary results of review the countervailable subsidy, if any, during the period of review and a description of official changes in the subsidy programs made by the government of the affected country that affect the estimated countervailable subsidy; and

(iv) Include in the final results of review the countervailable subsidy, if any, during the period of review and a description of official changes in the subsidy programs, made by the government of the affected country not later than the date of publication of the notice of preliminary results, that affect the estimated countervailable subsidy.

§ 351.222 Revocation of orders; termination of suspended investigations.

(a) *Introduction.* ''Revocation'' is a term of art that refers to the end of an antidumping or countervailing proceeding in which an order has been issued. ''Termination'' is the companion term for the end of a proceeding in which the investigation was suspended due to the acceptance of a suspension agreement. Generally, a revocation or termination may occur only after the Department or the Commission have conducted one or more reviews under section 751 of the Act. This section contains rules regarding requirements for a revocation or termination; and procedures that the Department will follow in determining whether to revoke an order or terminate a suspended investigation.

(b) *Revocation or termination based on absence of dumping.* (1) The Secretary may revoke an antidumping order or terminate a suspended antidumping investigation if the Secretary concludes that:

(i) All exporters and producers covered at the time of revocation by the order or the suspension agreement have sold the subject merchandise at not less than normal value for a period of at least three consecutive years; and

(ii) It is not likely that those persons will in the future sell the subject merchandise at less than normal value.

(2) The Secretary may revoke an antidumping order in part if the Secretary concludes that:

(i) One or more exporters or producers covered by the order have sold the merchandise at not less than normal value for a period of at least three consecutive years;

(ii) It is not likely that those persons will in the future sell the subject merchandise at less than normal value; and

(iii) For any exporter or producer that the Secretary previously has determined to have sold the subject merchandise at less than normal value, the exporter or producer agrees in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than normal value.

(3) *Revocation of nonproducing exporter.* In the case of an exporter that is not the producer of subject merchandise, the Secretary normally will revoke an order in part under paragraph (b)(2) of this section only with respect to subject merchandise produced or supplied by those companies that supplied the exporter during the time period that formed the basis for the revocation.

(c) *Revocation or termination based on absence of countervailable subsidy.* (1) The Secretary may revoke a countervailing duty order or terminate a suspended countervailing duty investigation if the Secretary concludes that:

(i) The government of the affected country has eliminated all countervailable subsidies on the subject merchandise by abolishing for the subject merchandise, for a period of at least three consecutive years, all programs that the Secretary has found countervailable;

(ii) It is not likely that the government of the affected country will in the future reinstate for the subject merchandise those programs or substitute other countervailable programs; and

(iii) Exporters and producers of the subject merchandise are not continuing to receive any net countervailable subsidy from an abolished program referred to in paragraph (c)(1)(i) of this section.

(2) The Secretary may revoke a countervailing duty order or terminate a suspended countervailing duty investigation if the Secretary concludes that:

(i) All exporters and producers covered at the time of revocation by the order or the suspension agreement have not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years; and

(ii) It is not likely that those persons will in the future apply for or receive any net countervailable subsidy on the subject merchandise from those programs the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs.

(3) The Secretary may revoke a countervailing duty order in part if the Secretary concludes that:

(i) One or more exporters or producers covered by the order have not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years;

(ii) It is not likely that those persons will in the future apply for or receive any net countervailable subsidy on the subject merchandise from those programs the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs; and

(iii) Except for exporters or producers that the Secretary previously has determined have not received any net countervailable subsidy on the subject merchandise, the exporters or producers agree in writing to their immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Secretary concludes that the exporter or producer, subsequent to the revocation, has received any net countervailable subsidy on the subject merchandise.

(4) *Revocation of nonproducing exporter.* In the case of an exporter that is not the producer of subject merchandise, the Secretary normally will revoke an order in part under paragraph (c)(3) of this section only with respect to subject merchandise produced or supplied by those companies that supplied the exporter during the time period that formed the basis for the revocation.

(d) *Treatment of unreviewed intervening years.* (1) *In general.* The Secretary will not revoke an order or terminate a suspended investigation under paragraphs (b) or (c) of this section unless the Secretary has

conducted a review under this subpart of the first and third (or fifth) years of the three-and five-year consecutive time periods referred to in those paragraphs. The Secretary need not have conducted a review of an intervening year (*see* paragraph (d)(2) of this section). However, except in the case of a revocation or termination under paragraph (c)(1) of this section (government abolition of countervailable subsidy programs), before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, during each of the three (or five) years, there were exports to the United States in commercial quantities of the subject merchandise to which a revocation or termination will apply.

(2) *Intervening year.* ''Intervening year'' means any year between the first and final year of the consecutive period on which revocation or termination is conditioned.

(e) *Request for revocation or termination.* (1) *Antidumping proceeding.* During the third and subsequent annual anniversary months of the publication of an antidumping order or suspension of an antidumping investigation, an exporter or producer may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (b) of this section with regard to that person if the person submits with the request:

(i) The person's certification that the person sold the subject merchandise at not less than normal value during the period of review described in § 351.213(e)(1), and that in the future the person will not sell the merchandise at less than normal value;

(ii) the person's certification that, during each of the consecutive years referred to in paragraph (b) of this section, the person sold the subject merchandise to the United States in commercial quantities; and

(iii) If applicable, the agreement regarding reinstatement in the order or suspended investigation described in paragraph (b)(2)(iii) of this section.

(2) *Countervailing duty proceeding.* (i) During the third and subsequent annual anniversary months of the publication of a countervailing duty order or suspension of a countervailing duty investigation, the government of the affected country may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (c)(1) of this section if the government submits with the request its certification that it has satisfied, during the period of review described in § 351.213(e)(2), the requirements of paragraph (c)(1)(i) of this section regarding the abolition of countervailable subsidy programs, and that it will not reinstate for the subject merchandise those programs or substitute other countervailable subsidy programs;

(ii) During the fifth and subsequent annual anniversary months of the publication of a countervailing duty order or suspended countervailing duty investigation, the government of the affected country may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (c)(2) of this section if the government submits with the request:

(A) Certifications for all exporters and producers covered by the order or suspension agreement that they have not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years (*see* paragraph (c)(2)(i) of this section);

(B) Those exporters' and producers' certifications that they will not apply for or receive any net countervailable subsidy on the subject merchandise from any program the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs (*see* paragraph (c)(2)(ii) of this section); and

(C) A certification from each exporter or producer that, during each of the consecutive years referred to in paragraph (c)(2) of this section, that person sold the subject merchandise to the United States in commercial quantities; or

(iii) During the fifth and subsequent annual anniversary months of the publication of a countervailing duty order, an exporter or producer may request in writing that the Secretary revoke the order with regard to that person if the person submits with the request:

(A) A certification that the person has not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years (*see* paragraph (c)(3)(i) of this section), including calculations demonstrating the basis for the conclusion that the person received zero or *de minimis* net countervailable subsidies during the review period of the administrative review in connection with which the person has submitted the request for revocation;

(B) A certification that the person will not apply for or receive any net countervailable subsidy on the subject merchandise from any program the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs (*see* paragraph (c)(3)(ii) of this section);

(C) The person's certification that, during each of the consecutive years referred to in paragraph (c)(3) of this section, the person sold the subject merchandise to the United States in commercial quantities; and

(D) The agreement described in paragraph (c)(3)(iii) of this section (reinstatement in order).

(f) *Procedures.* (1) Upon receipt of a timely request for revocation or termination under paragraph (e) of this section, the Secretary will consider the request as including a request for an administrative review and will initiate and conduct a review under § 351.213.

(2) In addition to the requirements of § 351.221 regarding the conduct of an administrative review, the Secretary will:

(i) Publish with the notice of initiation under § 351.221(b)(1), notice of ''Request for Revocation of Order (in part)'' or ''Request for Termination of Suspended Investigation'' (whichever is applicable);

(ii) Conduct a verification under § 351.307;

(iii) Include in the preliminary results of review under § 351.221(b)(4) the Secretary's decision whether there is a reasonable basis to believe that the requirements for revocation or termination are met;

(iv) If the Secretary decides that there is a reasonable basis to believe that the requirements for revocation or termination are met, publish with the notice of preliminary results of review under § 351.221(b)(4) notice of ''Intent to Revoke Order (in Part)'' or ''Intent to Terminate Suspended Investigation'' (whichever is applicable);

(v) Include in the final results of review under § 351.221(b)(5) the Secretary's final decision whether the requirements for revocation or termination are met; and

(vi) If the Secretary determines that the requirements for revocation or termination are met, publish with the notice of final results of review under § 351.221(b)(5) notice of ''Revocation of Order (in Part)'' or ''Termination of Suspended Investigation'' (whichever is applicable).

(3) If the Secretary revokes an order in whole or in part, the Secretary will order the suspension of liquidation terminated for the merchandise covered by the revocation on the first day after the period under review, and will instruct the Customs Service to release any cash deposit or bond.

(g) *Revocation or termination based on changed circumstances.* (1) The

Secretary may revoke an order, in whole or in part, or terminate a suspended investigation if the Secretary concludes that:

(i) Producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) or suspended investigation pertains have expressed a lack of interest in the order, in whole or in part, or suspended investigation (*see* section 782(h) of the Act); or

(ii) Other changed circumstances sufficient to warrant revocation or termination exist.

(2) If at any time the Secretary concludes from the available information that changed circumstances sufficient to warrant revocation or termination may exist, the Secretary will conduct a changed circumstances review under § 351.216.

(3) In addition to the requirements of § 351.221, the Secretary will:

(i) Publish with the notice of initiation (*see* § 353.221(b)(1), notice of ''Consideration of Revocation of Order (in Part)'' or ''Consideration of Termination of Suspended Investigation'' (whichever is applicable);

(ii) If the Secretary's conclusion regarding the possible existence of changed circumstances (*see* paragraph (g)(2) of this section), is not based on a request, the Secretary, not later than the date of publication of the notice of ''Consideration of Revocation of Order (in Part)'' or ''Consideration of Termination of Suspended Investigation'' (whichever is applicable) (*see* paragraph (g)(3)(i) of this section), will serve written notice of the consideration of revocation or termination on each interested party listed on the Department's service list and on any other person that the Secretary has reason to believe is a domestic interested party;

(iii) Conduct a verification, if appropriate, under § 351.307;

(iv) Include in the preliminary results of review, under § 351.221(b)(4), the Secretary's decision whether there is a reasonable basis to believe that changed circumstances warrant revocation or termination;

(v) If the Secretary's preliminary decision is that changed circumstances warrant revocation or termination, publish with the notice of preliminary results of review, under § 351.221(b)(4), notice of ''Intent to Revoke Order (in Part)'' or ''Intent to Terminate Suspended Investigation'' (whichever is applicable);

(vi) Include in the final results of review, under § 351.221(b)(5), the Secretary's final decision whether changed circumstances warrant revocation or termination; and

(vii) If the Secretary's determines that changed circumstances warrant revocation or termination, publish with the notice of final results of review, under § 351.221(b)(5), notice of ''Revocation of Order (in Part)'' or ''Termination of Suspended Investigation'' (whichever is applicable).

(4) If the Secretary revokes an order, in whole or in part, under paragraph (g) of this section, the Secretary will order the suspension of liquidation ended for the merchandise covered by the revocation on the effective date of the notice of revocation, and will instruct the Customs Service to release any cash deposit or bond.

(h) *Revocation or termination based on injury reconsideration.* If the Commission determines in a changed circumstances review under section 751(b)(2) of the Act that the revocation of an order or termination of a suspended investigation is not likely to lead to continuation or recurrence of material injury, the Secretary will revoke, in whole or in part, the order or terminate the suspended investigation, and will publish in the **Federal Register** notice of ''Revocation of Order (in Part)'' or ''Termination of Suspended Investigation'' (whichever is applicable).

(i) *Revocation or termination based on sunset review.* (1) *In general.* In the case of a sunset review under § 351.218, the Secretary will revoke an order or terminate a suspended investigation, unless:

(i) The Secretary makes a determination that revocation or termination would be likely to lead to continuation or recurrence of a countervailable subsidy or dumping (*see* section 752(b) and section 752(c) of the Act); and

(ii) The Commission makes a determination that revocation or termination would be likely to lead to continuation or recurrence of material injury (*see* section 752(a) of the Act).

(2) *Exception for transition orders.* Before January 1, 2000, the Secretary will not revoke a transition order (*see* section 751(c)(6) of the Act) as the result of a sunset review under § 351.218.

(j) *Revocation of countervailing duty order based on Commission negative determination under section 753 of the Act.* The Secretary will revoke a countervailing duty order, and will order the refund, with interest, of any estimated countervailing duties collected during the period liquidation was suspended under section 753(a)(4) of the Act upon being notified by the Commission that:

(1) The Commission has determined that an industry in the United States is not likely to be materially injured if the countervailing duty order in question is revoked (*see* section 753(a)(1) of the Act); or

(2) A domestic interested party did not make a timely request for an investigation under section 753(a) of the Act (*see* section 753(a)(3) of the Act).

(k) *Revocation based on Article 4/ Article 7 review.*

(1) *In general.* The Secretary may revoke a countervailing duty order, in whole or in part, following an Article 4/ Article 7 review under § 351.217(c), due to the imposition of countermeasures by the United States or the withdrawal of a countervailable subsidy by a WTO member country (*see* section 751(g)(2) of the Act).

(2) *Additional Requirements.* In addition to the requirements of § 351.221, if the Secretary determines to revoke an order as the result of an Article 4/Article 7 review, the Secretary will:

(i) Conduct a verification, if appropriate, under § 351.307;

(ii) Include in the final results of review, under § 351.221(b)(5), the Secretary's final decision whether the order should be revoked;

(iii) If the Secretary's final decision is that the order should be revoked:

(A) Determine the effective date of the revocation;

(B) Publish with the notice of final results of review, under § 351.221(b)(5), a notice of ''Revocation of Order (in Part),'' that will include the effective date of the revocation; and

(C) Order any suspension of liquidation ended for merchandise covered by the revocation that was entered on or after the effective date of the revocation, and instruct the Customs Service to release any cash deposit or bond.

(l) *Revocation under section 129.* The Secretary may revoke an order under section 129 of the URAA (implementation of WTO dispute settlement).

(m) *Transition rule.* In the case of time periods that, under section 291(a)(2) of the URAA, are subject to review under the provisions of the Act prior to its amendment by the URAA, and for purposes of determining whether the three-or five-year requirements of paragraphs (b) and (c) of this section are satisfied, the following rules will apply:

(1) *Antidumping proceedings.* The Secretary will consider sales at not less than foreign market value to be equivalent to sales at not less than normal value.

(2) *Countervailing duty proceedings.* The Secretary will consider the absence of a subsidy, as defined in section 771(5) of the Act prior to its amendment by the URAA, to be equivalent to the absence of a countervailable subsidy, as defined in section 771(5) of the Act, as amended by the URAA.

(n) *Cross-reference.* For the treatment in a subsequent investigation of business proprietary information submitted to the Secretary in connection with a changed circumstances review under § 351.216 or a sunset review under § 351.218 that results in the revocation of an order (or termination of a suspended investigation), see section 777(b)(3) of the Act.

§ 351.223 Procedures for initiation of downstream product monitoring.

(a) *Introduction.* Section 780 of the Act establishes a mechanism for monitoring imports of ''downstream products.'' In general, section 780 is aimed at situations where, following the issuance of an antidumping or countervailing duty order on a product that is used as a component in another product, exports to the United States of that other (or ''downstream'') product increase. Although the Department is responsible for determining whether trade in the downstream product should be monitored, the Commission is responsible for conducting the actual monitoring. The Commission must report the results of its monitoring to the Department, and the Department must consider the reports in determining whether to self-initiate an antidumping or countervailing duty investigation on the downstream product. This section contains rules regarding applications for the initiation of downstream product monitoring and decisions regarding such applications.

(b) *Contents of application.* An application to designate a downstream product for monitoring under section 780 of the Act must contain the following information, to the extent reasonably available to the applicant:

(1) The name and address of the person requesting the monitoring and a description of the article it produces which is the basis for filing its application;

(2) A detailed description of the downstream product in question;

(3) A detailed description of the component product that is incorporated into the downstream product, including the value of the component part in relation to the value of the downstream product, and the extent to which the component part has been substantially transformed as a result of its incorporation into the downstream product;

(4) The name of the country of production of both the downstream and component products and the name of any intermediate country from which the merchandise is imported;

(5) The name and address of all known producers of component parts and downstream products in the relevant countries and a detailed description of any relationship between such producers;

(6) Whether the component part is already subject to monitoring to aid in the enforcement of a bilateral arrangement within the meaning of section 804 of the Trade and Tariff Act of 1984;

(7) A list of all antidumping or countervailing duty investigations that have been suspended, or antidumping or countervailing duty orders that have been issued, on merchandise that is related to the component part and that is manufactured in the same foreign country in which the component part is manufactured;

(8) A list of all antidumping or countervailing duty investigations that have been suspended, or antidumping or countervailing duty orders that have been issued, on merchandise that is manufactured or exported by the manufacturer or exporter of the component part and that is similar in description and use to the component part; and

(9) The reasons for suspecting that the imposition of antidumping or countervailing duties has resulted in a diversion of exports of the component part into increased production and exportation to the United States of the downstream product.

(c) *Determination of sufficiency of application.* Within 14 days after an application is filed under paragraph (b) of this section, the Secretary will rule on the sufficiency of the application by making the determinations described in section 780(a)(2) of the Act.

(d) *Notice of Determination.* The Secretary will publish in the **Federal Register** notice of each affirmative or negative ''monitoring'' determination made under section 780(a)(2) of the Act, and if the determination under section 780(a)(2)(A) of the Act and a determination made under any clause of section 780(a)(2)(B) of the Act are affirmative, will transmit to the Commission a copy of the determination and the application. The Secretary will make available to the Commission, and to its employees directly involved in the monitoring, the information upon which the Secretary based the initiation.

§ 351.224 Disclosure of calculations and procedures for the correction of ministerial errors.

(a) *Introduction.* In the interests of transparency, the Department has long had a practice of providing parties with the details of its antidumping and countervailing duty calculations. This practice has come to be referred to as a ''disclosure.'' This section contains rules relating to requests for disclosure and procedures for correcting ministerial errors.

(b) *Disclosure.* The Secretary will disclose to a party to the proceeding calculations performed, if any, in connection with a preliminary determination under section 703(b) or section 733(b) of the Act, a final determination under section 705(a) or section 735(a) of the Act, and a final results of a review under section 736(c), section 751, or section 753 of the Act, normally within five days after the date of any public announcement or, if there is no public announcement of, within five days after the date of publication of, the preliminary determination, final determination, or final results of review (whichever is applicable). The Secretary will disclose to a party to the proceeding calculations performed, if any, in connection with a preliminary results of review under section 751 or section 753 of the Act, normally not later than ten days after the date of the public announcement of, or, if there is no public announcement, within five days after the date of publication of, the preliminary results of review.

(c) *Comments regarding ministerial errors.* (1) *In general.* A party to the proceeding to whom the Secretary has disclosed calculations performed in connection with a preliminary determination may submit comments concerning a significant ministerial error in such calculations. A party to the proceeding to whom the Secretary has disclosed calculations performed in connection with a final determination or the final results of a review may submit comments concerning any ministerial error in such calculations. Comments concerning ministerial errors made in the preliminary results of a review should be included in a party's case brief.

(2) *Time limits for submitting comments.* A party to the proceeding must file comments concerning ministerial errors within five days after the earlier of:

(i) The date on which the Secretary released disclosure documents to that party; or

(ii) The date on which the Secretary held a disclosure meeting with that party.

(3) *Replies to comments.* Replies to comments submitted under paragraph (c)(1) of this section must be filed within five days after the date on which the comments were filed with the Secretary. The Secretary will not consider replies to comments submitted in connection with a preliminary determination.

(4) *Extensions.* A party to the proceeding may request an extension of the time limit for filing comments concerning a ministerial error in a final determination or final results of review under § 351.302(c) within three days after the date of any public announcement, or, if there is no public announcement, within five days after the date of publication of the final determination or final results of review, as applicable. The Secretary will not extend the time limit for filing comments concerning a significant ministerial error in a preliminary determination.

(d) *Contents of comments and replies.* Comments filed under paragraph (c)(1) of this section must explain the alleged ministerial error by reference to applicable evidence in the official record, and must present what, in the party's view, is the appropriate correction. In addition, comments concerning a preliminary determination must demonstrate how the alleged ministerial error is significant (*see* paragraph (g) of this section) by illustrating the effect on individual weighted-average dumping margin or countervailable subsidy rate, the all-others rate, or the country-wide subsidy rate (whichever is applicable). Replies to any comments must be limited to issues raised in such comments.

(e) *Corrections.* The Secretary will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination, or correct any ministerial error by amending the final determination or the final results of review (whichever is applicable). Where practicable, the Secretary will announce publicly the issuance of a correction notice, and normally will do so within 30 days after the date of public announcement, or, if there is no public announcement, within 30 days after the date of publication, of the preliminary determination, final determination, or final results of review (whichever is applicable). In addition, the Secretary will publish notice of such corrections in the **Federal Register**. A correction notice will not alter the anniversary month of an order or suspended investigation for purposes of requesting an administrative review (*see* § 351.213) or a new shipper review (*see* § 351.214) or initiating a sunset review (*see* § 351.218).

(f) *Definition of ''ministerial error.''* Under this section, *ministerial error* means an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.

(g) *Definition of ''significant ministerial error.''* Under this section, *significant ministerial error* means a ministerial error (*see* paragraph (f) of this section), the correction of which, either singly or in combination with other errors:

(1) Would result in a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin or the countervailable subsidy rate (whichever is applicable) calculated in the original (erroneous) preliminary determination; or

(2) Would result in a difference between a weighted-average dumping margin or countervailable subsidy rate (whichever is applicable) of zero (or *de minimis*) and a weighted-average dumping margin or countervailable subsidy rate of greater than *de minimis*, or vice versa.

§ 351.225 Scope rulings.

(a) *Introduction.* Issues arise as to whether a particular product is included within the scope of an antidumping or countervailing duty order or a suspended investigation. Such issues can arise because the descriptions of subject merchandise contained in the Department's determinations must be written in general terms. At other times, a domestic interested party may allege that changes to an imported product or the place where the imported product is assembled constitutes circumvention under section 781 of the Act. When such issues arise, the Department issues ''scope rulings'' that clarify the scope of an order or suspended investigation with respect to particular products. This section contains rules regarding scope rulings, requests for scope rulings, procedures for scope inquiries, and standards used in determining whether a product is within the scope of an order or suspended investigation.

(b) *Self-initiation.* If the Secretary determines from available information that an inquiry is warranted to determine whether a product is included within the scope of an antidumping or countervailing duty order or a suspended investigation, the Secretary will initiate an inquiry, and will notify all parties on the Department's scope service list of its initiation of a scope inquiry.

(c) *By application.* (1) *Contents and service of application.* Any interested party may apply for a ruling as to whether a particular product is within the scope of an order or a suspended investigation. The application must be served upon all parties on the scope service list described in paragraph (n) of this section, and must contain the following, to the extent reasonably available to the interested party:

(i) A detailed description of the product, including its technical characteristics and uses, and its current U.S. Tariff Classification number;

(ii) A statement of the interested party's position as to whether the product is within the scope of an order or a suspended investigation, including:

(A) A summary of the reasons for this conclusion,

(B) Citations to any applicable statutory authority, and

(C) Any factual information supporting this position, including excerpts from portions of the Secretary's or the Commission's investigation, and relevant prior scope rulings.

(2) *Deadline for action on application.* Within 45 days of the date of receipt of an application for a scope ruling, the Secretary will issue a final ruling under paragraph (d) of this section or will initiate a scope inquiry under paragraph (e) of this section.

(d) *Ruling based upon the application.* If the Secretary can determine, based solely upon the application and the descriptions of the merchandise referred to in paragraph (k)(1) of this section, whether a product is included within the scope of an order or a suspended investigation, the Secretary will issue a final ruling as to whether the product is included within the order or suspended investigation. The Secretary will notify all persons on the Department's scope service list (*see* paragraph (n) of this section) of the final ruling.

(e) *Ruling where further inquiry is warranted.* If the Secretary finds that the issue of whether a product is included within the scope of an order or a suspended investigation cannot be determined based solely upon the application and the descriptions of the merchandise referred to in paragraph (k)(1) of this section, the Secretary will notify by mail all parties on the Department's scope service list of the initiation of a scope inquiry.

(f) *Notice and procedure.* (1) Notice of the initiation of a scope inquiry issued under paragraph (b) or (e) of this section will include:

(i) A description of the product that is the subject of the scope inquiry; and

(ii) An explanation of the reasons for the Secretary's decision to initiate a scope inquiry;

(iii) A schedule for submission of comments that normally will allow interested parties 20 days in which to provide comments on, and supporting factual information relating to, the inquiry, and 10 days in which to provide any rebuttal to such comments.

(2) The Secretary may issue questionnaires and verify submissions received, where appropriate.

(3) Whenever the Secretary finds that a scope inquiry presents an issue of significant difficulty, the Secretary will issue a preliminary scope ruling, based upon the available information at the time, as to whether there is a reasonable basis to believe or suspect that the product subject to a scope inquiry is included within the order or suspended investigation. The Secretary will notify all parties on the Department's scope service list (see paragraph (n) of this section) of the preliminary scope ruling, and will invite comment. Unless otherwise specified, interested parties will have within twenty days from the date of receipt of the notification in which to submit comments, and ten days thereafter in which to submit rebuttal comments.

(4) The Secretary will issue a final ruling as to whether the product which is the subject of the scope inquiry is included within the order or suspended investigation, including an explanation of the factual and legal conclusions on which the final ruling is based. The Secretary will notify all parties on the Department's scope service list (*see* paragraph (n) of this section) of the final scope ruling.

(5) The Secretary will issue a final ruling under paragraph (k) of this section (other scope rulings) normally within 120 days of the initiation of the inquiry under this section. The Secretary will issue a final ruling under paragraph (g), (h), (i), or (j) of this section (circumvention rulings under section 781 of the Act) normally within 300 days from the date of the initiation of the scope inquiry.

(6) When an administrative review under § 351.213, a new shipper review under § 351.214, or an expedited antidumping review under § 351.215 is in progress at the time the Secretary provides notice of the initiation of a scope inquiry (*see* paragraph (e)(1) of this section), the Secretary may conduct the scope inquiry in conjunction with that review.

(7)(i) The Secretary will notify the Commission in writing of the proposed inclusion of products in an order prior to issuing a final ruling under paragraph (f)(4) of this section based on a determination under:

(A) Section 781(a) of the Act with respect to merchandise completed or assembled in the United States (other than minor completion or assembly);

(B) Section 781(b) of the Act with respect to merchandise completed or assembled in other foreign countries; or

(C) Section 781(d) of the Act with respect to later-developed products which incorporate a significant technological advance or significant alteration of an earlier product.

(ii) If the Secretary notifies the Commission under paragraph (f)(7)(i) of this section, upon the written request of the Commission, the Secretary will consult with the Commission regarding the proposed inclusion, and any such consultation will be completed within 15 days after the date of such request. If, after consultation, the Commission believes that a significant injury issue is presented by the proposed inclusion of a product within an order, the Commission may provide written advice to the Secretary as to whether the inclusion would be inconsistent with the affirmative injury determination of the Commission on which the order is based.

(g) *Products completed or assembled in the United States.* Under section 781(a) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order imported parts or components referred to in section 781(a)(1)(B) of the Act that are used in the completion or assembly of the merchandise in the United States at any time such order is in effect. In making this determination, the Secretary will not consider any single factor of section 781(a)(2) of the Act to be controlling. In determining the value of parts or components purchased from an affiliated person under section 781(a)(1)(D) of the Act, or of processing performed by an affiliated person under section 781(a)(2)(E) of the Act, the Secretary may determine the value of the part or component on the basis of the cost of producing the part or component under section 773(f)(3) of the Act.

(h) *Products completed or assembled in other foreign countries.* Under section 781(b) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order, at any time such order is in effect, imported merchandise completed or assembled in a foreign country other than the country to which the order applies. In making this determination, the Secretary will not consider any single factor of section 781(b)(2) of the Act to be controlling. In determining the value of parts or components purchased from an affiliated person under section 781(b)(1)(D) of the Act, or of processing performed by an affiliated person under section 781(b)(2)(E) of the Act, the Secretary may determine the value of the part or component on the basis of the cost of producing the part or component under section 773(f)(3) of the Act.

(i) *Minor alterations of merchandise.* Under section 781(c) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order articles altered in form or appearance in minor respects.

(j) *Later-developed merchandise.* In determining whether later-developed merchandise is within the scope of an antidumping or countervailing duty order, the Secretary will apply section 781(d) of the Act.

(k) *Other scope determinations.* With respect to those scope determinations that are not covered under paragraphs (g) through (j) of this section, in considering whether a particular product is included within the scope of an order or a suspended investigation, the Secretary will take into account the following:

(1) The descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission.

(2) When the above criteria are not dispositive, the Secretary will further consider:

(i) The physical characteristics of the product;

(ii) The expectations of the ultimate purchasers;

(iii) The ultimate use of the product;

(iv) The channels of trade in which the product is sold; and

(v) The manner in which the product is advertised and displayed.

(l) *Suspension of liquidation.* (1) When the Secretary conducts a scope inquiry under paragraph (b) or (e) of this section, and the product in question is already subject to suspension of liquidation, that suspension of liquidation will be continued, pending a preliminary or a final scope ruling, at the cash deposit rate that would apply if the product were ruled to be included within the scope of the order.

(2) If the Secretary issues a preliminary scope ruling under paragraph (f)(3) of this section to the effect that the product in question is included within the scope of the order, any suspension of liquidation described in paragraph (l)(1) of this section will

continue. If liquidation has not been suspended, the Secretary will instruct the Customs Service to suspend liquidation and to require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of initiation of the scope inquiry. If the Secretary issues a preliminary scope ruling to the effect that the product in question is not included within the scope of the order, the Secretary will order any suspension of liquidation on the product ended, and will instruct the Customs Service to refund any cash deposits or release any bonds relating to that product.

(3) If the Secretary issues a final scope ruling, under either paragraph (d) or (f)(4) of this section, to the effect that the product in question is included within the scope of the order, any suspension of liquidation under paragraph (l)(1) or (l)(2) of this section will continue. Where there has been no suspension of liquidation, the Secretary will instruct the Customs Service to suspend liquidation and to require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after the date of initiation of the scope inquiry. If the Secretary's final scope ruling is to the effect that the product in question is not included within the scope of the order, the Secretary will order any suspension of liquidation on the subject product ended and will instruct the Customs Service to refund any cash deposits or release any bonds relating to this product.

(4) If, within 90 days of the initiation of a review of an order or a suspended investigation under this subpart, the Secretary issues a final ruling that a product is included within the scope of the order or suspended investigation that is the subject of the review, the Secretary, where practicable, will include sales of that product for purposes of the review and will seek information regarding such sales. If the Secretary issues a final ruling after 90 days of the initiation of the review, the Secretary may consider sales of the product for purposes of the review on the basis of non-adverse facts available. However, notwithstanding the pendency of a scope inquiry, if the Secretary considers it appropriate, the Secretary may request information concerning the product that is the subject of the scope inquiry for purposes of a review under this subpart.

(m) *Orders covering identical products.* Except for a scope inquiry and a scope ruling that involves section 781(a) or section 781(b) of the Act (assembly of parts or components in the United States or in a third country), if more than one order or suspended investigation cover the same subject merchandise, and if the Secretary considers it appropriate, the Secretary may conduct a single inquiry and issue a single scope ruling that applies to all such orders or suspended investigations.

(n) *Service of applications; scope service list.* The requirements of § 351.303(f) apply to this section, except that an application for a scope ruling must be served on all persons on the Department's scope service list. For purposes of this section, the ''scope service list'' will include all persons that have participated in any segment of the proceeding. If an application for a scope ruling in one proceeding results in a single inquiry that will apply to another proceeding (*see* paragraph (m) of this section), the Secretary will notify persons on the scope service list of the other proceeding of the application for a scope ruling.

(o) *Publication of list of scope rulings.* On a quarterly basis, the Secretary will publish in the **Federal Register** a list of scope rulings issued within the last three months. This list will include the case name, reference number, and a brief description of the ruling.

Subpart C—Information and Argument

§ 351.301 Time limits for submission of factual information.

(a) *Introduction.* The Department obtains most of its factual information in antidumping and countervailing duty proceedings from submissions made by interested parties during the course of the proceeding. This section sets forth the time limits for submitting such factual information, including information in questionnaire responses, publicly available information to value factors in nonmarket economy cases, allegations concerning market viability, allegations of sales at prices below the cost of production, countervailable subsidy allegations, and upstream subsidy allegations. Section 351.302 sets forth the procedures for requesting an extension of such time limits. Section 351.303 contains the procedural rules regarding filing, format, translation, service, and certification of documents.

(b) *Time limits in general.* Except as provided in paragraphs (c) and (d) of this section and § 351.302, a submission of factual information is due no later than:

(1) For a final determination in a countervailing duty investigation or an antidumping investigation, seven days before the date on which the verification of any person is scheduled to commence, except that factual information requested by the verifying officials from a person normally will be due no later than seven days after the date on which the verification of that person is completed;

(2) For the final results of an administrative review, 140 days after the last day of the anniversary month, except that factual information requested by the verifying officials from a person normally will be due no later than seven days after the date on which the verification of that person is completed;

(3) For the final results of a changed circumstances review, sunset review, or section 762 review, 140 days after the date of publication of notice of initiation of the review, except that factual information requested by the verifying officials from a person normally will be due no later than seven days after the date on which the verification of that person is completed;

(4) For the final results of a new shipper review, 100 days after the date of publication of notice of initiation of the review, except that factual information requested by the verifying officials from a person normally will be due no later than seven days after the date on which the verification of that person is completed; and

(5) For the final results of an expedited antidumping review, Article 8 violation review, Article 4/Article 7 review, or section 753 review, a date specified by the Secretary.

(c) *Time limits for certain submissions.* (1) *Rebuttal, clarification, or correction of factual information.* Any interested party may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party at any time prior to the deadline provided in this section for submission of such factual information. If factual information is submitted less than 10 days before, on, or after (normally only with the Department's permission) the applicable deadline for submission of such factual information, an interested party may submit factual information to rebut, clarify, or correct the factual information no later than 10 days after the date such factual information is served on the interested party or, if appropriate, made available under APO to the authorized applicant.

(2) *Questionnaire responses and other submissions on request.* (i) Notwithstanding paragraph (b) of this section, the Secretary may request any person to submit factual information at any time during a proceeding.

(ii) In the Secretary's written request to an interested party for a response to a questionnaire or for other factual information, the Secretary will specify the following: the time limit for the response; the information to be provided; the form and manner in which the interested party must submit the information; and that failure to submit requested information in the requested form and manner by the date specified may result in use of the facts available under section 776 of the Act and § 351.308.

(iii) Interested parties will have at least 30 days from the date of receipt to respond to the full initial questionnaire. The time limit for response to individual sections of the questionnaire, if the Secretary requests a separate response to such sections, may be less than the 30 days allotted for response to the full questionnaire. The date of receipt will be seven days from the date on which the initial questionnaire was transmitted.

(iv) A notification by an interested party, under section 782(c)(1) of the Act, of difficulties in submitting information in response to a questionnaire issued by the Secretary is to be submitted in writing within 14 days after the date of receipt of the initial questionnaire.

(v) A respondent interested party may request in writing that the Secretary conduct a questionnaire presentation. The Secretary may conduct a questionnaire presentation if the Secretary notifies the government of the affected country and that government does not object.

(3) *Submission of publicly available information to value factors under § 351.408(c).* Notwithstanding paragraph (b) of this section, interested parties may submit publicly available information to value factors under § 351.408(c) within:

(i) For a final determination in an antidumping investigation, 40 days after the date of publication of the preliminary determination;

(ii) For the final results of an administrative review, new shipper review, or changed circumstances review, 20 days after the date of publication of the preliminary results of review; and

(iii) For the final results of an expedited antidumping review, a date specified by the Secretary.

(d) *Time limits for certain allegations.* (1) *Market viability and the basis for determining a price-based normal value.* In an antidumping investigation or administrative review, allegations regarding market viability, including the exceptions in § 351.404(c)(2), are due, with all supporting factual information, within 40 days after the date on which the initial questionnaire was transmitted, unless the Secretary alters this time limit.

(2) *Sales at prices below the cost of production.* An allegation of sales at prices below the cost of production made by the petitioner or other domestic interested party is due within:

(i) In an antidumping investigation,

(A) On a country-wide basis, 20 days after the date on which the initial questionnaire was transmitted to any person, unless the Secretary alters this time limit; or

(B) On a company-specific basis, 20 days after a respondent interested party files the response to the relevant section of the questionnaire, unless the relevant questionnaire response is, in the Secretary's view, incomplete, in which case the Secretary will determine the time limit;

(ii) In an administrative review, new shipper review, or changed circumstances review, on a company-specific basis, 20 days after a respondent interested party files the response to the relevant section of the questionnaire, unless the relevant questionnaire response is, in the Secretary's view, incomplete, in which case the Secretary will determine the time limit; or

(iii) In an expedited antidumping review, on a company-specific basis, 10 days after the date of publication of the notice of initiation of the review.

(3) *Purchases of major inputs from an affiliated party at prices below the affiliated party's cost of production.* An allegation of purchases of major inputs from an affiliated party at prices below the affiliated party's cost of production made by the petitioner or other domestic interested party is due within 20 days after a respondent interested party files the response to the relevant section of the questionnaire, unless the relevant questionnaire response is, in the Secretary's view, incomplete, in which case the Secretary will determine the time limits.

(4) *Countervailable subsidy; upstream subsidy.* (i) *In general.* A countervailable subsidy allegation made by the petitioner or other domestic interested party is due no later than:

(A) In a countervailing duty investigation, 40 days before the scheduled date of the preliminary determination; or

(B) In an administrative review, new shipper review, or changed circumstances review, 20 days after all responses to the initial questionnaire are filed with the Department, unless the Secretary alters this time limit.

(ii) *Exception for upstream subsidy allegation in an investigation.* In a countervailing duty investigation, an allegation of upstream subsidies made by the petitioner or other domestic interested party is due no later than:

(A) 10 days before the scheduled date of the preliminary determination; or

(B) 15 days before the scheduled date of the final determination.

(5) *Targeted dumping.* In an antidumping investigation, an allegation of targeted dumping made by the petitioner or other domestic interested party under § 351.414(f)(3) is due no later than 30 days before the scheduled date of the preliminary determination.

§ 351.302 Extension of time limits; return of untimely filed or unsolicited material.

(a) *Introduction.* This section sets forth the procedures for requesting an extension of a time limit. In addition, this section explains that certain untimely filed or unsolicited material will be returned to the submitter together with an explanation of the reasons for the return of such material.

(b) *Extension of time limits.* Unless expressly precluded by statute, the Secretary may, for good cause, extend any time limit established by this part.

(c) *Requests for extension of specific time limit.* Before the applicable time limit specified under § 351.301 expires, a party may request an extension pursuant to paragraph (b) of this section. The request must be in writing and state the reasons for the request. An extension granted to a party must be approved in writing.

(d) *Return of untimely filed or unsolicited material.* (1) Unless the Secretary extends a time limit under paragraph (b) of this section, the Secretary will not consider or retain in the official record of the proceeding:

(i) Untimely filed factual information, written argument, or other material that the Secretary returns to the submitter, except as provided under § 351.104(a)(2); or

(ii) Unsolicited questionnaire responses, except as provided under § 351.204(d)(2).

(2) The Secretary will return such information, argument, or other material, or unsolicited questionnaire response with, to the extent practicable, written notice stating the reasons for return.

§ 351.303 Filing, format, translation, service, and certification of documents.

(a) *Introduction.* This section contains the procedural rules regarding filing, format, service, translation, and certification of documents and applies to all persons submitting documents to the Department for consideration in an antidumping or countervailing duty proceeding.

(b) *Where to file; time of filing.* Persons must address and submit all documents to the Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, between the hours of 8:30 a.m. and 5:00 p.m. on business days (*see* § 351.103(b)). If the applicable time limit expires on a non-business day, the Secretary will accept documents that are filed on the next business day.

(c) *Number of copies; filing of business proprietary and public versions under the one-day lag rule; information in double brackets.* (1) *In general.* Except as provided in paragraphs (c)(2) and (c)(3) of this section, a person must file six copies of each submission with the Department.

(2) *Application of the one-day lag rule.* (i) *Filing the business proprietary version.* A person must file one copy of the business proprietary version of any document with the Department within the applicable time limit. Business proprietary version means the version of a document containing information for which a person claims business proprietary treatment under § 351.304.

(ii) *Filing the final business proprietary version; bracketing corrections.* By the close of business one business day after the date the business proprietary version is filed under paragraph (c)(2)(i) of this section, a person must file six copies of the final business proprietary version of the document with the Department. The final business proprietary version must be identical to the business proprietary version filed on the previous day except for any bracketing corrections. Although a person must file six copies of the *complete* final business proprietary version with the Department, the person may serve other persons with only those pages containing bracketing corrections.

(iii) *Filing the public version.* Simultaneously with the filing of the final business proprietary version under paragraph (c)(2)(ii) of this section, a person also must file three copies of the public version of such document (see § 351.304(c)) with the Department.

(iv) *Information in double brackets.* If a person serves authorized applicants with a business proprietary version of a document that excludes information in double brackets pursuant to § 351.304(b)(2), the person simultaneously must file with the Department one copy of those pages in which information in double brackets has been excluded.

(3) *Computer media and printouts.* The Secretary may require submission of factual information on computer media unless the Secretary modifies such requirements under section 782(c) of the Act (*see* § 351.301(c)(2)(iv)). The computer medium must be accompanied by the number of copies of any computer printout specified by the Secretary. All information on computer media must be releasable under APO (see § 351.305).

(d) *Format of copies.* (1) *In general.* Unless the Secretary alters the requirements of this section, documents filed with the Department must conform to the specification and marking requirements under paragraph (d)(2) of this section or the Secretary may refuse to accept such documents for the official record of the proceeding.

(2) *Specifications and markings.* A person must submit documents on letter-size paper, single-sided and double-spaced, and must securely bind each copy as a single document with any letter of transmittal as the first page of the document. A submitter must mark the first page of each document in the upper right-hand corner with the following information in the following format:

(i) On the first line, except for a petition, indicate the Department case number;

(ii) On the second line, indicate the total number of pages in the document including cover pages, appendices, and any unnumbered pages;

(iii) On the third line, indicate whether the document is for an investigation, scope inquiry, circumvention inquiry, downstream product monitoring application, or review and, if the latter, indicate the inclusive dates of the review, the type of review, and the section number of the Act corresponding to the type of review;

(iv) On the fourth line, indicate the Department office conducting the proceeding;

(v) On the fifth and subsequent lines, indicate whether any portion of the document contains business proprietary information and, if so, list the applicable page numbers and state either ''Document May be Released Under APO'' or ''Document May Not be Released Under APO.'' Indicate ''Business Proprietary Treatment Requested'' on the top of each page containing business proprietary information. In addition, include the warning ''Bracketing of Business Proprietary Information is Not Final for One Business Day After Date of Filing'' on the top of each page containing business proprietary information in the copy of the business proprietary version filed under § 351.303(c)(2)(i) (one-day lag rule). Do not include this warning in the copies of the final business proprietary version filed on the next business day under § 351.303(c)(2)(ii) (*see* § 351.303(c)(2) and § 351.304(c)); and

(vi) For public versions of business proprietary documents required under § 351.304(c), complete the marking as required in paragraphs (d)(2)(i)–(v) of this section for the business proprietary document, but conspicuously mark the first page ''Public Version.''

(e) *Translation to English.* A document submitted in a foreign language must be accompanied by an English translation of the entire document or of only pertinent portions, where appropriate, unless the Secretary waives this requirement for an individual document. A party must obtain the Department's approval for submission of an English translation of only portions of a document prior to submission to the Department.

(f) *Service of copies on other persons.* (1)(i) *In general.* Except as provided in § 351.202(c) (filing of petition), § 351.207(f)(1) (submission of proposed suspension agreement), and paragraph (f)(3) of this section, a person filing a document with the Department simultaneously must serve a copy of the document on all other persons on the service list by personal service or first class mail.

(ii) *Service of public versions or a party's own business proprietary information.* Notwithstanding paragraphs (f)(1)(i) and (f)(3) of this section, service of the public version of a document or of the business proprietary version of a document containing only the server's own business proprietary information, on persons on the service list, may be made by facsimile transmission or other electronic transmission process, with the consent of the person to be served.

(2) *Certificate of service.* Each document filed with the Department must include a certificate of service listing each person served (including agents), the type of document served, and the date and method of service on each person. The Secretary may refuse to accept any document that is not accompanied by a certificate of service.

(3) *Service requirements for certain documents.* (i) *Briefs.* In addition to the certificate of service requirements contained in paragraph (f)(2) of this section, a person filing a case or rebuttal brief with the Department simultaneously must serve a copy of that brief on all persons on the service list and on any U.S. Government agency that has submitted a case or rebuttal brief in the segment of the proceeding. If, under § 351.103(c), a person has

designated an agent to receive service that is located in the United States, service on that person must be either by personal service on the same day the brief is filed or by overnight mail or courier on the next day. If the person has designated an agent to receive service that is located outside the United States, service on that person must be by first class airmail.

(ii) *Request for review.* In addition to the certificate of service requirements under paragraph (f)(2) of this section, an interested party that files with the Department a request for an expedited antidumping review, an administrative review, a new shipper review, or a changed circumstances review must serve a copy of the request by personal service or first class mail on each exporter or producer specified in the request and on the petitioner by the end of the anniversary month or within ten days of filing the request for review, whichever is later. If the interested party that files the request is unable to locate a particular exporter or producer, or the petitioner, the Secretary may accept the request for review if the Secretary is satisfied that the party made a reasonable attempt to serve a copy of the request on such person.

(g) *Certifications.* A person must file with each submission containing factual information the certification in paragraph (g)(1) of this section and, in addition, if the person has legal counsel or another representative, the certification in paragraph (g)(2) of this section:

(1) For the person's officially responsible for presentation of the factual information:

I, (name and title), currently employed by (person), certify that (1) I have read the attached submission, and (2) the information contained in this submission is, to the best of my knowledge, complete and accurate.

(2) For the person's legal counsel or other representative:

I, (name), of (law or other firm), counsel or representative to (person), certify that (1) I have read the attached submission, and (2) based on the information made available to me by (person), I have no reason to believe that this submission contains any material misrepresentation or omission of fact.

§ 351.304 Establishing business proprietary treatment of information [Reserved].

§ 351.305 Access to business proprietary information [Reserved].

§ 351.306 Use of business proprietary information [Reserved].

§ 351.307 Verification of information.

(a) *Introduction.* Prior to making a final determination in an investigation or issuing final results of review, the Secretary may verify relevant factual information. This section clarifies when verification will occur, the contents of a verification report, and the procedures for verification.

(b) *In general.* (1) Subject to paragraph (b)(4) of this section, the Secretary will verify factual information upon which the Secretary relies in:

(i) A final determination in a continuation of a previously suspended countervailing duty investigation (section 704(g) of the Act), countervailing duty investigation, continuation of a previously suspended antidumping investigation (section 705(a) of the Act), or antidumping investigation;

(ii) The final results of an expedited antidumping review;

(iii) A revocation under section 751(d) of the Act;

(iv) The final results of an administrative review, new shipper review, or changed circumstances review, if the Secretary decides that good cause for verification exists; and

(v) The final results of an administrative review if:

(A) A domestic interested party, not later than 100 days after the date of publication of the notice of initiation of review, submits a written request for verification; and

(B) The Secretary conducted no verification under this paragraph during either of the two immediately preceding administrative reviews.

(2) The Secretary may verify factual information upon which the Secretary relies in a proceeding or a segment of a proceeding not specifically provided for in paragraph (b)(1) of this section.

(3) If the Secretary decides that, because of the large number of exporters or producers included in an investigation or administrative review, it is impractical to verify relevant factual information for each person, the Secretary may select and verify a sample.

(4) The Secretary may conduct verification of a person if that person agrees to verification and the Secretary notifies the government of the affected country and that government does not object. If the person or the government objects to verification, the Secretary will not conduct verification and may disregard any or all information submitted by the person in favor of use of the facts available under section 776 of the Act and § 351.308.

(c) *Verification report.* The Secretary will report the methods, procedures, and results of a verification under this section prior to making a final determination in an investigation or issuing final results in a review.

(d) *Procedures for verification.* The Secretary will notify the government of the affected country that employees of the Department will visit with the persons listed below in order to verify the accuracy and completeness of submitted factual information. The notification will, where practicable, identify any member of the verification team who is not an officer of the U.S. Government. As part of the verification, employees of the Department will request access to all files, records, and personnel which the Secretary considers relevant to factual information submitted of:

(1) Producers, exporters, or importers;

(2) Persons affiliated with the persons listed in paragraph (d)(1) of this section, where applicable;

(3) Unaffiliated purchasers, or

(4) The government of the affected country as part of verification in a countervailing duty proceeding.

§ 351.308 Determinations on the basis of the facts available.

(a) *Introduction.* The Secretary may make determinations on the basis of the facts available whenever necessary information is not available on the record, an interested party or any other person withholds or fails to provide information requested in a timely manner and in the form required or significantly impedes a proceeding, or the Secretary is unable to verify submitted information. If the Secretary finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Secretary may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. This section lists some of the sources of information upon which the Secretary may base an adverse inference and explains the actions the Secretary will take with respect to corroboration of information.

(b) *In general.* The Secretary may make a determination under the Act and this part based on the facts otherwise available in accordance with section 776(a) of the Act.

(c) *Adverse Inferences.* For purposes of section 776(b) of the Act, an adverse inference may include reliance on:

(1) Secondary information, such as information derived from:

(i) The petition;

(ii) A final determination in a countervailing duty investigation or an antidumping investigation;

(iii) Any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or

(2) Any other information placed on the record.

(d) *Corroboration of secondary information.* Under section 776(c) of the Act, when the Secretary relies on secondary information, the Secretary will, to the extent practicable, corroborate that information from independent sources that are reasonably at the Secretary's disposal. Independent sources may include, but are not limited to, published price lists, official import statistics and customs data, and information obtained from interested parties during the instant investigation or review. Corroborate means that the Secretary will examine whether the secondary information to be used has probative value. The fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question.

(e) *Use of certain information.* In reaching a determination under the Act and this part, the Secretary will not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the Secretary if the conditions listed under section 782(e) of the Act are met.

§ 351.309 Written argument.

(a) *Introduction.* Written argument may be submitted during the course of an antidumping or countervailing duty proceeding. This section sets forth the time limits for submission of case and rebuttal briefs and provides guidance on what should be contained in these documents.

(b) *Written argument.* (1) *In general.* In making the final determination in a countervailing duty investigation or antidumping investigation or the final results of an administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review, the Secretary will consider written arguments in case or rebuttal briefs filed within the time limits in this section.

(2) *Written argument on request.* Notwithstanding paragraph (b)(1) of this section, the Secretary may request written argument on any issue from any person or U.S. Government agency at any time during a proceeding.

(c) *Case brief.* (1) Any interested party or U.S. Government agency may submit a ''case brief'' within:

(i) For a final determination in a countervailing duty investigation or antidumping investigation, 50 days after the date of publication of the preliminary determination, unless the Secretary alters this time limit;

(ii) For the final results of an administrative review, new shipper review, changed circumstances review, or section 762 review, 30 days after the date of publication of the preliminary results of review, unless the Secretary alters the time limit; or

(iii) For the final results of an expedited antidumping review, sunset review, Article 8 violation review, Article 4/Article 7 review, or section 753 review, a date specified by the Secretary.

(2) The case brief must present all arguments that continue in the submitter's view to be relevant to the Secretary's final determination or final results, including any arguments presented before the date of publication of the preliminary determination or preliminary results. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

(d) *Rebuttal brief.* (1) Any interested party or U.S. Government agency may submit a ''rebuttal brief'' within five days after the time limit for filing the case brief, unless the Secretary alters this time limit.

(2) The rebuttal brief may respond only to arguments raised in case briefs and should identify the arguments to which it is responding. As part of the rebuttal brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

§ 351.310 Hearings.

(a) *Introduction.* This section sets forth the procedures for requesting a hearing, indicates that the Secretary may consolidate hearings, and explains when the Secretary may hold closed hearing sessions.

(b) *Pre-hearing conference.* The Secretary may conduct a telephone pre-hearing conference with representatives of interested parties to facilitate the conduct of the hearing.

(c) *Request for hearing.* Any interested party may request that the Secretary hold a public hearing on arguments to be raised in case or rebuttal briefs within 30 days after the date of publication of the preliminary determination or preliminary results of review, unless the Secretary alters this time limit, or in a proceeding where the Secretary will not issue a preliminary determination, not later than a date specified by the Secretary. To the extent practicable, a party requesting a hearing must identify arguments to be raised at the hearing. At the hearing, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief.

(d) *Hearings in general.* (1) If an interested party submits a request under paragraph (c) of this section, the Secretary will hold a public hearing on the date stated in the notice of the Secretary's preliminary determination or preliminary results of administrative review (or otherwise specified by the Secretary in an expedited antidumping review), unless the Secretary alters the date. Ordinarily, the hearing will be held two days after the scheduled date for submission of rebuttal briefs.

(2) The hearing is not subject to 5 U.S.C. §§ 551–559, and § 702 (Administrative Procedure Act). Witness testimony, if any, will not be under oath or subject to cross-examination by another interested party or witness. During the hearing, the chair may question any person or witness and may request persons to present additional written argument.

(e) *Consolidated hearings.* At the Secretary's discretion, the Secretary may consolidate hearings in two or more cases.

(f) *Closed hearing sessions.* An interested party may request a closed session of the hearing no later than the date the case briefs are due in order to address limited issues during the course of the hearing. The requesting party must identify the subjects to be discussed, specify the amount of time requested, and justify the need for a closed session with respect to each subject. If the Secretary approves the request for a closed session, only authorized applicants and other persons authorized by the regulations may be present for the closed session (*see* § 351.305).

(g) *Transcript of hearing.* The Secretary will place a verbatim transcript of the hearing in the public and official records of the proceeding and will announce at the hearing how interested parties may obtain copies of the transcript.

§ 351.311 Countervailable subsidy practice discovered during investigation or review.

(a) *Introduction.* During the course of a countervailing duty investigation or review, Department officials may discover or receive notice of a practice that appears to provide a countervailable subsidy. This section explains when the Secretary will examine such a practice.

(b) *Inclusion in proceeding.* If during a countervailing duty investigation or a

countervailing duty administrative review the Secretary discovers a practice that appears to provide a countervailable subsidy with respect to the subject merchandise and the practice was not alleged or examined in the proceeding, or if, pursuant to section 775 of the Act, the Secretary receives notice from the United States Trade Representative that a subsidy or subsidy program is in violation of Article 8 of the Subsidies Agreement, the Secretary will examine the practice, subsidy, or subsidy program if the Secretary concludes that sufficient time remains before the scheduled date for the final determination or final results of review.

(c) *Deferral of examination.* If the Secretary concludes that insufficient time remains before the scheduled date for the final determination or final results of review to examine the practice, subsidy, or subsidy program described in paragraph (b) of this section, the Secretary will:

(1) During an investigation, allow the petitioner to withdraw the petition without prejudice and resubmit it with an allegation with regard to the newly discovered practice, subsidy, or subsidy program; or

(2) During an investigation or review, defer consideration of the newly discovered practice, subsidy, or subsidy program until a subsequent administrative review, if any.

(d) *Notice.* The Secretary will notify the parties to the proceeding of any practice the Secretary discovers, or any subsidy or subsidy program with respect to which the Secretary receives notice from the United States Trade Representative, and whether or not it will be included in the then ongoing proceeding.

§ 351.312 Industrial users and consumer organizations.

(a) *Introduction.* The URAA provides for opportunity for comment by consumer organizations and industrial users on matters relevant to a particular determination of dumping, subsidization, or injury. This section indicates under what circumstances such persons may submit relevant information and argument.

(b) *Opportunity to submit relevant information and argument.* In an antidumping or countervailing duty proceeding under title VII of the Act and this part, an industrial user of the subject merchandise or a representative consumer organization, as described in section 777(h) of the Act, may submit relevant factual information and written argument to the Department under paragraphs (b), (c)(1), and (c)(3) of § 351.301 and paragraphs (c) and (d) of § 351.309 concerning dumping or a countervailable subsidy. All such submissions must be filed in accordance with § 351.303.

(c) *Business proprietary information.* Persons described in paragraph (b) of this section may request business proprietary treatment of information under § 351.304, but will not be granted access under § 351.305 to business proprietary information submitted by other persons.

Subpart D—Calculation of Export Price, Constructed Export Price, Fair Value, and Normal Value

§ 351.401 In general.

(a) *Introduction.* In general terms, an antidumping analysis involves a comparison of export price or constructed export price in the United States with normal value in the foreign market. This section establishes certain general rules that apply to the calculation of export price, constructed export price and normal value. (*See* section 772, section 773, and section 773A of the Act.)

(b) *Adjustments in general.* In making adjustments to export price, constructed export price, or normal value, the Secretary will adhere to the following principles:

(1) The interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment; and

(2) The Secretary will not double-count adjustments.

(c) *Use of price net of price adjustments.* In calculating export price, constructed export price, and normal value (where normal value is based on price), the Secretary will use a price that is net of any price adjustment, as defined in § 351.102(b), that is reasonably attributable to the subject merchandise or the foreign like product (whichever is applicable).

(d) *Delayed payment or pre-payment of expenses.* Where cost is the basis for determining the amount of an adjustment to export price, constructed export price, or normal value, the Secretary will not factor in any delayed payment or pre-payment of expenses by the exporter or producer.

(e) *Adjustments for movement expenses.* (1) *Original place of shipment.* In making adjustments for movement expenses to establish export price or constructed export price under section 772(c)(2)(A) of the Act, or normal value under section 773(a)(6)(B)(ii) of the Act, the Secretary normally will consider the production facility as being the ''original place of shipment. However, where the Secretary bases export price, constructed export price, or normal value on a sale by an unaffiliated reseller, the Secretary may treat the original place from which the reseller shipped the merchandise as the ''original place of shipment.''

(2) *Warehousing.* The Secretary will consider warehousing expenses that are incurred after the subject merchandise or foreign like product leaves the original place of shipment as movement expenses.

(f) *Treatment of affiliated producers in antidumping proceedings.* (1) *In general.* In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.

(2) *Significant potential for manipulation.* In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:

(i) The level of common ownership;

(ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and

(iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

(g) *Allocation of expenses and price adjustments.* (1) *In general.* The Secretary may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided the Secretary is satisfied that the allocation method used does not cause inaccuracies or distortions.

(2) *Reporting allocated expenses and price adjustments.* Any party seeking to report an expense or a price adjustment on an allocated basis must demonstrate to the Secretary's satisfaction that the allocation is calculated on as specific a basis as is feasible, and must explain why the allocation methodology used does not cause inaccuracies or distortions.

(3) *Feasibility.* In determining the feasibility of transaction-specific reporting or whether an allocation is calculated on as specific a basis as is

feasible, the Secretary will take into account the records maintained by the party in question in the ordinary course of its business, as well as such factors as the normal accounting practices in the country and industry in question and the number of sales made by the party during the period of investigation or review.

(4) *Expenses and price adjustments relating to merchandise not subject to the proceeding.* The Secretary will not reject an allocation method solely because the method includes expenses incurred, or price adjustments made, with respect to sales of merchandise that does not constitute subject merchandise or a foreign like product (whichever is applicable).

(h) *Treatment of subcontractors (''tolling'' operations).* The Secretary will not consider a toller or subcontractor to be a manufacturer or producer where the toller or subcontractor does not acquire ownership, and does not control the relevant sale, of the subject merchandise or foreign like product.

(i) *Date of sale.* In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

§ 351.402 Calculation of export price and constructed export price; reimbursement of antidumping and countervailing duties.

(a) *Introduction.* In order to establish export price, constructed export price, and normal value, the Secretary must make certain adjustments to the price to the unaffiliated purchaser (often called the ''starting price'') in both the United States and foreign markets. This regulation clarifies how the Secretary will make certain of the adjustments to the starting price in the United States that are required by section 772 of the Act.

(b) *Additional adjustments to constructed export price.* In establishing constructed export price under section 772(d) of the Act, the Secretary will make adjustments for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid. The Secretary will not make an adjustment for any expense that is related solely to the sale to an affiliated importer in the United States, although the Secretary may make an adjustment to normal value for such expenses under section 773(a)(6)(C)(iii) of the Act.

(c) *Special rule for merchandise with value added after importation.* (1) *Merchandise imported by affiliated persons.* In applying section 772(e) of the Act, merchandise imported by and value added by a person affiliated with the exporter or producer includes merchandise imported and value added for the account of such an affiliated person.

(2) *Estimation of value added.* The Secretary normally will determine that the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise if the Secretary estimates the value added to be at least 65 percent of the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States. The Secretary normally will estimate the value added based on the difference between the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the price paid for the subject merchandise by the affiliated person. The Secretary normally will base this determination on averages of the prices and the value added to the subject merchandise.

(3) *Determining dumping margins.* For purposes of determining dumping margins under paragraphs (1) and (2) of section 772(e) of the Act, the Secretary may use the weighted-average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons.

(d) *Special rule for determining profit.* This paragraph sets forth rules for calculating profit in establishing constructed export price under section 772(f) of the Act.

(1) *Basis for total expenses and total actual profit.* In calculating total expenses and total actual profit, the Secretary normally will use the aggregate of expenses and profit for all subject merchandise sold in the United States and all foreign like products sold in the exporting country, including sales that have been disregarded as being below the cost of production. (*See* section 773(b) of the Act (sales at less than cost of production).)

(2) *Use of financial reports.* For purposes of determining profit under section 772(d)(3) of the Act, the Secretary may rely on any appropriate financial reports, including public, audited financial statements, or equivalent financial reports, and internal financial reports prepared in the ordinary course of business.

(3) *Voluntary reporting of costs of production.* The Secretary will not require the reporting of costs of production solely for purposes of determining the amount of profit to be deducted from the constructed export price. The Secretary will base the calculation of profit on costs of production if such costs are reported voluntarily by the date established by the Secretary, and provided that it is practicable to do so and the costs of production are verifiable.

(e) *Treatment of payments between affiliated persons.* Where a person affiliated with the exporter or producer incurs any of the expenses deducted from constructed export price under section 772(d) of the Act and is reimbursed for such expenses by the exporter, producer or other affiliate, the Secretary normally will make an adjustment based on the actual cost to the affiliated person. If the Secretary is satisfied that information regarding the actual cost to the affiliated person is unavailable to the exporter or producer, the Secretary may determine the amount of the adjustment on any other reasonable basis, including the amount of the reimbursement to the affiliated person if the Secretary is satisfied that such amount reflects the amount usually paid in the market under consideration.

(f) *Reimbursement of antidumping duties and countervailing duties.* (1) *In general.* (i) In calculating the export price (or the constructed export price), the Secretary will deduct the amount of any antidumping duty or countervailing duty which the exporter or producer:

(A) Paid directly on behalf of the importer; or

(B) Reimbursed to the importer.

(ii) The Secretary will not deduct the amount of any antidumping duty or countervailing duty paid or reimbursed if the exporter or producer granted to the importer before initiation of the antidumping investigation in question a warranty of nonapplicability of antidumping duties or countervailing duties with respect to subject merchandise which was:

(A) Sold before the date of publication of the Secretary's order applicable to the merchandise in question; and

(B) Exported before the date of publication of the Secretary's final antidumping determination.

(iii) Ordinarily, under paragraph (f)(1)(i) of this section, the Secretary will deduct the amount reimbursed only once in the calculation of the export price (or constructed export price).

(2) *Certificate.* The importer must file prior to liquidation a certificate in the

following form with the appropriate District Director of Customs:

I hereby certify that I (have) (have not) entered into any agreement or understanding for the payment or for the refunding to me, by the manufacturer, producer, seller, or exporter, of all or any part of the antidumping duties or countervailing duties assessed upon the following importations of (commodity) from (country): (List entry numbers) which have been purchased on or after (date of publication of antidumping notice suspending liquidation in the **Federal Register**) or purchased before (same date) but exported on or after (date of final determination of sales at less than fair value).

(3) *Presumption.* The Secretary may presume from an importer's failure to file the certificate required in paragraph (f)(2) of this section that the exporter or producer paid or reimbursed the antidumping duties or countervailing duties.

§ 351.403 Sales used in calculating normal value; transactions between affiliated parties.

(a) *Introduction.* This section clarifies when the Secretary may use offers for sale in determining normal value. Additionally, this section clarifies the authority of the Secretary to use sales to or through an affiliated party as a basis for normal value. (*See* section 773(a)(5) of the Act (indirect sales or offers for sale).)

(b) *Sales and offers for sale.* In calculating normal value, the Secretary normally will consider offers for sale only in the absence of sales and only if the Secretary concludes that acceptance of the offer can be reasonably expected.

(c) *Sales to an affiliated party.* If an exporter or producer sold the foreign like product to an affiliated party, the Secretary may calculate normal value based on that sale only if satisfied that the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller.

(d) *Sales through an affiliated party.* If an exporter or producer sold the foreign like product through an affiliated party, the Secretary may calculate normal value based on the sale by such affiliated party. However, the Secretary normally will not calculate normal value based on the sale by an affiliated party if sales of the foreign like product by an exporter or producer to affiliated parties account for less than five percent of the total value (or quantity) of the exporter's or producer's sales of the foreign like product in the market in question or if sales to the affiliated party are comparable, as defined in paragraph (c) of this section.

§ 351.404 Selection of the market to be used as the basis for normal value.

(a) *Introduction.* Although in most circumstances sales of the foreign like product in the home market are the most appropriate basis for determining normal value, section 773 of the Act also permits use of sales to a third country or constructed value as the basis for normal value. This section clarifies the rules for determining the basis for normal value.

(b) *Determination of viable market.* (1) *In general.* The Secretary will consider the exporting country or a third country as constituting a viable market if the Secretary is satisfied that sales of the foreign like product in that country are of sufficient quantity to form the basis of normal value.

(2) *Sufficient quantity.* ''Sufficient quantity'' normally means that the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold by an exporter or producer in a country is 5 percent or more of the aggregate quantity (or value) of its sales of the subject merchandise to the United States.

(c) *Calculation of price-based normal value in viable market.* (1) *In general.* Subject to paragraph (c)(2) of this section:

(i) If the exporting country constitutes a viable market, the Secretary will calculate normal value on the basis of price in the exporting country (*see* section 773(a)(1)(B)(i) of the Act (price used for determining normal value)); or

(ii) If the exporting country does not constitute a viable market, but a third country does constitute a viable market, the Secretary may calculate normal value on the basis of price to a third country (*see* section 773(a)(1)(B)(ii) of the Act (use of third country prices in determining normal value)).

(2) *Exception.* The Secretary may decline to calculate normal value in a particular market under paragraph (c)(1) of this section if it is established to the satisfaction of the Secretary that:

(i) In the case of the exporting country or a third country, a particular market situation exists that does not permit a proper comparison with the export price or constructed export price (*see* section 773(a)(1)(B)(ii)(III) or section 773(a)(1)(C)(iii) of the Act); or

(ii) In the case of a third country, the price is not representative (*see* section 773(a)(1)(B)(ii)(I) of the Act).

(d) *Allegations concerning market viability and the basis for determining a price-based normal value.* In an antidumping investigation or review, allegations regarding market viability or the exceptions in paragraph (c)(2) of this section, must be filed, with all supporting factual information, in accordance with § 351.301(d)(1).

(e) *Selection of third country.* For purposes of calculating normal value based on prices in a third country, where prices in more than one third country satisfy the criteria of section 773(a)(1)(B)(ii) of the Act and this section, the Secretary generally will select the third country based on the following criteria:

(1) The foreign like product exported to a particular third country is more similar to the subject merchandise exported to the United States than is the foreign like product exported to other third countries;

(2) The volume of sales to a particular third country is larger than the volume of sales to other third countries;

(3) Such other factors as the Secretary considers appropriate.

(f) *Third country sales and constructed value.* The Secretary normally will calculate normal value based on sales to a third country rather than on constructed value if adequate information is available and verifiable (*see* section 773(a)(4) of the Act (use of constructed value)).

§ 351.405 Calculation of normal value based on constructed value.

(a) *Introduction.* In certain circumstances, the Secretary may determine normal value by constructing a value based on the cost of manufacture, selling general and administrative expenses, and profit. The Secretary may use constructed value as the basis for normal value where: neither the home market nor a third country market is viable; sales below the cost of production are disregarded; sales outside the ordinary course of trade, or sales the prices of which are otherwise unrepresentative, are disregarded; sales used to establish a fictitious market are disregarded; no contemporaneous sales of comparable merchandise are available; or in other circumstances where the Secretary determines that home market or third country prices are inappropriate. (*See* section 773(e) and section 773(f) of the Act.) This section clarifies the meaning of certain terms relating to constructed value.

(b) *Profit and selling, general, and administrative expenses.* In determining the amount to be added to constructed value for profit and for selling, general, and administrative expenses, the following rules will apply:

(1) Under section 773(e)(2)(A) of the Act, ''foreign country'' means the country in which the merchandise is produced or a third country selected by the Secretary under § 351.404(e), as appropriate.

(2) Under section 773(e)(2)(B) of the Act, ''foreign country'' means the country in which the merchandise is produced.

§ 351.406 Calculation of normal value if sales are made at less than cost of production.

(a) *Introduction.* In determining normal value, the Secretary may disregard sales of the foreign like product made at prices that are less than the cost of production of that product. However, such sales will be disregarded only if they are made within an extended period of time, in substantial quantities, and are not at prices which permit recovery of costs within a reasonable period of time. (*See* section 773(b) of the Act.) This section clarifies the meaning of the term ''extended period of time'' as used in the Act.

(b) *Extended period of time.* The ''extended period of time'' under section 773(b)(1)(A) of the Act normally will coincide with the period in which the sales under consideration for the determination of normal value were made.

§ 351.407 Calculation of constructed value and cost of production.

(a) *Introduction.* This section sets forth certain rules that are common to the calculation of constructed value and the cost of production. (*See* section 773(f) of the Act.)

(b) *Determination of value under the major input rule.* For purposes of section 773(f)(3) of the Act, the Secretary normally will determine the value of a major input purchased from an affiliated person based on the higher of:

(1) The price paid by the exporter or producer to the affiliated person for the major input;

(2) The amount usually reflected in sales of the major input in the market under consideration; or

(3) The cost to the affiliated person of producing the major input.

(c) *Allocation of costs.* In determining the appropriate method for allocating costs among products, the Secretary may take into account production quantities, relative sales values, and other quantitative and qualitative factors associated with the manufacture and sale of the subject merchandise and the foreign like product.

(d) *Startup costs.* (1) In identifying startup operations under section 773(f)(1)(C)(ii) of the Act:

(i) ''New production facilities'' includes the substantially complete retooling of an existing plant. Substantially complete retooling involves the replacement of nearly all production machinery or the equivalent rebuilding of existing machinery.

(ii) A ''new product'' is one requiring substantial additional investment, including products which, though sold under an existing nameplate, involve the complete revamping or redesign of the product. Routine model year changes will not be considered a new product.

(iii) Mere improvements to existing products or ongoing improvements to existing facilities will not be considered startup operations.

(iv) An expansion of the capacity of an existing production line will not qualify as a startup operation unless the expansion constitutes such a major undertaking that it requires the construction of a new facility and results in a depression of production levels due to technical factors associated with the initial phase of commercial production of the expanded facilities.

(2) In identifying the end of the startup period under clauses (ii) and (iii) of section 773(f)(1)(C) of the Act:

(i) The attainment of peak production levels will not be the standard for identifying the end of the startup period, because the startup period may end well before a company achieves optimum capacity utilization.

(ii) The startup period will not be extended to cover improvements and cost reductions that may occur over the entire life cycle of a product.

(3) In determining when a producer reaches commercial production levels under section 773(f)(1)(C)(ii) of the Act:

(i) The Secretary will consider the actual production experience of the merchandise in question, measuring production on the basis of units processed.

(ii) To the extent necessary, the Secretary will examine factors in addition to those specified in section 773(f)(1)(C)(ii) of the Act, including historical data reflecting the same producer's or other producers' experiences in producing the same or similar products. A producer's projections of future volume or cost will be accorded little weight.

(4) In making an adjustment for startup operations under section 773(f)(1)(C)(iii) of the Act:

(i) The Secretary will determine the duration of the startup period on a case-by-case basis.

(ii) The difference between actual costs and the costs of production calculated for startup costs will be amortized over a reasonable period of time subsequent to the startup period over the life of the product or machinery, as appropriate.

(iii) The Secretary will consider unit production costs to be items such as depreciation of equipment and plant, labor costs, insurance, rent and lease expenses, material costs, and factory overhead. The Secretary will not consider sales expenses, such as advertising costs, or other general and administrative or non-production costs (such as general research and development costs), as startup costs.

§ 351.408 Calculation of normal value of merchandise from nonmarket economy countries.

(a) *Introduction.* In identifying dumping from a nonmarket economy country, the Secretary normally will calculate normal value by valuing the nonmarket economy producers' factors of production in a market economy country. (*See* section 773(c) of the Act.) This section clarifies when and how this special methodology for nonmarket economies will be applied.

(b) *Economic Comparability.* In determining whether a country is at a level of economic development comparable to the nonmarket economy under section 773(c)(2)(B) or section 773(c)(4)(A) of the Act, the Secretary will place primary emphasis on *per capita* GDP as the measure of economic comparability.

(c) *Valuation of Factors of Production.* For purposes of valuing the factors of production, general expenses, profit, and the cost of containers, coverings, and other expenses (referred to collectively as ''factors'') under section 773(c)(1) of the Act the following rules will apply:

(1) *Information used to value factors.* The Secretary normally will use publicly available information to value factors. However, where a factor is purchased from a market economy supplier and paid for in a market economy currency, the Secretary normally will use the price paid to the market economy supplier. In those instances where a portion of the factor is purchased from a market economy supplier and the remainder from a nonmarket economy supplier, the Secretary normally will value the factor using the price paid to the market economy supplier.

(2) *Valuation in a single country.* Except for labor, as provided in paragraph (d)(3) of this section, the Secretary normally will value all factors in a single surrogate country.

(3) *Labor.* For labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to

be applied in nonmarket economy proceedings each year. The calculation will be based on current data, and will be made available to the public.

(4) *Manufacturing overhead, general expenses, and profit.* For manufacturing overhead, general expenses, and profit, the Secretary normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.

§ 351.409 Differences in quantities.

(a) *Introduction.* Because the quantity of merchandise sold may affect the price, in comparing export price or constructed export price with normal value, the Secretary will make a reasonable allowance for any difference in quantities to the extent the Secretary is satisfied that the amount of any price differential (or lack thereof) is wholly or partly due to that difference in quantities. (*See* section 773(a)(6)(C)(i) of the Act.)

(b) *Sales with quantity discounts in calculating normal value.* The Secretary normally will calculate normal value based on sales with quantity discounts only if:

(1) During the period examined, or during a more representative period, the exporter or producer granted quantity discounts of at least the same magnitude on 20 percent or more of sales of the foreign like product for the relevant country; or

(2) The exporter or producer demonstrates to the Secretary's satisfaction that the discounts reflect savings specifically attributable to the production of the different quantities.

(c) *Sales with quantity discounts in calculating weighted-average normal value.* If the exporter or producer does not satisfy the conditions of paragraph (b) of this section, the Secretary will calculate normal value based on weighted-average prices that include sales at a discount.

(d) *Price lists.* In determining whether a discount has been granted, the existence or lack of a published price list reflecting such a discount will not be controlling. Ordinarily, the Secretary will give weight to a price list only if, in the line of trade and market under consideration, the exporter or producer demonstrates that it has adhered to its price list.

(e) *Relationship to level of trade adjustment.* If adjustments are claimed for both differences in quantities and differences in level of trade, the Secretary will not make an adjustment for differences in quantities unless the Secretary is satisfied that the effect on price comparability of differences in quantities has been identified and established separately from the effect on price comparability of differences in the levels of trade.

§ 351.410 Differences in circumstances of sale

(a) *Introduction.* In calculating normal value the Secretary may make adjustments to account for certain differences in the circumstances of sales in the United States and foreign markets. (*See* section 773(a)(6)(C)(iii) of the Act.) This section clarifies certain terms used in the statute regarding circumstances of sale adjustments and describes the adjustment when commissions are paid only in one market.

(b) *In general.* With the exception of the allowance described in paragraph (e) of this section concerning commissions paid in only one market, the Secretary will make circumstances of sale adjustments under section 773(a)(6)(C)(iii) of the Act only for direct selling expenses and assumed expenses.

(c) *Direct selling expenses.* ''Direct selling expenses'' are expenses, such as commissions, credit expenses, guarantees, and warranties, that result from, and bear a direct relationship to, the particular sale in question.

(d) *Assumed expenses.* Assumed expenses are selling expenses that are assumed by the seller on behalf of the buyer, such as advertising expenses.

(e) *Commissions paid in one market.* The Secretary normally will make a reasonable allowance for other selling expenses if the Secretary makes a reasonable allowance for commissions in one of the markets under considerations, and no commission is paid in the other market under consideration. The Secretary will limit the amount of such allowance to the amount of the other selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

(f) *Reasonable allowance.* In deciding what is a reasonable allowance for any difference in circumstances of sale, the Secretary normally will consider the cost of such difference to the exporter or producer but, if appropriate, may also consider the effect of such difference on the market value of the merchandise.

§ 351.411 Differences in physical characteristics.

(a) *Introduction.* In comparing United States sales with foreign market sales, the Secretary may determine that the merchandise sold in the United States does not have the same physical characteristics as the merchandise sold in the foreign market, and that the difference has an effect on prices. In calculating normal value, the Secretary will make a reasonable allowance for such differences. (*See* section 773(a)(6)(C)(ii) of the Act.)

(b) *Reasonable allowance.* In deciding what is a reasonable allowance for differences in physical characteristics, the Secretary will consider only differences in variable costs associated with the physical differences. Where appropriate, the Secretary may also consider differences in the market value. The Secretary will not consider differences in cost of production when compared merchandise has identical physical characteristics.

§ 351.412 Levels of trade; adjustment for difference in level of trade; constructed export price offset.

(a) *Introduction.* In comparing United States sales with foreign market sales, the Secretary may determine that sales in the two markets were not made at the same level of trade, and that the difference has an effect on the comparability of the prices. The Secretary is authorized to adjust normal value to account for such a difference. (*See* section 773(a)(7) of the Act.)

(b) *Adjustment for difference in level of trade.* The Secretary will adjust normal value for a difference in level of trade if:

(1) The Secretary calculates normal value at a different level of trade from the level of trade of the export price or the constructed export price (whichever is applicable); and

(2) The Secretary determines that the difference in level of trade has an effect on price comparability.

(c) *Identifying levels of trade and differences in levels of trade.* (1) *Basis for identifying levels of trade.* The Secretary will identify the level of trade based on:

(i) In the case of export price, the starting price;

(ii) In the case of constructed export price, the starting price, as adjusted under section 772(d) of the Act; and

(iii) In the case of normal value, the starting price or constructed value.

(2) *Differences in levels of trade.* The Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Some overlap in selling activities will not preclude a determination that two sales are at different stages of marketing.

(d) *Effect on price comparability.* (1) *In general.* The Secretary will determine that a difference in level of trade has an

effect on price comparability only if it is established to the satisfaction of the Secretary that there is a pattern of consistent price differences between sales in the market in which normal value is determined:

(i) At the level of trade of the export price or constructed export price (whichever is appropriate); and

(ii) At the level of trade at which normal value is determined.

(2) *Relevant sales.* Where possible, the Secretary will make the determination under paragraph (d)(1) of this section on the basis of sales of the foreign like product by the producer or exporter. Where this is not possible, the Secretary may use sales of different or broader product lines, sales by other companies, or any other reasonable basis.

(e) *Amount of adjustment.* The Secretary normally will calculate the amount of a level of trade adjustment by:

(1) Calculating the weighted-averages of the prices of sales at the two levels of trade identified in paragraph (d), after making any other adjustments to those prices appropriate under section 773(a)(6) of the Act and this subpart;

(2) Calculating the average of the percentage differences between those weighted-average prices; and

(3) Applying the percentage difference to normal value, where it is at a different level of trade from the export price or constructed export price (whichever is applicable), after making any other adjustments to normal value appropriate under section 773(a)(6) of the Act and this subpart.

(f) *Constructed export price offset.* (1) *In general.* The Secretary will grant a constructed export price offset only where:

(i) Normal value is compared to constructed export price;

(ii) Normal value is determined at a more advanced level of trade than the level of trade of the constructed export price; and

(iii) Despite the fact that a person has cooperated to the best of its ability, the data available do not provide an appropriate basis to determine under paragraph (d) of this section whether the difference in level of trade affects price comparability.

(2) *Amount of the offset.* The amount of the constructed export price offset will be the amount of indirect selling expenses included in normal value, up to the amount of indirect selling expenses deducted in determining constructed export price. In making the constructed export price offset, ''indirect selling expenses'' means selling expenses, other than direct selling expenses or assumed selling expenses (*see* § 351.410), that the seller would incur regardless of whether particular sales were made, but that reasonably may be attributed, in whole or in part, to such sales.

(3) *Where data permit determination of affect on price comparability.* Where available data permit the Secretary to determine under paragraph (d) of this section whether the difference in level of trade affects price comparability, the Secretary will not grant a constructed export price offset. In such cases, if the Secretary determines that price comparability has been affected, the Secretary will make a level of trade adjustment. If the Secretary determines that price comparability has not been affected, the Secretary will not grant either a level of trade adjustment or a constructed export price offset.

§ 351.413 Disregarding insignificant adjustments.

Ordinarily, under section 777A(a)(2) of the Act, an ''insignificant adjustment'' is any individual adjustment having an *ad valorem* effect of less than 0.33 percent, or any group of adjustments having an *ad valorem* effect of less than 1.0 percent, of the export price, constructed export price, or normal value, as the case may be. Groups of adjustments are adjustments for differences in circumstances of sale under § 351.410, adjustments for differences in the physical characteristics of the merchandise under § 351.411, and adjustments for differences in the levels of trade under § 351.412.

§ 351.414 Comparison of normal value with export price (constructed export price).

(a) *Introduction.* The Secretary normally will average prices used as the basis for normal value and, in an investigation, prices used as the basis for export price or constructed export price as well. This section explains when and how the Secretary will average prices in making comparisons of export price or constructed export price with normal value. (*See* section 777A(d) of the Act.)

(b) *Description of methods of comparison.* (1) *Average-to-average method.* The ''average-to-average'' method involves a comparison of the weighted average of the normal values with the weighted average of the export prices (and constructed export prices) for comparable merchandise.

(2) *Transaction-to-transaction method.* The ''transaction-to-transaction'' method involves a comparison of the normal values of individual transactions with the export prices (or constructed export prices) of individual transactions for comparable merchandise.

(3) *Average-to-transaction method.* The ''average-to-transaction'' method involves a comparison of the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise.

(c) *Preferences.* (1) In an investigation, the Secretary normally will use the average-to-average method. The Secretary will use the transaction-to-transaction method only in unusual situations, such as when there are very few sales of subject merchandise and the merchandise sold in each market is identical or very similar or is custom-made.

(2) In a review, the Secretary normally will use the average-to-transaction method.

(d) *Application of the average-to-average method.* (1) *In general.* In applying the average-to-average method, the Secretary will identify those sales of the subject merchandise to the United States that are comparable, and will include such sales in an ''averaging group.'' The Secretary will calculate a weighted average of the export prices and the constructed export prices of the sales included in the averaging group, and will compare this weighted average to the weighted average of the normal values of such sales.

(2) *Identification of the averaging group.* An averaging group will consist of subject merchandise that is identical or virtually identical in all physical characteristics and that is sold to the United States at the same level of trade. In identifying sales to be included in an averaging group, the Secretary also will take into account, where appropriate, the region of the United States in which the merchandise is sold, and such other factors as the Secretary considers relevant.

(3) *Time period over which weighted average is calculated.* When applying the average-to-average method, the Secretary normally will calculate weighted averages for the entire period of investigation or review, as the case may be. However, when normal values, export prices, or constructed export prices differ significantly over the course of the period of investigation or review, the Secretary may calculate weighted averages for such shorter period as the Secretary deems appropriate.

(e) *Application of the average-to-transaction method.* (1) *In general.* In applying the average-to-transaction method in a review, when normal value is based on the weighted average of sales of the foreign like product, the

Secretary will limit the averaging of such prices to sales incurred during the contemporaneous month.

(2) *Contemporaneous month.* Normally, the Secretary will select as the contemporaneous month the first of the following which applies:

(i) The month during which the particular U.S. sale under consideration was made;

(ii) If there are no sales of the foreign like product during this month, the most recent of the three months prior to the month of the U.S. sale in which there was a sale of the foreign like product.

(iii) If there are no sales of the foreign like product during any of these months, the earlier of the two months following the month of the U.S. sale in which there was a sale of the foreign like product.

(f) *Targeted dumping.* (1) *In general.* Notwithstanding paragraph (c)(1) of this section, the Secretary may apply the average-to-transaction method, as described in paragraph (e) of this section, in an antidumping investigation if:

(i) As determined through the use of, among other things, standard and appropriate statistical techniques, there is targeted dumping in the form of a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time; and

(ii) The Secretary determines that such differences cannot be taken into account using the average-to-average method or the transaction-to-transaction method and explains the basis for that determination.

(2) *Limitation of average-to-transaction method to targeted dumping.* Where the criteria for identifying targeted dumping under paragraph (f)(1) of this section are satisfied, the Secretary normally will limit the application of the average-to-transaction method to those sales that constitute targeted dumping under paragraph (f)(1)(i) of this section.

(3) *Allegations concerning targeted dumping.* The Secretary normally will examine only targeted dumping described in an allegation, filed within the time indicated in § 351.301(d)(5). Allegations must include all supporting factual information, and an explanation as to why the average-to-average or transaction-to-transaction method could not take into account any alleged price differences.

(g) *Requests for information.* In an investigation, the Secretary will request information relevant to the identification of averaging groups under paragraph (d)(2) of this section and to the analysis of possible targeted dumping under paragraph (f) of this section. If a response to a request for such information is such as to warrant the application of the facts otherwise available, within the meaning of section 776 of the Act and § 351.308, the Secretary may apply the average-to-transaction method to all the sales of the producer or exporter concerned.

§ 351.415 Conversion of currency.

(a) *In general.* In an antidumping proceeding, the Secretary will convert foreign currencies into United States dollars using the rate of exchange on the date of sale of the subject merchandise.

(b) *Exception.* If the Secretary establishes that a currency transaction on forward markets is directly linked to an export sale under consideration, the Secretary will use the exchange rate specified with respect to such foreign currency in the forward sale agreement to convert the foreign currency.

(c) *Exchange rate fluctuations.* The Secretary will ignore fluctuations in exchange rates.

(d) *Sustained movement in foreign currency value.* In an antidumping investigation, if there is a sustained movement increasing the value of the foreign currency relative to the United States dollar, the Secretary will allow exporters 60 days to adjust their prices to reflect such sustained movement.

Subpart E—[Reserved]

Subpart F—Subsidy Determinations Regarding Cheese Subject to an In-Quota Rate of Duty

§ 351.601 Annual list and quarterly update of subsidies.

The Secretary will make the determinations called for by section 702(a) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 1202 note) based on the available information, and will publish the annual list and quarterly updates described in such section in the **Federal Register**.

§ 351.602 Determination upon request.

(a) *Request for determination.* (1) Any person, including the Secretary of Agriculture, who has reason to believe there have been changes in or additions to the latest annual list published under § 351.601 may request in writing that the Secretary determine under section 702(a)(3) of the Trade Agreements Act of 1979 whether there are any changes or additions. The person must file the request with the Central Records Unit (*see* § 351.103). The request must allege either a change in the type or amount of any subsidy included in the latest annual list or quarterly update or an additional subsidy not included in that list or update provided by a foreign government, and must contain the following, to the extent reasonably available to the requesting person:

(i) The name and address of the person;

(ii) The article of cheese subject to an in-quota rate of duty allegedly benefitting from the changed or additional subsidy;

(iii) The country of origin of the article of cheese subject to an in-quota rate of duty; and

(iv) The alleged subsidy or changed subsidy and relevant factual information (particularly documentary evidence) regarding the alleged changed or additional subsidy including the authority under which it is provided, the manner in which it is paid, and the value of the subsidy to producers or exporters of the article.

(2) The requirements of § 351.303 (c) and (d) apply to this section.

(b) *Determination.* Not later than 30 days after receiving an acceptable request, the Secretary will:

(1) In consultation with the Secretary of Agriculture, determine based on the available information whether there has been any change in the type or amount of any subsidy included in the latest annual list or quarterly update or an additional subsidy not included in that list or update is being provided by a foreign government;

(2) Notify the Secretary of Agriculture and the person making the request of the determination; and

(3) Promptly publish in the **Federal Register** notice of any changes or additions.

§ 351.603 Complaint of price-undercutting by subsidized imports.

Upon receipt of a complaint filed with the Secretary of Agriculture under section 702(b) of the Trade Agreements Act concerning price-undercutting by subsidized imports, the Secretary will promptly determine, under section 702(a)(3) of the Trade Agreements Act of 1979, whether or not the alleged subsidies are included in or should be added to the latest annual list or quarterly update.

§ 351.604 Access to information.

Subpart C of this part applies to factual information submitted in connection with this subpart.

Subpart G—Applicability Dates

§ 351.701 Applicability dates.

The regulations contained in this part 351 apply to all administrative reviews initiated on the basis of requests made

on or after the first day of July, 1997, to all investigations and other segments of proceedings initiated on the basis of petitions filed or requests made after June 18, 1997 and to segments of proceedings self-initiated by the Department after June 18, 1997. Segments of proceedings to which part 351 do not apply will continue to be governed by the regulations in effect on the date the petitions were filed or requests were made for those segments, to the extent that those regulations were not invalidated by the URAA or replaced by the interim final regulations published on May 11, 1995 (60 FR 25130 (1995)). For segments of proceedings initiated on the basis of petitions filed or requests made after January 1, 1995, but before part 351 applies, part 351 will serve as a restatement of the Department's interpretation of the requirements of the Act as amended by the URAA.

ANNEX I.—DEADLINES FOR PARTIES IN COUNTERVAILING INVESTIGATIONS

Day [1]	Event	Regulation
0 days	Initiation	
31 days [2]	Notification of difficulty in responding to questionnaire.	351.301(c)(2)(iv) (14 days after date of receipt of initial questionnaire).
37 days	Application for an administrative protective order.	351.305(b)(3).
40 days	Request for postponement by petitioner	351.205(e) (25 days or more before preliminary determination).
45 days	Allegation of critical circumstances	351.206(c)(2)(i) (20 days before preliminary determination).
47 days	Questionnaire response	351.301(c)(2)(iii) (30 days from date of receipt of initial questionnaire).
55 days	Allegation of upstream subsidies	351.301(d)(4)(ii)(A) (10 days before preliminary determination).
65 days (Can be extended)	Preliminary determination	351.205(b)(1).
72 days	Submission of proposed suspension agreement.	351.208(f)(1)(B) (7 days after preliminary determination).
75 days [3]	Submission of factual information	351.301(b)(1) (7 days before date on which verification is to commence).
75 days	Submission of ministerial error comments	351.224(c)(2) (5 days after release of disclosure documents).
77 days [4]	Request to align a CVD case with a concurrent AD case.	351.210(i) (5 days after date of publication of preliminary determination).
102 days	Request for a hearing	351.310(c) (30 days after date of publication of preliminary determination).
119 days	Critical circumstances allegation	351.206(e) (21 days or more before final determination).
122 days	Requests for closed hearing sessions	351.310(f) (No later than the date the case briefs are due).
122 days	Submission of briefs	351.309(c)(1)(i) (50 days after date of publication of preliminary determination).
125 days	Allegation of upstream subsidies	351.301(d)(4)(ii)(B) (15 days before final determination).
127 days	Submission of rebuttal briefs	351.309(d) (5 days after dead-line for filing case brief).
129 days	Hearing	351.310(d)(1) (2 days after submission of rebuttal briefs).
140 days (Can be extended)	Final determination	351.210(b)(1) (75 days after preliminary determination).
150 days	Submission of ministerial error comments	351.224(c)(2) (5 days after release of disclosure documents).
155 days	Submission of replies to ministerial error comments.	351.224(c)(3) (5 days after filing of comments).
192 days	Order issued	351.211(b).

[1] Indicates the number of days from the date of initiation. Most of the deadlines shown here are approximate. The actual deadline in any particular segment of a proceeding may depend on the date of an earlier event or be established by the Secretary.
[2] Assumes that the Department sends out the questionnaire within 10 days of the initiation and allows 7 days for receipt of the questionnaire from the date on which it was transmitted.
[3] Assumes about 17 days between the preliminary determination and verification.
[4] Assumes that the preliminary determination is published 7 days after issuance (*i.e.,* signature).

ANNEX II.—DEADLINES FOR PARTIES IN COUNTERVAILING ADMINISTRATIVE REVIEWS

Day [1]	Event	Regulation
0 days	Request for review	351.213(b) (Last day of the anniversary month).
30 days	Publication of initiation notice	351.221(c)(1)(i) (End of month following the anniversary month).
66 days [2]	Notification of difficulty in responding to questionnaire.	351.301(c)(2)(iv) (14 days after date of receipt of initial questionnaire).
75 days	Application for an administrative protective order.	351.305(b)(3).

ANNEX II.—DEADLINES FOR PARTIES IN COUNTERVAILING ADMINISTRATIVE REVIEWS—Continued

Day [1]	Event	Regulation
90 days [3]	Questionnaire response	351.301(c)(2)(iii) (At least 30 days after date of receipt of initial questionnaire).
120 days	Withdrawal of request for review	351.213(d)(1) (90 days after date of publication of initiation).
130 days	Request for verification	351.307(b)(1)(v) (100 days after date of publication of initiation).
140 days	Submission of factual information	351.301(b)(2).
245 days (Can be extended)	Preliminary results of review	351.213(h)(1).
282 days [4]	Request for a hearing and/or closed hearing session.	351.310(c); 351.310(f) (30 days after date of publication of preliminary results).
282 days	Submission of briefs	351.309(c)(1)(ii) (30 days after date of publication of preliminary results).
287 days	Submission of rebuttal briefs	351.309(d)(1) (5 days after deadline for filing case briefs).
289 days	Hearing	351.310(d)(1) (2 days after submission of rebuttal briefs).
372 days (Can be extended)	Final results of review	351.213(h)(1) (120 days after date of publication of preliminary results).
382 days	Submission of ministerial error comments	351.224(c)(2) (5 days after release of disclosure documents).
387 days	Replies to ministerial error comments	351.224(c)(3) (5 days after filing of comments).

[1] Indicates the number of days from the end of the anniversary month. Most of the deadlines shown here are approximate. The actual deadline in any particular segment of a proceeding may depend on the date of an earlier event or be established by the Secretary.
[2] Assumes that the Department sends out the questionnaire 45 days after the last day of the anniversary month and allows 7 days for receipt of the questionnaire from the date on which it was transmitted.
[3] Assumes that the Department sends out the questionnaire on day 45 and the response is due 45 days later.
[4] Assumes that the preliminary results are published 7 days after issuance (*i.e.*, signature).

ANNEX III.—DEADLINES FOR PARTIES IN ANTIDUMPING INVESTIGATIONS

Day [1]	Event	Regulation
0 days	Initiation	
37 days	Application for an administrative protective order.	351.305(b)(3).
50 days	Country-wide cost allegation	351.301(d)(2)(i)(A) (20 days after date on which initial questionnaire was transmitted).
51 days [2]	Notification of difficulty in responding to questionnaire.	351.301(c)(2)(iv) (Within 14 days after date of receipt of initial questionnaire).
51 days	Section A response	None.
67 days	Sections B, C, D, E responses	351.301(c)(2)(iii) (At least 30 days after date of receipt of initial questionnaire).
70 days	Viability arguments	351.301(d)(1) (40 days after date on which initial questionnaire was transmitted).
87 days	Company-specific cost allegations	351.301(d)(2)(i)(B).
87 days	Major input cost allegations	351.301(d)(3).
115 days	Request for postponement by petitioner	351.205(e) (25 days or more before preliminary determination).
120 days	Allegation of critical circumstances	351.206(c)(2)(i) (20 days before preliminary determination).
140 days (Can be extended)	Preliminary determination	351.205(b)(1).
150 days	Submission of ministerial error comments	351.224(c)(2) (5 days after release of disclosure documents).
155 days	Submission of proposed suspension agreement.	351.208(f)(1)(A) (15 days after preliminary determination).
161 days [3]	Submission of factual information	351.301(b)(1) (7 days before date on which verification is to commence).
177 days [4]	Request for a hearing	351.310(c) (30 days after date of publication of preliminary determination).
187 days	Submission of publicly available information to value factors (NME's).	351.301(c)(3)(i) (40 days after date of publication of preliminary determination).
194 days	Critical circumstance allegation	351.206(e) (21 days before final determination).
197 days (Can be changed)	Request for closed hearing sessions	351.310(f) (No later than the date the case briefs are due).
197 days (Can be changed)	Submission of briefs	351.309(c)(1)(i) (50 days after date of publication of preliminary determination).
202 days	Submission of rebuttal briefs	351.309(d) (5 days after dealine for filing case briefs).
204 days	Hearing	351.310(d)(1) (2 days after submission of rebuttal briefs).

ANNEX III.—DEADLINES FOR PARTIES IN ANTIDUMPING INVESTIGATIONS—Continued

Day [1]	Event	Regulation
215 days	Request for postponement of the final determination.	351.210(e).
215 days (Can be extended)	Final determination	351.210(b)(1) (75 days after preliminary determination).
225 days	Submission ministerial error comments	351.224(c)(2) (5 days after release of disclosure documents).
230 days	Replies to ministerial error comments	351.224(c)(3) (5 days after filing of comments).
267 days	Order issued	351.211(b).

[1] Indicates the number of days from the date of initiation. Most of the deadlines shown here are approximate. The actual deadline in any particular segment of a proceeding may depend on the date of an earlier event or be established by the Secretary.
[2] Assumes that the Department sends out the questionnaire 5 days after the ITC vote and allows 7 days for receipt of the questionnaire from the date on which it was transmitted.
[3] Assumes about 28 days between the preliminary determination and verification.
[4] Assumes that the preliminary determination is published 7 days after issuance (*i.e.,* signature).

ANNEX IV.—DEADLINES FOR PARTIES IN ANTIDUMPING ADMINISTRATIVE REVIEWS

Day[1]	Event	Regulation
0 days	Request for review	351.213(b) (Last day of the anniversary month).
30 days	Publication of initiation	351.221 (c)(1)(i) (End of month following the anniversary month).
37 days	Application for an administrative protective order.	351.305(b)(3).
60 days	Request to examine absorption of duties (AD)	351.213(j) (30 days after date of publication of initiation).
66 days[2]	Notification of difficulty in responding to questionnaire.	351.301(c)(2)(iv) (14 days after date of receipt of initial questionnaire).
66 days	Section A response	None.
85 days	Viability arguments	351.301(d)(1) (40 days after date of transmittal of initial questionnaire).
90 days[3]	Sections B, C, D, E response	351.301(c)(2)(iii) (At least 30 days after date of receipt of initial questionnaire).
110 days	Company-specific cost allegations	351.301(d)(2)(i)(B) (20 days after relevant section is filed).
110 days	Major input cost allegations	351.301(d)(3) (20 days after relevant section is filed).
120 days	Withdrawal of request for review	351.213(d)(1) (90 days after date of publication of initiation)
130 days	Request for verification	351.307(b)(1)(v) (100 days after date of publication of initiation).
140 days	Submission of factual information	351.301(b)(2).
245 days (Can be extended)	Preliminary results of review	351.213(h)(1).
272 days[4]	Submission of publicly available information to value factors (NME's).	351.301(c)(3)(ii) (20 days after date of publication of preliminary results).
282 days	Request for a hearing and/or closed hearing session.	351.310(c); 351.310(f) (30 days after date of publication of preliminary results).
282 days	Submission of briefs	351.309(c)(1)(ii) (30 days after date of publication of preliminary results).
287 days	Submission of rebuttal briefs	351.309(d)(1) (5 days after deadline for filing case briefs).
289 days	Hearing; closed hearing session	351.310(d)(1) (2 days after submission of rebuttal briefs).
372 days (Can be extended)	Final results of review	351.213(h)(1) (120 days after date of publication of preliminary results).
382 days	Ministerial error comments	351.224(c)(2) (5 days after release of disclosure documents).
387 days	Replies to ministerial error comments	351.224(c)(3) (5 days after filing of comments).

[1] Indicates the number of days from the end of the anniversary month. Most of the deadlines shown here are approximate. The actual deadline in any particular segment of a proceeding may depend on the date of an earlier event or be established by the Secretary.
[2] Assumes that the Department sends out the questionnaire 45 days after the last day of the anniversary month and allows 7 days for receipt of the questionnaire from the date on which it was transmitted.
[3] Assumes that the Department sends out the questionnaire on day 45 and the response is due 45 days later.
[4] Assumes that the preliminary results are published 7 days after issuance (*i.e.,* signature).

ANNEX V.—COMPARISON OF PRIOR AND NEW REGULATIONS

Prior	New	Description
	PART 353—ANTIDUMPING DUTIES	
	Subpart A—Scope and Definitions	
353.1	351.101	Scope of regulations.
353.2	351.102	Definitions.
353.3	351.104	Record of proceedings.
353.4	351.105	Public, proprietary, privileged & classified.
353.5	Removed	Trade and Tariff Act of 1984 amendments.
353.6	351.106	*De minimis* weighted-average dumping margin.
	Subpart B—Antidumping Duty Procedures	
353.11	351.201	Self-initiation.
353.12	351.202	Petition requirements.
353.13	351.203	Determination of sufficiency of petition.
353.14	351.204(e)	Exclusion from antidumping duty order.
353.15	351.205	Preliminary determination.
353.16	351.206	Critical circumstances.
353.17	351.207	Termination of investigation.
353.18	351.208	Suspension of investigation.
353.19	351.209	Violation of suspension agreement.
353.20	351.210	Final determination.
353.21	351.211	Antidumping duty order.
353.21(c)	351.204(e)	Exclusion from antidumping duty order.
1353.22 (a)–(d)	351.213, 351.221	Administrative reviews under 751(a) of the Act.
353.22(e)	351.212(c)	Automatic assessment of duties.
353.22(f)	351.216, 351.221(c)(3)	Changed circumstances reviews.
353.22(g)	351.215, 351.221(c)(2)	Expedited antidumping review.
353.23	351.212(d)	Provisional measures deposit cap.
353.24	351.212(e)	Interest on overpayments and under-payments.
353.25	351.222	Revocation of orders; termination of suspended investigations.
353.26	351.402(f)	Reimbursement of duties.
353.27	351.223	Downstream product monitoring.
353.28	351.224	Correction of ministerial errors.
353.29	351.225	Scope rulings.
	Subpart C—Information and Argument	
353.31 (a)–(c)	351.301	Time Limits for submission of factual information.
353.31(a)(3)	351.301(d), 351.104(a)(2)	Return of untimely material.
353.31(b)(3)	351.302(c)	Request for extension of time.
353.31 (d)–(i)	351.303	Filing, format, translation, service and certification.
353.32	351.304	Request for proprietary treatment of information.
353.33	351.104, 351.304(a)(2)	Information exempt from disclosure.
353.34	351.305, 351.306	Disclosure of information under protective order.
353.35	Removed	*Ex parte* meeting.
353.36	351.307	Verification.
353.37	351.308	Determination on the basis of the facts available.
353.38 (a)–(e)	351.309	Written argument.
353.38(f)	351.310	Hearings.
	Subpart D—Calculation of Export Price, Constructed Export Price, Fair Value and Normal Value	
353.41	351.402	Calculation of export price.
353.42(a)	351.102	Fair value (definition).
353.42(b)	351.104(c)	Transaction and persons examined.
353.43	351.403(b)	Sales used in calculating normal value.
353.44	Removed	Sales at varying prices.
353.45	351.403	Transactions between affiliated parties.
353.46	351.404	Selection of home market as the basis for normal value.
353.47	Removed	Intermediate countries.
353.48	351.404	Basis for normal value if home market sales are inadequate.
353.49	351.404	Sales to a third country.
353.50	351.405, 351.407	Calculation of normal value based on constructed value.
353.51	351.406, 351.407	Sales at less than the cost of production.
353.52	351.408	Nonmarket economy countries.
353.53	Removed	Multinational corporations.

ANNEX V.—COMPARISON OF PRIOR AND NEW REGULATIONS—Continued

Prior	New	Description
353.54	351.401(b)	Claims for adjustments.
353.55	351.409	Differences in quantities.
353.56	351.410	Differences in circumstances of sale.
353.57	351.411	Differences in physical characteristics.
353.58	351.412	Levels of trade.
353.59(a)	351.413	Insignificant adjustments.
353.59(b)	351.414	Use of averaging.
353.60	351.415	Conversion of currency.
PART 355—COUNTERVAILING DUTIES		
Subpart A—Scope and Definitions		
355.1	351.001	Scope of regulations.
355.2	351.002	Definitions.
355.3	351.004	Record of proceeding.
355.4	351.005	Public, proprietary, privileged & classified.
355.5	351.003(a)	Subsidy library.
355.6	Removed	Trade and Tariff Act of 1984 amendments.
355.7	351.006	*De minimis* net subsidies.
Subpart B—Countervailing Duty Procedures		
355.11	351.101	Delf-initiation.
355.12	351.102	Petition requirements.
355.13	351.103	Determination of sufficiency of petition.
355.14	351.104(e)	Exclusion from countervailing duty order.
355.15	351.105	Preliminary determination.
355.16	351.106	Critical circumstances.
355.17	351.107	Termination of investigation.
355.18	351.108	Suspension of investigation.
355.19	351.109	Violation of agreement.
355.20	351.110	Final determination.
355.21	351.111	Countervailing duty order.
355.21(c)	351.104(e)	Exclusion from countervailing duty order.
355.22 (a)–(c)	351.113, 351.121	Administrative reviews under 751(a) of the Act.
355.22(d)	Removed	Calculation of individual rates.
355.22(e)	351.113(h)	Possible cancellation or revision of suspension agreements.
355.22(f)	Removed	Review of individual producer or exporter.
355.22(g)	351.112(c)	Automatic assessment of duties
355.22(h)	351.116, 351.121(c)(3)	Changed circumstances review
355.22(i)	351.120, 351.221(c)(7)	Review at the direction of the President.
355.23	351.112(d)	Provisional measures deposit cap
355.24	351.112(e)	Interest on overpayments and underpayments.
355.25	351.112	Revocation of orders; termination of suspended investigations.
355.27	351.123	Downstream product monitoring.
355.28	351.124	Correction of ministerial errors.
355.29	351.125	Scope determinations.
Subpart C—Information and Argument		
355.31 (a)–(c)	351.301	Time limits for submission of factual information.
355.31(a)(3)	351.302(d), 351.104(a)(2)	Return of untimely material.
355.31(b)(3)	351.302(c)	Request for extension of time.
355.31 (d)–(i)	351.303	Filing, format, translation, service and certification.
355.32	351.304	Request for proprietary treatment of information.
355.33	351.104, 351.304(a)(2)	Information exempt from disclosure.
355.34	351.305, 351.306	Disclosure of information under protective order.
355.35	Removed	*Ex parte* meeting.
355.36	351.307	Verification.
355.37	351.308	Determinations on the basis of the facts available.
355.38 (a)–(e)	351.309	Written argument.
355.38(f)	351.310	Hearings.
355.39	351.311	Subsidy practice discovered during investigation or review.
Subpart D—Quota Cheese Subsidy Determinations		
355.41	Removed	Definition of subsidy.

ANNEX V.—COMPARISON OF PRIOR AND NEW REGULATIONS—Continued

Prior	New	Description
355.42	351.601	Annual list and quarterly update.
355.43	351.602	Determination upon request.
355.44	351.603	Complaint of price-undercutting.
355.45	351.604	Access to information.

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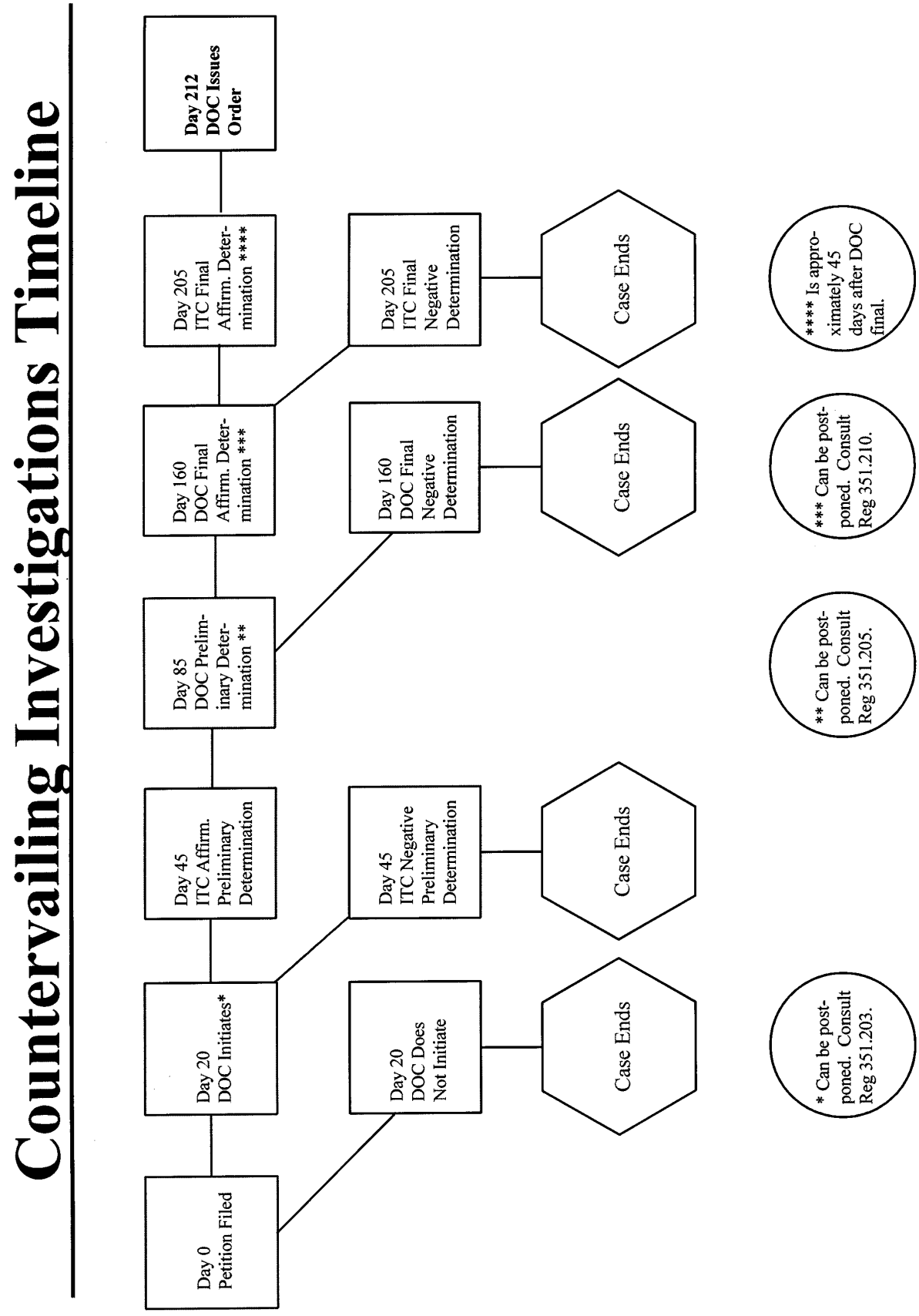
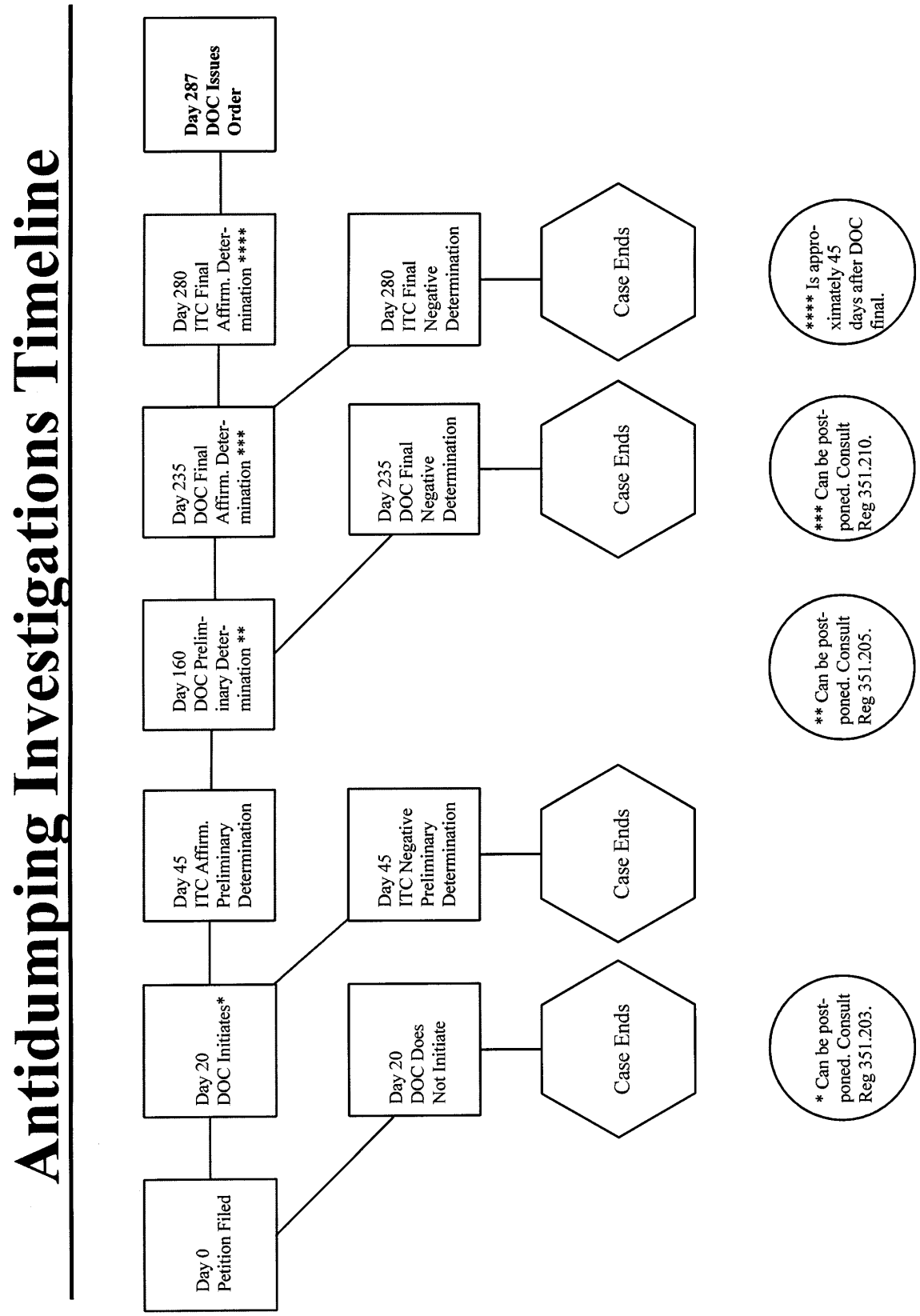
Annex VI—Countervailing Investigations Timeline



Annex VII—Antidumping Investigations Timeline



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Part III

Department of Health and Human Services

Administration for Children and Families

Fiscal Year 1997 Discretionary Announcement for Head Start-University Research Projects, Head Start Research Scholars and Head Start Partnerships With Historically Black Colleges and Universities; Availability of Funds and Request for Applications; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACF/ACYF/HS–URP&RS 97–7]

Fiscal Year 1997 Discretionary Announcement for Head Start-University Research Projects, Head Start Research Scholars and Head Start Partnerships with Historically Black Colleges and Universities; Availability of Funds and Request for Applications

AGENCY: Administration on Children, Youth and Families, ACF, DHHS.

ACTION: Announcement of the availability of funds and request for applications for four priority areas related to Head Start.

SUMMARY: The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF) announces the availability of funds to support research activities in three research areas, two Head Start-University Partnerships (Translating Research into Practice and Mental Health Within Head Start) and Head Start Research Scholars, and one training area, Head Start Partnerships with Historically Black Colleges and Universities.

DATES: The closing time and date for receipt of applications is 5:00 p.m. (Eastern Time Zone) July 18, 1997. Applications received after 5:00 p.m. will be classified as late.

ADDRESSES: Mail applications to: Operations Center, 3030 Clarendon Blvd., Suite 240, Arlington, Va. 22201. Application for Head Start Discretionary Research: (Head Start-University Partnerships [Priority Area 1.01 or 1.02], Head Start Research Scholars, and Applications for Head Start Partnerships with Historically Black Colleges and Universities.)

Hand delivered, courier or overnight delivery applications are accepted during the normal working hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, on or prior to the established closing date at: ACFY Operations Center, 3030 Clarendon Blvd., Suite 240, Arlington, Va. 22201. Application for Head Start Discretionary Research: (Head Start-University Partnerships or Head Start Research Scholars and Applications for Head Start Partnerships with Historically Black Colleges and Universities. (HBCUs))

FOR FURTHER INFORMATION CONTACT: The ACYF Operations Center, Technical Assistance Team (1–800–351–2293), is available to answer questions regarding application requirements and to refer you to the appropriate contact person in ACYF for programmatic questions.

In order to determine the number of expert reviewers that will be necessary, if you are going to submit an application, *you must send a post card or call with the following information: the name, address, telephone and fax number, and e-mail address of the principal investigator and the name of the university at least four weeks prior to the submission deadline date to:* Administration on Children, Youth and Families, Operations Center, 3030 Clarendon Blvd., Suite 240, Arlington, VA 22201, (1–800–351–2293).

Part I. General Information, Purpose and Background

A. General Information

This announcement is divided into four parts, plus appendices:

Part I provides information on the purpose of the discretionary research effort and a discussion of issues particularly relevant to the research under this announcement.

Part II contains key information on the statutory authority and each of the four priority areas such as eligible applicants, project periods, special conditions and other information. Each priority area description is composed of the following sections:

- *Eligible Applicants*—This section specifies the type of organization which is eligible to apply under the particular priority area.
- *Purpose*—This section presents the basic focus and/or broad goal(s) of the priority area.
- *Background and Information*—This section briefly discusses the legislative background and/or the social context that supports the need for this particular priority area.
- *Program Narrative*—This section describes any necessary explanations of or deletions to the instructions given in the narrative section of Appendix A to make it appropriate for research applications or training applications for Historically Black Colleges and Universities.
- *Special Conditions*—This section lists any special conditions with which the applicant must comply in order for the application to be considered for review.
- *Project Duration*—This section specifies the maximum allowable length of time for the project period; it refers to the amount of time for which Federal funding is available
- *Federal Share of Project Costs*—This section specifies the maximum amount of Federal support for the project.
- *Matching Requirement*—This section specifies the minimum non-Federal contribution, either through cash or in-kind match.
- *Anticipated Number of Projects to be Funded*—This section specifies the number of projects that ACYF anticipates it will fund in the priority area.
- *CFDA*—This section identifies the Catalog of Federal Domestic Assistance (CFDA) number and title of the program under which applications in this priority area will be funded.

Part III presents the criteria upon which the proposals will be reviewed and evaluated.

Part IV contains information for preparing the fiscal year 1997 application.

Appendix A includes the relevant forms, certifications, disclosures and assurances necessary for completing and submitting the application.

Appendix B lists the Single Points of Contact for Each State and Territory.

Appendix C lists the Early Head Start programs that do not have Early Head Start Local Research cooperative agreements.

B. Purpose

The purpose of this announcement is to (1) support research conducted by universities on behalf of faculty or doctoral-level graduate students who form partnerships with Head Start or Early Head Start programs in their communities for the purposes of contributing new knowledge or testing research applications which will improve services for low income young children and their families or (2) to utilize the capabilities of HBCUs to improve the quality and long term effectiveness of Head Start and Early Head Start by developing models of academic training and forming partnerships between HBCUs and Head Start (including Early Head Start) grantees and delegate agencies. Priority Areas 1.01 and 1.02 Head Start-University Partnerships provide support to Universities on behalf of faculty members in universities. Priority Area 1.03 Head Start Research Scholars provides support to universities on behalf of doctoral-level graduate students. Priority Area 1.04 provides support to Historically Black Colleges and Universities on behalf of faculty.

C. Background

Part of Head Start's mission is to serve as a national laboratory for exploring new ideas, testing and demonstrating state-of-the-art techniques, and

disseminating research findings for the purpose of improving services for low-income children and their families. In order to accomplish that mission, Head Start supports and encourages partnerships between Head Start programs (including Early Head Start) and universities. These partnerships present new opportunities to learn from each other, to test practical applications of theoretical concepts and translate research into practice.

Past competitions for either Head Start-University Partnerships or Head Start Research Scholars grants have been limited to Head Start programs that serve mostly three and four-year old children. However, in fiscal year 1995 Head Start initiated a new program, Early Head Start, which serves children and their families from the prenatal period to age three. Therefore, in fiscal year 1996, the Head Start-University Partnerships and Head Start Research Scholars announcement contained new opportunities to conduct research with this younger age group. Presently, there are 143 Early Head Start programs. Of these, 16 are participating in both the national research study and local research studies. These 16 sites are not eligible for partnerships under priority areas 1.01 and 1.02 in this announcement. However, partnerships may be formed with the other 127 Early Head Start sites that are presently funded by Head Start (See Appendix C) or any Head Start program that serves preschool children. For the purposes of this announcement, any further reference to Head Start is meant to include both Head Start and Early Head Start. Major issues for Head Start include improving the quality of all Head Start services, in particular for the purposes of this announcement, children's mental health, gathering recent information on the long-term effects of Head Start and exploring methods for enhancing the cognitive, language and social development of infants and toddlers. Improvement in quality includes the application of-state-of-the-art techniques that have evolved from advanced theoretical concepts and new research findings. It also involves the conduct of new research to ensure that Head Start services remain at the cutting edge. For HBCUs, improvement in quality is directed at testing state-of-the-art training models.

Longitudinal research involves forming partnerships with Head Start programs to identify Head Start graduates and track their progress into elementary school. With new opportunities for research with younger populations, and ACYF's interest in longitudinal research on Head Start graduates and testing or demonstrating state-of-the-art techniques in all Head Start services, Head Start's FY 1997 research priorities present a number of interesting research challenges.

Part II. Priority Areas

Statutory Authority

The Head Start Act, as amended, 42 U.S.C. 9801 *et seq.*

1.01 Head Start-University Partnerships—Translating Research Into Practice

Eligible Applicants: Universities and four-year colleges.

Purpose: (1) To improve the quality of Head Start/Early Head Start practices, particularly with regard to children's cognitive, language or social-emotional development; or (2) to conduct longitudinal research on Head Start graduates' status after entry into school.

Background Information: In addition to Head Start's primary role as a national program of comprehensive services for young low-income children and their families, it also serves as a national laboratory, which develops, demonstrates, and tests best practices based on scientifically sound research and encourages and supports both new research and the development of new methods for conducting research. Because of its recognition as a national, federally-sponsored program, and the access it provides to a multi-cultural, low-income population, Head Start has been a major source of research. This research, which has been conducted both with Federal support and other resources, constitutes a significant portion of the child development research literature that includes low-income and multi-cultural populations.

In the main, the ever-increasing body of child development research literature contains studies that fall into the domains of basic research and evaluation. Although these studies have made a significant contribution to our scientific, policy and general program knowledge, very little has reached service providers in terms of implementable applications within the context of their programs. Therefore, with the increase in our knowledge base, there is a concomitant increase in the gap between research and its translation into practice. Within this priority area, ACYF is interested in funding projects that translate theory-driven research into programmatic applications in partnership with the staff and families of Head Start programs. In addition to the translation of research into practice, these partnerships are intended to demonstrate new ways of conducting research where the researchers, the program staff and program families work as a cooperative research team. Projects under this priority area will test theory-driven approaches intended to enhance children's cognitive, language and/or social-emotional development. These approaches may include those that focus on the child or focus on the primary caregiver(s) and the child as a dyad. The chosen approach should reflect theory and previous research and be documented through a review of the literature. In addition, the approach may be developed for appropriate use with either infants and toddlers or preschool children.

A second area of major concern is longitudinal data on Head Start graduates. Although Head Start is over thirty years old, little research has been accumulated on Head Start graduates' experiences and status after they enter school. Although the Head Start population of today is very different from the population thirty years ago, the data that exist on Head Start children's status as they enter school and their subsequent experiences are primarily based on the earlier population. What are the effects of Head Start children's status at kindergarten entry on their later school performance? How is Head Start children's performance in school influenced by the socio-economic environment of the school and the classroom? What variables within the child, family, Head Start program and community mediate success in school? These and other longitudinal questions are important areas for research.

Narrative: Please see the Program Narrative section in Appendix A to prepare this section of the application. Explanations of and exceptions to the narrative for the purposes of preparing a research proposal are listed below.

- *Objectives and Need for Assistance*—The justification for a research proposal is based upon a review of the literature and either the need for new research or for the application of basic research in an applied setting. Do not include letters of support or testimonials other than those required below under special conditions.
- *Results or Benefits Expected*—For research applications, it is the contribution to the field the research will make or the improvement in the quality of services for children and families.
- *Approach*—For research applications, this is the methodology section including design, sample size and description, identification of

measures, data collection schedules and types of analyses to be performed.

- *Evaluation*—This section is not needed for research applications.
- *Geographical Location*—Not needed.
- *Additional Information*—Use the sections on Staff and Position Data and Dissemination Plan only. Biographical sketches are needed for only the principal investigator or co-principal investigators and other key staff.

Special Conditions:

- The applicant must enter into a partnership with a Head Start or Early Head Start program for the purposes of conducting the research.
- The application must contain a letter from the Head Start or Early Head Start program certifying that they have entered into a partnership with the applicant and the application has been reviewed and approved by the Policy Council.
- The applicant must agree to attend two meetings of the research grantees each year including Head Start's Fourth National Research Conference in July of 1998 and June of 2000. The budget should reflect travel funds for such purposes.
- The applicant must apply the University's off-campus research rates for indirect costs.

Project Duration: The announcement for priority area 1.01 is soliciting applications for project periods up to three years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Federal Share of Project Costs: The maximum Federal share is approximately $150,000 for the first 12-month budget period or approximately $450,000 for a 3-year project period. The Federal share is *inclusive* of indirect costs.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that 4–6 projects will be funded.

CFDA: 93.600 Head Start: Head Start Act, as amended.

1.02 Head Start-University Partnerships— Mental Health Within Head Start

Eligible Applicants: Universities and four-year colleges.

Purpose: The purpose of this priority area is to invite applicants to submit proposals for competitive cooperative agreements to develop and/or test applications of theory-based research or state-of-the-art techniques for the prevention, identification and/or treatment of young children's mental health disorders. The goal is to create a consortium of researchers focused on improving the provision of mental health services within Head Start programs.

A cooperative agreement is a funding mechanism which allows substantial Federal involvement in the activities undertaken with Federal financial support. Details of the responsibilities, relationships, and governance of the cooperative agreement will be spelled out in the terms and conditions of the award. The specific responsibilities of the Federal staff and grantee staff are tentatively listed below under Special Conditions and will be agreed upon prior to the award of each cooperative agreement.

Background and Information: Along with pediatric primary health care providers, Head Start, as a comprehensive service delivery program, serves as one of the earliest mechanisms for identification and intervention with a vulnerable population of young low-income children and their families. Whether one advocates the importance of early identification and treatment of ''at-risk'' children or children with actual manifestations of emotional and/or behavioral difficulties, or one stresses the fundamental importance of promoting ''wellness'' via preventive intervention approaches, it is clear that Head Start plays a crucial role in any such discussion.

Based upon a recent review of the research literature, there are key gaps in the extant knowledge base that call for additional research in this area. First, there is the need to improve the understanding of the identification of early onset mental, emotional or behavioral disabilities in this low-income population of young children, especially in comparison to the rates of identification of disabilities (which include mental health problems) in Head Start programs.

There also is the need to expand the understanding of the trajectories of social and emotional development in very young, low-income children, including a better understanding of the prevalence of risk and protective factors. This is especially the case given the overarching context of dramatic increases in the frequency, intensity and severity of exposure to risk factors (e.g., community violence, substance abuse, physical and sexual abuse, neglect, etc.) for young children growing up in poverty.

Head Start programs are the point of entry for low-income children into community service delivery networks. Head Start programs, within the context of the larger network of other community service providers, can be organized to promote efficient, accurate, and high quality screening, assessment, intervention and/or referral, as necessary. The proactive universal screening of all enrolled children, that is required by Head Start Performance Standards, is one of the best mechanisms for ensuring the earliest detection of difficulties.

However, the effectiveness of such an approach undoubtedly will be a function of certain key programmatic indicators of quality mental health service provision, such as the use of on-site mental health professionals (versus outside mental health professionals and/or consultants), high ratios of mental health professional staff to children served, adequate educational/professional training of mental health staff, and strong, established collaborative relationships with relevant community mental health providers, as well as involvement of families and staff in the development and implementation of services that are appropriate and acceptable to the families and communities they serve.

Within this priority area, ACYF is interested in funding a Consortium of research projects that will generate new knowledge through research, that will advance our current level of understanding and that will facilitate efforts to improve the capacity of Head Start and related early childhood programs to deliver high quality, comprehensive, developmentally appropriate, prevention and intervention services to support the mental health of Head Start and other young children, families and staff, across the country. Lessons learned from these research projects would be linked with Head Start's training and technical assistance network to maximize benefits across all programs.

Mental health is defined broadly as ''promoting the healthy emotional development of children, supporting family strengths, identifying early signs of emotional and behavioral difficulties, and assisting families with special

needs'' (Yoshikawa and Knitzer, 1997). This definition incorporates a balanced emphasis that includes prevention as a cornerstone of early intervention efforts. While the primary focus is on the child, this ecological approach acknowledges the importance of addressing the mental health needs of the parents and staff, as well.

This Head Start/early childhood mental health research initiative builds upon a number of recent efforts, including: (1) The Task Force on Head Start and Mental Health supported by the American Orthopsychiatric Association; (2) the recently-completed Descriptive Study of the Head Start Health Component, which included an examination of mental health issues for a nationally-representative sample of Head Start programs and the families served; (3) the recently published Head Start Program Performance Standards, which stress collaborative relationships between programs and parents to share concerns about their children's mental health, identify appropriate responses to children's behavior, help parents to understand mental health issues, and create supportive environments and relationships in their homes and at Head Start; and (4) the recently completed study, *Lessons from the Field: Head Start Mental Health Strategies to Meet Changing Needs* (Yoshikawa and Knitzer, 1997), on the mental health service delivery systems of care in 73 Head Start programs across the country.

The Administration on Children, Youth and Families is currently in negotiation with the National Institute of Mental Health (NIMH) about the possibility of expanding the Consortium to include similar research projects currently supported by ACYF and/or NIMH. Applicants should be aware that there is also a possibility that NIMH may make available supplementary funding in subsequent grant years to facilitate a set of cross-cutting, coordinated research efforts within a consortium framework. Any supplemental funding would be contingent upon ACYF and NIMH review and approval of the consortium's workplan for the set of cross-cutting, coordinated research activities.

Narrative: Please see the Program Narrative Section in Appendix A to prepare the narrative section of the application. Explanations of and exceptions to the narrative for the purposes of preparing a research proposal are listed below.

- *Objectives and Need for Assistance*—The justification for a research proposal is based upon a review of the literature and either the need for new research or for the application of basic research in an applied setting. Do not include letters of support or testimonials other than those required below under special conditions.
- *Results or Benefits Expected*—For research applications, it is the contribution to the field the research will make or the improvement in the quality of services for children and families.
- *Approach*—For research applications, this is the methodology section including design, sample size and description, identification of measures, data collection schedules and types of analyses to be performed.
- *Evaluation*—This section is not needed for research applications.
- *Geographical Location*—Not needed.
- *Additional Information*—Use the sections on Staff and Position Data and Dissemination Plan only. Biographical sketches are needed for only the principal investigator or co-principal investigators and other *key* staff.

Special Conditions:

- These are five-year cooperative agreement projects in which substantial Federal involvement is anticipated. ACYF is utilizing a cooperative agreement mechanism to support close communication, cooperation and coordination among participating projects. The specific respective responsibilities of Federal staff and the awardees are tentatively listed below under Cooperative Agreements and will be agreed upon prior to the award of each cooperative agreement.
- The applicant must enter into a partnership with a Head Start or Early Head Start program for the purposes of conducting the research.
- The application must contain a letter from the Head Start or Early Head Start program certifying that they have entered into a partnership with the applicant and the application has been reviewed and approved by the Head Start Program Policy Council.
- The applicant must agree to participate as a member of a Consortium of research projects focused on Head Start mental health efforts, which will include, but not necessarily be limited to, successful applicants under this announcement and similar research projects currently supported by ACYF and/or NIMH (*e.g.*, the Head Start Quality Research Centers Consortium, related Head Start University Partnerships, among others). A Steering Committee will be formed consisting of principal investigators from each of the participating projects, as well as representatives from ACYF and NIMH. The ACYF Federal Project Officer will serve as the chairperson for the Steering Committee. The Steering Committee will advise ACYF and NIMH on the design, implementation, and management of the cross-cutting research activities (e.g., common assessment approaches and intervention activities) which may be implemented by the participating projects. It will also provide a forum for the discussion of issues raised by the Consortium members, ACYF and NIMH. NIMH will provide logistical support for the cross-cutting work of the Consortium.
- The principal investigator and at least one other key staff member must agree to attend up to four (4), two-day meetings of the research grantees in the Washington, D.C. area each year including Head Start's Fourth National Research Conference in July of 1998 and June of 2000. The budget should reflect travel funds for such purposes. Participation in the broader consortium activities with other similar research projects, as described above, likely will involve approximately two of the four annual meetings.
- The applicant must apply the University's off-campus research rates for indirect costs.

Cooperative Agreements:

The following represents a tentative list of the reponsibilities under the cooperative agreement.

1. Responsibilities of the Grantee

The Grantee

- Enters into a partnership with a Head Start or Early Head Start program for the purposes of conducting research, including certification of review and approval of the application by the Policy Council.
- Conducts a local research study which develops and/or tests applications of theory-based research or state-of-the-art techniques for the prevention, identification and/or treatment of children's mental health disorders.
- Participates as a member of the Consortium of research projects focused on Head Start mental health efforts, which will include, but not necessarily be limited to, successful applicants under this announcement and similar research projects currently supported by ACYF and/or NIMH, such as the Head Start Quality Research Centers, and Head Start University Partnership research grants, among others.
- Agrees to participate in a Consortium governance structure consisting of a steering committee chaired by the ACYF Federal Project Officer, and including principal

investigators from each of the participating projects, as well as representatives from ACYF and NIMH.

- Agrees to participate in the design and testing of a Consortium workplan, consisting of a set of cross-cutting, coordinated research activities, and to consider participation in the implementation of this Consortium workplan, contingent upon ACYF and NIMH review and approval, should supplementary funding become available in subsequent years.

2. Responsibilities of the Federal Staff

The Federal Staff

- Provide guidance in the development of the Consortium workplan, including review and decision-making about the feasibility of implementing the workplan, should supplementary funding become available in subsequent years.
- Participate as members of the Consortium, including Chair of the steering committee, and on any policy or working groups established at the Consortium level to facilitate the accomplishment of project goals.
- Facilitate communication among Consortium members, including research partners and Federal staff, the Head Start training and technical assistance network, the Quality Research Centers Consortium, and related Head Start University Partnerships.
- Provide logistical support to facilitate conferences, meetings, special consultation activities, commissioned papers, and meetings of the Consortium.

Project Duration: The announcement for priority area 1.02 is soliciting applications for project periods up to five years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for five years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within the five-year project period, will be entertained in subsequent years on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government. Criteria for continuation of funding beyond the first three years may include participation in the cross-cutting, coordinated research activities developed through the consortium framework.

Federal Share of Project Costs: The maximum Federal share for the base cooperative agreements is approximately $200,000 for the first 12-month budget period or a maximum of $1,000,000 for a five-year project period. (The Federal share is *inclusive* of indirect costs.) In addition to the base funding level of each cooperative agreement, there is the possibility that NIMH may make available supplemental funds in subsequent years to some or all of the grantees, through a collaborative, interagency agreement, to support a potential set of cross-cutting, coordinated research activities developed during the first year of the project period. These supplements would be subject to the availability of NIMH funds and contingent upon NIMH review and approval of a consortium workplan for the set of cross-cutting, coordinated research activities.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that 4–6 projects will be funded.

CFDA: 93.600 Head Start: Head Start Act, as amended.

1.03 Support for Graduate Students: The Head Start Research Scholars Program

Eligible Applicants: Institutions of higher education on behalf of qualified doctoral candidates enrolled in the sponsoring institution. To be eligible to administer the grant on behalf of the student, the institution must be fully accredited by one of the regional accrediting commissions recognized by the Department of Education and the Council on Post-Secondary Accreditation. In addition, the specific graduate student on whose behalf the application is made must be identified and any resultant grant award is not transferable to another student. Funds from this grant may not be used to make any payments to other students at the university.

Purpose: To provide support for graduate students to encourage the conduct of research with Head Start populations which will contribute to the knowledge base for improving services for Head Start children and families.

Background and Information: A large body of literature exists on the early years of the Head Start program. A significant number of these studies are dissertations and other research conducted by graduate students. Many of these graduate students continued to make significant contributions to Head Start as they pursued their careers. As Head Start has continued to grow, its population has become more diverse and societal problems have become more complex. In order to meet the challenges Head Start faces today, it is more than ever in need of the information that only sophisticated research conducted by well trained researchers can provide. Therefore, as part of a research capacity building effort, Head Start is interested in supporting doctorate-level graduate students with diverse backgrounds and from diverse fields to conduct research in Head Start programs.

A new generation of Head Start research is needed that recognizes the great diversity among Head Start programs and the populations which it serves. Although Head Start delivers a core set of services which are defined by the Head Start Program Performance Standards, there is wide variability across programs in terms of the methods by which these services are delivered. Within programs, moreover, children and families vary in their levels of functioning, ethnicity and other variables which interact with program interventions. The Head Start population offers a unique opportunity for research which will contribute to understanding the differences in this diverse population and how to effectively tailor services and interventions for children and families with different characteristics. Research is needed on the particular learning styles, the cognitive and social development, and the developmental trajectories of children as well as on indicators of family functioning as they are manifested in specific cultural and/or linguistic groups, children with specific disabilities, and families at different levels of functioning. In addition, suitable measures of child, adult and family functioning must be identified and adapted for specific subgroups of this diverse population. ACYF is interested in supporting doctoral-level students, through their sponsoring institutions, who are now conducting or wish to conduct research on the Head Start population, and which will contribute to our knowledge about the best approaches for delivering services to diverse populations. Doctoral-level graduate students who are representative of Head Start's diverse populations are particularly encouraged to apply.

Research projects include independent studies conducted by the graduate students or well-defined portions of a larger study currently being conducted by a principal investigator holding a faculty position and for which the graduate student will have primary responsibility.

Narrative: Please see the Program Narrative section in Appendix A to prepare the narrative section of the application. Explanations of and exceptions to the narrative for the

purposes of preparing a research proposal are listed below.

• *Objectives and Need for Assistance*—The justification for a research proposal is based upon a review of the literature and either the need for new research or for the application of basic research in an applied setting. Do not include letters of support or testimonials other than those required below under special conditions.

• *Results or Benefits Expected*—For research applications, it is the contribution to the literature the research will make or the improvement in the quality of services for children and families.

• *Approach*—For research applications, this is the methodology section including design, sample size and description, identification of measures, data collection schedules and types of analyses to be performed.

• *Evaluation*—This section is not needed for research applications.

• *Geographical Location*—Not needed.

• *Additional Information*—Use the sections on Staff and Position Data and Dissemination Plan only. Biographical sketches are needed for only the principal investigator or co-principal investigators.

Special Conditions:

• The applicant must enter into a partnership with a Head Start or Early Head Start program for the purposes of conducting the research.

• The application must contain a letter from the Head Start program certifying that they have entered into a partnership with the applicant and the application has been reviewed and approved by the Policy Council.

• The applicant must agree to attend one meeting of the research grantees each year and Head Start's Fourth National Research Conference in July of 1998. The budget should reflect travel funds for such purposes.

• Considering the size of the grant, the university must waive indirect costs.

• A university faculty member must serve as a mentor to the graduate student. The application must include a letter from the faculty member stating that s/he has reviewed and approved the proposal and a description of how the faculty member will monitor the student's work.

• Contact information, including an e-mail address, for the graduate student applicant must be included in the proposal.

• The proposal must be written by the graduate student.

Project Duration: The announcement for priority area 1.03 is soliciting applications for project periods up to two years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for two years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within the two-year project period, will be entertained in the subsequent year on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Federal Share of Project Costs: The maximum Federal share is not to exceed $15,000 for the first 12-month budget period or a maximum of $30,000 for a 2-year project period.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that 10 projects will be funded. No individual university will be funded for more than one candidate unless 10 applications from different institutions do not qualify for support.

CFDA: 93.600 Head Start: Head Start Act, as amended.

1.04 Head Start Partnerships With Historically Black Colleges and Universities

Eligible Applicants: Historically Black Colleges and Universities (HBCUs) as defined in Executive Order 12677, which offer courses of study in the areas of human services delivery, early childhood education and care, health care services, community development and/or human resource development.

Purpose: Announcement of financial assistance to be competitively awarded to Historically Black Colleges and Universities to utilize the capabilities of HBCUs to improve the quality and long term effectiveness of Head Start and Early Head Start by developing models of academic training and forming partnerships between HBCUs, and Head Start (including Early Head Start) grantees and delegate agencies.

Background Information: The overall goal of Head Start is to bring about a greater degree of social competence in the children of low-income families. In order to accomplish this goal, Head Start provides comprehensive services to low-income children and their families. Head Start enhances children's physical, intellectual, social and emotional development. It supports parents in their efforts to fulfill their parental roles and provides for their involvement in implementing the Head Start program. Another goal of Head Start is to strengthen community supports for families with young children. Early Head Start provides comprehensive services to pregnant women, infants and toddlers.

Under this announcement, priority will be given to those HBCUs that indicate that they have formed partnerships with one or more Head Start or Early Head Start grantee and delegate agencies to provide training and mentorship to the Head Start and Early Head Start agencies.

The partnership agreements must be beneficial to each partner, that is, HBCUs must benefit and participating Head Start and Early Head Start grantees must benefit. Partnership agreements can take many forms; however, at a minimum they must provide academic training for a specified number of Head Start/Early Head Start staff members. For example, a Head Start grantee may form a partnership with an HBCU that agrees to provide training for all Head Start staff members; including food service workers, classroom staff, home visitors and management staff. Another HBCU may agree to train mental health staff at several grantees, and provide modeling of sound child development practices with follow-up training and mentoring for center-based staff that may want to improve the overall learning environment of their classrooms. Other Head Start grantees may form partnerships with HBCUs that would provide training for all classroom staff, home visitors and Head Start Family Child Care providers that would lead to academic credit. *In addition, if the Head Start grantee has formed partnerships with local child care agencies, training by the HBCU can be offered to those child care staff members.*

Narrative: Please see the Program Narrative Section in Appendix A to prepare the narrative section of the application.

Special Conditions:

• The applicant must provide letters of commitment from the Head Start grantee(s) and relevant child care agencies.

• The applicant must currently offer credit courses in the areas of community Mental Health, Mental Health, Education and Early Childhood Development, including infant/toddler development, social work and social services and human resources development.

• The planning period before implementation of the program must not be more than five months.

Project Duration: The announcement for priority area 1.04 is soliciting applications for project periods up to four years. Awards, on a competitive

basis, will be for a one-year budget period, although project periods may be for four years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within the four-year project period, will be entertained in the subsequent years on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Federal Share of Project Costs: The maximum Federal share is not to exceed $125,000 for the first 12-month budget period or a maximum of $500,000 for a 4-year project period.

Matching Requirement: There is no matching requirement. However, applicants are encouraged to provide non-Federal contributions to the project.

Anticipated Number of Projects to be Funded: It is anticipated that up to five projects will be funded.

Part III. Criteria and Review Process

Two sets of criteria are presented below. In order to select successful applicants, the criteria for Head Start-University Partnerships and Head Start Research Scholars will be applied by the reviewers to the applicant's submissions in priority areas 1.01, 1.02 and 1.03. The criteria for HBCU's will be applied to priority area 1.04.

A. Criteria

Head Start-University Partnerships and Head Start Research Scholars

1. *Objectives and Significance*—25 points

- The extent to which the objectives of the research are important and relevant to Head Start and the field of early childhood.
- The extent to which the research study makes a significant contribution to the broader field.
- The extent to which the related literature review supports the study objectives, the questions to be addressed or the hypotheses to be tested.
- The extent to which the questions that will be addressed or the hypotheses that will be tested are sufficient for meeting the stated objectives.

2. *Approach*—40 points

- The extent to which the planned approach reflects sufficient input from and partnership with the Head Start or Early Head Start program.
- The extent to which the research design is appropriate and sufficient for addressing the questions of the study.
- The extent to which the planned approach allows for the identification of specific outcomes.
- The extent to which the planned research includes quantitative and qualitative methods.
- The extent to which the planned measures and analyses both reflect knowledge and use of state-of-the-art measures and analytic techniques and advance the state of-the art.
- The extent to which the statistical approaches are appropriate for the question under consideration.
- The adequacy of the anticipated research sample size for the requirements of the study.
- For longitudinal studies the extent to which the site in which the research will be conducted has a method of tracking Head Start or Early Head Start graduates.
- The applicant has provided all required assurances.
- The reasonableness of the budget for the work proposed.

3. *Staffing*—35 points

- The extent to which the principal investigator and other key research staff possess the research expertise necessary to conduct the study as demonstrated in the application and information contained in their vitae.
- The principal investigator(s) has earned a doctoral degree in an appropriate field. (Not applicable for Head Start Research Scholars.)
- The extent to which the proposed staff reflect an understanding of and sensitivity to the issues of working in a community setting and in partnership with program staff and parents.
- The adequacy of the time devoted to this project by the principal investigator and other key staff in order to ensure a high level of professional input and attention.
- For graduate students, the adequacy of the supervision provided by the graduate student's mentor.

Historically Black Colleges and Universities

1. *Objectives and Significance*—25 points

- The extent to which the application demonstrates a clear need for the training and a documents a sufficient number of potential trainees.
- The extent to which the proposed projects will produce substantial benefits to Head Start and the HBCU that go beyond those provided by Head Start's existing training system.

2. *Approach*—40 points

- The extent to which the applicant demonstrates a partnership between the HBCU, Head Start and relevant child care agencies.
- The extent to which the proposed course work is relevant to the established needs and whether it contributes to the continuing education of the trainees in terms of college credits or degrees.
- The extent to which courses are planned at times convenient to the students, are held in accessible locations and support is provided to the students such as text books, chid care and transportation.
- The appropriateness of the methods for recruiting students and the assignment of faculty.
- The quality of the applicants plan for evaluation of the project.
- The adequacy of the applicant's plan for continuous involvement with the Head Start or Early Head Start program.
- The appropriateness of the budget for the project proposed.

3. *Staffing*—35 points

- The extent to which the project director and other key staff possess the expertise necessary to conduct the project as demonstrated in the application and information contained in their vitae.
- The extent to which the proposed staff reflect an understanding of and sensitivity to the issues of working in a community setting and in partnership with program staff and parents.
- The adequacy of the time devoted to this project by the project director and other key staff in order to ensure a high level of professional input and attention.

B. The Review Process

Applications received by the due date will be reviewed and scored competitively. Experts in the field, generally persons from outside the Federal government, will use the evaluation criteria listed in Part III of this announcement to review and score the applications. The results of this review are a primary factor in making funding decisions. ACYF may also solicit comments from ACF Regional Office staff and other Federal agencies. These comments, along with those of the expert reviewers, will be considered in making funding decisions. In selecting successful applicants, consideration may be given to other factors which at the time of funding, may cause ACYF to consider certain research topics of higher priority or give less priority to current or past principal investigators who were recipients of Head Start discretionary research funds, or for Priority Area 1.03, universities which are current grant recipients in behalf of graduate students.

Part IV. Instructions for Submitting Applications

A. Availability of Forms

Eligible applicants interested in applying for funds must submit a complete application including the required forms included at the end of this program announcement in Appendix A. In order to be considered for a grant under this announcement, an application must be submitted on the Standard Form 424 (approved by the Office of Management and Budget under Control Number 0348–0043). A copy has been provided. Each application must be signed by an individual authorized to act for the applicant and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, Assurances: Non-Construction Programs (approved by the Office of Management and Budget under control number 0348–0340). Applicants must sign and return the Standard Form 424B with their application. Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must also understand that they will be held accountable for the smoking prohibition included within P.L. 103–227, Part C Environmental Tobacco Smoke (also known as The Pro-Children's Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with the forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

All applicants for research projects must provide a Protection of Human Subjects Assurance as specified in the policy described on the HHS Form 596 (approved by the Office of Management and Budget under control number 0925–0137) in Appendix A. If there is a question regarding the applicability of this assurance, contact the Office for Protection from Research Risks of the National Institutes of Health at (301) 496–7041. Those applying for or currently conducting research projects are further advised of the availability of a Certificate of Confidentiality through the National Institute of Mental Health of the Department of Health and Human Services. To obtain more information and to apply for a Certificate of Confidentiality, contact the Division of Extramural Activities of the National Institute of Mental Health at (301) 443–4673.

B. Proposal Limits

The proposal should be double-spaced and single-sided on 8½″ × 11″ plain white paper, with 1″ margins on all sides. Use only a standard size font no smaller than 12 pitch throughout the proposal. All pages of the proposal (including appendices, resumes, charts, references/footnotes, tables, maps and exhibits) must be sequentially numbered, beginning on the first page after the budget justification, the principal investigator contact information and the Table of Contents. The length of the proposal starting with page 1 as described above and including appendices and resumes must not exceed 60 pages. Anything over 60 pages will be removed and not considered by the reviewers. The project summary should not be counted in the 60 pages. Applicants should not submit reproductions of larger sized paper that is reduced to meet the size requirement. Applicants are requested not to send pamphlets, brochures, or other printed material along with their applications as these pose copying difficulties. These materials, if submitted, will not be included in the review process. In addition, applicants must not submit any additional letters of endorsement beyond any that may be required.

Applicants are encouraged to submit curriculum vitae using ''Biographical Sketch'' forms used by some government agencies.

Please note that applicants that do not comply with the requirements in the section on ''Eligible Applicants'' will not be included in the review process.

C. Checklist for a Complete Application

The checklist below is for your use to ensure that the application package has been properly prepared.

—One original, signed and dated application plus two copies.
—Attachments/Appendices, when included, should be used only to provide supporting documentation such as resumes, and letters of agreement/support.
—A complete application consists of the following items in this order:

Front Matter:
- Cover Letter

Table of Contents
- Contact information for Principal Investigator including telephone number, fax number and e-mail address. (In the case of graduate students, include this information for both the graduate student and the supervisor.)
- Project Abstract

(1) Application for Federal Assistance (SF 424);

(2) Budget information-Non-Construction Programs (SF424A & B);

(3) Budget Justification, including subcontract agency budgets;

(4) Letter from the Head Start or Early Head Start program certifying that the program is a research partner of the respective applicant and that the Policy Council had reviewed and approved the application;

(5) Application Narrative and Appendices (not to exceed 60 pages);

(6) Proof of non-profit status. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit organization can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of incorporation of the State in which the corporation or association is domiciled.

(7) Assurances Non-Construction Programs;

(8) Certification Regarding Lobbying;

(9) Where appropriate, a completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424;

(10) Certification of Protection of Human Subjects.

D. Due Date for the Receipt of Applications

1. *Deadline:* Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at: Operations Center, 3030 Clarendon Blvd., Suite 240, Arlington, Va. 22201.

Application for Head Start Discretionary Research: (Head Start—

University Partnerships [Priority Area 1.01 or 1.02], Head Start Research Scholars or Historically Black Colleges and Universities)

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications handcarried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 5:00 p.m., Monday–Friday (excluding holidays) at the address above. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.) ACF cannot accommodate transmission of applications by fax or e-mail. Therefore, applications faxed or e-mailed to ACF will not be accepted regardless of date or time of submission and time of receipt.

2. *Late applications:* Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

3. *Extension of deadlines:* ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., widespread disruption of the mails or when it is anticipated that many of the applications will come from rural or remote areas. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

E. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Public Law 104–13, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those currently approved under OMB Control Numbers 0348–0043, 0348–0044, 0348–00400, 0348–0046, 0925–0137 and 0970–0139.

F. Required Notification of the State Single Point of Contact

This program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

- All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-three jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the accommodate or explain rule.

When comments are submitted directly to ACF, they should be addressed to: Lynda Perez, Head Start Bureau, P.O. Box 1182, Washington, D.C. 20013, Attn: Head-Start University Partnerships, Head Start Research Scholars or Historically Black Colleges and Universities. A list of the Single Points of Contact for each State and Territory is included in Appendix B.

Dated: May 8, 1997.

Helen H. Taylor,

Associate Commissioner, Head Start Bureau, Administration on Children, Youth and Families.

BILLING CODE 4184–01–P

Appendix A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ - ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify)_____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ - ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (REV 4-92)
Prescribed by OMB Circular A-102

BILLING CODE 4184-01-C

Instructions for the SF 424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget. Paperwork Reduction Project (0348–0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State, if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.

—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.

—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit allowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (Rev. 4-92)
Prescribed by OMB Circular A-102

BILLING CODE 4184-01-C

SECTION C — NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E — BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL (sum of lines 16 - 19)	$	$	$	$

SECTION F — OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 4-92) Page 2

Instructions for the SF 424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Section A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments.In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1–4, Columns (a) and(b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple function or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number of each line Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and(f). The amount(s) in Column (g) should not equal the same of amounts in Columns (e) and (f)

Line 5—Show the total for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and Non-Federal) by object class categories.

Lines 6a-i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6K—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6K, should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals in Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expenses.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15

minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the applicant.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. §§ 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB circular No. A–133, Audits of Institutions of Higher Learning and other Non-profit Institutions.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

_____

Signature of Authorized Certifying Official

_____

Title

_____

Applicant Organization

_____

Date Submitted

Program Narrative

This program narrative section was designed for use by many and varied programs. Consequently, it is not possible to provide specific guidance for developing a program narrative statement that would be appropriate in all cases. Applicants must refer the relevant program announcement for information on specific program requirements and any additional guidelines for preparing the program narrative statement. The following are general guidelines for preparing a program narrative statement.

The program narrative provides a major means by which the application is evaluated and ranked to compete with other applicants for available assistance. It should be concise and complete and should address the activity for which Federal funds are requested. Supporting documents should be included where they can present information clearly

and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered to be relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those which will not be used in support of the specific project for which funds are requested.

Cross-referencing should be used rather than repetition. ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Narratives are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities which will not be directly funded by the grant or information which does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.) Pages should be numbered for easy reference.

Prepare the program narrative statement in accordance with the following instructions:

- Applicants submitting *new applications* or *competing continuation applications* should respond to Items A and D.
- Applicants submitting *noncompeting continuation applications* should respond to Item B.
- Applicants requesting *supplemental assistance* should respond to Item C.

A. Project Description—Components

1. Project Summary/Abstract

A summary of the project description (usually a page or less) with reference to the funding request should be placed directly behind the table of contents or SF–424.

2. Objectives and Need for Assistance

Applicants must clearly identify the physical, economic, social, financial, institutional, or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation such as letters of support and testimonials from concerned interests other than the applicant may be included. Any relevant data based on planning studies should be included or referenced in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the narrative, the applicant may volunteer or be requested to provide information on the total range of projects currently conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

3. Results or Benefits Expected

Identify results and benefits to be derived. For example, when applying for a grant to establish a neighborhood child care center, describe who will occupy the facility, who will use the facility, how the facility will be used, and how the facility will benefit the community which it will serve.

4. Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate of decelerate the work and state your reason for taking this approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of microloans made. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

Identify the kinds of data to be collected, maintained, and/or disseminated. (Note that clearance from the U.S. Office of Management and Budget might be needed prior to an information collection.) List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

5. Evaluation

Provide a narrative addressing how you will evaluate 1) the results of your project and 2) the conduct of your program. In addressing the evaluation of results, state how you will determine the extent to which the program has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the program. Discuss the criteria to be used to evaluate results; explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of your program, define the procedures you will employ to determine whether the program is being conducted in a manner consistent with the work plan you presented and discuss the impact of the program's various activities upon the program's effectiveness.

6. Geographic Location

Give the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

7. Additional Information (Include if applicable)

Additional information may be provided in the body of the program narrative or in the appendix. Refer to the program announcement and ''General Information and Instructions'' for guidance on placement of application materials.

Staff and Position Data—Provide a biographical sketch for key personnel appointed and a job description for each vacant key position. Some programs require both for all positions. Refer to the program announcement for guidance on presenting this information. Generally, a biographical sketch is required for original staff and new members as appointed.

Plan for Project Continuance Beyond Grant Support—A plan for securing resources and continuing project activities after Federal assistance has ceased.

Business Plan—When federal grant funds will be used to make an equity investment, provide a business plan. Refer to the program announcement for guidance on presenting this information.

Organization Profiles—Information on applicant organizations and their cooperating partners such as organization charts, financial statements, audit reports or statements from CPA/Licensed Public Accountant, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with federal/state/local government standards, documentation of experience in program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Dissemination Plan—A plan for distributing reports and other project outputs to colleagues and the public. Applicants must provide a description of the kind, volume and timing of distribution.

Third-Party Agreements—Written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements may detail scope of work, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Waiver Request—A statement of program requirements for which waivers will be needed to permit the proposed project to be conducted.

Letters of Support—Statements from community, public and commercial leaders which support the project proposed for funding.

B. Noncompeting Continuation Applications

A program narrative usually will not be required for noncompeting continuation applications for nonconstruction programs. Noncompeting continuation applications shall be abbreviated unless the ACF Program Office administering this program has issued a notice to the grantee that a full application will be required.

An abbreviated application consists of:

1. The Standard Form 424 series (SF 424, SF 424A, SF–424B)

2. The estimated or actual unobligated balance remaining from the previous budget period should be identified on an accurate SF–269 as well as in Section A, Columns (c) and (d) of the SF–424A.

3. The grant budget, broken down into the object class categories on the 424A, and if category ''other'' is used, the specific items supported must be identified.

4. Required certifications.

A full application consists of all elements required for an abbreviated application plus:

1. Program narrative information explaining significant changes to the original program narrative statement, a description of accomplishments from the prior budget period, a projection of accomplishments throughout the entire remaining project period, and any other supplemental information that ACF informs the grantee is necessary.

2. A full budget proposal for the budget period under consideration with a full cost analysis of all budget categories.

3. A corrective action plan, if requested by ACF, to address organizational performance weaknesses.

C. Supplemental Requests

For supplemental assistance requests, explain the reason for the request and justify the need for additional funding. Provide a budget and budget justification *only* for those items for which additional funds are requested. (See Item D for guidelines on preparing a budget and budget justification.)

D. Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification which describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

The following guidelines are for preparing the budget and budget justification. Both federal and non-federal resources should be detailed and justified in the budget and narrative justification. For purposes of preparing the program narrative, ''federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other federal and non-federal resources. It is suggested that for the budget, applicants use a column format: Column 1, object class categories; Column 2, federal budget amounts; Column 3, non-federal budget amounts, and Column 4, total amounts. The budget justification should be a narrative.

Personnel. Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, show name/title, time commitment to the project (in months), time commitments to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits. Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, taxes, etc.

Travel. Costs of project related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF sponsored workshops as specified in this program announcement should be detailed in the budget.

Equipment. Costs of all non-expendable, tangible personal property to be acquired by the project where each article has a useful life of more than one year and an acquisition cost which equals the lesser of (a) the capitalization level established by the applicant organization for financial statement purposes, or (b) $5000.

Justification: For each type of equipment requested, provide a description of the equipment, cost per unit, number of units, total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends.

Supplies. Cost of all tangible personal property (supplies) other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual. Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. If procurement competitions were held or if a sole source procurement is being proposed, attach a list of proposed contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and the award selection process. Also provide back-up documentation where necessary to support selection process.

Note: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must provide a detailed budget and budget narrative for each delegate agency by agency title, along with the required supporting information referenced in these instructions.

Applicants must identify and justify any anticipated procurement that is expected to exceed the simplified purchase threshold (currently set at $100,000) and to be awarded without competition. Recipients are required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc. under the conditions identified at 45 CFR Part 74.44(e).

Construction. Costs of construction by applicant or contractor.

Justification: Provide detailed budget and narrative in accordance with instructions for other object class categories. Identify which construction activity/costs will be contractual and which will assumed by the applicant.

Other. Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, space and equipment rentals, printing and publication, computer use, training costs, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Indirect Charges. Total amount of indirect costs. This category should be used only when the applicant current has an indirect cost rate approved by the Department of Health and Human Services or another cognizant Federal agency.

Justification: With the exception of most local government agencies, an applicant which will charge indirect costs to the grant must enclose a copy of the current rate agreement if the agreement was negotiated with a cognizant Federal agency other than the Department of Health and Human Services (DHHS). If the rate agreement was negotiated with the Department of Health and Human Services, the applicant should state this in the budget justification. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposed based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates, and submit it to the appropriate DHHS Regional Office. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under this program announcement, the authorized representative of your organization needs to submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income. The estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from program support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Justification: Describe the nature, source and anticipated use of program income in the budget or reference pages in the program narrative statement which contain this information.

Non-Federal Resources. Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process.

Total Direct Charges, Total Indirect Charges, Total Project Costs. (self explanatory)

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630 (c) and (d)(2) and 76.645 (a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW., Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements

(Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must kept the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identification must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21702, May 25, 1990]

Certification Regarding Debartment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4 debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or

voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by an Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

BILLING CODE 4184–01–P

OMB No. 9999-0020
OMB No. 0925-0418
Approved for use through 12/31/97

Protection of Human Subjects
Assurance Identification/Certification/Declaration
(Common Federal Rule)

POLICY: Research activities involving human subjects may not be conducted or supported by the Departments and Agencies adopting the Common Rule (56FR28003, June 18, 1991) unless the activities are exempt from or approved in accordance with the common rule. See Section 101(B) the common rule for exemptions. Institutions submitting applications or proposals for support must submit certification of appropriate Institutional Review Board (IRB) review and approval to the Department or Agency in accordance with the common rule. Institutions with an assurance of compliance that covers the research to be conducted on file with the Department, Agency or the Department of Health and Human Services (HHS) should submit certification of IRB review and ap- proval with each application or proposal unless otherwise advised by the De- partment or Agency. Institutions which do not have such an assurance must submit an assurance and certification of IRB review and approval within 30 days of a written request from the Department or Agency.

1. Request Type	2. Type of Mechanism	3. Name of Federal Department or Agency and, if known, Application or Proposal Identification No.
☐ ORIGINAL ☐ FOLLOWUP ☐ EXEMPTION	☐ GRANT ☐ CONTRACT ☐ FELLOWSHIP ☐ COOPERATIVE AGREEMENT ☐ OTHER: _____	

4. Title of Application or Activity	5. Name of Principal Investigator, Program Director, Fellow, or Other

6. Assurance Status of this Project *(Respond to one of the following)*

☐ This assurance, on file with the Department of Health and Human Services, covers this activity:

Assurance identification no. M-_____ IRB identification no._____

☐ This Assurance, on file with *(agency/dept.)* _____, covers this activity:

Assurance identification no. _____ IRB identification no._____*(if applicable)*

☐ No assurance has been filed for this project. This institution declares that it will provide an Assurance and Certification of IRB review and approval upon request.

☐ *Exemption status:* Human subjects are involved, but this activity qualifies for exemption under Section 101 (b), paragraph _____.

7. Certification of IRB Review *(Respond to one of the following IF you have an Assurance on file)*

☐ This activity has been reviewed and approved by the IRB in accordance with the common rule and any other governing regulations and subparts on *(date)*_____ by: ☐ Full IRB Review or ☐ Expedited Review.

☐ This activity contains multiple projects, some of which have not been reviewed. The IRB has granted approval on condition that all projects covered by the common rule will be reviewed and approved before they are initiated and that appropriate further certification will be submitted.

8. Comments

9. The official signing below certifies that the information provided above is correct and that, as required, future reviews will be performed and certification will be provided.		10. Name and Address of Institution
11. Phone No. *(with area code)*	12. Fax No. (with area code)	
13. Name of Official		14. Title
15. Signature		16. Date

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Public reporting burden for this collection of information is estimated to average 5 minutes per response. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: PHS Reports Clearance Officer (9999-0020 and 0925-0418), Humphrey Building, 200 Independence Ave. S.W., Washington, D.C. 20201. Attn: PRA. *Do not return the completed form to this address.*

OPTIONAL FORM 310 (Rev. 1-95)
Sponsored by HHS/PHS/NIH

BILLING CODE 4184–01–C

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form—LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For material change only** Year_____ Quarter_____ date of last report_____

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known.* **Congressional District,** *if known*	5. **If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known*
6. **Federal Department/Agency:**	7. **Federal Program Name/Description:** **CFDA Number,** *if applicable:*
8. **Federal Action Number,** ***if known*****:**	9. **Award Amount,** ***if known*****:** $
10. a. **Name and Address of Lobbying Registrant** *(if individual, last name, first name, MI):*	b. **Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*

Items 11 through 15 are deleted.

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

BILLING CODE 4184–01–C

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking be not permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Appendix B—OMB State Single Point of Contact Listing

Arizona

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315, FAX: (602) 280–1305

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone (501) 682–1074, FAX: (501) 682–5206

California

Grants Coordinator, Office of Planning & Research, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone (916) 323–7480, FAX (916) 323–3018

Delaware

Francine Booth, State Single Point of Contact Executive Department, Thomas Collins Building, P.O. Box 1401, Dover, Delaware 19903, Telephone (302) 739–3326, FAX (302) 739–5661

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Mgmt. & Dev., 717 14th Street, N.W.—Suite 500, Washington, D.C. 20005, Telephone: (202) 727–6554, FAX: (202) 727–1617

Florida

Florida State Clearinghouse, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399–2100, Telephone: (904) 922–5438, FAX: (904) 487–2899

Georgia

Tom L. Reid, III, Administrator, Georgia State Clearinghouse, 254 Washington Street, S.W.—Room 401J, Atlanta, Georgia 30334, Telephone: (404) 656–3855 or (404) 656–3829, FAX: (404) 656–7938

Illinois

Virginia Bova, State Single Point of Contact, Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, FAX: (312) 814–1800

Indiana

Frances Williams, State Budget Agency, 212 State House, Indianapolis, Indiana 46204–2796, Telephone: (317) 232–5619, FAX: (317) 233–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4859

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601–8204, Telephone: (502) 573–2382, FAX: (502) 573–2512

Maine

Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489

Maryland

William G. Carroll, Manager, State Clearinghouse for Intergovernmental Assistance, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–2365, Staff Contact: Linda Janey, Telephone: (410) 225–4490, FAX: (410) 225–4480

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 1900 Edison Plaza, 660 Plaza Drive, Detroit, Michigan 48226, Telephone: (313) 961–4266

Mississippi

Cathy Malette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39202–3087, Telephone: (601) 359–6762, FAX: (601) 359–6764

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 760, Truman Building, Jefferson City, Missouri 65102, Telephone: (314) 751–4834, FAX: (314) 751–7819

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone: (702) 687–4065, FAX: (702) 687–3983

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728

New Mexico

Robert Peters, State Budget Division, Room 190 Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605, FAX: (518) 486–5617

North Carolina

Chrys Baggett, Director, N.C. State Clearinghouse, Office of the Secretary of Admin., 116 West Jones Street, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone: (701) 224–2094, FAX: (701) 224–2308

Ohio

Larry Weaver, State Single Point of Contact, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Please direct correspondence and questions about intergovernmental review to: Linda Wise, Telephone: (614) 466–0698, FAX: (614) 466–5400

Rhode Island

Kevin Nelson, Review Coordinator, Department of Administration/Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 277–2656, FAX: (401) 277–2083.

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Rodney Grizzle, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street—Room 331, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0356

Texas

Tom Adams, Governor's Office, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 463–1771, FAX: (512) 463–1888

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1535, FAX: (801) 538–1547

West Virginia

Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, FAX: (304) 558–3248

Wisconsin

Jeff Smith, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–0267, FAX: (608) 267–6931

Wyoming

Matthew Jones, State Single Point of Contact, Office of the Governor, 200 West 24th Street, State Capitol, Room 124, Cheyenne, Wyoming 82002, Telephone: (307) 777–7446, FAX: (307) 632–3909

TERRITORIES

Guam

Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, FAX: 011–671–472–2825

Puerto Rico

Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444, (809) 723–6190, FAX: (809) 724–3270, (809) 724–3103

North Mariana Islands

Mr. Alvaro A. Santos, Executive Officer, State Single Point of Contact, Ofice of Management and Budget, Office of the Governor, Saipan, MP, Northern Mariana Islands 96950, Telephone (670) 664–2256, FAX: (670) 664–2272, Contact Person: Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone (670) 644–2289, FAX: (670) 644–2272

Virgin Islands

Nelson Bowry, Director, Office of Management and Budget, # 141 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802, Please direct all questions and correspondence about intergovernmental review to: Linda Clarke, Telephone: (809) 774–0750, FAX: (809) 776–0069.

In accordance with Executive Order #12372, ''Intergovernmental Review of Federal Programs,'' this listing represents the designated State Single Points of Contact. The jurisdications not listed no longer participate in the process BUT GRANT APPLICANTS ARE STILL ELIGIBLE TO APPLY FOR THE GRANT EVEN IF YOUR STATE, TERRITOTY, COMMONWEALTH, ETC DOES NOT HAVE A ''STATE SINGLE POINT OF CONTACT.'' STATES WITHOUT ''STATE SINGLE POINTS OF CONTACT'' INCLUDE: Alabama, Alaska, American Samoa, Colorado, Connecticut, Kansas, Hawaii, Idaho, Louisiana, Massachusetts, Palau, Minnesota, Montana, Nebraska, New Jersey, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington. This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to the Office of Management and Budget and the State in question. Changes to the list will only be made upon formal question. Changes to the list will only be made upon formal notification by the State. Also, this listing is published biannually in the Catalogue of Federal Domestic Assistance.

Appendix C—List of Early Head Start Grantees

John Regitano, Fairbanks Native Association, 201 First Avenue, Suite 200, Fairbanks, AK 99701

Sharon Trish, Child Development Deputy Director, RurAL CAP; PO Box 925, Angayuqat MikeInguut-Ilu Eliitellerkait Program, Bethel, AK 99559

Vi Todd, Maricopa County Board of Supervisors, 3335 W. Durango, Phoenix, AZ 85009

Jan Martner, Director, Early Head Start, Southwest Human Development, Inc., 202 E. Earll Drive, Suite 140, Phoenix, AZ 85012

Susan St. Germaine, Butte County Office of Education, 1859 Bird Street, Oroville, CA 95965

Jean Miner, Children's Services International, PO Box 1634, Salinas, CA 93902

Sue Story, Child, Family and Community Services, Inc., 35699 Niles Boulevard, Fremont, CA 94536

Gail Healy, El Dorado County Superintendent of Schools, 6767 Green Valley Road, Placerville, CA 95667

Naomi Quiring-Mizumoto, Fresno County EOC, 1920 Mariposa Mall, Fresno, CA 93721

Dolores Garcia, Executive Director, Placer Community Action Council, Inc., 1166 High Street, Auburn, CA 95603

J'anne Kaussen, Head Start Director, 685 F. Street, Humboldt Del Norte Head Start, Arcata, CA 95521

Amy Liew, Executive Director, The Institute for Human and Social Development, 753 Del Monte Avenue, San Francisco, CA 94080

Catherine Goins, Education Specialist, SETA Head Start, 3750 Rosin Court, Suite 100, Sacramento, CA 95834

Christine Lyle, Assistant Director, Community Partnership for Child Development, 2132 E. Bijou Street, Colorado Springs, CO 80909

Pam Walker, Upper Arkansas Council of Governments, 1718 Brookside; PO Box 510, Canon City, CO 81215–0510

Cynthia Faust, Early Head Start Project Director, Edward C. Mazique Parent Child Center, Inc., 1719m 13th Street NW, Washington, DC 20009

Jan Yocum de Calderon, Rosemont Center, 2000 Rosemont Avenue, NW, Washington, DC 20010

William Hughey, United Planning Organization, 941 North Capitol Street, NE, 7th Floor, Washington, DC 20002

Alton Sears, Project Director, Metro-Dade County Community Action Agency, 1325 NW 71st Street, Miami, FL 33147

Mimi Graham, FSU Center for Prevention and Early Intervention Policy, 1139 East Lafayette, Tallahassee, FL 32301

Donna Glausser, Hillsborough Co. Bd. of Commissioners Head Start Dept., 601 E. Kennedy Boulevard, 13th Floor, Tampa, FL 33602

Barbara Mainster, Redlands Christian Migrant Association, 402 W. Main Street, Immokalee, FL 34142–3633

Merian Washington, Supervisor, Project Development, School Board of Alachua County, 620 East University Avenue, Gainesville, FL 32601

Willowdean Mors, Director, Berry Chattooga Early Development Center, 702 S. Congress Street, Summerville, GA 30747

Linda Hassan, Education Coordinator, Clark Atlanta University Head Start, 350 Autumn Lane SW, Atlanta, GA 30310

Donna Bibulia, Deputy Director, Save the Children Child Support Center, 1447 Peachtree Street NE, Suite 700, Atlanta, GA 30309

Momi Kamau, Hawaii Depart of Health, Maternal and Child Health Branch, 741–A Sunset Avenue, Honolulu, HI 96816

Kuukei Richard, Parents and Children Together, 1475 Linapuni Street, Room 117–A, Honolulu, HI 96819

Ann Bardwell, Drake University, 3929 Bel Aire Road, Des Monines, IA 50310

Mary Jo Madvag, EHS Director, Upper Des Monies Opportunity, Inc., 101 Robbins Avenue, Box 519, Graettinger, IA 51342

Connie Guillory, Nez Perce, PO Box 365, Lapwai, ID 83540–0365

Gary Mayberry, Better Boys Foundation, 1512 S. Pulaski Road, Chicago, IL 60623

Pat Wildner, CEDA of Cook County, 224 N. DesPlaines Street, Chicago, IL 60661–1195

Gwen Kenner Johnson, Manager, Child Care Program, City of Chicago Dept. of Human Services, 510 Peshtigo Court, Chicago, IL 60611

Anita Rash, Family Service and Visiting Nurse Association, 550 Landmark Boulevard, Alton, IL 62002

McFarland Bragg, Peoria Citizens Committee for Economic Opportunity, 711 W. McBean Street, Peoria, IL 61605

Howard Veal, Springfield Urban League, Inc., 1225 East Lawrence, Springfield, IL 62703

Brenda Dobbins-Noel, The Ounce of Prevention Fund, 122 S. Michigan Avenue, Suite 2050, Chicago, IL 60603

Donna Emmons, Director, Wabash Area Development, Inc., 100 North Latham, Enfield, IL 62835

Kathleen Liffick, Child Adult Resource Service, Inc., 620 Tennessee Street, Greencastle, IN 46135

Anita Lascelles, Coordinator, Healthy Beginnings 620 8th Avenue, Terre Haute, IN 47804

Ken Swenson, Hopewell Center, Inc., PO Box 3150, Anderson, IN 46018

Glenda Wilcox, Early Head Start Director, Child Care Association, 1069 Parklane, Wichita, KS 67218

Korey Powell Hensley, EHS Director, Heartland Healthy Families, 700 Jupiter, Salina, KS 67401

Aubrey Nehring, Audobon Area Community Services, Inc., 1800 West Fourth Street, PO Box 20004, Owensboro, KY 42304
Cleo Lowry, Executive Director, Breckinridge-Grayson Programs, Inc., 201 E. Walnut Street, PO Box 63, Leitchfield, KY 42754
Paul Dole, Kentucky Communities Economic Opportunity Council, PO Box 490, Barbourville, KY 40906
Judy Whitten, Head Start Director, Murray Head Start 208 South 13th Street, Murray, KY 42071
Vivian Maddox, Whitley County Communities for Children, PO Box 733, Williamsburg, KY 40769
James Houlares, Community Teamwork, Inc., 125 Phoenix Avenue, Lowell, MA 01852
Linda Gaither, Deputy Director, Friends of the Family, Inc., 1001 Eastern Ave, 2nd Floor, Baltimore, MD 21202
Carol Sutton, EHS Director, The Family Services Agency, Inc., 640 East Diamond Avenue, Suite A, Gaithersburg, MD 20877
Sandy Scoville, University of Maryland University College, University Boulevard at Adelphi Road, College Park, MD 20742–1600
Deborah Richardson, Director, Community Concepts, Inc., 35 Market Street, PO Box 278, So Paris, ME 04281
Steve Russell, Western Maine Community Action, PO Box 200, East Wilton, ME 04234
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Gertrude Buckanaga, Upper Midwest American Indian Center, 1113 West Broadway, Minneapolis, MN 55411
Beverly Dyson, Branch Manager, Early Head Start, Human Development Corp of Metropolitan St Louis, 929 North Spring Avenue, St. Louis, MO 63108
Regina Battle, Executive Director, Friends of Children of Mississippi, 4880 McWillie Circle, Jackson, MS 39206
Robbie Angell, Director, Asheville City Schools Preschool and Family Literacy Center, 441 Haywood Rd., Asheville, NC 28806
Beverly Graywater, Director, Little Hoop Community College, PO Box 89, Fort Totten, ND 58335–0089
Marcella Yellow Hammer, Standing Rock Sioux Tribe, PO Box 473, Fort Yates, ND 58538
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Jo Anne Begley, Panhandle Community Services, 3350 10th Street, Gering, NE 69341
Pam Fisher, The Salvation Army, 3612 Cuming Street, Omaha, NE 68131–1998
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Gina M. Johnson, EHS Interim Director, East Orange Child Development Corp, PO Box 890; 50 Washington Street, East Orange, NJ 07019
Shirley Williams, Executive Director, Group Homes of Camden County, 35 South 29th Street; PO Box 1538, Camden, NJ 08105
Linda Kane, Head Start Director, NORWESCAP, Inc., 481 Memorial Parkway, Phillipsburg, NJ 08865
Charles Kalthoff, ACCORD, 84 Schuyler Street; PO Box 573, Belmont, NY 14813
Patricia Heidelmark, Director, Ballston Spa Central School District, 70 Malta Avenue, Ballston Spa, NY 12020
Grace Knaak, Head Start Director, Chautauqua Opportunities, Inc., 610 W. 3rd Street, Jamestown, NY 14701
Carol Bradwell, Asst. Exec. Director, Grand Street Settlement, 80 Pitt Street, New York, NY 10002
Lori Spector, Kingsbridge Heights Community Center, Inc., 3101 Kingsbridge Terrace, Bronx, NY 10463
Ursula Lehmann, New Square Community Improvement Council, 766 North Main Street, Suite 108, Spring Valley, NY 10977
Moira Irons, Interim Early Head Start Director, P.E.A.C.E. Inc., 1153 W. Fayette Street, Syracuse, NY 13204
Bartholomew O'Conner, Project Director, Project Chance, 136 Lawrence Street, Brooklyn, NY 11201
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Barbara Nye, Project Executive Director, Tennesse State University, Tennessee CARES Early Head Start, 330 10th Avenue N., Box 141, Nashville, TN 37203
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Connie Zwick, North East Kingdom Community Action, PO Box 630; 10 Main Street, Newport, VT 05855
Jaclyn Haight, Early Childhood Program Director, Port Gamble S'Klallam Tribe, 31912 Little Boston Road, Kingston, WA 98346
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Barbara Gardner, Next Door Foundation, Inc., 2545 North 29th Street, Milwaukee, WI 53210
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Federal Register

Monday
May 19, 1997

Part IV

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Guideline on Impurities in New Drug Products; Availability; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96D–0009]

International Conference on Harmonisation; Guideline on Impurities in New Drug Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a guideline entitled ''Impurities in New Drug Products.'' The guideline was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guideline provides guidance for registration or marketing applications on the content and qualification of impurities in new drug products produced from chemically synthesized new drug substances not previously registered in a region or member State. The guideline is an annex to the ICH guideline entitled ''Impurities in New Drug Substances.''

DATES: Effective May 19, 1997. Submit written comments at any time.

ADDRESSES: Submit written comments on the guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the guideline are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Regarding the guideline: Albinus M. D'Sa, Center for Drug Evaluation and Research (HFD–170), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3741.

Regarding ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In the **Federal Register** of March 19, 1996 (61 FR 11268), FDA published a draft tripartite guideline entitled ''Impurities in New Drug Products.'' The notice gave interested persons an opportunity to submit comments by June 17, 1996.

After consideration of the comments received and revisions to the guideline, a final draft of the guideline was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies at the ICH meeting held on November 6, 1996.

In the **Federal Register** of January 4, 1996 (61 FR 372), the agency published a guideline entitled ''Impurities in New Drug Substances.'' The guideline provides guidance to applicants for drug marketing registration on the content and qualification of impurities in new drug substances produced by chemical synthesis and not previously registered in a country, region, or member state.

This guideline is an annex to that guideline and provides guidance for registration or marketing applications on the content and qualification of impurities in new drug products produced from chemically synthesized new drug substances not previously registered in a region or member State. The guideline addresses only those impurities in drug products classified as degradation products of the active ingredient or reaction products of the active ingredient with an excipient and/or immediate container/closure system. Impurities arising from excipients present in the drug product are not addressed in this guideline.

This guideline represents the agency's current thinking on impurities in new drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

As with all of FDA's guidelines, the public is encouraged to submit written comments with new data or other new information pertinent to this guideline. The comments in the docket will be periodically reviewed, and, where appropriate, the guideline will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guideline is available on the Internet using the World Wide Web (WWW) (http://www.fda.gov/cder/guidance.htm).

The text of the guideline follows:

Impurities in New Drug Products

1. Introduction

1.1 Objective of the Guideline

This document provides guidance recommendations for registration or marketing applications on the content and qualification of impurities in new drug products produced from chemically synthesized new drug substances not previously registered or approved for marketing in a region or member State.

1.2 Background

This guideline is an annex to the Guideline on Impurities in New Drug Substances, which should be consulted for basic principles.

1.3 Scope of the Guideline

This guideline addresses only those impurities in drug products classified as degradation products of the active ingredient or reaction products of the active ingredient with an excipient and/or immediate container/closure system (collectively referred to in this guideline as degradation products). Impurities arising from excipients present in the drug product are not covered in this document. This guideline also does not address the regulation of drug products used during the clinical research stages of development. Biological/biotechnological products, peptides, oligonucleotides, radiopharmaceuticals, fermentation products and semisynthetic products derived therefrom, herbal products, and crude products of animal or plant origin are not covered. Also excluded from this document are: Extraneous contaminants, which should not occur in drug products and are more appropriately addressed as good manufacturing practice issues, polymorphic form, a solid state property of the new drug substance, and enantiomeric impurities. Impurities present in the new drug substance need not be monitored in drug products unless they are also degradation products.

2. Guidelines

2.1 Analytical Procedures

The registration or marketing application should include documented evidence that the analytical procedures are validated and suitable for the detection and quantitation of degradation products. Analytical methods should be validated to demonstrate that impurities unique to the new drug substance do not interfere with or are separated from specified and unspecified degradation products in the drug product.

Degradation product levels can be measured by a variety of techniques, including those which compare an analytical response for a degradation product to that of an appropriate reference standard or to the response of the new drug substance itself. Reference standards used in the analytical procedures for control of degradation products should be evaluated and characterized according to their intended uses. The drug substance may be used to estimate the levels of degradation products. In cases where the response factors are not close, this practice may still be used if a correction factor is applied or the degradation products are, in fact, being overestimated. Specifications and analytical procedures used to estimate identified or unidentified degradation products are often based on analytical assumptions (e.g., equivalent detector response). These assumptions should be discussed in the registration or marketing application. Differences in the analytical procedures used during development and those proposed for the commercial product should be discussed.

2.2 Rationale for the Reporting and Control of Impurities

The applicant should summarize those degradation products observed during stability studies of the drug product. This summary should be based on sound scientific appraisal of potential degradation pathways in the drug product and impurities arising from the interaction with excipients and/or the immediate container/closure system. In addition, the applicant should summarize any laboratory studies conducted to detect degradation products in the drug product. This summary should include test results of batches manufactured during the development process and batches representative of the proposed commercial process. A rationale should be provided for exclusion of those impurities which are not degradation products, e.g., process impurities from the drug substance and excipients and their related impurities. The impurity profile of the drug product batches representative of the proposed commercial process should be compared with the profiles of drug product batches used in development and any differences discussed.

Degradation products observed in stability studies conducted at recommended storage conditions should be identified when the identification thresholds given in ATTACHMENT I are equaled or exceeded (although it is common practice to round analytical results of between 0.05 and 0.09 percent to the nearest number, i.e., 0.1 percent, for the purpose of these guidelines such values would not be rounded to 0.1 percent). When identification of a degradation product is not feasible, a summary of the laboratory studies demonstrating the unsuccessful effort should be included in the registration or marketing application.

Degradation products below the indicated levels generally would not need to be identified. However, identification should be attempted for those degradation products that are suspected to be unusually potent, producing toxic or significant pharmacologic effects at levels lower than indicated.

2.3 Reporting Impurity Content of Batches

Analytical results should be provided in tabular format for all relevant batches of new drug product used for clinical, safety, and stability testing, as well as batches which are representative of the proposed commercial process. Because the degradation test procedure can be an important support tool for monitoring the manufacturing quality as well as for deciding the expiration dating period of the drug product, the reporting level should be set below the identification threshold. The recommended target value for the reporting threshold (as a percentage of the drug substance) can be found in ATTACHMENT 1. A higher reporting threshold should only be proposed, with justification, if the target reporting threshold cannot be achieved.

In addition, where an analytical method reveals the presence of impurities in addition to the degradation products (e.g., impurities arising from the synthesis of the drug substance), the origin of these impurities should be discussed. Chromatograms, or equivalent data (if other methods are used), from representative batches including long-term and accelerated stability conditions should be provided. The procedure should be capable of quantifying at least at the reporting threshold and the chromatograms should show the location of the observed degradation products and impurities from the new drug substance.

The following information should be provided:

- Batch identity, strength, and size
- Date of manufacture
- Site of manufacture
- Manufacturing process, where applicable
- Immediate container/closure
- Degradation product content, individual and total
- Use of batch
- Reference to analytical procedure(s) used
- Batch number of the drug substance used in the drug product
- Storage conditions

2.4 Specification Limits for Impurities

The specifications for a new drug product should include limits for degradation products expected to occur under recommended storage conditions. Stability studies, knowledge of degradation pathways, product development studies, and laboratory studies should be used to characterize the degradation profile. Specifications should be set taking into account the qualification of the degradation products, the stability data, the expected expiry period, and the recommended storage conditions for the new drug product, allowing sufficient latitude to deal with normal manufacturing, analytical, and stability profile variation. The specification for the drug product should include, where applicable, limits for:

- Each specified degradation product
- Any unspecified degradation product
- Total degradation products

Although some variation is expected, significant variation in batch-to-batch degradation profiles may indicate that the manufacturing process of the new drug product is not adequately controlled and validated. A rationale for the inclusion or exclusion of impurities in the specifications should be presented. This rationale should include a discussion of the impurity profiles observed in the safety and clinical studies, together with a consideration of the impurity profile of the product manufactured by the proposed commercial process.

2.5 Qualification of Impurities

Qualification is the process of acquiring and evaluating data that establishes the biological safety of an individual degradation product or a given degradation profile at the level(s) specified. The applicant should provide a rationale for selecting degradation product limits based on safety considerations. The level of any degradation product present in a new drug product that has been adequately tested and found safe in safety and/or clinical studies is considered qualified. Therefore, it is useful to include any available information on the actual content of degradation products in the relevant batches at the time of use in safety and/or clinical studies. Degradation products that are also significant metabolites, present in animal and/or human studies, would not need further qualification. It may be possible to justify a higher level of a degradation product than the level administered in safety studies. The justification should include consideration of factors such as: (1) The

amount of degradation product administered in previous safety and/or clinical studies and found to be safe; (2) the percentage change in the degradation product; and (3) other safety factors as appropriate.

If data are not available to qualify the proposed specification level of a degradation product, studies to obtain such data may be needed (see ATTACHMENT II) when the usual qualification thresholds given in ATTACHMENT I are equaled or exceeded. Higher or lower thresholds for qualification of degradation products may be appropriate for some individual drug products based on scientific rationale and level of concern, including drug class effects and clinical experience. For example, qualification may be especially important when there is evidence that such degradation products in certain drugs or therapeutic classes have previously been associated with adverse reactions in patients. In these instances, a lower qualification threshold may be appropriate. Conversely, a higher qualification threshold may be appropriate for individual drugs when the level of concern for safety is less than usual based on similar considerations (e.g., patient population, drug class effects, and clinical considerations). In unusual circumstances, technical factors (e.g., manufacturing capability, a low drug substance to excipient ratio, or the use of excipients that are also crude products of animal or plant origin) may be considered as part of the justification for selection of alternative thresholds. Proposals for alternative thresholds would be considered on a case-by-case basis.

The ''Decision Tree for Safety Studies'' (See Guideline on Impurities in New Drug Substances and ATTACHMENT II) describes considerations for the qualification of impurities when thresholds are equaled or exceeded. Alternatively, if data are available in the scientific literature, then such data may be submitted for consideration to qualify a degradation product. If neither is the case, additional safety testing should be considered. The studies desired to qualify a degradation product will depend on a number of factors, including the patient population, daily dose, route and duration of drug administration. Such studies should normally be conducted on the drug product or drug substance containing the degradation products to be controlled, although studies using isolated degradation products may be considered acceptable.

2.6 New Impurities

During the course of drug development studies, the qualitative degradation profile of a new drug product may change, resulting in new degradation products that exceed the identification and/or qualification threshold. In this event, these new degradation products should be identified and/or qualified. Such changes call for consideration of the need for qualification of the level of the impurity unless it is below the threshold values as noted in ATTACHMENT I.

When a new degradation product equals or exceeds the threshold (for rounding, see section 2.2), the ''Decision Tree for Safety Studies'' should be consulted. Safety studies should provide a comparison of results of safety testing of the drug product or drug substance containing a representative level of the degradation product with previously qualified material, although studies using the isolated degradation products also may be considered acceptable (these studies may not always have clinical significance).

3. Glossary

Degradation Product: A molecule resulting from a chemical change in the drug molecule brought about over time and/or by the action of, e.g., light, temperature, pH, or water, or by reaction with an excipient and/or the immediate container/closure system (also called decomposition product).

Degradation Profile: A description of the degradation products observed in the drug substance or drug product.

Development Studies: Studies conducted to scale-up, optimize, and validate the manufacturing process for a drug product.

Identified Impurity: An impurity for which a structural characterization has been achieved.

Impurity: Any component of the drug product that is not the chemical entity defined as the drug substance or an excipient in the drug product.

Impurity Profile: A description of the identified and unidentified impurities present in a drug product.

New Drug Substance: The designated therapeutic moiety which has not been previously registered in a region or member State (also referred to as a new molecular entity or new chemical entity). It may be a complex, simple ester, or salt of a previously approved drug substance.

Potential Degradation Product: An impurity which, from theoretical considerations, may arise during or after manufacture or storage of the drug product. It may or may not actually appear in the drug substance or drug product.

Qualification: The process of acquiring and evaluating data that establishes the biological safety of an individual impurity or a given impurity profile at the level(s) specified.

Reaction Product: Product arising from the reaction of a drug substance with an excipient in the drug product or immediate container/closure system.

Safety Information: The body of information that establishes the biological safety of an individual impurity or a given impurity profile at the level(s) specified.

Specified Degradation Product: Identified or unidentified degradation product that is selected for inclusion in the new drug product specifications and is individually listed and limited in order to assure the safety and quality of the new drug product.

Toxic Impurity: An impurity having significant undesirable biological activity.

Unidentified Degradation Product: An impurity which is defined solely by qualitative analytical properties, e.g., chromatographic retention time.

Unspecified Degradation Product: A degradation product which is not recurring from batch to batch.

ATTACHMENT I

Thresholds for Reporting of Degradation Products in New Drug Products

Maximum daily dose[1]	Threshold[3]
≤ 1 g	0.1%
> 1 g	0.05%

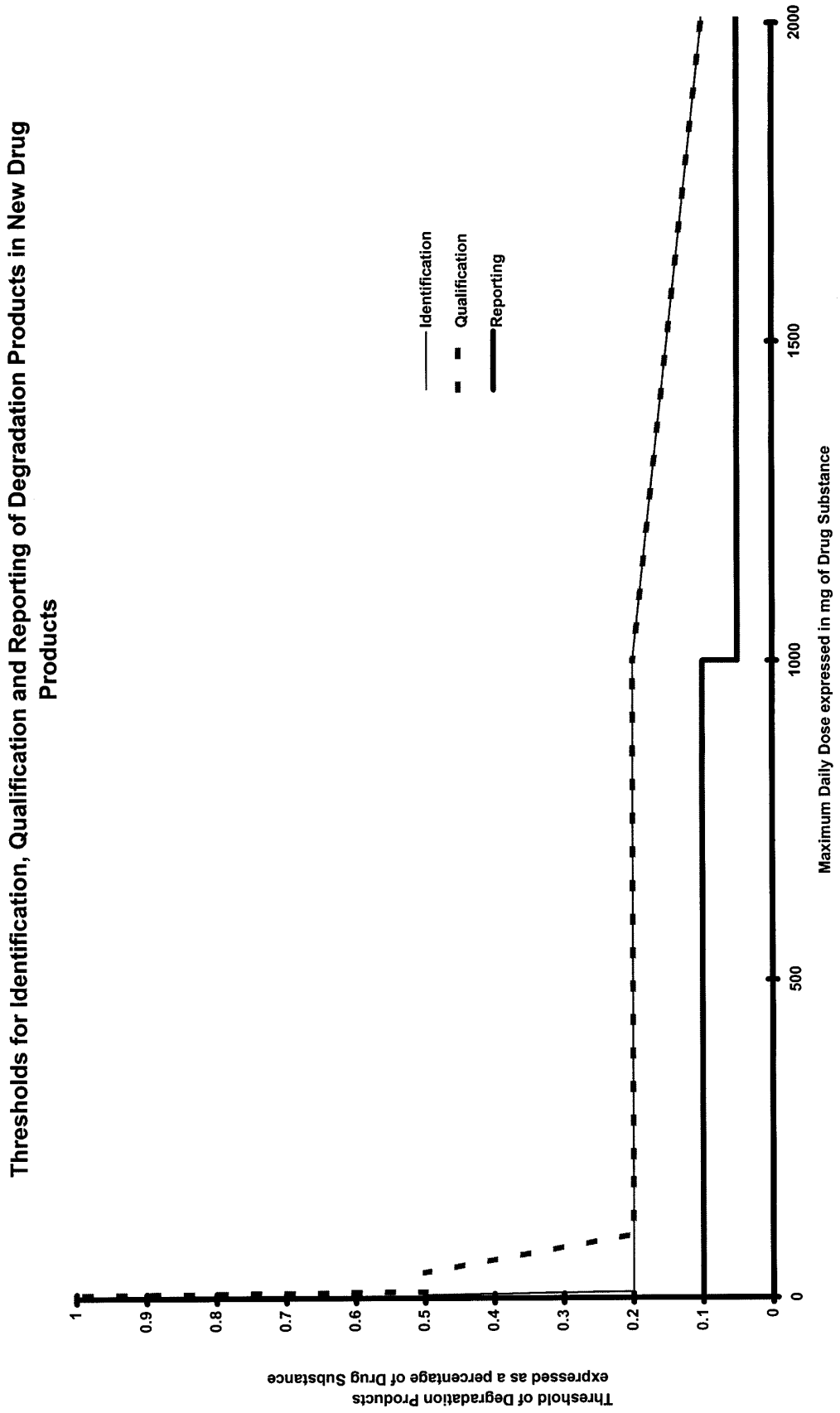
Thresholds for Identification of Degradation Products in New Drug Products

Maximum daily dose[1]	Threshold[3]
< 1 mg	1.0% or 5 μg TDI[2] whichever is lower
1 mg - 10 mg	0.5% or 20 μg TDI whichever is lower
> 10 mg - 2 g	0.2% or 2 mg TDI whichever is lower
> 2 g	0.1%

Thresholds for Qualification of Degradation Products in New Drug Products	
Maximum daily dose[1]	Threshold[3]
< 10 mg	1.0% or 50 µg TDI whichever is lower
10 mg - 100 mg	0.5% or 200 µg TDI whichever is lower
> 100 mg - 2 g	0.2% or 2 mg TDI whichever is lower
> 2 g	0.1%

[1] The amount of drug substance administered per day
[2] Total Daily Intake
[3] Threshold is based on percent of the drug substance

BILLING CODE 4160–01–F


Thresholds for Identification, Qualification and Reporting of Degradation Products in New Drug Products
Identification
Qualification
Reporting
Threshold of Degradation Products expressed as a percentage of Drug Substance
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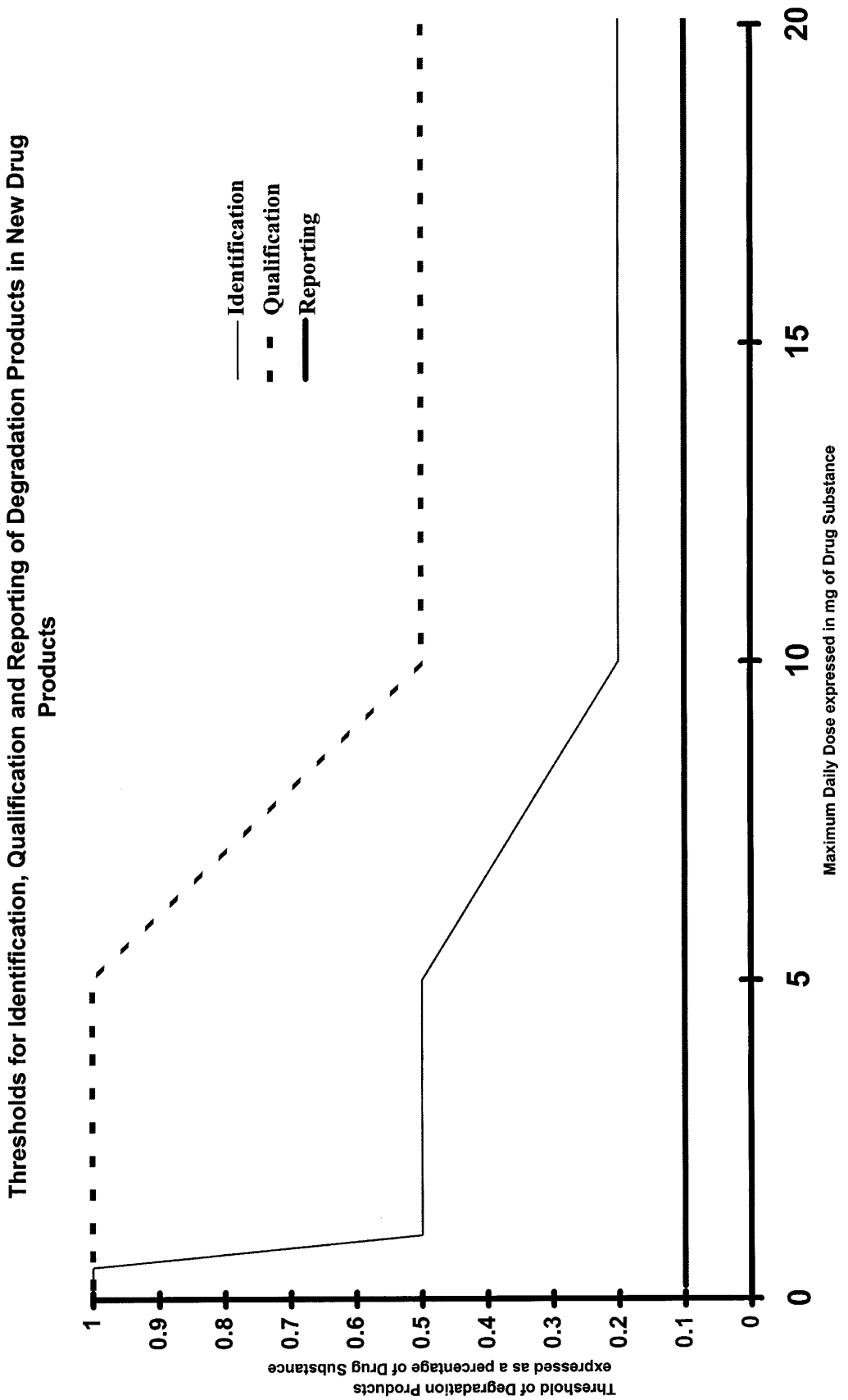
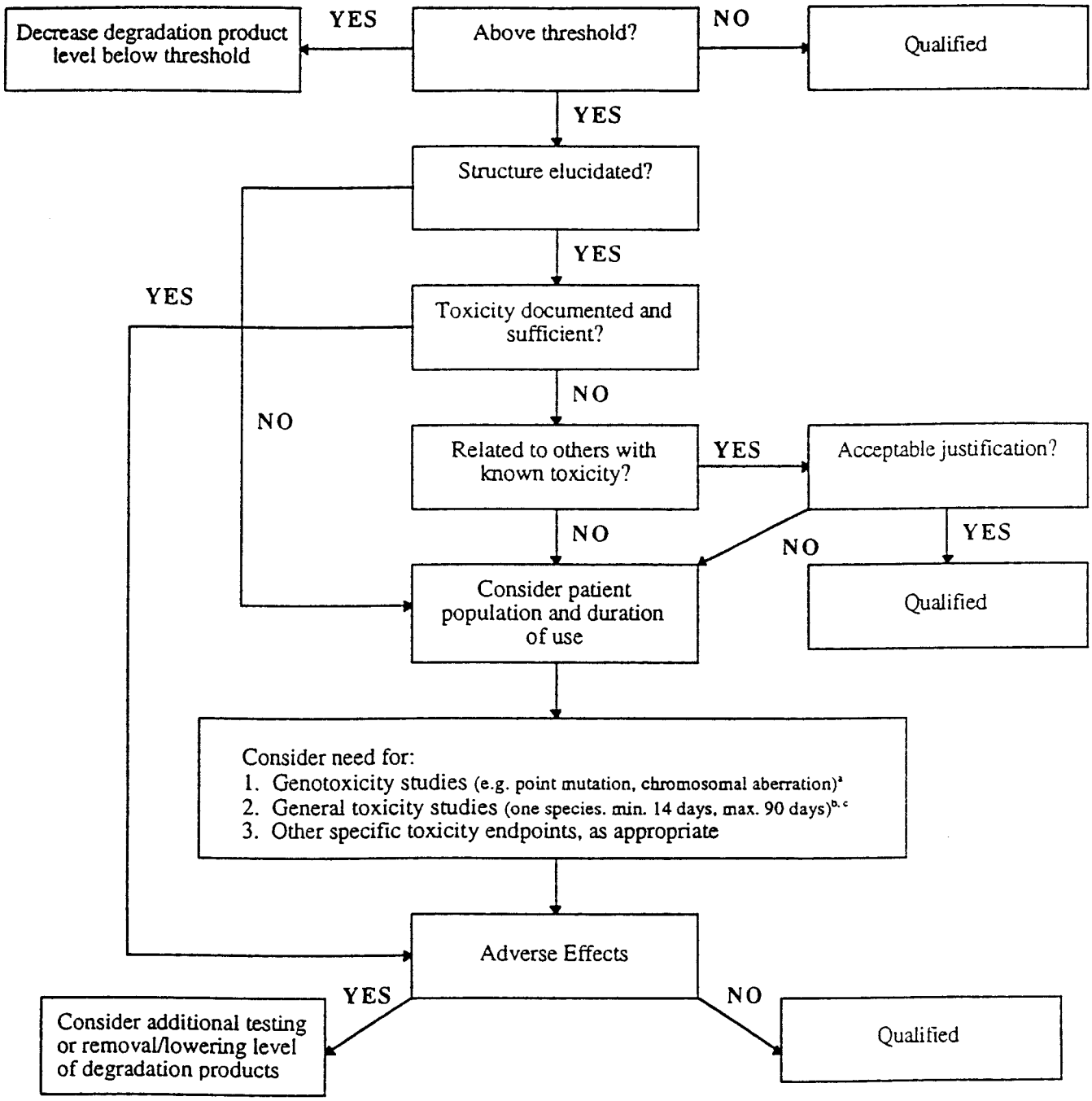
0.9
0.8
0.7
0.6
0.5
0.4
0.3
0.2
0.1
0
0
500
1000
1500
2000
Maximum Daily Dose expressed in mg of Drug Substance


Thresholds for Identification, Qualification and Reporting of Degradation Products in New Drug Products
Identification
Qualification
Reporting
Threshold of Degradation Products expressed as a percentage of Drug Substance
1
0.9
0.8
0.7
0.6
0.5
0.4
0.3
0.2
0.1
0
0
5
10
15
20
Maximum Daily Dose expressed in mg of Drug Substance

ATTACHMENT II

DECISION TREE FOR SAFETY STUDIES



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[a] If considered desirable, a minimum screen, e.g., genotoxic potential, should be conducted. A study to detect point mutations and one to detect chromosomal aberrations, both in vitro, are seen as an acceptable minimum screen, as discussed in the ICH guidelines: ''Genotoxicity: Specific Aspects of Regulatory Tests'' and ''Genotoxicity: A Standard Battery for Genotoxicity Testing of Pharmaceuticals.''

[b] If general toxicity studies are desirable, study(ies) should be designed to allow comparison of unqualified to qualified material. The study duration should be based on available relevant information and performed in the species most likely to maximize the potential to detect the toxicity of an impurity. In general, a minimum duration of 14 days and a maximum duration of 90 days would be acceptable.

[c] On a case-by-case basis, single-dose studies may be acceptable, especially for single-dose drugs, and when such studies are conducted using an isolated impurity. If repeat-dose studies are desirable, a maximum duration of 90 days would be acceptable.

Dated: May 6, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–13019 Filed 5–16–97; 8:45 am]

BILLING CODE 4160–01–F

Federal Register

Monday
May 19, 1997

Part V

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Guideline on the Validation of Analytical Procedures: Methodology; Availability; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96D–0030]

International Conference on Harmonisation; Guideline on the Validation of Analytical Procedures: Methodology; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a guideline entitled, ''Validation of Analytical Procedures: Methodology.'' The guideline was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guideline provides recommendations on how to consider various validation characteristics for each analytical procedure. The guideline is an extension to the ICH guideline entitled, ''Text on Validation of Analytical Procedures.''

DATES: Effective May 19, 1997. Submit written comments at any time.

ADDRESSES: Submit written comments on the guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the guideline are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Regarding the guideline: Linda L. Ng, Center for Drug Evaluation and Research (HFD–570), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1050.

Regarding ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In the **Federal Register** of March 7, 1996 (61 FR 9316), FDA published a draft tripartite guideline entitled, ''Validation of Analytical Procedures: Methodology.'' The notice gave interested persons an opportunity to submit comments by June 5, 1996.

After consideration of the comments received and revisions to the guideline, a final draft of the guideline was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies at the ICH meeting held on November 6, 1996.

In the **Federal Register** of March 1, 1995 (60 FR 11260), the agency published a guideline entitled, ''Text on Validation of Analytical Procedures.'' The guideline presents a discussion of the characteristics that should be considered during the validation of the analytical procedures included as part of registration applications submitted in Europe, Japan, and the United States. The guideline discusses common types of analytical procedures and defines basic terms, such as ''analytical procedure,'' ''specificity,'' and ''precision.'' These terms and definitions are meant to bridge the differences that often exist between various compendia and regulators of the European Union, Japan, and the United States.

This guideline provides guidance and recommendations on how to consider the various validation characteristics for each analytical procedure. In some cases, (for example, the demonstration of specificity) the overall capabilities of a number of analytical procedures in combination may be investigated to ensure the quality of the drug substance or drug product.

This guideline represents the agency's current thinking on the validation of analytical procedures. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

As with all of FDA's guidelines, the public is encouraged to submit written comments with new data or other new information pertinent to this guideline. The comments in the docket will be periodically reviewed, and, where appropriate, the guideline will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the final guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guideline is available via Internet using the World Wide Web (WWW) (http://www.fda.gov/cder/guidance.htm).

The text of the guideline follows:

Validation of Analytical Procedures: Methodology

Introduction

This document is complementary to the ICH guideline entitled ''Text on Validation of Analytical Procedures,'' which presents a discussion of the characteristics that should be considered during the validation of analytical procedures. Its purpose is to provide some guidance and recommendations on how to consider the various validation characteristics for each analytical procedure. In some cases (for example, demonstration of specificity), the overall capabilities of a number of analytical procedures in combination may be investigated in order to ensure the quality of the drug substance or drug product. In addition, the document provides an indication of the data that should be presented in a new drug application.

All relevant data collected during validation and formulae used for calculating validation characteristics should be submitted and discussed as appropriate.

Approaches other than those set forth in this guideline may be applicable and acceptable. It is the responsibility of the applicant to choose the validation procedure and protocol most suitable for their product. However, it is important to remember that the main objective of validation of an analytical procedure is to demonstrate that the procedure is suitable for its intended purpose. Due to their complex nature, analytical procedures for biological and biotechnological products in some cases may be approached differently than in this document.

Well-characterized reference materials, with documented purity, should be used throughout the validation study. The degree of purity necessary depends on the intended use.

In accordance with the parent document, and for the sake of clarity, this document considers the various validation characteristics in distinct sections. The arrangement of these sections reflects the process by which an analytical procedure may be developed and evaluated.

In practice, it is usually possible to design the experimental work such that the appropriate validation characteristics can be considered simultaneously to provide a sound, overall knowledge of the capabilities of the analytical procedure, for instance: Specificity, linearity, range, accuracy, and precision.

1. Specificity

An investigation of specificity should be conducted during the validation of identification tests, the determination of impurities, and the assay. The procedures used to demonstrate specificity will depend on the intended objective of the analytical procedure.

It is not always possible to demonstrate that an analytical procedure is specific for a particular analyte (complete discrimination). In this case, a combination of two or more analytical procedures is recommended to achieve the necessary level of discrimination.

1.1. Identification

Suitable identification tests should be able to discriminate between compounds of closely related structures which are likely to be present. The discrimination of a procedure may be confirmed by obtaining positive results (perhaps by comparison with a known reference material) from samples containing the analyte, coupled with negative results from samples which do not contain the analyte. In addition, the identification test may be applied to materials structurally similar to or closely related to the analyte to confirm that a positive response is not obtained. The choice of such potentially interfering materials should be based on sensible scientific judgment with a consideration of the interferences that could occur.

1.2. Assay and Impurity Test(s)

For chromatographic procedures, representative chromatograms should be used to demonstrate specificity, and individual components should be appropriately labeled. Similar considerations should be given to other separation techniques.

Critical separations in chromatography should be investigated at an appropriate level. For critical separations, specificity can be demonstrated by the resolution of the two components which elute closest to each other.

In cases where a nonspecific assay is used, other supporting analytical procedures should be used to demonstrate overall specificity. For example, where a titration is adopted to assay the drug substance for release, the combination of the assay and a suitable test for impurities can be used.

The approach is similar for both assay and impurity tests:

1.2.1. Impurities Are Available

For the assay, this should involve demonstration of the discrimination of the analyte in the presence of impurities and/or excipients; practically, this can be done by spiking pure substances (drug substance or drug product) with appropriate levels of impurities and/or excipients and demonstrating that the assay result is unaffected by the presence of these materials (by comparison with the assay result obtained on unspiked samples). For the impurity test, the discrimination may be established by spiking drug substance or drug product with appropriate levels of impurities and demonstrating the separation of these impurities individually and/or from other components in the sample matrix.

1.2.2. Impurities Are Not Available

If impurity or degradation product standards are unavailable, specificity may be demonstrated by comparing the test results of samples containing impurities or degradation products to a second well-characterized procedure, e.g., pharmacopoeial method or other validated analytical procedure (independent procedure). As appropriate, this should include samples stored under relevant stress conditions: Light, heat, humidity, acid/base hydrolysis, and oxidation.

- For the assay, the two results should be compared.
- For the impurity tests, the impurity profiles should be compared.

Peak purity tests may be useful to show that the analyte chromatographic peak is not attributable to more than one component (e.g., diode array, mass spectrometry).

2. Linearity

A linear relationship should be evaluated across the range (see section 3) of the analytical procedure. It may be demonstrated directly on the drug substance (by dilution of a standard stock solution) and/or separate weighings of synthetic mixtures of the drug product components, using the proposed procedure. The latter aspect can be studied during investigation of the range.

Linearity should be evaluated by visual inspection of a plot of signals as a function of analyte concentration or content. If there is a linear relationship, test results should be evaluated by appropriate statistical methods, for example, by calculation of a regression line by the method of least squares. In some cases, to obtain linearity between assays and sample concentrations, the test data may have to be subjected to a mathematical transformation prior to the regression analysis. Data from the regression line itself may be helpful to provide mathematical estimates of the degree of linearity.

The correlation coefficient, y-intercept, slope of the regression line, and residual sum of squares should be submitted. A plot of the data should be included. In addition, an analysis of the deviation of the actual data points from the regression line may also be helpful for evaluating linearity.

Some analytical procedures, such as immunoassays, do not demonstrate linearity after any transformation. In this case, the analytical response should be described by an appropriate function of the concentration (amount) of an analyte in a sample.

For the establishment of linearity, a minimum of five concentrations is recommended. Other approaches should be justified.

3. Range

The specified range is normally derived from linearity studies and depends on the intended application of the procedure. It is established by confirming that the analytical procedure provides an acceptable degree of linearity, accuracy, and precision when applied to samples containing amounts of analyte within or at the extremes of the specified range of the analytical procedure.

The following minimum specified ranges should be considered:

- For the assay of a drug substance or a finished (drug) product: Normally from 80 to 120 percent of the test concentration;
- For content uniformity: Covering a minimum of 70 to 130 percent of the test concentration, unless a wider, more appropriate range, based on the nature of the dosage form (e.g., metered dose inhalers), is justified;
- For dissolution testing: +/-20 percent over the specified range; e.g., if the specifications for a controlled released product cover a region from 20 percent, after 1 hour, up to 90 percent, after 24 hours, the validated range would be 0–110 percent of the label claim;
- For the determination of an impurity: From the reporting level of an impurity[1] to 120 percent of the specification;
- For impurities known to be unusually potent or to produce toxic or unexpected pharmacological effects, the detection/quantitation limit should be commensurate with the level at which the impurities must be controlled.

Note: For validation of impurity test procedures carried out during development, it may be necessary to consider the range around a suggested (probable) limit;

- If assay and purity are performed together as one test and only a 100 percent standard

[1]See sections on ''Reporting Impurity Content of Batches'' of the corresponding ICH guideline entitled ''Impurities in New Drug Substances'' (61 FR 372, January 4, 1996) and draft guideline ''Impurities in New Drug Products'' (61 FR 11268, March 19, 1996).

is used, linearity should cover the range from the reporting level of the impurities[2] to 120 percent of the assay specification.

4. Accuracy

Accuracy should be established across the specified range of the analytical procedure.

4.1. Assay

4.1.1. Drug substance:

Several methods of determining accuracy are available:

(a) Application of an analytical procedure to an analyte of known purity (e.g., reference material);

(b) Comparison of the results of the proposed analytical procedure with those of a second well-characterized procedure, the accuracy of which is stated and/or defined (independent procedure, see section 1.2.);

(c) Accuracy may be inferred once precision, linearity, and specificity have been established.

4.1.2. Drug product:

Several methods for determining accuracy are available:

(a) Application of the analytical procedure to synthetic mixtures of the drug product components to which known quantities of the drug substance to be analyzed have been added;

(b) In cases where it is impossible to obtain samples of all drug product components, it may be acceptable either to add known quantities of the analyte to the drug product or to compare the results obtained from a second, well-characterized procedure, the accuracy of which is stated and/or defined (independent procedure, see section 1.2);

c) Accuracy may be inferred once precision, linearity, and specificity have been established.

4.2. Impurities (Quantitation)

Accuracy should be assessed on samples (drug substance/drug product) spiked with known amounts of impurities.

In cases where it is impossible to obtain samples of certain impurities and/or degradation products, it is considered acceptable to compare results obtained by an independent procedure (see section 1.2.). The response factor of the drug substance can be used.

It should be clear how the individual or total impurities are to be determined, e.g., weight/weight or area percent, in all cases with respect to the major analyte.

4.3. Recommended Data:

Accuracy should be assessed using a minimum of 9 determinations over a minimum of 3 concentration levels covering the specified range (e.g., 3 concentrations/3 replicates each of the total analytical procedure).

Accuracy should be reported as percent recovery by the assay of known added amount of analyte in the sample or as the difference between the mean and the accepted true value together with the confidence intervals.

[2] Ibid.

5. Precision

Validation of tests for assay and for quantitative determination of impurities includes an investigation of precision.

5.1. Repeatability

Repeatability should be assessed using:

(a) A minimum of 9 determinations covering the specified range for the procedure (e.g., 3 concentrations/3 replicates each); or

(b) A minimum of 6 determinations at 100 percent of the test concentration.

5.2. Intermediate Precision

The extent to which intermediate precision should be established depends on the circumstances under which the procedure is intended to be used. The applicant should establish the effects of random events on the precision of the analytical procedure. Typical variations to be studied include days, analysts, equipment, etc. It is not necessary to study these effects individually. The use of an experimental design (matrix) is encouraged.

5.3. Reproducibility

Reproducibility is assessed by means of an interlaboratory trial. Reproducibility should be considered in case of the standardization of an analytical procedure, for instance, for inclusion of procedures in pharmacopoeias. These data are not part of the marketing authorization dossier.

5.4. Recommended Data

The standard deviation, relative standard deviation (coefficient of variation), and confidence interval should be reported for each type of precision investigated.

6. Detection Limit

Several approaches for determining the detection limit are possible, depending on whether the procedure is noninstrumental or instrumental. Approaches other than those listed below may be acceptable.

6.1. Based on Visual Evaluation

Visual evaluation may be used for noninstrumental methods but may also be used with instrumental methods.

The detection limit is determined by the analysis of samples with known concentrations of analyte and by establishing the minimum level at which the analyte can be reliably detected.

6.2. Based on Signal-to-Noise

This approach can only be applied to analytical procedures which exhibit baseline noise. Determination of the signal-to-noise ratio is performed by comparing measured signals from samples with known low concentrations of analyte with those of blank samples and establishing the minimum concentration at which the analyte can be reliably detected. A signal-to-noise ratio between 3 or 2:1 is generally considered acceptable for estimating the detection limit.

6.3 Based on the Standard Deviation of the Response and the Slope

The detection limit (DL) may be expressed as:

$$DL = \frac{3.3\sigma}{S}$$

where σ = the standard deviation of the response

S = the slope of the calibration curve

The slope S may be estimated from the calibration curve of the analyte. The estimate of σ may be carried out in a variety of ways, for example:

6.3.1. Based on the standard deviation of the blank

Measurement of the magnitude of analytical background response is performed by analyzing an appropriate number of blank samples and calculating the standard deviation of these responses.

6.3.2. Based on the calibration curve

A specific calibration curve should be studied using samples containing an analyte in the range of DL. The residual standard deviation of a regression line or the standard deviation of y-intercepts of regression lines may be used as the standard deviation.

6.4. Recommended Data

The detection limit and the method used for determining the detection limit should be presented. If DL is determined based on visual evaluation or based on signal-to-noise ratio, the presentation of the relevant chromatograms is considered acceptable for justification.

In cases where an estimated value for the detection limit is obtained by calculation or extrapolation, this estimate may subsequently be validated by the independent analysis of a suitable number of samples known to be near or prepared at the detection limit.

7. Quantitation Limit

Several approaches for determining the quantitation limit are possible, depending on whether the procedure is noninstrumental or instrumental. Approaches other than those listed below may be acceptable.

7.1. Based on Visual Evaluation

Visual evaluation may be used for noninstrumental methods, but may also be used with instrumental methods.

The quantitation limit is generally determined by the analysis of samples with known concentrations of analyte and by establishing the minimum level at which the analyte can be quantified with acceptable accuracy and precision.

7.2. Based on Signal-to-Noise

This approach can only be applied to analytical procedures that exhibit baseline noise. Determination of the signal-to-noise ratio is performed by comparing measured signals from samples with known low concentrations of analyte with those of blank samples and by establishing the minimum concentration at which the analyte can be reliably quantified. A typical signal-to-noise ratio is 10:1.

7.3. Based on the Standard Deviation of the Response and the Slope

The quantitation limit (QL) may be expressed as:

$$QL = \frac{10\sigma}{S}$$

where σ = the standard deviation of responses

S = the slope of the calibration curve

The slope S may be estimated from the calibration curve of the analyte. The estimate of σ may be carried out in a variety of ways, for example:

7.3.1. Based on standard deviation of the blank

Measurement of the magnitude of analytical background response is performed by analyzing an appropriate number of blank samples and calculating the standard deviation of these responses.

7.3.2. Based on the calibration curve

A specific calibration curve should be studied using samples containing an analyte in the range of QL. The residual standard deviation of a regression line or the standard deviation of y-intercepts of regression lines may be used as the standard deviation.

7.4 Recommended Data

The quantitation limit and the method used for determining the quantitation limit should be presented.

The limit should be subsequently validated by the analysis of a suitable number of samples known to be near or prepared at the quantitation limit.

8. Robustness

The evaluation of robustness should be considered during the development phase and depends on the type of procedure under study. It should show the reliability of an analysis with respect to deliberate variations in method parameters.

If measurements are susceptible to variations in analytical conditions, the analytical conditions should be suitably controlled or a precautionary statement should be included in the procedure. One consequence of the evaluation of robustness should be that a series of system suitability parameters (e.g., resolution test) is established to ensure that the validity of the analytical procedure is maintained whenever used.

Examples of typical variations are:

- Stability of analytical solutions
- Extraction time

In the case of liquid chromatography, examples of typical variations are:

- Influence of variations of pH in a mobile phase
- Influence of variations in mobile phase composition
- Different columns (different lots and/or suppliers)
- Temperature
- Flow rate

In the case of gas-chromatography, examples of typical variations are:

- Different columns (different lots and/or suppliers)
- Temperature
- Flow rate

9. System Suitability Testing

System suitability testing is an integral part of many analytical procedures. The tests are based on the concept that the equipment, electronics, analytical operations, and samples to be analyzed constitutean integral system that can be evaluated as such. System suitability test parameters to be established for a particular procedure depend on the type of procedure being validated. See pharmacopoeias for additional information.

Dated: May 13, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–13063 Filed 5-16-97; 8:45 am]

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Federal Register

Monday
May 19, 1997

Part VI

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Guideline on Clinical Safety Data Management: Periodic Safety Update Reports for Marketed Drugs; Availability; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96D–0041]

International Conference on Harmonisation; Guideline on Clinical Safety Data Management: Periodic Safety Update Reports for Marketed Drugs; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a guideline entitled ''Clinical Safety Data Management: Periodic Safety Update Reports for Marketed Drugs.'' The guideline was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guideline recommends a unified standard for the format, content, and reporting frequency for postmarketing periodic safety update reports for drugs and biological products. The guideline also provides definitions and terms for key aspects of postmarketing periodic safety reporting. The guideline is intended to help harmonize collection and submission of postmarketing clinical safety data.

DATES: Effective May 19, 1997. Submit written comments at any time.

ADDRESSES: Submit written comments on the guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the guideline are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573. Single copies of the draft guideline may be obtained by mail from the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448 or by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Copies may be obtained from CBER's FAX Information System at 1–888–CBER–FAX or 301–827–3844.

FOR FURTHER INFORMATION CONTACT:

Regarding the guideline: Murray M. Lumpkin, Center for Drug Evaluation and Research (HFD–2), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5400.

Regarding ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In the **Federal Register** of April 5, 1996 (61 FR 15352), FDA published a draft tripartite guideline entitled ''Clinical Safety Data Management: Periodic Safety Update Reports for Marketed Drugs.'' The notice gave interested persons an opportunity to submit comments by July 5, 1996.

After consideration of the comments received and revisions to the guideline, a final draft of the guideline was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies at the ICH meeting held on November 6, 1996.

The guideline provides recommendations on the content, format, and reporting frequency for postmarketing periodic safety update reports for drugs and biological products. The guideline also defines basic terms for postmarketing periodic reporting, such as ''company core data sheet,'' ''company core safety information,'' ''data lock-point (data cut-off date),'' ''international birth date,'' ''listed adverse drug reaction,'' ''spontaneous report (spontaneous notification),'' and ''unlisted adverse drug reaction.'' The guideline is designed primarily for medicinal products authorized recently or in the future. It is most relevant for products marketed in more than one ICH country.

This guideline represents the agency's current thinking on periodic safety update reports for marketed drugs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

As with all of FDA's guidelines, the public is encouraged to submit written comments with new data or other new information pertinent to this guideline. The comments in the docket will be periodically reviewed, and, where appropriate, the guideline will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this draft guideline is available on the Internet using the World Wide Web (WWW) (http://www.fda.gov/cder/guidance.htm) or through the CBER home page (http://www.fda.gov/cber/cberftp.html).

The text of the guideline follows:

Clinical Safety Data Management: Periodic Safety Update Reports for Marketed Drugs

1. Introduction

1.1 Objectives of the guideline

The main objective of ICH is to make recommendations to harmonize technical

requirements for registration or marketing approval. However, because new products are introduced at different times in different markets and the same product may be marketed in one or more countries and still be under development in others, reporting and use of clinical safety information should be regarded as part of a continuum.

The regulatory requirements, particularly regarding frequency of submission and content of periodic safety updates, are not the same in the three regions (EU, Japan, United States). To avoid duplication of effort and to ensure that important data are submitted with consistency to regulatory authorities, this guideline on the format and content for comprehensive periodic safety updates of marketed medicinal products has been developed.[1]

1.2 Background

When a new medicinal product is submitted for marketing approval, except in special situations, the demonstration of its efficacy and the evaluation of its safety are based at most on several thousand patients. The limited number of patients included in clinical trials, the exclusion at least initially of certain patients at-risk, the lack of significant long-term treatment experience, and the limitation of concomitant therapies do not allow a thorough evaluation of the safety profile. Under such circumstances, the detection or confirmation of rare adverse reactions is particularly difficult, if not impossible.

In order to develop a comprehensive picture of clinical safety, medicinal products should be closely monitored, especially during the first years of commercialization. Surveillance of marketed drugs is a shared responsibility between regulatory authorities and MAH's. They record information on drug safety from different sources and procedures have been developed to ensure timely detection and mutual exchange of safety data. Because all information cannot be evaluated with the same degree of priority, regulatory authorities have defined the information to be submitted on an expedited basis; in most countries this rapid transmission is usually focused on the expedited reporting of adverse drug reactions (ADR's) that are both serious and unexpected.

Reevaluation of the benefit/risk ratio of a drug is usually not possible for each individual ADR case, even if serious. Therefore, periodic safety update reports (PSUR's) present the worldwide safety experience of a medicinal product at defined times postauthorization, in order to:

- Report all the relevant new information from appropriate sources;
- Relate these data to patient exposure;
- Summarize the market authorization status in different countries and any significant variations related to safety;
- Create periodically the opportunity for an overall safety reevaluation;
- Indicate whether changes should be made to product information in order to optimize the use of the product.

However, if PSUR's required in the different countries where the product is on the market require a different format, content, period covered, and filing date, MAH's would need to prepare on an excessively frequent basis different reports for the same product. In addition, under such conditions, different regulators could receive different kinds and amounts of information at different times. Thus, efforts are needed to harmonize the requirements for PSUR's, which will also improve the efficiency with which they are produced.

The current situation for periodic safety reports on marketed drugs is different among the three ICH regions. For example:

- The U. S. regulations require quarterly reports during the first 3 years, then annual reports. FDA has recently published proposed rules[2] that take into account the Council for International Organizations of Medical Sciences (CIOMS) Working Group II proposals.[3]
- In the EU, Council Directive 93/39/EEC and Council Regulation 2309/93 require reports with a periodicity of 6 months for 2 years, annually for the 3 following years, and then every 5 years, at the time of renewal of registration.
- In Japan, the authorities require a survey on a cohort of a few thousand patients established by a certain number of identified institutions during the 6 years following authorization. Systematic information on this cohort, taking into account a precise denominator, must be reported annually. Regarding other marketing experience, adverse reactions that are nonserious, but both mild in severity and unlabeled, must be reported every 6 months for 3 years and annually thereafter.

Following a discussion of the objectives and general principles for preparing and submitting PSUR's, a model for their format and content is presented.

Appended is a glossary of important relevant terms.

1.3 Scope of the Guideline

This guideline on the format and content of PSUR's is considered particularly suitable for comprehensive reports covering short periods (e.g., 6 months, 1 year) often prepared during the initial years following approval/authorization.

This guideline might also be applicable for longer term reporting intervals; however, other options may be appropriate.

1.4 General Principles

1.4.1 One report for one active substance

Ordinarily, all dosage forms and formulations as well as indications for a given pharmacologically active substance should be covered in one PSUR. Within the single PSUR, separate presentations of data for different dosage forms, indications, or populations (e.g., children versus adults) may be appropriate.

For combinations of substances also marketed individually, safety information for the fixed combination may be reported either in a separate PSUR or included as separate presentations in the report for one of the separate components, depending on the circumstances. Cross-referencing all relevant PSUR's is considered important.

1.4.2 General scope of information

All relevant clinical and nonclinical safety data should cover only the period of the report (interval data) with the exception of regulatory status information on authorization applications and renewals, as well as data on serious, unlisted ADR's (see section 1.4.5), which should be cumulative.

The main focus of the report should be ADR's. For spontaneous reports, unless indicated otherwise by the reporting health-care professional, all adverse experiences should be assumed to be ADR's; for clinical study and literature cases, only those judged not related to the drug by both the reporter and the manufacturer/sponsor should be excluded.

Reports of lack of efficacy specifically for drugs used in the treatment of life-threatening conditions may represent a significant hazard and, in that sense, be a ''safety issue''. Although these types of cases should not be included with the usual ADR presentations (i.e., line listings and summary tabulations), such findings should be discussed within the PSUR (see section 2.8), if deemed medically relevant.

Increase in the frequency of reports for known ADR's has traditionally been considered as relevant new information. Although attention should be given in the PSUR to such increased reporting, no specific quantitative criteria or other rules are recommended. Judgment should be used in such situations to determine whether the data reflect a meaningful change in ADR occurrence or safety profile and whether an explanation can be proposed for such a change (e.g., population exposed, duration of exposure).

1.4.3 Products manufactured and/or marketed by more than one company

Each MAH is responsible for submitting PSUR's, even if different companies market the same product in the same country. When companies are involved in contractual relationships (e.g., licensor-licensee), arrangements for sharing safety information should be clearly specified. In order to ensure that all relevant data will be duly reported to appropriate regulatory authorities, respective responsibilities for safety reporting should also be clearly specified.

When data received from a partner company(ies) might contribute meaningfully to the safety analysis and influence any proposed or effected changes in the reporting company's product information, these data should be included and discussed in the PSUR, even if it is known that they are included in another company's PSUR.

[1] Guidelines are not legally binding. Some portions of this guideline may not be reflected in existing regulations. To that extent, until the regulations are amended, marketing authorization holders (MAH's) must comply with existing regulations.

[2] Adverse Experience Reporting Requirements for Human Drug and Licensed Biological Products; Proposed Rule, **Federal Register**, October 27, 1994 (59 FR 54046 to 54064).

[3] International Reporting of Periodic Drug-Safety Update Summaries; Final Report of CIOMS, Working Group II, CIOMS, Geneva, 1992.

1.4.4 International birth date and frequency of review and reporting

Each medicinal product should have as an international birth date (IBD) the date of the first marketing authorization for the product granted to any company in any country in the world. For administrative convenience, if desired by the MAH, the IBD can be designated as the last day of the same month. When a report contains information on different dosage forms, formulations, or uses (indications, routes, populations), the date of the first marketing authorization for any of the various authorizations should be regarded as the IBD and, therefore, determine the data lock point for purposes of the unified PSUR. The data lock point is the date designated as the cutoff for data to be included in a PSUR.

The need for a report and the frequency of report submission to authorities are subject to local regulatory requirements. The age of a drug on the market may influence this process. In addition, during the initial years of marketing, a drug will ordinarily receive authorizations at different times in different countries; it is during this early period that harmonization of reporting is particularly important.

However, independent of the required reporting frequency, regulatory authorities should accept PSUR's prepared at 6-month intervals or PSUR's based on multiples of 6 months. Therefore, it is recommended that the preparation of PSUR's for all regulatory authorities should be based on data sets of 6 months or multiples thereof.

Once a drug has been marketed for several years, the need for a comprehensive PSUR and the frequency of reporting may be reviewed, depending on local regulations or requests, while maintaining one IBD for all regulatory authorities.

In addition, approvals beyond the initial one for the active substance may be granted for new indications, dosage forms, populations, or prescription status (e.g., children versus adults; prescription to nonprescription status). The potential consequences on the safety profile raised by such new types and extent of population exposures should be discussed between regulatory authorities and MAH's since they may influence the requirements for periodic reporting.

The MAH should submit a PSUR within 60 days of the data lock point.

1.4.5 Reference safety information

The objective of a PSUR is to establish whether information recorded during the reporting period is in accord with previous knowledge on the drug's safety, and to indicate whether changes should be made to product information. Reference information is needed to perform this comparison. Having one reference source of information in common for the three ICH regions would facilitate a practical, efficient, and consistent approach to the safety evaluation and make the PSUR a unique report accepted in all areas.

It is a common practice for MAH's to prepare their own ''Company Core Data Sheet'' (CCDS) which covers material relating to safety, indications, dosing, pharmacology, and other information concerning the product. A practical option for the purpose of periodic reporting is for each MAH to use, as a reference, the safety information contained within its central document (CCDS), which would be referred to as ''Company Core Safety Information'' (CCSI).

For purposes of periodic safety reporting, CCSI forms the basis for determining whether an ADR is already *Listed* or is still *Unlisted*, terms that are introduced to distinguish them from the usual terminology of ''expectedness'' or ''labeledness'' that is used in association with official labeling. Thus, the local approved product information continues to be the reference document upon which labeledness/expectedness is based for the purpose of local *expedited* postmarketing safety reporting.

1.4.6 Presentation of data on individual case histories

Sources of information

Generally, data from the four following sources of ADR case information are potentially available to an MAH and could be included in the PSUR:

(a) Direct reports to MAH's (or under MAH control):

- Spontaneous notifications from health care professionals;
- Spontaneous notifications from nonhealth care professionals or from consumers (nonmedically substantiated);
- MAH-sponsored clinical studies[4] or named-patient (''compassionate'') use.

(b) Literature.

(c) ADR reporting systems of regulatory authorities.

(d) Other sources of data:

- Reports on ADR's exchanged between contractual partners (e.g., licensors-licensees);
- Data in special registries, such as maintained in organ toxicity monitoring centers;
- Reports created by poison control centers;
- Epidemiological data bases.

Description of the reaction

Until an internationally agreed coding terminology becomes available and its use broadly implemented, the event terms used in the PSUR will generally be derived from whatever standard terminology (''controlled vocabulary'' or ''coding dictionary'') is used by the reporting company.

Whenever possible, the notifying reporter's event terms should be used to describe the ADR. However, when the notifying reporter's terms are not medically appropriate or meaningful, MAH's should use the best alternative compatible event terms from their ADR dictionaries to ensure the most accurate representation possible of the original terms. Under such circumstances, the following should be borne in mind:

- To make it available on request, the ''verbatim'' information supplied by the notifying reporter should be kept on file (in the original language and/or as a medically sound English translation, if applicable).
- In the absence of a diagnosis by the reporting health-care professional, a suggested diagnosis for a symptom complex may be made by the MAH and used to describe a case, in addition to presenting the reported individual signs, symptoms, and laboratory data.
- If an MAH disagrees with a diagnosis that is provided by the notifying health-care professional, it may indicate such disagreement within the line listing of cases (see below).
- MAH's should report and try to understand all information provided within a case report. An example is a laboratory abnormality not addressed/evaluated by the notifying reporter.

Therefore, when necessary and relevant, two descriptions of the signs, symptoms, or diagnosis could be presented in the line listing: First, the reaction as originally reported; second, when it differs, the MAH's medical interpretation (identified by asterisk or other means).

Line listings and/or summary tabulations

Depending on their type or source, available ADR cases should be presented as individual case line listings and/or as summary tabulations.

A line listing provides key information but not necessarily all the details customarily collected on individual cases; however, it does serve to help regulatory authorities identify cases that they might wish to examine more completely by requesting full case reports.

MAH's can prepare line listings of consistent structure and content for cases directly reported to them (or under their control) (see section 1.4.6(a)) as well as those received from regulatory authorities. They can usually do the same for published cases (ordinarily well documented; if not, followup with the author may be possible). However, inclusion of individual cases from second- or third-hand sources, such as contractual partners and special registries (see section 1.4.6(d)) might not be (1) possible without standardization of data elements, or (2) appropriate due to the paucity of information, and might represent unnecessary re-entry/reprocessing of such information by the MAH. Therefore, summary tabulations or possibly a narrative review of these data is considered acceptable under these circumstances.

In addition to individual case line listings, summary tabulations of ADR terms for signs, symptoms, and diagnoses across all patients should usually be presented to provide an overview. Such tabulations should be based on the data in line listings (e.g., all serious ADR's and all nonserious unlisted ADR's), but also on other sources for which line listings are not requested (e.g., nonserious listed ADR's). Details are found in section 2.6.4.

2. Model for a PSUR

The following sections are organized as a sample PSUR. In each of the sections, guidance is provided on what should be included.

[4] What constitutes a clinical study may not always be clear, given the recent use of, for example, stimulated reporting and patient-support programs. In some of these circumstances, the distinction between spontaneous reporting and a clinical study is not well defined. The MAH should specify how relevant data from such sources are included.

Sample Title Page

- Periodic safety update report for: (product);
- MAH's name and address (corporate headquarters or other company entity responsible for report preparation);
- Period covered by this report: (dates);
- International birth date: date (country of IBD);
- Date of report;
- (Other identifying information at the option of MAH, such as report number).

Table of Contents for Model PSUR

- Introduction;
- Worldwide market authorization status;
- Update of regulatory authority or MAH actions taken for safety reasons;
- Changes to reference safety information;
- Patient exposure;
- Presentation of individual case histories;
- Studies;
- Other information;
- Overall safety evaluation;
- Conclusion;
- Appendix: Company Core Data Sheet.

2.1 Introduction

The MAH should briefly introduce the product so that the report ''stands alone'' but is also placed in perspective relative to previous reports and circumstances.

Reference should be made not only to product(s) covered by the report but also to those excluded. Exclusions should be explained; for example, they may be covered in a separate report (e.g., for a combination product).

If it is known that a PSUR on the same product(s) will be submitted by another MAH, some of whose data are included in the report (see section 1.4.6), the possibility of data duplication should be noted.

2.2 Worldwide Market Authorization Status

This section of the report provides cumulative information.

Information should be provided, usually as a table, on all countries in which a regulatory decision about marketing has been made related to the following:

- Dates of market authorization, and subsequent renewal;
- Any qualifications surrounding the authorization, such as limits on indications if relevant to safety;
- Treatment indications and special populations covered by the market authorization, when relevant;
- Lack of approval, including explanation, by regulatory authorities;
- Withdrawal by the company of a license application submission if related to safety or efficacy;
- Dates of launch when known;
- Trade name(s).

Typically, indications for use, populations treated (e.g., children versus adults), and dosage forms will be the same in many or even most countries where the product is authorized. However, when there are important differences, which would reflect different types of patient exposure, such information should be noted. This is especially true if there are meaningful differences in the newly reported safety information that are related to such different exposures. If more convenient and useful, separate regulatory status tables for different product uses or forms would be considered appropriate.

Country entries should be listed in chronological order of regulatory authorizations. For multiple authorizations in the same country (e.g., new dosage forms), the IBD for the active substance and for all PSUR's should be the first (initial) authorization date.

Table 1 is an example, with fictitious data for an antibiotic, of how a table might be organized. The drug was initially developed as a solid oral dosage form for outpatient treatment of various infections.

2.3 Update of Regulatory Authority or MAH Actions Taken for Safety Reasons

This section should include details on the following types of actions relating to safety that were taken during the period covered by the report and between data lock point and report submission:

- Marketing authorization withdrawal or suspension;
- Failure to obtain a marketing authorization renewal;
- Restrictions on distribution;
- Clinical trial suspension;
- Dosage modification;
- Changes in target population or indications;
- Formulation changes.

The safety related reasons that led to these actions should be described and documentation appended when appropriate; any communication with the health profession (e.g., Dear Doctor letters) as a result of such action should also be described with copies appended.

2.4 Changes to Reference Safety Information

The version of the CCDS with its CCSI in effect at the beginning of the period covered by the report should be used as the reference. It should be numbered, dated, and appended to the PSUR and include the date of last revision.

Changes to the CCSI, such as new contraindications, precautions, warnings, ADR's, or interactions, already made during the period covered by the report, should be clearly described, with presentation of the modified sections. The revised CCSI should be used as the reference for the next report and the next period.

With the exception of emergency situations, it may take some time before intended modifications are introduced in the product-information materials provided to prescribers, pharmacists, and consumers. Therefore, during that period the amended reference document (CCDS) may contain more ''listed'' information than the existing product information in many countries.

When meaningful differences exist between the CCSI and the safety information in the official data sheets/product information documents approved in a country, a brief comment should be prepared by the company, describing the local differences and their consequences on the overall safety evaluation and on the actions proposed or initiated. This commentary may be provided in the cover letter or other addendum accompanying the local submission of the PSUR.

2.5 Patient Exposure

Where possible, an estimation of accurate patient exposure should cover the same period as the interim safety data. While it is recognized that it is usually difficult to obtain and validate accurate exposure data, an estimate of the number of patients exposed should be provided along with the method used to derive the estimate. An explanation and justification should be presented if the number of patients is impossible to estimate or is a meaningless metric. In its place, other measures of exposure, such as patient-days, number of prescriptions, or number of dosage units are considered appropriate; the method used should be explained. If these or other more precise measures are not available, bulk sales (tonnage) may be used. The concept of a defined daily dose may be used in arriving at patient exposure estimates. When possible and relevant, data broken down by sex and age (especially pediatric versus adult) should be provided.

When a pattern of reports indicates a potential problem, details by country (with locally recommended daily dose) or other segmentation (e.g., indication, dosage form) should be presented if available.

When ADR data from clinical studies are included in the PSUR, the relevant denominator(s) should be provided. For ongoing and/or blinded studies, an estimation of patient exposure may be made.

2.6 Presentation of Individual Case Histories

2.6.1 General considerations

- Followup data on individual cases may be obtained subsequent to their inclusion in a PSUR. If such information is relevant to the interpretation of the case (significant impact on the case description or analysis, for example), the new information should be presented in the next PSUR, and the correction or clarification noted relative to the earlier case description.
- With regard to the literature, MAH's should monitor standard, recognized medical and scientific journals for safety information on their products and/or make use of one or more literature search/summary services for that purpose. Published cases may also have been received as spontaneous cases, be derived from a sponsored clinical study, or arise from other sources. Care should be taken to include such cases only once. Also, no matter what ''primary source'' is given a case, if there is a publication, it should be noted and the literature citation given.
- In some countries, there is no requirement to submit medically unconfirmed spontaneous reports that originate with consumers or other nonhealth care professionals. However, such reports are acceptable or requested in other countries. Therefore, medically unconfirmed reports should be submitted as addenda line listings and/or summary tabulations only when required or requested by regulatory authorities. However, it is considered that such reports are not expected to be discussed within the PSUR itself.

2.6.2 Cases presented as line listings

The following types of cases should be included in the line listings (Table 2); attempts should be made to avoid duplicate reporting of cases from the literature and regulatory sources:

- All serious reactions, and nonserious unlisted reactions, from spontaneous notifications;
- All serious reactions (attributable to drug by either investigator or sponsor), available from studies or named-patient (''compassionate'') use;
- All serious reactions, and nonserious unlisted reactions, from the literature;
- All serious reactions from regulatory authorities.

Collection and reporting of nonserious, listed ADR's may not be required in all ICH countries. Therefore, a line listing of spontaneously reported nonserious listed reactions that have been collected should be submitted as an addendum to the PSUR only when required or requested by a regulatory authority.

2.6.3 Presentation of the line listing

The line listing(s) should include each patient only once regardless of how many adverse event/reaction terms are reported for the case. If there is more than one event/reaction, they should all be mentioned but the case should be listed under the most serious ADR (sign, symptom, or diagnosis), as judged by the MAH. It is possible that the same patient may experience different ADR's on different occasions (e.g., weeks apart during a clinical trial). Such experiences would probably be treated as separate reports. Under such circumstances, the same patient might then be included in a line listing more than once, and the line listings should be cross-referenced when possible. Cases should be organized (tabulated) by body system (standard organ system classification scheme).

The following headings should usually be included in the line listing:

- MAH case reference number;
- Country in which case occurred;
- Source (e.g., clinical trial, literature, spontaneous, regulatory authority);
- Age and sex;
- Daily dose of suspected drug (and, when relevant, dosage form or route);
- Date of onset of the reaction. If not available, best estimate of time to onset from therapy initiation. For an ADR known to occur after cessation of therapy, estimate of time lag if possible (may go in Comments section);
- Dates of treatment. If not available, best estimate of treatment duration;
- Description of reaction as reported, and when necessary as interpreted by the MAH (English translation when necessary). See section 1.4.6 for guidance;
- Patient outcome (at case level) (e.g., resolved, fatal, improved, sequelae, unknown). This field does not refer to the criteria used to define a ''serious'' ADR. It should indicate the consequences of the reaction(s) for the patient, using the worst of the different outcomes for multiple reactions;
- Comments, if relevant (e.g., causality assessment if the manufacturer disagrees with the reporter; concomitant medications suspected to play a role in the reactions directly or by interaction; indication treated with suspect drug(s); dechallenge/rechallenge results if available).

Depending on the product or circumstances, it may be useful or practical to have more than one line listing, such as for different dosage forms or indications, if such differentiation facilitates presentation and interpretation of the data.

2.6.4 Summary tabulations

An aggregate summary for each of the line listings should usually be presented. These tabulations ordinarily contain more terms than patients. It would be useful to have separate tabulations (or columns) for serious reactions and for nonserious reactions, for listed and unlisted reactions; other breakdowns might also be appropriate (e.g., by source of report). See Table 3 for a sample data presentation on serious reactions.

A summary tabulation should be provided for the nonserious, listed, spontaneously reported reactions (see also section 2.6.2).

The terms used in these tables should ordinarily be those used by the MAH to describe the case (see section 1.4.6).

Except for cases obtained from regulatory authorities, the data on serious reactions from other sources (see section 1.4.6(c)) should normally be presented only as a summary tabulation. If useful, the tabulations may be sorted by source of information or country, for example.

When the number of cases is very small, or the information inadequate for any of the tabulations, a narrative description rather than a formal table is considered suitable.

As previously described, the data in summary tabulations should be interval data, as should the line listings from which they are derived. However, for ADR's that are both serious and unlisted, a cumulative figure (i.e., all cases reported to date) should be provided in the table(s) or as a narrative.

2.6.5 MAH's analysis of individual case histories

This section may be used for brief comments on the data concerning individual cases. For example, discussion can be presented on particular serious or unanticipated findings (e.g., their nature, medical significance, mechanism, reporting frequency, etc.). The focus here should be on individual case discussion and should not be confused with the global assessment in the Overall Safety Evaluation (section 2.9).

2.7 Studies

All completed studies (nonclinical, clinical, epidemiological) yielding safety information with potential impact on product information, studies specifically planned or in progress, and published studies that address safety issues, should be discussed.

2.7.1 Newly analyzed company-sponsored studies

All relevant studies containing important safety information and newly analyzed during the reporting period should be described, including those from epidemiological, toxicological, or laboratory investigations. The study design and results should be clearly and concisely presented with attention to the usual standards of data analysis and description that are applied to nonclinical and clinical study reports. Copies of full reports should be appended only if deemed appropriate.

2.7.2 Targeted new safety studies planned, initiated, or continuing during the reporting period.

New studies specifically planned or conducted to examine a safety issue (actual or hypothetical) should be described (e.g., objective, starting date, projected completion date, number of subjects, protocol abstract).

When possible and relevant, if an interim analysis was part of the study plan, the interim results of ongoing studies may be presented. When the study is completed and analyzed, the final results should be presented in a subsequent PSUR as described under section 2.7.1.

2.7.3 Published safety studies

Reports in the scientific and medical literature, including relevant published abstracts from meetings, containing important safety findings (positive or negative) should be summarized and publication reference(s) given.

2.8 Other Information

2.8.1 Efficacy-related information

For a product used to treat serious or life-threatening diseases, medically relevant lack of efficacy reporting, which might represent a significant hazard to the treated population, should be described and explained.

2.8.2 Late-breaking information

Any important, new information received after the data base was frozen for review and report preparation may be presented in this section. Examples include significant new cases or important followup data. These new data should be taken into account in the Overall Safety Evaluation (section 2.9).

2.9 Overall Safety Evaluation

A concise analysis of the data presented, taking into account any late-breaking information (section 2.8.2), and followed by the MAH assessment of the significance of the data collected during the period and from the perspective of cumulative experience, should highlight any new information on:

- A change in characteristics of listed reactions, e.g., severity, outcome, target population;
- Serious unlisted reactions, placing into perspective the cumulative reports;
- Nonserious unlisted reactions;
- An increased reporting frequency of listed reactions, including comments on whether it is believed the data reflect a meaningful change in ADR occurrence.

The report should also explicitly address any new safety issue on the following (lack of significant new information should be mentioned for each):

- Drug interactions;
- Experience with overdose, deliberate or accidental, and its treatment;
- Drug abuse or misuse;
- Positive or negative experiences during pregnancy or lactation;
- Experience in special patient groups (e.g., children, elderly, organ impaired);

• Effects of long-term treatment.

2.10 Conclusion

The conclusion should:

• Indicate which safety data do not remain in accord with the previous cumulative experience, and with the reference safety information (CCSI);

• Specify and justify any action recommended or initiated.

Appendix: Company Core Data Sheet

The Company Core Data Sheet in effect at the beginning of the period covered should be appended to the PSUR.

3. Glossary of Special Terms

Company Core Data Sheet (CCDS)—A document prepared by the MAH containing, in addition to safety information, material relating to indications, dosing, pharmacology, and other information concerning the product.

Company Core Safety Information (CCSI)—All relevant safety information contained in the CCDS prepared by the MAH and which the MAH requires to be listed in all countries where the company markets the drug, except when the local regulatory authority specifically requires a modification. It is the reference information by which listed and unlisted are determined for the purpose of periodic reporting for marketed products, but not by which expected and unexpected are determined for expedited reporting.

Data Lock Point (Data Cut-off Date)—The date designated as the cut-off date for data to be included in a PSUR. It is based on the international birth date (IBD) and should usually be in 6-month increments.

International Birth Date (IBD)—The date of the first marketing authorization for a new medicinal product granted to any company in any country in the world.

Listed Adverse Drug Reaction (ADR)—An ADR whose nature, severity, specificity, and outcome are consistent with the information in the CCSI.

Spontaneous Report or Spontaneous Notification—An unsolicited communication to a company, regulatory authority, or other organization that describes an adverse reaction in a patient given one or more medicinal products and which does not derive from a study or any organized data collection scheme.

Unlisted Adverse Drug Reaction—An ADR whose nature, severity, specificity, or outcome are not consistent with the information included in the CCSI.

TABLE 1.—EXAMPLE OF PRESENTATION OF WORLDWIDE MARKET AUTHORIZATION STATUS

Country	Action-Date	Launch Date	Trade Name(s)	Comments
Sweden	A[1]–7/90	12/90	Bacteroff	–
	AR–10/95	–	–	–
Brazil	A–10/91	2/92	Bactoff	–
	A–1/93	3/93	Bactoff-IV	IV dosage form
United Kingdom	AQ–3/92	6/92	Bacgone	Elderly (> 65) excluded
	A–4/94	7/94	Bacgone-C (skin infs)	(PK) Topical cream
Japan	LA–12/92	–	–	To be refiled
France	V–9/92	–	–	Unrelated to safety
Nigeria	A–5/93	7/93	Bactoff	–
	A–9/93	1/94	Bactoff	New indication
Etc...				

[1] Abbreviations for Action: A = authorized; AQ = authorized with qualifications; LA = lack of approval; V = voluntary marketing application withdrawal by company; AR = authorization renewal.

TABLE 2.—PRESENTATION OF INDIVIDUAL CASE HISTORIES

(See sections 2.6.2 and 2.6.4 for full explanation)

Source	Type of Case	Only Summary Tabulation	Line Listing and Summary Tabulation
1. *Direct Reports to MAH*			
• Spontaneous ADR reports[1]	S	-	+
	NS U	-	+
	NS L[2]	+	-
• MAH sponsored studies	SA	-	+
2. *Literature*	S	-	+
	NS U	-	+
3. *Other sources*			
• Regulatory authorities	S	-	+
• Contractual partners	S	+	-
• Registries	S	+	-

[1] Medically unconfirmed reports should be provided as a PSUR addendum only if required or requested by regulatory authorities, as a line listing and/or summary tabulation.

[2] Line listing should be provided as PSUR addendum only if required or requested by regulatory authority.

S = serious; L = listed; A = attributable to drug (by investigator or sponsor); NS = nonserious; U = unlisted.

*TABLE 3.—(EXAMPLE OF SUMMARY TABULATION)[1] NUMBER OF REPORTS BY TERM (SIGNS, SYMPTOMS AND DIAGNOSES) FROM SPONTANEOUS (MEDICALLY CONFIRMED), CLINICAL STUDY AND LITERATURE CASES: ALL SERIOUS REACTIONS

(An * indicates an unlisted term)

Body system/ADR term	Spontaneous/Regulatory bodies	Clinical trials	Literature
CNS			
hallucinations*	2	0	0
etc.			
etc.			
Sub-total			
CV			
etc.			
etc.			
Sub-total			
Etc.			
TOTAL			

[1] This table is only one example of different possible data presentations which are at the discretion of the MAH (e.g., serious and nonserious in the same table or as separate tables, etc).

In a footnote (or elsewhere), the number of patient-cases that represent the tabulated terms might be given (e.g., x-spontaneous/regulatory, y-clinical trial, and z-literature cases).

Dated: May 13, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–13065 Filed 5–16–97; 8:45 am]

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Federal Register

Monday
May 19, 1997

Part VII

Department of Commerce

National Telecommunications and Information Administration

Telecommunications and Information Infrastructure Assistance Program (TIIAP); Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket Number: 970103002–7109–02]

RIN 0660–ZA02

Telecommunications and Information Infrastructure Assistance Program (TIIAP)

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of applications received.

SUMMARY: On January 27, 1997, in the **Federal Register** (62 FR 3946) the National Telecommunications and Information Administration (NTIA) annnounced availability of funds for the Telecommunications and Information Infrastructure Assistance Program (TIIAP) to promote the widespread use of advanced telecommunications and information technologies in the public and non-profit sectors. By providing matching grants for information infrastructure projects, this program will help develop a nationwide, interactive, multimedia information infrastructure that is accessible to all citizens, in rural as well as urban areas. This Notice announces the applications that were received in response to the January 27, 1997 solicitation.

FOR FURTHER INFORMATION CONTACT: Stephen J. Downs, Acting Director of the Telecommunications and Information Infrastructure Assistance Program, Telephone: 202/482–2048. Fax: 202/501–5136. E-mail: tiiap@ntia.doc.gov.

SUPPLEMENTARY INFORMATION:

Applications Received

In all, 924 applications were received from 49 states, the District of Columbia, Commonwealth of Puerto Rico, Guam, US Virgin Islands, and the Marshall Islands. The total amount requested by the applications is $354 million.

Notice is hereby given that the TIIAP received applications from the following organizations. The list includes all applications received. Identification of any application only indicates its receipt. It does *not* indicate that it has been accepted for review, that it has been determined to be eligible for funding, or that an application will receive an award.

ALASKA

970094 Council of Athabascan Tribal Governments
970371 United Way of Anchorage
970355 University of Alaska Fairbanks
970654 Galena City School District
970898 University of Alaska Anchorage

ALABAMA

970024 Lanett City Schools
970039 Dallas County School System
970063 Rotary Club of Mobile Alabama
970242 United Way of Southwest Alabama, Inc.
970266 Poarch Creek Indians
970411 Alabama A&M University
970785 Selma University
970497 City of Madison

ARKANSAS

970105 Ozarks Unlimited Resources Educational Co-operative
970075 Board of Trustees of the University of Arkansas
970132 United Way of Pulaski County
970206 Pottsville School District
970147 Lyon College
970351 Arkansas Educational Television Commission
970476 City of Little Rock
970623 Arkansas Environmental Education Association
970652 Lincoln Consolidate School District
970728 University of Arkansas at Little Rock
970569 Mid-South Community College
970773 University of Arkansas for Medical Sciences
970826 University of Arkansas Cooperative Extension Service
970825 University of Arkansas for Medical Sciences

ARIZONA

970123 White Mountain Apache Tribe
970140 Navajo County
970249 Casa Grande Police Department
970359 City of Phoenix
970378 City of Bullhead City
970642 Northern Arizona University
970659 Maricopa County Environmental Service Department
970733 City of Tucson
970738 PPEP Micro & Housing Development Corporation
970700 Chicanos Por La Causa, Inc.
970708 Ajo-Lukeville Health Services District
970844 Indian Oasis-Baboquivari Unified SD #40
970867 National Indian Training and Research Center
970870 Gila River Indian Community
970912 Amphitheater School District # 10
970920 Navajo Community College

CALIFORNIA

970001 West End Communications Authority
970005 Los Angeles Mission College
970013 Borrego Springs Unified School District
970107 Glenn County
970116 PUENTE Learning Center
970057 City of Orange
970014 City of Cathedral City
970046 California State Rural Health Association
970030 Western Identification Network, Inc. (WIN)
970138 City of South San Francisco
970041 San Diego Association of Governments
970062 Coordinated Youth Services Council
970061 Stanford University
970219 Rancho Santiago College
970162 College of the Desert
970164 Estero Community Access
970171 South Bay Advanced Educational Technology Con.
970236 Borrego Springs Fire Protection District
970112 City of Anaheim
970198 Association of Bay Area Governments
970278 Maranatha Broadcasting, Inc.
970336 County of Los Angeles
970345 City of Sunnyvale
970335 Mayor's Office of Children, Youth & Their Families
970340 Community Coalition for Substance Abuse Prevention
970333 Ontario-Montclair School District
970341 Natural History Museum Foundation of Los Angeles
970364 Santa Barbara Community College District
970432 National Institute for Urban Search & Research
970461 CommerceNet Consortium
970395 D–Q University
970415 Charles R. Drew University of Medicine
970453 Elk Grove Unified School District
970473 City of Los Angeles
970554 Coachella Valley Association of Governments (CVAG)
970565 California Rural Indian Health Board
970555 Cerritos College
970588 Ventura County Economic Development Association
970581 San Francisco State University
970516 Local Government Commission
970628 Cyber Cafes, Inc.
970513 ARC Associates
970635 Los Angeles Educational Partnership
970610 Twenty-Fourth Street Elementary School
970261 City of Los Angeles Public Library Foundation
970572 Sierra Economic Development District
970629 St. Vincent de Paul Village, Inc.
970627 Foundation for the California State University Mon
970639 California Arts Council
970651 California State University, Stanislaus
970740 University of Southern California
970557 Silicon Valley Economic Development Corporation
970723 Rural Human Services, Inc.
970717 Greater Los Angeles Council on Deafness, Inc.
970644 Pamona Foundation, Inc.
970544 SeniorNet, Inc.
970727 Los Angeles Conservation Corps
970552 Oakland Citizens Committee for Urban Renewal
970636 San Gabriel Valley Commerce and Cities Consortium
970648 Markham Middle School
970775 Riverside County
970498 California State University, Long Beach Foundation
970495 City of Paramount
970483 Norwalk-La Mirada Unified School District

970539 Regents of University of California
970556 Soalno County of Health and Social Services
970585 Santa Cruz County Office of Education
970750 Tides Center
970797 Utility Consumers' Ation Network
970799 Center for Training and Career, Inc.
970786 Women's Economic Agenda Project
970787 Bay Area Urban League, Inc.
970751 Catholic Charities of the Archdiocese of San Francisco
970809 Bay Area Shared Information Consortium (BASIC)
970794 San Francisco Dept. of Public Health
970836 Enterprise for Economic Excellence
970827 Latino Issues Forum
970859 Riverside County
970770 City of Riverside
970793 Watts Labor Community Action Committee
970838 California Department of Justice
970841 Nonprofit Exchange Online Network
970181 County of San Bernardino (CA)
970767 Youth Policy Institute
970546 City of Atascadero
970509 City of Monrovia
970484 Fresno Unified School District
970676 Community Partners
970680 City of Santa Rosa Elementary and Secondary School
970679 Yerba Buena Gardens Studio for Technology and the
970747 Orange County Department of Education
970891 Kaiser Foundation Research Institute
970910 Visible Light, Inc. dba RAIN Network
970913 City of Ridgecrest
970919 Olive View-UCLA Medical Center Education & Research
970361 City of Lodi

COLORADO

970019 City of Arvada
970154 Ignacio United School District 11 Jt.
970229 Parker Fire Protection District
970156 Weld County
970272 Sheridan School District #2
970299 Southwestern Colorado Data Center, Inc.
970347 Pueblo Community College
970329 Colorado Department of Human Services
970434 NEWSED Community Development Corporation
970655 Colorado State University
970872 Larimer County
970573 Colorado Department of Public Safety
970892 San Juan Basin Technical School

CONNECTICUT

970101 National Cristina Foundation
970222 Norwalk Community-Technical College
970244 Windham Community Memorial Hospital
970192 Southside Institutions Neighborhood Alliance, Inc.
970297 Housing Authority of the City of Norwalk
970425 Leadership, Education and Athletics In Partnership
970490 Hartford Public Library
970551 City of Norwalk
970558 Eastern CT Resource Conservation and Development A
970736 Bibliomation, Inc.
970672 Capitol Region Education Council
970824 City of Waterbury
970756 City-Wide Youth Coalition, Inc.
970862 Norwich Communications & Technology Learning Center
970854 Hartford Critical/Creative Thinking Center

DISTRICT OF COLUMBIA

970280 Smithsonian Institution
970401 District of Columbia Public Schools
970398 Foundation for Educational Innovation
970427 United Cerebral Palsy Association
970467 McGuffey Project
970462 Smithsonian Institution
970468 Advocates for Youth
970500 National Puerto Rican Coalition, Inc.
970503 Academy for Educational Development
970621 Rural Coalition
970591 Wider Opportunities for Women
970602 National Urban Coalition
970730 Milton S. Eisenhower Foundation
970754 National Coalition for the Homeless
970579 Association for Community Based Education
970768 National Congress of American Indians
970802 Funds of the Community's Future, Inc.
970815 National Association of Child Care Resource and Re
970881 National Hispanic Council on Aging
970884 Community Building Group, Ltd.
970759 Network of East-West Women, Inc.
970922 NetAmerica Foundation and Prince William Co. P
970406 SOUNDPRINT Media Center, Inc.
970904 National Association of Resource Conservation & De
970916 Sigma Public Education & Research Foundation

DELAWARE

970418 Delaware Congress of Parents
970725 Polytech School District
970777 University of Delaware
970816 Wilmington Department of Public Safety

FLORIDA

970010 City of Gainesville
970146 Riverview High School
970214 Citrus County Sheriff's Office
970237 Coordinating Council of Broward
970353 Early Childhood Services, Inc. (ECS)
970389 Florida Institute of Technology
970391 Okaloosa County
970400 School Board of Dade County
970456 Mote Marine Laboratory
970478 Florida Rural Legal Services, Inc.
970487 Coral Gables Community Foundation
970485 University of South Florida
970542 City of Cape Coral
970006 Troy State University System
970633 Florida Dept. of Agriculture and Consumer Services
970619 Central Florida Community College
970502 City of Jacksonville
970615 Palm Beach County Board of County Commission
970664 City of Lauderhill
970559 University of Central Florida
970568 City of Titusville
970689 City of Margate
970709 Collier County Sheriff's Office
970522 Collier County Public Schools
970743 Okaloosa County Florida Sheriff's Office
970511 Florida Alcohol and Drug Abuse Association
970866 Escambia County Sheriff's Office
970769 City of Orlando
970796 Santa Rosa County Sheriff's Office
970848 Florida State University
970890 City of Miami Beach
970883 City of Tampa
970691 Indian River County Board of Co. Commission
970531 Children's Home Society of Florida, Inc.
970850 Children's Home Society of Florida

GEORGIA

970007 Butler Street YMCA
970017 Southeastern Library Network, Inc.
970196 DeKalb County School System
970008 Consolidated Government
970250 Metro Atlanta Task Force for the Homeless
970275 Georgia Institute of Technology
970311 City of Elberton
970291 City of Cairo
970310 Operation PEACE, Inc.
970442 Pickens Technical Institute
970632 Gwinnett County Board of Commissioners
970605 Carroll Electric Membership Corporation
970637 City of Atlanta
970741 Athens Regional Library System
970566 Georgia Tech Research Corporation
970690 Sullivan Center, Inc.
970567 City of Atlanta
970905 Morehouse College
970715 Georgia Public Telecommunications Commission

GUAM

970257 Territory of Guam

HAWAII

970031 Hawaii Centers for Independent Living
970403 Olelo: The Corporation for Community Television
970592 Honolulu Police Department
970868 University of Hawaii at Manoa
970821 1000 Friends of Kauai
970908 Hamakua Health Center, Inc.
970894 University of Hawaii

IOWA

970066 Youth and Shelter Services, Inc.
970166 City of Des Moines
970149 State of Iowa Department of Public Safety
970369 Iowa Valley Community College District
970330 Arrowhead Area Education Agency
970587 Des Moines Area Community College
970686 Dubuque County Historical Society

ILLINOIS

970016 Elmwood Park Community Unit School District #401
970117 Chicago Public Schools
970053 Middle Passages, Inc.
970081 Lake Land College
970163 Governors State University
970165 Jefferson County Illinois
970232 Kankakee Police Department
970253 Chicago Housing Authority
970256 Illinois State Police
970324 Hamilton-Jefferson Counties Regional Offices of Education
970374 Circuit Court of Cook County
970390 Shawnee Free-Net, Inc.
970439 National Safety Council
970394 University of Illinois
970409 Treatment Alterntives for Safer Communities
970529 Illinois Communities in Action Now, Inc.
970564 Children and Youth 2000
970562 Illinois State Museum Society
970620 West Aurora Public School District #129
970597 City of Rockford
970647 Latino Institute
970721 Profamily Social Service Connections, Inc.
970514 Loyola University Chicago
970734 Board of Trustees of the University of Illinois
970528 Board of Trustees of the University of Illinois
970482 Village of Cahokia
970760 Community Emergency Shelter Organization
970790 City of Champaign
970900 Bradley University
970746 City of Peoria

INDIANA

970119 Plainfield Community School Corporation
970036 Bartholomew Consolidated School Corporation
970128 Ivy Tech State College
970231 Lake County Public Library
970228 Indiana Youth Services Association, Inc.
970294 OMNI Centre for Public Media, Inc.
970326 Indiana University—Northwest Campus
970363 Rose-Hulman Institute of Technology
970388 South Central Community Mental Health Centers, Inc.
970694 The Children's Campus

KANSAS

970082 Kansas State University
970069 Smoky Hill Central Kansas Education Service Center
970210 County of Geary Kansas
970182 Unified School District #313
970194 County of Clark
970262 Southeast Kansas Education Service Center
970300 Mental Health Consortium, Inc.
970611 Western Kansas Community Services Consortium
970479 Cowley County Community College
970869 North Central Kansas Educational Service Center Inc.
970742 University of Kansas Medical Center
970899 City of Junction City

KENTUCKY

970168 Marion County Board of Education
970308 Jefferson County Fiscal Court
970331 EMPOWER Kentucky Office
970290 Warren County Fiscal Court
970325 Fayette County Public Schools
970323 Kentucky Rural Telecommunications Center, Inc.
970431 Big Sandy Area Development District
970438 Forward in the Fifth
970685 Kentucky Historical Society
970614 Paducah/McCracken E–911 Service Board
970714 Barbourville Utility Commission
970518 Bluegrass Regional MH–MR Board, Inc.
970771 Northern Kentucky University
970808 Gateway District Health Department
970373 St. Elizabeth Medical Center
970915 Center for Rural Development
970688 City of Ludlow Police Department

LOUISIANA

970201 Ares of Southeast Louisiana, Inc.
970292 Orleans Parish Public Schools
970338 City of Ruston
970384 Southwest Louisiana Hospital
970616 City of New Orleans
970618 Orleans Parish Criminal Sheriff's Office
970603 South Central Planning and Development Commission
970668 City of Shreveport
970656 Louisiana State University Medical Center
970697 Southeastern Louisiana University
970606 Southwest Louisiana Business Development Center
970779 Jefferson Parish Government
970878 New Orleans Center for Successful Living
970897 Greater New Orleans Free-Net, Inc.
970907 New Orleans Health Information Network

MASSACHUSETTS

970048 Mount Wachusett Community College
970033 City of Revere
970071 Greater Boston Morehouse College Alumni Assoc.
970203 City of Quincy
970175 National Consumer Law Center, Inc.
970226 Loka Institute, Inc.
970238 Westfield State College
970269 Greenfield Community College
970321 Boston College
970377 Tech Corps
970443 Civil Rights Project, Inc.
970577 North Shore Community College
970604 Town of North Andover
970673 Very Special Arts Massachusetts, Inc.
970532 Town of Brookline
970657 Education Development Center, Inc.
970737 Smithsonian Institution Astrophysical Observatory
970682 Old Sturbridge, Inc.
970693 Massachusetts Coalition of Battered Women Service
970678 Metropolitan Area Planning Council
970800 Boston College
970762 Beth Israel Deaconess Medical Center
970817 Massachusetts Health Research Institute

MARYLAND

970065 Somerset County Economic Development Commission
970157 Board of Carroll County Commissioners
970303 Allegany County Board of Education
970259 Cook County School District #166
970366 Community Preservation & Development Corporation
970423 Community Building in Partnership, Inc.
970463 Board of Education of Prince George's County
970441 Center for Leadership, Development, and Research
970407 Board of Education of Prince George's County
970537 East Baltimore Community Corporation
970595 Youth Achievers USA, Inc.
970758 Institute for Family-Centered Care
970795 Network of Community Resources, Inc.
970873 Prince George's County Board of Education
970895 University of Maryland at Baltimore
970928 MentorNet, Inc.

MAINE

970103 Franklin Community Health Network
970052 ECO2000
970376 Eastern Maine Development Corporation
970396 University of Southern Maine
970593 Kennebec Valley Technical College
970813 Community Health and Counseling Services

MARSHALL ISLANDS

970887 College of the Marshall Islands

MICHIGAN

970009 Copper Country Intermediate School District
970028 Monroe County Community College
970106 Wexford County
970115 Wayne County Regional Educational Service Agency
970143 Michigan Technological University
970100 Van Buren Intermediate School District
970218 Muskegon Area Intermediate School District
970215 City of Allen Park
970227 Thomas M. Cooley Law School
970223 City of Bay City
970152 Grand Traverse Band of Ottawa and Chippewa Indians
970375 Tuscola Intermediate School District
970414 Regents of the University of Michigan
970421 Dickinson-Iron Intermediate School District
970477 Downriver Community Conference
970454 Lansing Community College
970541 Michigan State Bar Foundation
970533 City of Coleman
970560 Grand Rapids Community College
970666 County of Oakland Michigan
970641 Washtenaw County
970706 Eastern Michigan University
970520 Bethany Christian Services

970748 County of Macomb
970852 Greater Kalamazoo TeleCITY USA, Inc.
970780 Traverse Bay Area Intermediate School District
970858 Perry Public Schools
970849 City of Detroit
970842 Regents of the University of Michigan
970888 Charles Stewart Mott Community College
970507 Ionia County Intermediate School District
970543 Cheboygan-Otsego-Presque Isle ISD
970578 United Way Community Services
970925 Metropolitan Community Center

MINNESOTA

970011 Minnesota Sheriff's Association
970153 Minnesota Regional Network
970212 North Valley & Kittson Memorial Health Care Center
970301 Fosston Economic Development Authority
970243 Independent School District #31
970187 Independent School District 318
970307 Minnesota Council of Nonprofits
970282 Commonbond Communities
970350 Hennepin County
970367 City of Minneapolis
970444 ParirieNet Consortium
970563 Rural Minnesota CEP, Inc.
970519 Minnesota Health Data Institute
970530 First Call Minnesota
970508 Mid-Minnesota Development Commission
970534 Independent School District 196
970712 Pioneerland Library System
970499 Minneapolis American Indian Center
970481 Hibbing Community College
970784 University of Minnesota
970855 Minnesota County Attorneys Association
970393 Northwest Technical College

MISSOURI

970126 American Red Cross St. Louis Bi-State Chapter
970121 Boonslick Regional Planning Commission
970080 City of St. Louis
970144 Boone Hospital Center
970314 North Area Telecommunications Authority
970348 City of Kansas City
970334 Cooperating School Districts of Greater St. Louis
970420 Diocese of Kansas City-St. Joseph
970653 Missouri Southern State College
970732 Mid-America Assistance Coalition
970525 Logan College of Chiropractic
970720 State of Missouri
970517 Central Missouri Counties' Development Corporation
970776 Public Television 19, Inc.
970834 Crawford County Central Communications
970871 Kansas City Neighborhood Alliance

MISSISSIPPI

970172 Scott County School District
970230 Grenada School District
970404 Mississippi Action for Community Education
970609 Tupelo Public School District
970645 South Delta School District
970521 Mississippi Delta Community College
970766 Mississippi Authority for Educational TV
970874 MS Department of Education
970832 Mississippi State University
970923 Humphrey's County Board of Education

MONTANA

970002 Montana State University
970118 Saint Vincent Foundation
970026 Native American Development Corporation
970264 Gallatin County Montana
970332 University of Great Falls
970379 Helena Area Chamber of Commerce
970504 University of Montana

NORTH CAROLINA

970051 North Carolina Department of Crime Control and Pub
970032 City of Salisbury
970058 Durham Technical Community College
970059 North Carolina Wesleyan College
970099 North Carolina State University
970088 Regional Education Service Alliance Fiscal Agent
970185 North Carolina Center for Geographic Information
970178 Perquimans County Schools
970235 North Carolina Dept. of Environment Health and Natural
970199 North Carolina State University
970183 North Carolina School of Science and Mathematics
970313 Land-of-sky Regional Council
970408 Southern Rural Development Initiative
970724 Excellence by Choice, Inc.
970710 City of Greensboro Fire Department
970860 County of Caldwell
970864 East Carolina University
970877 University of North Carolina at Wilmington
970674 Cabarrus County

NORTH DAKOTA

970018 St. Alexius Medical Center
970130 Turtle Mountain Community College
970205 Valley City State University
970224 Fort Berthold Community College
970413 Medcenter One Health Systems
970570 United Health Foundation

NEBRASKA

970072 Wayne County School District—0560
970285 Wayne Community Schools
970711 Nebraska Cooperative Government

NEW HAMPSHIRE

970125 North Country Council, Inc.
970190 Southeastern Regional Education Service Center
970273 Pembroke School District
970151 New Hampshire Community Technical College System
970258 Nashua School District
970279 Rochester N.H. Police Dept.
970399 Community Health Institute
970524 Trustees of Dartmouth College

NEW JERSEY

970131 Union Organization for Social Service
970087 Educational Information & Resource Center
970209 Recording for the Blind & Dyslexic
970122 United Way of Bergen County
970189 Board of Education of the Vocational School in the
970255 New Jersey Department of Corrections
970254 Moorestown Township Public Schools
970342 Bergen County Special Services School District
970386 City of Newark
970599 Monmouth-Ocean Hospital Service Corporation
970608 Woodbridge Township
970612 Township of Cherry Hill
970624 CRT-UIC
970704 Ocean County College
970607 United Community Corporation
970696 Harrison Board of Education
970729 Info Line of Middlesex County
970882 Little Egg Harbor Township
970911 First Baptist Community Development Corporation
970926 Camden Free Public Library
970931 Hunterdon County Technical Council

NEW MEXICO

970029 Bernalillo County
970054 Alamo Navajo School Board, Inc.
970220 Penasco Independent School District #4
970217 University of New Mexico
970089 Eight Northern Indian Pueblo Council, Inc.
970193 City of Lovington
970274 Central Consolidated School District #22
970319 City of Las Cruces
970357 University of New Mexico
970370 University of New Mexico
970392 State of New Mexico General Services Department
970526 Gadsden Independent School District #19
970631 Magdalena Municipal Schools
970601 New Mexico Technet, Inc.
970707 Grant County
970804 University of New Mexico
970843 Capitan Municipal Schools
970889 Taos County
970744 Dexter Consolidated Schools
970909 Jicarilla Apache Tribal Court
970921 New Mexico Highlands University

NEVADA

970380 INSYNC, Inc.
970491 Children's Cabinet, Inc.
970575 City of Las Vegas
970778 City of Reno Police Department
970643 Nevada Indian Environmental Coalition
970930 Schurz Elementary School

NEW YORK

970108 Fund for the City of New York, Inc.
970114 National Puerto Rican Forum, Inc.
970047 Southern Tier West Regional Planning & Development
970035 New York State Alliance for Arts Education
970012 Columbia University—Teachers College
970044 Sullivan County
970067 Research Foundation of SUNY at Binghamton

970070 Community Health Care Association of New York
970076 Queens Borough Public Library
970204 Farmingdale UFSD
970086 Research Foundation of SUNY
970174 Niagara Falls City School District
970184 Brooklyn College & CUNY
970221 New York City Board of Education
970302 Dunkird City School District
970188 Brooklyn Public Library
970316 Montefiore Medical Center
970288 Libraries for the Future
970337 Legal Aid Society
970286 New York City Health and Hospitals Corporation
970349 New York City Department of Homeless Services
970422 Renaissance Development Corporation
970493 Pratt Institute
970448 Newark Central School District
970475 New York State Office for the Aging
970471 County of Ontario
970492 SUNY Cortland
970486 Research Foundation of CUNY
970452 One Hundred Black Men
970494 New York University Medical Center
970480 National Urban League, Inc.
970589 Actors' Fund of America
970496 Congregations Linked in Urban Strategy To Effect Renewal, Inc.
970512 Crouse Health Foundation
970598 Foundation for Minority Interest in Media, Inc.
970613 Sage Colleges
970594 Bank Street College of Education
970687 AIDS Day Services Association of New York Inc.
970590 BICNET Foundation, Inc.
970596 East Harlem Chamber of Commerce, Inc.
970670 Bay Shore Union Free School District
970658 New York Vietnam Veterans Leadership Program
970683 Educational Alliance
970536 Monroe #1 Board of Cooperative Educational Service
970692 Chemung County
970600 Asian American Federation of New York
970695 Onandag-Cortland-Madison BOCES
970823 Rochester Museum & Science Center
970822 Jamestown City School District
970863 Teachers College/Columbia University
970806 Town of Brookhaven
970807 Northern New York Rural Health Care Alliance Inc.
970811 Presbyterian Hospital in the City of New York
970886 Northport-East Northport U.F.S.D.
970416 People Against Sexual Abuse, Inc.
970702 Department of Youth and Community Development
970901 Harlem School of the Arts
970362 Suffolk County
970428 New School for Social Research
970917 Rural Development Leadership Network

OHIO

970124 Ohio University
970045 City of Kettering Police Department
970213 Canton City School District
970176 Bowling Green State University
970150 Buckeye State Sheriff's Association
970240 Telecommunications Commission of Northwest Ohio
970270 Ohio State University Research Foundation
970318 Ohio University
970295 METRO Regional Transit Authority
970289 University of Toledo
970320 Caracole, Inc.
970327 Otterbein College
970365 Cuyahoga Metropolitan Housing Authority
970489 Cincinnati Public Schools
970549 Cloverleaf Local Schools
970660 Ohio University
970719 Cuyahoga County
970726 Kent State University
970681 Cleveland City School District
970774 Ohio Aerospace Institute
970783 Mareda, Inc.
970918 Parent/School Services
970474 Children's Hospital
970233 Woodburn Center for Cultural Studies

OKLAHOMA

970102 Tahlequah Public Schools
970079 Little Dixie Community Action Agency, Inc.
970161 Community Services Building, Inc.
970241 Street School of Tulsa, Inc.
970159 Miami Tribe of Oklahoma
970186 Cherokee Nation
970263 Central Oklahoma Area Vo-Tech School
970298 Caddo-Kiowa Vocational Technical Center
970445 AdultEdWeb.Net, Inc.
970458 Larry Jones International Ministries
970584 Oklahoma State University—Okmulgee
970837 Citizen Potawatomi Nation
970828 University of Oklahoma

OREGON

970023 Forest Grove School District
970111 Oregon Department of State Police
970043 Oregon Youth Authority
970073 South Coast Education Service District
970091 Columbia-Willamette Area Health Education Center
970169 Columbia Foundation
970200 State Offices for Services to Children and Families
970344 Mid-Columbia Economic Development District
970358 Northwest Portland Area Indian Health Board
970553 Portland Community College
970634 Metro
970640 Confederated Tribes of Grand Ronde Community of OR
970622 Lane Council of Governments
970649 Mt. Hood Community College
970718 City of Portland Police Bureau
970788 Clackamas County
970772 Central Oregon Community College
970812 Dept of Community Justice
970561 Lane Community College
970853 Clackamas County Fire District #1

PENNSYLVANIA

970004 Friends School Haverford
970113 National Environmental Education and Training Cent
970050 Children's Hospital of Pittsburgh
970060 Mattress Factory
970134 Lehigh Carbon Community College
970097 Crawford County Development Corporation
970095 Central Pennsylvania Legal Services
970092 North Central Pennsylvania Regional Planning and D
970225 University of Pittsburgh
970239 Pennsylvania State University
970309 Fayette County Community Action Agency Inc
970195 Vantage Health Group
970158 Edinboro University of Pennsylvania
970312 Mayor's Office of Community Services
970267 College of Misericordia
970372 Pennsylvania Department of Community and Econmonic
970387 City of Harrisburg
970433 University City Science Center
970451 Ben Franklin Technology Center of Western Pennsylv
970465 Free Library of Philadelphia
970472 Philadelphia Commercial Development Corporation
970488 Pennsylvania Association of Rural and Small School
970576 Geisinger Clinic
970630 Road, Inc. aka SAW
970626 Manor Junior College
970663 Berks Community Television
970671 South George Street Community Partnership, Inc.
970703 Carnegie Mellon University
970701 Center for Agile Pennsylvania Education
970722 Meadville Area Free Clinic
970677 Monroe County Commissioners
970527 Educational and Scientific Trust of the Pennsy
970586 Tuscarora Intermediate Unit
970765 Pennsylvania College of Technology
970814 Private Industry Council of Philadelphia, Inc.
970840 Central Susquehanna Intermediate Unit
970851 Trustees of the University of Pennsylvania
970805 Keystone Central School District
970876 Philadelphia Enterprise Center
970068 Manchester Craftsmen's Guild
970661 National Association of Laboratory Schools

PUERTO RICO

970083 Health Department of Puerto Rico
970098 Municipality of Caguas
970271 Municipality of Jayuya
970251 Inter American University of Puerto Rico
970277 Municipality of Ciales
970252 Municipality of Lares
970284 University of the Sacred Heart
970381 Municipality of Adjuntas
970455 Municipality of Santa Isabel
970501 Municipality of Utuado
970810 Municipality of Cayey

RHODE ISLAND

970155 Coventry Public Schools
970446 Providence Public Library
970669 Johnson & Wales University
970582 Ocean State FreeNet, Inc.

SOUTH CAROLINA

970129 Greenville Technical College

970145 Technical College of the Low Country
970064 Catawba Indian Nation
970173 Columbia College of South Carolina
970197 City of Spartanburg
970287 Benedict College
970346 Clemson University
970368 Spartanburg Technical College
970383 Horry County Schools
970436 Georgetown County Library System
970397 School District of Georgetown County
970617 Berkeley County School District
970625 City of Rock Hill
970550 South Carolina State Budget & Control Board
970763 Charleston County School District
970846 Aiken Technical College
970845 Winthrop University
970791 Florence-Darlington Technical College

SOUTH DAKOTA

970120 University of South Dakota School of Medicine
970078 Rapid City Regional Hospital
970135 Dakota State University
970055 McCook Central School District 43–7
970137 South Dakota State University
970191 State of South Dakota
970574 Oglala Sioux Tribe
970510 Netway Training Center
970739 City of Viborg
970929 Lower Brule Sioux Tribe

TENNESSEE

970049 City of Knoxville Police Department
970136 Duck River Agency
970234 Upper Cumberland Community Services Agency
970317 Tennessee Tomorrow, Inc.
970247 RiverValley Patners, Inc.
970268 Columbia State Community College
970293 University of Tennessee
970382 County of Rutherford
970435 Council of Community Services
970419 Hancock County
970459 Fentress County Government
970505 Oak Ridge Associated Universities, Inc.
970665 University of Tennessee
970547 City of Brentwood
970646 University of Memphis
970757 Vanderbilt University Medical Center
970789 University of Tennessee Medical Center at Knox
970819 City of Cleveland
970781 Newport/Cocke County Chamber of Commerce
970830 University of Tennessee
970675 Memphis City Schools
970914 Dyersburg State Community College

TEXAS

970003 City of Pasadena
970104 Wharton County Junior College
970109 Community Council of Greater Dallas
970040 University of Houston System
970133 Catholic Family Services, Inc.
970207 Robyn-Hood Housing Development
970090 San Vicente ISD
970211 Association for the Advancement of Mexican America
970160 San Diego Independent School District
970139 Region 18 Education Service Center
970096 Hays Central Independent School District
970246 Rogers Independent School District
970304 Region V Education Service Center
970021 La Grange Independent School District
970148 Abileene Independent School District
970260 City of Frisco
970248 El Paso County Community College District
970296 Groesbeck Independent School District
970343 Computers Robotics & Artists Society of Houston
970356 Maypearl Independent School District
970354 University of Texas—Pan American
970360 University of Texas at El Paso
970283 Panola College
970449 City of Plano Public Library System
970447 Highland Park ISD
970412 Austin Eastside Story Foundation
970469 Southwest Voter Research, Inc.
970540 Laredo Community College
970538 Houston Community College System
970580 Pharr-San Juan-Alamo Independent School District
970650 Temple Independent School District
970735 Texoma Council of Governments
970545 Heard Natural Science Museum & Wildlife Sanctuary
970535 Conroe Independent School District
970548 American Institute for Learning
970761 Bell County
970818 Cuero Independent School District
970831 Alabama-Coushatta Tribe of Texas
970880 Alamo Community College District
970792 Baylor College of Medicine
970583 Texas A&M Research Foundation
970857 University of Texas Health
970430 Texas A&M University-Kingsville
970906 Texas Parks and Wildlife Department
970893 South Texas Community College
970698 Adults and Youth United Development Association
970924 Tarrant County ACCESS for the Homeless

UTAH

970038 Utah Valley State College
970034 University of Utah
970315 University of Utah
970265 Utah Valley State College
970328 State of Utah
970457 SmartUTAH Foundation, Inc.
970705 Utah State University
970820 Western Governors University
970833 Springville City Corporation

VIRGINIA

970127 City of Richmond Police Department
970042 County of Henry
970056 City of Richmond
970180 Southwest Virginia Governor's School
970093 Bethel Manor Elementary School
970167 Chesterfield County
970177 Norfolk Police Department
970208 Norfolk Redevelopment & Housing Authority
970074 Virginia Polytechnic Institute & State University
970245 Franklin County Public Schools
970306 Tazewell County Public Library
970142 City of Radford
970385 Kidz OnLine, Inc.
970437 Commonwealth Governor's School
970440 Williamsburg Regional Library
970429 University of Virginia
970460 Old Dominion University Research Foundation
970417 George Mason University
970426 City of Alexandria
970466 Hampton University
970470 National Association of Partners in Education Inc.
970464 Dinwiddie County Schools
970667 Averett College
970662 National Society of Black Engineers
970523 United Way of the National Capital Area
970699 City of Newport News
970798 GWETA, Inc.
970753 Southwest Virginia Education & Training Network
970861 Telecommunications Cooperative Network, Inc.
970339 Fluvanna County Schools
970713 Virginia Beach City Public Schools
970927 City of Bedford

VIRGIN ISLANDS

970084 Virgin Islands Public Television System
970801 United States Virgin Islands Department of Education

VERMONT

970571 Grand Isle County Sheriff's Office
970731 Orleans Southwest Supervisory Union
970782 University of Vermont and State Agricultural Colle

WASHINGTON

970022 City of Richland
970027 Eastside Public Safety Communications Agency
970037 University of Washinqton
970025 Manson School District No. 19
970077 SNOPAC
970141 Technology Access Foundation
970202 Palouse Economic Development Council
970170 Jefferson County Education Foundation
970216 Grays Harbor College
970281 City of Seattle
970276 Washington State University
970402 Port of Tacoma
970410 Urban League of Metropolitan Seattle
970638 Northwest Indian College
970764 Community Technology Institute
970749 Cowlitz-Wahkiakum Council of Governments
970803 Eastern Washington University
970829 Central Terrace Properties, Inc.
970865 Catholic Community Services
970847 Washington State University
970755 Law Enforcement Support Agency
970875 University of Washington
970896 Upper Skagit Indian Tribe

WISCONSIN

970110 Milwaukee Access Telecommunications Authority
970305 Northcentral Technical College

970322 Sheboygan County
970352 Dane County
970506 Door County
970752 Milwaukee Public Schools
970515 Cooperative Educational Service Agency #9
970716 College of the Menominee Nation

WEST VIRGINIA

970020 Berkeley County Health Department
970179 WVHTC Foundation
970450 City of Bluefield
970745 Marshall University Research
970879 Eastern Netway, Inc.

WYOMING

970015 Northern Arapaho Tribe
970835 Big Horn Basin Joint Powers Board
970856 Casper College
970839 University of Wyoming

Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 97–13066 Filed 5–16–97; 8:45 am]

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Federal Register

Monday
May 19, 1997

Part VIII

Department of Housing and Urban Development

24 CFR Part 200

HUD Building Products Standards and Certification Program—Use of Materials Bulletins; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR–4137–P–01]

RIN 2502–AG84

HUD Building Products Standards and Certification Program—Use of Materials Bulletins

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would adopt a number of Use of Materials Bulletins (UM) and references related to national voluntary consensus standards in accordance with OMB Circular 119A. It also supplements the HUD Building Product Standards and Certification Program by requiring that additional information be included on the label, tag, or mark that each manufacturer affixes to the certified product. The labeling of these products is in the public interest because it will allow consumers to readily identify those products that comply with existing voluntary consensus standards. In addition, the adoption of a UM for a product eliminates the need for manufacturers to seek HUD acceptance through ''Materials Releases'' for individual products that meet the standard of a UM. HUD accepts products that use on a generic basis for use in houses covered under HUD mortgage insurance programs, thus streamlining Departmental requirements. In addition, this proposed rule specifies the frequency with which products should be tested in order to be acceptable to HUD; and modifies section (d)(4)(ii) of 24 CFR 200.935 to allow the use of American Society for Quality Controls (ASQC) standards 9000–94, 9001–94, 9002–94, 9003–94, & 9004–94 as voluntary guidelines in any quality review.

DATES: *Comment due date:* July 18, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing & Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–8000. Communication should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXED comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 Seventh Street S.W., Room 9156, Washington, D.C. 20410–8000; telephone: voice, (202) 708–6423; TTY, (202) 708–4594 (these are not toll free numbers.)

SUPPLEMENTARY INFORMATION: Pursuant to HUD's Building Product Standards and Certification Programs, authorized by Section 521 of the National Housing Act, 12 U.S.C. 1735e, the Department issues Use of Materials Bulletins (UMs). The Use of Materials Bulletins are issued in the public interest, to provide HUD standards that establish minimum acceptable qualities for certain materials and products to be used in properties subject to mortgages insured by the Department. In accordance with 24 CFR 200.935, UMs are also used in third-party labeling and certification programs to assure that building products used in HUD programs meet the appropriate national voluntary standards.

The Department of Housing and Urban Development issues ''Materials Releases'' to individual manufacturers for the specific acceptance of new or innovative building products where there are no existing standards. ''Use of Materials Bulletins'' are also issued by the Department for the acceptance of new products on a generic or class basis, thus making it unnecessary for individual manufacturers to continue applying for approval of similar products, and making the approval process overall much less cumbersome. This proposed rule permits public comment prior to the issuance of a Use of Materials Bulletin.

Materials Releases are periodically renewed or revised, for a fee, by the Department. In cases where there are many manufacturers of similar new products, or standards developed that cover these products, the Department cancels the Materials Releases and refers to the new standard and a certification program in a Use of Materials Bulletin.

With the promulgation of a Use of Materials Bulletin, individual manufacturers no longer have to pay a fee to the Department for the maintenance of their Materials Releases, and the Department no longer has the administrative burden of renewing or revising the individual Materials Releases. For these reasons, in the future, the Department anticipates increasing its reliance on Use of Materials Bulletins to accept new or innovative building products.

This proposed rule would promulgate or revise the following Use of Materials Bulletins:

UM 73b Plastic Plumbing Fixtures at § 200.937.
UM 44e Carpet at § 200.942.
UM 38j Grademarking of Lumber at § 200.943.
UM 40c Plywood at § 200.944.
UM 72b Carpet Cushion at § 200.948.
UM 105 Elastomeric Joint Sealants at § 200.951.
UM 70b Particleboard Stair Treads at § 200.952.
UM 110 Sprayed Polyurethane Foam Roof Insulation at § 200.953.
UM 60a Construction Adhesives for Field Glued Wood Floor Systems at § 200.954.
UM 111 Fenestration Products (Windows and Doors) at § 200.955.

Third-party certification programs for elastomeric joint sealants and sprayed polyurethane foam for roof insulation have been informally accepted by the Department, and by this rule are designated as new Bulletins UM 105 and UM 110 under the procedures of 24 CFR 200.935.

In addition, paragraph (d)(4)(ii) of 24 CFR 200.935 is being modified to allow the use of American Society for Quality Control standards 9000–94, 9001–94, 9002–94, 9003–94, and 9004–94 as voluntary guidelines in any quality review. These standards are identical to the International Standards Organization standards. This change is necessary because no criteria currently exist for a HUD determination of an acceptable quality assurance program.

The Department has evaluated the updated technical standards prepared by national standards organizations, and plans to adopt these standards by incorporating them in the UM by reference. The UMs adopted would also augment the labeling requirements of 24 CFR 200.935(d)(6). In addition, the Department is also requesting comments on the frequency of testing specified for each third party certification program.

The reference in § 900.929(b)(2) to the MPS compilation is updated to cite the 1994 edition.

Copies of UMs are available for public inspection during regular business hours in the Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, Room 9156, 451 Seventh Street S.W., Washington, DC., 20410–8000.

Findings and Certifications

Regulatory Planning and Review

This proposed rule has been reviewed in accordance with Executive Order 12866, issued by the President on

September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the proposed rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Paperwork Reduction Act Statement

The proposed information collection requirements contained at §§ 900.937, 900.942, 900.943, 900.944, 900.948, 900.951, 900.952, 900.953, 900.954, and 900.955 of this rule have been submitted to the Office of Management and Budget (OMB) for review, under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(a) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

Reporting Burden	Number of respondents	Freq. of response	Est. avg. response time (hrs.)	Est. annual burden (hrs.)
	20	20	1	400
Totaling Reporting Burden	.....	.....	.....	400

(b) In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number (FR–4137) and must be sent to: Joseph F. Lackey, Jr. HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, D.C. 20410.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this proposed rule, and in so doing certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. These Use of Materials Bulletins adopt standards that are nationally recognized throughout the affected industry and will not create a burden on manufacturers currently meeting the standards. The proposed rule will have no adverse or disproportionate economic impact on small businesses.

Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism,* that this proposed rule does not have federalism implications concerning the division of local, State, and federal responsibilities. The rule only proposes to adopt standards that are already nationally recognized throughout the affected industry.

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

This proposed rule will not pose an environmental health risk or safety risk on children.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, 24 CFR part 200 is proposed to be amended as follows:

PART 200—INTRODUCTION

1. The authority citation for 24 CFR part 200 is revised to read as follows:

Authority: Titles I and II of the National Housing Act (12 U.S.C. 1701 through 1715z-18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535 (d)).

2. In § 200.929, paragraph (b)(2) is revised to read as follows:

§ 200.929 Description and identification of minimum property standards.

* * * * *

(b) * * *

(2) MPS for Housing 4910.1, 1994 edition. This volume applies to buildings and sites designed and used for normal multifamily occupancy,

including both unsubsidized and subsidized insured housing, and to care-type housing insured under the National Housing Act. It also includes, in Appendix K, a reprint of the MPS for One and Two Family Dwellings identified in paragraph (b)(1) of this section.

3. Section 200.931 is revised to read as follows:

§ 200.931 Statement of availability.

Updated copies of the Minimum Property Standards and Use of Materials Bulletins are available for public examination in the Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, room 9156, 451 Seventh St. S.W., Washington, D.C. 20410–8000, and at the Office of the **Federal Register**, 800 North Capitol Street, NW, Suite 700, Washington, D.C., 20408. In addition, copies of volumes 1, 2, and 3 of the Minimum Property Standards may be purchased from the U.S. Government Printing Office, Washington, D.C. 20402.

4. In § 200.935, paragraph (d)(4)(ii) is revised to read as follows:

§ 200.935 Administrator qualifications and procedures for HUD building products certification programs.

* * * * *

(d) * * *

(4) * * *

(ii) *Quality assurance system review.* (A) Each administrator shall examine a participating manufacturer's facilities and quality assurance system procedures to determine that they are adequate to assure continuing production of the product that complies with the applicable standard. These quality assurance systems procedures shall be documented in the administrator's and the manufacturer's files. If a manufacturer's quality assurance system is not satisfactory to the administrator, validation of the manufacturer's declaration of certification shall be withheld. The following American Society for Quality Control (ASQC) standards, which are incorporated by reference and which are identical to the International Standards Organization standards, may be used as guidelines in any quality assurance review:

(*1*) ASQC Q 9000–94 Quality Management and Quality Assurance Standards Guidelines for Selection and Use;

(*2*) ASQC Q 9001–94 Quality Systems-Model for Quality Assurance in Design, Development, Production, Installation, and Servicing;

(*3*) ASQC Q 9002–94 Quality Systems-Model for Quality in Production and Installation;

(*4*) ASQC Q 9003–94 Quality Systems-Model for Quality Assurance in Final Inspection and Test;

(*5*) ASQC Q 9004–94 Quality Management and Quality System Elements-Guidelines.

(B) These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. They are available from the American Society for Quality Control (ASQC), 310 West Wisconsin Avenue, Milwaukee, WI 53208.

* * * * *

5. Section 200.937 is revised to read as follows:

§ 200.937 Supplementary specific requirements under the HUD building product standards and certification program for plastic plumbing fixtures.

(a) *Applicable standards.* (1) All plastic plumbing fixtures shall be designed, manufactured, and tested in compliance with the following American National Standards Institute (ANSI) standards, which are incorporated by reference:

(i) ANSI Z 124.1–95 Plastic Bathtub Units;

(ii) ANSI Z 124.2–95 Plastic Shower Receptors;

(iii) ANSI Z 124.3–95 Plastic Lavatories;

(iv) ANSI Z 124.4–96 Plastic Water Closets, Bowls, & Tanks;

(v) ANSI Z 124.6–90 Plastic Sinks; and

(vi) ANSI Z 124.7–93 Plastic Spa Shells.

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. They are available from the American National Standards Institute, Inc., 11 West 42nd Street, New York, New York 10036.

(b) *Labeling.* Under the procedures set forth in 24 CFR 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. Each plastic plumbing fixture shall be marked as conforming to UM 73b. The label shall be located on each plastic plumbing fixture so that it is available for inspection. The label shall include the manufacturer's name and plant location.

(c) *Periodic tests and quality assurance inspections.* Under the procedures concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of plastic plumbing fixtures, testing and inspection shall be conducted as follows:

(1) At least every year, the administrator shall visit the manufacturer's facility to select a sample of each certified plastic plumbing fixture for testing in a laboratory accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) of the U.S. Department of Commerce.

(2) The administrator shall also review the quality assurance procedures once a year to assure that they are being followed by the manufacturer.

§§ 200.938, 200.939, and 200.941 [Removed]

6. Sections 200.938, 200.939, and 200.941 are removed.

7. Section 200.942 is revised to read as follows:

§ 200.942 Supplementary specific requirements under the HUD building product standards and certification program for carpets and carpets with attached cushions.

(a) *Applicable standards.* (1) All carpets and carpets with attached cushions shall be designed, manufactured, and tested in compliance with the following standards:

(i) ASTM D297–95 Standard Test Method for Rubber Products-Chemical Analysis;

(ii) ASTM D5848–95 Standard Test Method for Mass per Unit Area of Pile Floor Coverings;

(iii) ASTM D1335–72 Standard Test Method for Pile Floor Coverings;

(iv) ASTM D3936–90 Test Method for Delamination of Secondary Backing of Pile Coverings;

(v) ASTM D2646–95 Test Method for Backing Fabrics;

(vi) AATCC 16E–93 Test Method for Colorfastness to Light-Xenon; and

(vii) AATCC 165–93 Test for Crocking.

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. They are available from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428; the American Association of Textile Chemists and Colorists (AATCC), P.O. Box 12215, Research Triangle Park, NC 27709; U.S. Department of Commerce, NIST, NVLAP, Gaithersburg, MD 20899.

(b) *Labeling.* Under the procedures set forth in 24 CFR 200.935(d)(6)

concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. Each carpet shall be marked at intervals of at least 6 feet and no less than 1 foot from the edge, in compliance with UM 44e. The label shall include the manufacturer's name, plant location, and statement of compliance with UM 44e.

(c) *Periodic tests and quality assurance inspections.*

Under the procedures set forth in 24 CFR 200.935(d)(8) concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of carpet and carpet with attached cushion, testing and inspection shall be conducted as follows:

(1) Two samples of each certified quality shall be taken every six months from the manufacturer and one sample annually from the public marketplace for testing in a laboratory accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) of the U.S. Department of Commerce.

(2) The administrator shall also review the quality procedures twice a year to assure that they are being followed by the manufacturer.

(d) *Cut pile polypropylene carpet.* Provisions for cut pile polypropylene are included under UM 44e.

8. Section 200.943 is revised to read as follows:

§ 200.943 Supplementary specific requirements under the HUD building product standards and certification program for the grademarking of lumber.

(a) *Applicable Standard.* (1) In accordance with UM 38j, lumber shall be grademarked in compliance with the U.S. Department of Commerce Voluntary Product Standard PS–20–94 American Softwood Lumber Standard.

(2) This standard has been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. It is available from U.S. Department of Commerce, American Lumber Standard Committee (ALSC), P.O. Box 210, Germantown, Maryland 20875–0210.

(b) *Labeling.* Under the procedures set forth in 24 CFR 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standard are required on the certification label issued by the administrator to the manufacturer. The certification mark shall be affixed to each piece of lumber. In the case of grademarking of lumber, the following information shall be included on the certification label or mark:

(1) The registered symbol which identifies the grading agency;

(2) Species or species combination;

(3) Grade;

(4) Identification of the applicable grading rules when not indicated by the species identification or agency symbol;

(5) Mill or grader;

(6) For members which are less than 5 inches in nominal thickness, indication that the lumber was green or dry at the time of dressing; and

(7) Indication that the lumber was finger jointed.

(c) *Periodic tests and quality assurance.* Periodic tests and quality assurance inspections shall be carried out by the American Lumber Standard Committee as defined in PS 20–94.

9. Section 200.944 is revised to read as follows:

§ 200.944 Supplementary specific requirements under the HUD building product standards and certification program for plywood and other wood-based structural-use panels.

(a) *Applicable standards.* (1) All plywood prescriptively designed, manufactured, and tested shall be in compliance with the U.S. Department of Commerce Voluntary Product Standard PS 1–95. Plywood panels not meeting the grade requirements of PS 1–95 and all composite and non-veneer structural-use panels shall comply with the ''Performance Standards and Policies for Structural-Use Panels-94'' (APA Standard PRP 108–94 or TECO Standard PRP 133–94) except that the American Society for Testing and Materials (ASTM) Standard ASTM D 3043–87 Method B may be used.

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. They are available from the U.S. Department of Commerce, NIST, Gaithersburg, MD 20899; APA-The Engineered Wood Association, 7011 South 19th St., Tacoma, WA 98411; TECO/PFS Inc., 2402 Daniels Street, Madison, WI 53704; American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428.

(b) *Labeling.* Under the procedures set forth in 24 CFR 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. All plywood panels made to PS 1–95 prescriptive or performance standards shall be marked as complying to PS 1–95. All plywood products not meeting the requirements of PS 1–95 and all composite and non-veneer structural-use panels that do not comply with APA PRP 108–94 or TECO PRP 133–94 shall be marked as complying with UM 40c. The label shall be located on each panel so that it is available for inspection. The label shall include the manufacturer's name and mill number.

(c) *Periodic tests and quality assurance.* Under the procedures concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of plywood and other wood-based structural-use panels, testing and inspection shall be conducted as follows:

(1) At least three times a year, the administrator shall visit the manufacturer's facility to select 10 panels of each certified product for testing in a laboratory accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) of the U.S. Department of Commerce.

(2) The administrator shall also review the quality assurance procedures three times a year to assure that they are being followed by the manufacturer.

10. Section 200.948 is revised to read as follows:

§ 200.948 Supplementary specific requirements under the HUD building product standards and certification program for carpet cushion.

(a) *Applicable standards.* (1) All carpet cushion shall be designed, manufactured, and tested in compliance with the following standards:

(i) ASTM D3574–95 Test Method for Flexible Cellular Materials;

(ii) ASTM D297–95 Standard Test Method for Rubber Products Chemical Analysis;

(iii) ASTM D629–95 Test Methods for Quantitative Analysis of Textiles;

(iv) ASTM D1667–90 Specification for Flexible Cellular Materials;

(v) ASTM D2646–95 Test Method for Backing Fabrics;

(vi) ASTM D3696–90 Test Method for Delamination of Secondary Backing of Pile Coverings.

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and

1 CFR part 51. They are available from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428.

(b) *Labeling.* Under the procedures set forth in 24 CFR 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. Each carpet cushion shall be marked as to type and class, and as conforming to UM 72b.

(c) *Periodic tests and quality assurance.* Under the procedures set forth in 200.935(d)(8), testing and inspection shall be conducted as follows:

(1) At least twice a year, the administrator shall visit the manufacturer's facility to select a sample of each certified carpet cushion for testing by a laboratory approved by the administrator.

(2) The administrator shall review the quality assurance procedures every six months to assure that they are being followed by the manufacturer.

11. A new § 200.951 is added to read as follows:

§ 200.951 Supplementary specific requirements under the HUD building product standard and certification program for elastomeric joint sealants.

(a) *Applicable standards.* (1) All elastomeric joint sealants shall be designed, manufactured, and tested in compliance with the following American Society for Testing and Materials standards:

(i) ASTM C920–94 Standard Specification for Elastomeric Joint Sealants, except that there be a maximum of 25% loss of elongation when determined after curing and 2500 hours of ultra-violet light in a xenon arc accelerated weathering test for Class 25 materials compared to a cured non-exposed sample;

(ii) ASTM C1193–91 Standard Guide for the Use of Elastomeric Sealants.

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. They are available from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428.

(b) *Labeling.* Under the procedures set forth in 24 CFR 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. Each container of elastomeric joint sealant shall include the sealant's type, grade, class, and use, and the manufacturer's name, plant location and statement of compliance with UM 105.

(c) *Periodic tests and quality assurance inspections.* Under the procedures set forth in 24 CFR 200.935(d)(8) concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of elastomeric joint sealants, testing and inspection shall be conducted as follows:

(1) At least once every year, the administrator shall visit the manufacturer's facility to select a sample for testing in a laboratory accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) of the U.S. Department of Commerce.

(2) The administrator shall also review the quality assurance procedures once a year to assure that they are being followed by the manufacturer.

12. A new § 200.952 is added to read as follows:

§ 200.952 Supplementary specific requirements under the HUD building product standards and certification program for interior particleboard stair treads.

(a) *Applicable standards.* (1) All interior particleboard stair treads shall be designed, manufactured, and tested in compliance with ANSI A208.1 Mat-Formed Wood Particleboard, Grade M–3.

(2) This standard has been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, and is available from the American National Standards Institute, Inc., 11 West 42nd Street, New York, New York 10036.

(b) *Labeling.* Under the procedures set forth in 24 CFR 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standard are required to be on the certification label issued by the administrator to the manufacturer. Each interior particleboard stair tread shall include the manufacturer's statement of conformance to UM 70b, a statement that this product is for interior use only, and the manufacturer's name and plant location.

(c) *Periodic tests and quality assurance.* Under the procedures set forth in 24 CFR 200.935(d)(8) concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of interior particleboard stair treads, testing and inspection shall be conducted as follows:

(1) At least once every three months, the administrator shall visit the manufacturer's facility to select a sample for testing in a laboratory approved by the administrator.

(2) The administrator shall also review the quality assurance procedures twice a year to assure that they are being followed by the manufacturer.

13. A new § 200.953 is added to read as follows:

§ 200.953 Supplementary specific requirements under the HUD building product standards and certification program for sprayed polyurethane foam for roof insulation.

(a) *Applicable standards.* (1) All sprayed polyurethane foam for roof insulation shall be designed, manufactured, and tested in compliance with ASTM C1029–93 Standard Specification for Spray Applied Rigid Cellular Polyurethane Thermal Insulation. The foam shall be installed in accordance with ASTM D5469–93 Standard Guide for Application of New Spray Applied Polyurethane Foam and Coated Roofing Systems, and designed in accordance with the Society of the Plastics Industry (SPI) standard PFCD AY 104–90 Recommended Design Considerations and Guide Specifications.

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. They are available from the American National Standards Institute, Inc., 11 West 42nd Street, New York, New York 10036, or the Society of the Plastics Industry (SPI), 1275 K Street, NW, Suite 400, Washington, D.C., 20005.

(b) *Labeling.* Under the procedures set forth in 24 CFR 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standard are required to be on the certification label issued by the administrator to the manufacturer. Each container or package of sprayed polyurethane foam roof insulation

material shall be marked as conforming to UM 110. The label shall include the manufacturer's name and plant location.

(c) *Periodic tests and quality assurance inspections.* Under the procedures set forth in 24 CFR 200.935(d)(8) concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of sprayed polyurethane foam for room insulation, testing and inspection shall be conducted as follows:

(1) At least twice a year, the administrator shall visit the manufacturer's facility to select a sample for testing in an approved laboratory with the applicable standard.

(2) The administrator shall also review the quality assurance procedures twice a year to assure that they are being followed by the manufacturer.

14. A new § 200.954 is added to read as follows:

§ 200.954 Supplementary specific requirements under the HUD building product standard and certification program for flooring adhesives.

(a) *Applicable Standards.* (1) All construction adhesives for field glued wood floor systems shall be designed, manufactured, and tested in compliance with the following American Society for Testing and Materials (ASTM) standard D3498–93 Specifications for Adhesive for Field-Gluing Plywood to Lumber Framing for Floor Systems except that the mold and bacteria resistance tests shall not be included.

(2) This standard has been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, and is available from the American Society for Testing & Materials Inc., 100 Barr Harbor Drive, West Conshohocken, PA. 19428.

(b) *Labeling.* Under the procedures set forth in 24 CFR 200.935(d)(6) concerning labeling of a product, the Administrator's validation mark and the manufacturer's certification of compliance with the applicable standard are required to be on the certification label issued by the Administrator to the manufacturer. Each container shall be marked as being in compliance with UM 60a. The label shall also include the manufacturer's name, plant location, and shelf life.

(c) *Periodic Tests and Quality Assurance.* Under the procedures set forth in 24 CFR 200.935(d)(8) concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of construction adhesives for field glued wood floor systems, testing and inspection shall be conducted as follows:

(1) At least every six months, the administrator shall visit the manufacturer's facility to select a sample for testing in a laboratory approved by the administrator.

(2) The administrator shall also review the quality assurance procedures twice a year to assure that they are being followed by the manufacturer.

15. A new § 200.955 is added to read as follows:

§ 200.955 Supplementary specific requirements under the HUD building product standard and certification program for fenestration products (windows and doors).

(a) *Applicable Standards.* (1) All windows and doors shall be designed, manufactured, and tested in compliance with American Architectural Manufacturers Association (AAMA) standard, AAMA 101/I.S.2–97, Voluntary Specifications for Aluminum, Vinyl (PVC), and Wood Windows and Glass Doors.

(2) This standard has been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, and is available from the American Architectural Manufacturers Association, 1540 East Dundee Road, Paletine, IL 60067.

(b) *Labeling.* Under the procedures set forth in 24 CFR 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. Each window or glass door shall include the manufacturer's name, plant location, and statement of compliance with UM 111.

(c) *Periodic Tests and Quality Assurance Inspections.* Under the procedures set forth in 24 CFR 200.935(d)(8) concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of windows and glass doors, testing and inspection shall be conducted as follows:

(1) At least once every four years, the administrator shall visit the manufacturer's facility to select a commercial sample for testing in a laboratory approved by the administrator.

(2) The administrator shall also review the quality assurance procedures twice a year to assure that they are being followed by the manufacturer.

Dated: March 7, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner

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RESERVATIONS: 202–523–4538

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●**1, 2 (2** Reserved)	(869–032–00001–8)	$5.00	Feb. 1, 1997
●**3** (1996 Compilation and Parts 100 and 101)	(869–032–00002–6)	20.00	[1] Jan. 1, 1997
●**4**	(869–032–00003–4)	7.00	Jan. 1, 1997
5 Parts:			
●1–699	(869–032–0004–2)	34.00	Jan. 1, 1997
●700–1199	(869–032–00005–1)	26.00	Jan. 1, 1997
●1200–End, 6 (6 Reserved)	(869–032–00006–9)	33.00	Jan. 1, 1997
7 Parts:			
●0–26	(869–032–00007–7)	26.00	Jan. 1, 1997
●27–52	(869–032–00008–5)	30.00	Jan. 1, 1997
*●53–209	(869–032–00009–3)	22.00	Jan. 1, 1997
●210–299	(869–032–00010–7)	44.00	Jan. 1, 1997
●300–399	(869–032–00011–5)	22.00	Jan. 1, 1997
●400–699	(869–032–00012–3)	28.00	Jan. 1, 1997
●700–899	(869–032–00013–1)	31.00	Jan. 1, 1997
900–999	(869–032–00014–0)	40.00	Jan. 1, 1997
●1000–1199	(869–032–00015–8)	45.00	Jan. 1, 1997
●1200–1499	(869–032–00016–6)	33.00	Jan. 1, 1997
1500–1899	(869–028–00019–3)	41.00	Jan. 1, 1996
●1900–1939	(869–032–00018–2)	19.00	Jan. 1, 1997
●1940–1949	(869–032–00019–1)	40.00	Jan. 1, 1997
●1950–1999	(869–032–00020–4)	42.00	Jan. 1, 1997
●2000–End	(869–032–00021–2)	20.00	Jan. 1, 1997
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9 Parts:			
●1–199	(869–032–00023–9)	39.00	Jan. 1, 1997
●200–End	(869–032–00024–7)	33.00	Jan. 1, 1997
10 Parts:			
●0–50	(869–028–00027–4)	30.00	Jan. 1, 1996
●51–199	(869–032–00026–3)	31.00	Jan. 1, 1997
200–399	(869–028–00029–1)	5.00	Jan. 1, 1996
400–499	(869–028–00030–4)	21.00	Jan. 1, 1996
500–End	(869–028–00031–2)	34.00	Jan. 1, 1996
●**11**	(869–032–00029–8)	20.00	Jan. 1, 1997
12 Parts:			
●1–199	(869–032–00030–1)	16.00	Jan. 1, 1997
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●220–299	(869–032–00032–8)	34.00	Jan. 1, 1997
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●600–End	(869–032–00035–2)	40.00	Jan. 1, 1997
●**13**	(869–032–00036–1)	23.00	Jan. 1, 1997
14 Parts:			
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*60–139	(869–032–00038–7)	38.00	Jan. 1, 1997
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200–1199	(869–032–00040–9)	30.00	Jan. 1, 1997
●1200–End	(869–032–00041–7)	21.00	Jan. 1, 1997
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150–279	(869–028–00056–8)	12.00	Apr. 1, 1996
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1–399	(869–028–00062–2)	20.00	Apr. 1, 1996
●400–499	(869–028–00063–1)	35.00	Apr. 1, 1996
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21 Parts:			
●1–99	(869–028–00065–7)	16.00	Apr. 1, 1996
●100–169	(869–028–00066–5)	22.00	Apr. 1, 1996
●170–199	(869–028–00067–3)	29.00	Apr. 1, 1996
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●300–499	(869–028–00069–0)	50.00	Apr. 1, 1996
●500–599	(869–028–00070–3)	28.00	Apr. 1, 1996
●600–799	(869–028–00071–1)	8.50	Apr. 1, 1996
●800–1299	(869–028–00072–0)	30.00	Apr. 1, 1996
●1300–End	(869–028–00073–8)	14.00	Apr. 1, 1996
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200–219	(869–028–00078–9)	14.00	May 1, 1996
220–499	(869–028–00079–7)	13.00	May 1, 1996
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§§ 1.441-1.500	(869-028-00090-8)	22.00	Apr. 1, 1996
§§ 1.501–1.640	(869–028–00091–6)	21.00	Apr. 1, 1996
§§ 1.641–1.850	(869–028–00092–4)	25.00	Apr. 1, 1996
§§ 1.851–1.907	(869–028–00093–2)	26.00	Apr. 1, 1996
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§§ 1.1001–1.1400	(869–028–00095–9)	26.00	Apr. 1, 1996
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50–299	(869–028–00100–9)	14.00	Apr. 1, 1996
300–499	(869–028–00101–7)	25.00	Apr. 1, 1996
500–599	(869–028–00102–5)	6.00	[4] Apr. 1, 1990
600–End	(869–028–00103–3)	8.00	Apr. 1, 1996
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200–End	(869–028–00105–0)	13.00	Apr. 1, 1996
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0–99	(869–028–00108–4)	26.00	July 1, 1996
100–499	(869–028–00109–2)	12.00	July 1, 1996
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1910 (§§ 1910.1000 to end)	(869–028–00113–1)	27.00	July 1, 1996
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1926	(869–028–00115–7)	30.00	July 1, 1996
1927–End	(869–028–00116–5)	38.00	July 1, 1996
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1–199	(869–028–00117–3)	33.00	July 1, 1996
200–699	(869–028–00118–1)	26.00	July 1, 1996
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200–End	(869–028–00121–1)	33.00	July 1, 1996
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1–190	(869–028–00122–0)	42.00	July 1, 1996
191–399	(869–028–00123–8)	50.00	July 1, 1996
400–629	(869–028–00124–6)	34.00	July 1, 1996
630–699	(869–028–00125–4)	14.00	[5] July 1, 1991
700–799	(869–028–00126–2)	28.00	July 1, 1996
800–End	(869–028–00127–1)	28.00	July 1, 1996
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125–199	(869–028–00129–7)	35.00	July 1, 1996
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●52	(869–028–00142–4)	51.00	July 1, 1996
●53–59	(869–028–00143–2)	14.00	July 1, 1996
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●190–259	(869–028–00152–1)	22.00	July 1, 1996
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●1–199	(869–028–00169–6)	28.00	Oct. 1, 1996
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●500–1199	(869–028–00171–8)	30.00	Oct. 1, 1996
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●200–499	(869–028–00180–7)	21.00	Oct. 1, 1996
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●1–199	(869–028–00202–1)	34.00	Oct. 1, 1996
●200–599	(869–028–00203–0)	22.00	Oct. 1, 1996

Title	Stock Number	Price	Revision Date
●600–End	(869–028–00204–8)	26.00	Oct. 1, 1996
CFR Index and Findings Aids	(869–028–00051–7)	35.00	Jan. 1, 1996
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1996. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.